

EXHIBIT G

From: [Avitabile, David](#)
To: ["Ndaw, Mamadou \(DCRA\)"](#)
Cc: ["Ilan Scharfstein"; Epting, John](#); ["LeGrant, Matt \(DCRA\)"](#)
Subject: 2121 M Street - Zoning Administrator letter
Date: Friday, November 22, 2013 12:18:12 PM
Attachments: [Determination Ltr re 2109 M St to Epting 12-6-2010.pdf](#)
[Sq70_Determ Ltr - Exh E.PDF](#)
[Sq70_Determ Ltr - Exh A.PDF](#)
[Sq70_Determ Ltr - Exh B.PDF](#)
[Sq70_Determ Ltr - Exh C.PDF](#)
[Sq70_Determ Ltr - Exh D.PDF](#)

Good afternoon Mamadou,

Attached is a full version of Matt's 2010 letter regarding 2121 M Street, with exhibits. Note that the project was slightly different (it was an apartment building rather than a hotel) but the key findings on lot control, single building, etc all hold true.

Thanks,
Dave

David M. Avitabile

Associate

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***goulston*&storrs**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



December 6, 2010

John Epting, Esq.
Goulston & Storrs, PC
2001 K Street NW, 11th Floor
Washington, DC 20006

**Re: Zoning Determination Letter
 2109 M Street NW – Square 70, Lot 880 (part of record lot 190)**

Dear Mr. Epting:

You have asked for a determination letter regarding a series of zoning issues related to property located at 2109 M Street NW (Square 70, Lot 880) (“Property”). It is my understanding that you plan to construct a new apartment building on the Property containing approximately 160 units (“Project”). The ground floor of the building will contain the residential lobby entrance as well as a club that provides various amenities (food, beverage, fitness center, etc) to both residents of the building as well as club members who are not residents. Concept test fit plans depicting the proposed Project are included in Exhibit A.

Based on my review of the zoning history of the Property, I have determined that the proposed Project fully complies with the following requirements of the Zoning Regulations:

- Section 631: Permitted Floor Area Ratio in the CR Zone, including the related definition of “building” set forth in Section 199.
- Section 634: Permitted Lot Occupancy in the CR Zone, including the related definition of “lot” set forth in Section 199 and the status of the ground-floor club as a nonresidential use under Section 634.
- Section 638: Court requirements in the CR Zone, including the related definitions of courts set forth in Section 199
- Chapter 21: Parking requirements for the existing improvements to the Record Lot and proposed Project
- Chapter 22: Loading requirements for the existing improvements to the Record Lot and proposed Project.

Below is a summary of the zoning and development history for the Property, followed by a detailed analysis of each zoning feature.

I. History

The Property contains approximately 18,212 s.f. of land area and is currently improved with a surface parking lot. Prior to 2006, the Property contained a one-story retail/service establishment known as Lulu's Club Mardi Gras that occupied the entire lot.

The Property is part of a single lot development based on record lot 190 ("Record Lot"). The Record Lot is currently improved with the surface parking lot on the Property, as well as a Marriott hotel, Walgreens drug store, and Starbucks coffee shop. A private alley runs along the eastern end of the Record Lot. A plat depicting the existing improvements on the Record Lot is attached as Exhibit B.

Based on information included on the Zoning Computation sheets prepared by prior Zoning Administrators (attached as Exhibit C) as well as information you provided, the development history of the Property is set forth below:

- Pre-1958: improvements included a one-story restaurant on the Property (Lulu's) and a one-story restaurant on the Record Lot (Blackie's House of Beef).
- 1978: new hotel containing 354 rooms constructed on Record Lot
- 1990: addition to hotel containing 71 rooms constructed
- 2006: addition to hotel containing 56 rooms constructed. Blackie's converted to use as Walgreens and Starbucks.
- 2006: Lulu's demolished and converted to surface parking lot

The Record Lot, including the Property, is zoned CR and is located in the Dupont Circle Overlay District.

II. Permitted Density

In the CR zone district, the maximum permitted FAR is 6.0 (of which up to 3.0 may be for non-residential uses). Section 631.3 of the Zoning Regulations permits the allowable residential and non-residential density to be apportioned between several record lots in the same square in the CR zone.

A series of recorded covenants apportioned the allowable density between Lot 190 and other lots in Square 70. Pursuant to my prior ruling dated February 13, 2009 and attached as Exhibit D, Lot 190 has 120,639.91 square feet available for future development on the Record Lot. Of that amount, up to 18,212 square feet may be for non-residential uses.

Under the Zoning Regulations, only one building is permitted on a record lot. Furthermore, in order to construct the Project described above, and utilize the density available to the Record Lot, the Project must be constructed as an addition to the existing improvements, such that the entire set of improvements on the Record Lot constitute one “building” as defined under the Zoning Regulations.

Under the definition of “building” in Section 199.1 of the Regulations, the existence of communication at or above the main floor unifies the separate portions of a structure into a single building. Here, the “main floor” of the Record Lot is its ground floor, and, as shown on the ground floor plan included in Exhibit A, you have indicated that meaningful communication between the existing improvements and the Project will be constructed as a part of the Project.

Accordingly, the proposed Project is an addition that is part of a “single building” that may utilize the density available on the Record Lot.

III. Lot Occupancy

Under Section 634.1, the maximum lot occupancy for a structure devoted to residential use is 75%. Percentage of lot occupancy is defined in Section 199 as a figure that expresses that portion of a **lot** lying within lot lines and building lines that is occupied by building area. Section 199 further states that a “lot” may or may not be a record lot.

Here, you have proposed evaluating whether the Project complies with the lot occupancy requirements based on its relationship to Lot 880, an assessment and taxation lot (i.e. the Property), rather than based on its relationship to Lot 190, the underlying Record Lot. I conclude that calculation of the percentage of lot occupancy based on an assessment and taxation lot is permissible under the Zoning Regulations, which explicitly provide that a “lot” need not be a record lot.

I further conclude, based on the same rationale, that the use of an assessment and taxation lot to determine compliance with the lot occupancy requirement does not preclude the use of an underlying record lot to determine compliance with other requirements of the Zoning Regulations. Nothing in the Regulations states that the “lot” used for evaluating compliance with one portion of the Regulations need be the same as the “lot” used for evaluating compliance with another portion of the Regulations.

Under Section 634.2, the percentage of lot occupancy is calculated on a horizontal plane located at the lowest level where residential uses begin. Under Section 634.3, “residential uses” includes “multiple dwellings.”

Here, you have proposed treating the ground floor of the Project as a nonresidential use for purposes of lot occupancy. As discussed above, the ground floor of the Project will contain the residential lobby entrance as well as amenity space that provides food, beverage, access to a fitness center, and social gathering space available to both residents of the Project as well as club members who are not residents.

Under longstanding interpretations of the Zoning Regulations, the presence of a residential building entrance, by itself, does not trigger the percentage of lot occupancy requirements at the ground level of a building. Such entrances typically include a lobby, offices for building management as well as the leasing offices, and back of house space for loading and service, and may also include amenity spaces for the residents such as business centers, fitness centers, or gathering spaces. I conclude that these uses are not “residential uses” for purposes of Section 634; rather, they are permitted nonresidential uses that are accessory to the residential dwelling units above. Therefore, so long as no dwelling units are located on the ground floor of a multiple dwelling unit, and the amenity space is made available to both residents of the Project as well as club members who are non-residents, the ground floor is not “residential” for purposes of Section 634. In support of this conclusion, I note that such accessory uses are not listed as a “residential use” under Section 634.3.

Accordingly, the ground floor uses in the Project are not “residential uses” for purposes of calculating lot occupancy, and a lot occupancy of up to 100% is permitted for the ground floor of the Project.

IV. Courts

Courts are not required in the CR Zone District. Under Section 638 of the Regulations, if an open court is provided for residential use, its width must be three inches (3 in.) per foot of court height, but not less than 10 feet wide. If a closed court is provided for residential use, its width must be four inches (4 in.) per foot of court height, but not less than 15 feet, and the area of the court must be twice the square of the required width. Section 199 of the Regulations defines a closed court as a court surrounded on all sides by the exterior walls of a building and side or rear lot lines, or by alley lines when the alley is less than 10 feet wide. Any court that is not a closed court is an open court. The Regulations define an open court as a court that opens onto a street, yard or alley not less than 10 feet wide.

According to the 1978 Comp Sheet and attachments thereto, the open area on the Record Lot above the Property and the adjacent private alley were historically considered to be one open court.¹ As shown on the test fit drawings attached as Exhibit A, the proposed Project will narrow this open court but continue to maintain it as one continuous open space along the east side of the Record Lot.

Accordingly, I conclude that this court will continue to meet the definition of “open court” under the Zoning Regulations. For purposes of calculating the required open court width, the court should be segmented into two separate pieces – one being the volume beginning at the ground level that roughly corresponds with the private alley, and the other being the volume that begins above the ground floor of the Project. Since the width of the latter volume is irregular, it may be calculated based on the diameter of the largest circle that may be inscribed in a horizontal plane within the court. The required width of this court shall be based on the height of the court.

¹ At the time of construction in 1978, this open court was located, in part, above the one-story Lulu’s establishment.

As shown on the test fit drawings attached as Exhibit A, a second court will be created in the center of the Record Lot, to the west of the Project. This court is surrounded on all sides by the Project and other improvements on the Record Lot and, therefore, is a closed court, because it is surrounded on all sides by the exterior walls of the “building” (meaning, the single building for zoning purposes created on the Record Lot). Again, the required width and area of the court shall be based on the height of the court.

V. Parking

According to the Comp Sheet, in 1978, the uses on the Record Lot did not require any parking.² The 1990 addition of 71 hotel rooms established a requirement for 18 parking spaces, and the 2006 addition of 56 hotel rooms triggered a requirement of 14 additional parking spaces.³ Therefore, the existing improvements on the Record Lot require a total of 32 parking spaces.

The improvements associated with the hotel include an underground parking structure containing 140 parking spaces. Since the existing uses have a parking requirement of 32 spaces, the Record Lot complies with the parking requirements of the Zoning Regulations, and currently contains an excess of 108 parking spaces. This parking is located on the Record Lot, but not on the Property.

The proposed Project contains 160 residential units, which triggers a requirement for 54 additional parking spaces. You have proposed the use of the excess parking spaces in the hotel garage towards the parking requirement for the Project.

As discussed above, the Record Lot is divided into separate A&T lots, one of which is the Property. Furthermore, as discussed above, the Project will be constructed as an addition to existing improvements on the Record Lot, such that the structures constitute one building for zoning purposes.

As I have previously determined (see Oct 12, 2010 Zoning Determination letter attached as Exhibit E), Section 2116.1 of the Zoning Regulations provides that all parking spaces must be located on the same lot with the buildings or structures they are intended to serve. Furthermore, Section 199 states that a lot may be a record lot or an A&T lot. Therefore, as I have previously concluded, required parking spaces need not be located on the same A&T lot of the associated use so long as they are located on the same underlying record lot as the building they are intended to serve.

Accordingly, excess parking spaces located on the separate hotel A&T lot may be used to satisfy the parking requirement for the Project, because they are located on the same underlying Record Lot.

² At the time of construction of the new hotel in 1978, the CR Zone did not impose a parking minimum on hotels. Furthermore, the pre-existing retail uses (Lulu's, on the Property, and Blackie's, on the Record Lot) were constructed prior to 1958 and required no parking.

³ No additional parking was required for the 2006 change in retail tenants from Blackie's to Walgreens and Starbucks, since the area devoted to retail use remained the same.

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December 6, 2010

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2001 K Street NW, 11th Floor
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**Re: Zoning Determination Letter
 2109 M Street NW – Square 70, Lot 880 (part of record lot 190)**

Dear Mr. Epting:

You have asked for a determination letter regarding a series of zoning issues related to property located at 2109 M Street NW (Square 70, Lot 880) (“Property”). It is my understanding that you plan to construct a new apartment building on the Property containing approximately 160 units (“Project”). The ground floor of the building will contain the residential lobby entrance as well as a club that provides various amenities (food, beverage, fitness center, etc) to both residents of the building as well as club members who are not residents. Concept test fit plans depicting the proposed Project are included in Exhibit A.

Based on my review of the zoning history of the Property, I have determined that the proposed Project fully complies with the following requirements of the Zoning Regulations:

- Section 631: Permitted Floor Area Ratio in the CR Zone, including the related definition of “building” set forth in Section 199.
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- Chapter 22: Loading requirements for the existing improvements to the Record Lot and proposed Project.

Below is a summary of the zoning and development history for the Property, followed by a detailed analysis of each zoning feature.

I. History

The Property contains approximately 18,212 s.f. of land area and is currently improved with a surface parking lot. Prior to 2006, the Property contained a one-story retail/service establishment known as Lulu's Club Mardi Gras that occupied the entire lot.

The Property is part of a single lot development based on record lot 190 ("Record Lot"). The Record Lot is currently improved with the surface parking lot on the Property, as well as a Marriott hotel, Walgreens drug store, and Starbucks coffee shop. A private alley runs along the eastern end of the Record Lot. A plat depicting the existing improvements on the Record Lot is attached as Exhibit B.

Based on information included on the Zoning Computation sheets prepared by prior Zoning Administrators (attached as Exhibit C) as well as information you provided, the development history of the Property is set forth below:

- Pre-1958: improvements included a one-story restaurant on the Property (Lulu's) and a one-story restaurant on the Record Lot (Blackie's House of Beef).
- 1978: new hotel containing 354 rooms constructed on Record Lot
- 1990: addition to hotel containing 71 rooms constructed
- 2006: addition to hotel containing 56 rooms constructed. Blackie's converted to use as Walgreens and Starbucks.
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A series of recorded covenants apportioned the allowable density between Lot 190 and other lots in Square 70. Pursuant to my prior ruling dated February 13, 2009 and attached as Exhibit D, Lot 190 has 120,639.91 square feet available for future development on the Record Lot. Of that amount, up to 18,212 square feet may be for non-residential uses.

Under the Zoning Regulations, only one building is permitted on a record lot. Furthermore, in order to construct the Project described above, and utilize the density available to the Record Lot, the Project must be constructed as an addition to the existing improvements, such that the entire set of improvements on the Record Lot constitute one “building” as defined under the Zoning Regulations.

Under the definition of “building” in Section 199.1 of the Regulations, the existence of communication at or above the main floor unifies the separate portions of a structure into a single building. Here, the “main floor” of the Record Lot is its ground floor, and, as shown on the ground floor plan included in Exhibit A, you have indicated that meaningful communication between the existing improvements and the Project will be constructed as a part of the Project.

Accordingly, the proposed Project is an addition that is part of a “single building” that may utilize the density available on the Record Lot.

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I further conclude, based on the same rationale, that the use of an assessment and taxation lot to determine compliance with the lot occupancy requirement does not preclude the use of an underlying record lot to determine compliance with other requirements of the Zoning Regulations. Nothing in the Regulations states that the “lot” used for evaluating compliance with one portion of the Regulations need be the same as the “lot” used for evaluating compliance with another portion of the Regulations.

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According to the 1978 Comp Sheet and attachments thereto, the open area on the Record Lot above the Property and the adjacent private alley were historically considered to be one open court.¹ As shown on the test fit drawings attached as Exhibit A, the proposed Project will narrow this open court but continue to maintain it as one continuous open space along the east side of the Record Lot.

Accordingly, I conclude that this court will continue to meet the definition of “open court” under the Zoning Regulations. For purposes of calculating the required open court width, the court should be segmented into two separate pieces – one being the volume beginning at the ground level that roughly corresponds with the private alley, and the other being the volume that begins above the ground floor of the Project. Since the width of the latter volume is irregular, it may be calculated based on the diameter of the largest circle that may be inscribed in a horizontal plane within the court. The required width of this court shall be based on the height of the court.

¹ At the time of construction in 1978, this open court was located, in part, above the one-story Lulu’s establishment.

As shown on the test fit drawings attached as Exhibit A, a second court will be created in the center of the Record Lot, to the west of the Project. This court is surrounded on all sides by the Project and other improvements on the Record Lot and, therefore, is a closed court, because it is surrounded on all sides by the exterior walls of the “building” (meaning, the single building for zoning purposes created on the Record Lot). Again, the required width and area of the court shall be based on the height of the court.

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The proposed Project contains 160 residential units, which triggers a requirement for 54 additional parking spaces. You have proposed the use of the excess parking spaces in the hotel garage towards the parking requirement for the Project.

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Accordingly, excess parking spaces located on the separate hotel A&T lot may be used to satisfy the parking requirement for the Project, because they are located on the same underlying Record Lot.

² At the time of construction of the new hotel in 1978, the CR Zone did not impose a parking minimum on hotels. Furthermore, the pre-existing retail uses (Lulu's, on the Property, and Blackie's, on the Record Lot) were constructed prior to 1958 and required no parking.

³ No additional parking was required for the 2006 change in retail tenants from Blackie's to Walgreens and Starbucks, since the area devoted to retail use remained the same.

VI. Loading

According to the Comp Sheet, in 1978, the uses on the Record Lot required 2 loading berths and 6 delivery spaces, which are located off Ward Place.⁴ The 1990 and 2006 additions of hotel rooms did not trigger a requirement for additional loading.⁵ Therefore the current improvements comply with the loading requirement.

The Project contains over 50 dwelling units, which triggers a requirement for additional loading under the Regulations. Specifically, the requirement is for one (1) 55-foot berth, one (1) 200 square foot platform, and one (1) 20-foot loading space. For zoning purposes, this loading may be located anywhere on the Record Lot, for the reasons discussed in Section V above.

VII. Inclusionary Zoning

Under Section 2602.1(c)(iii) of the Regulations, Inclusionary Zoning ("IZ") applies to additions containing 10 or more multifamily dwelling units that increase the gross floor area of the entire development by 50% or more. Additions that increase the GFA of the development by less than 50% are exempt from IZ. As stated in my prior Zoning determination letter dated November 18, 2010, this exemption applies to residential additions to both residential and commercial buildings.

Accordingly, so long as the Project has a gross floor area that is less than 50% of the gross floor area of the existing improvements on the Record Lot, the Project will be exempt from IZ.

VIII. Conclusion

Based on the foregoing, the existing improvements on the Record Lot comply with the parking and loading requirements of the Zoning Regulations, and the proposed Project will fully comply with the use, density, lot occupancy, court, parking and loading requirements of the Regulations. Accordingly, when you file the plans for a building permit, I will approve drawings if they are consistent with the calculations and exhibits referred to above. Please let me know if you have further questions.

Sincerely, Matthew Le Grant

Matthew Le Grant
Zoning Administrator

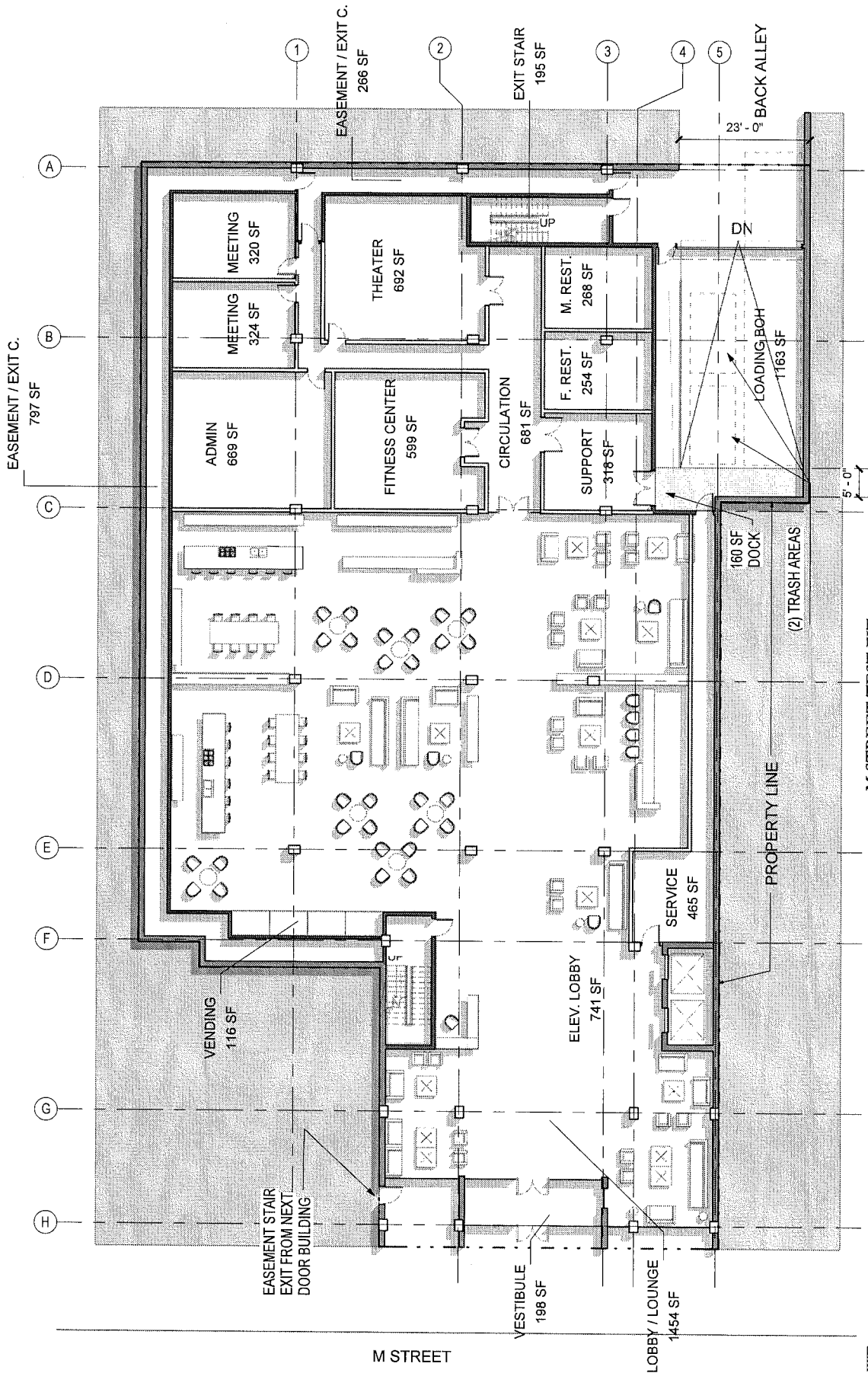
Attachments

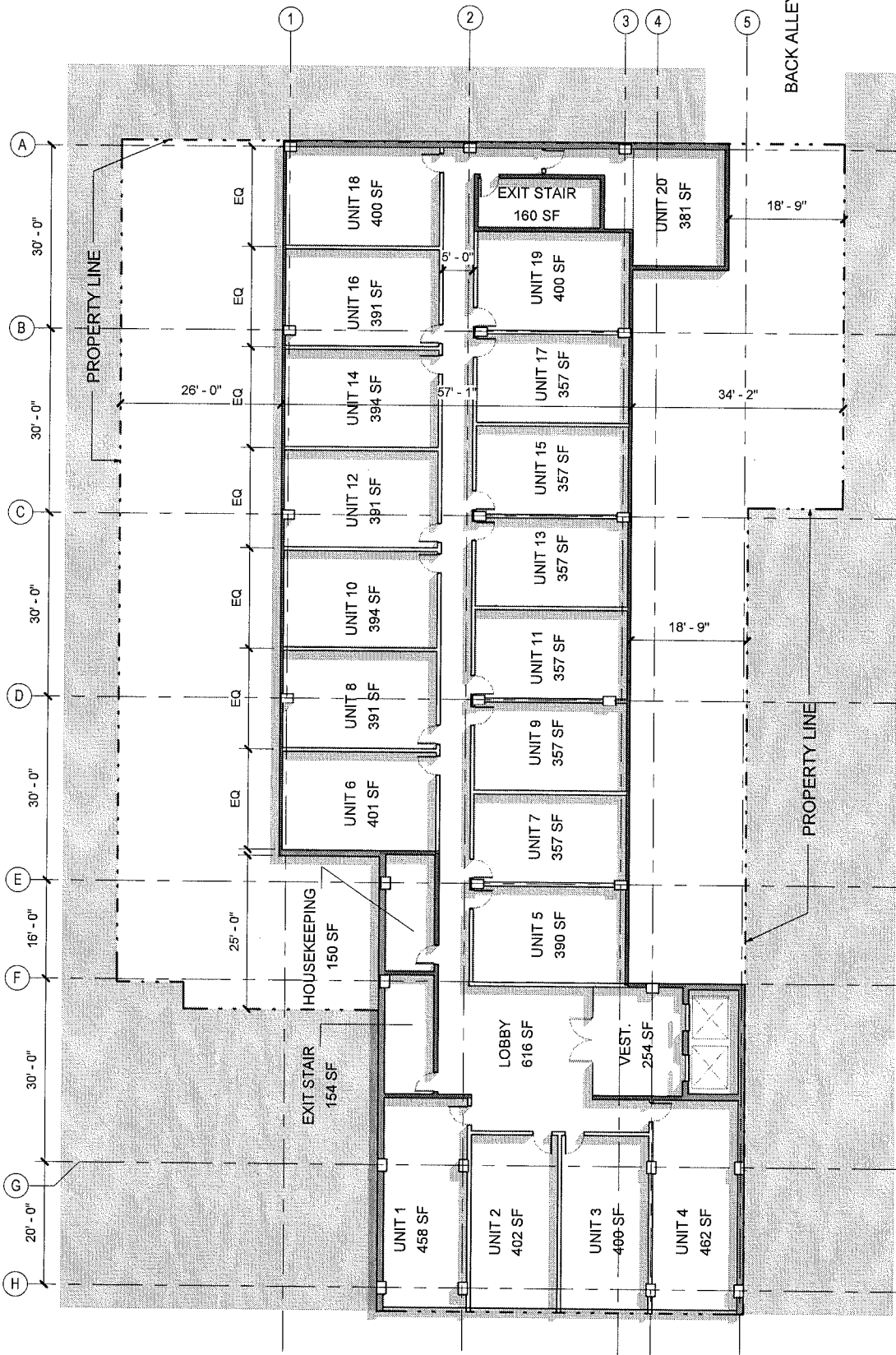
File: Determination Ltr re 2109 M St to Epting 12-6-2010

⁴ Again, per the 1978 Comp Sheet, the pre-existing retail uses (Lulu's, on the Property, and Blackie's, on the Record Lot) required no loading.

⁵ No additional loading was required for the 2006 change in retail tenants from Blackies to Walgreens and Starbucks, since retail uses between 5,000 s.f. and 20,000 s.f. require the same amount of loading as a drug store of the same size, and retail uses less than 5,000 s.f. do not require any loading space.

EXHIBIT A





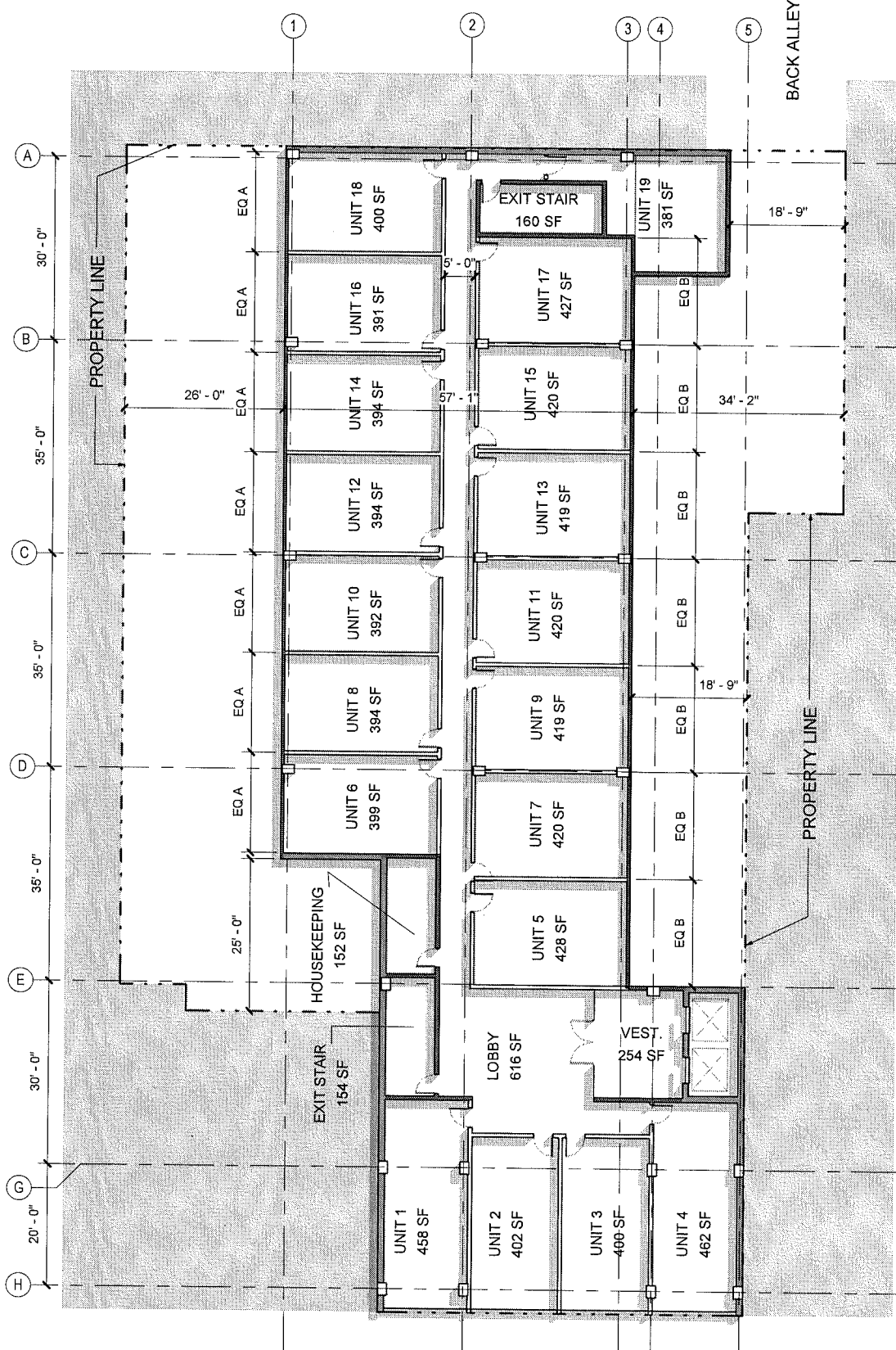
M STREET

LOWE
Gensler

M STREET TEST FIT
TYPICAL FLOOR (REVISED
11/26/10)

11/26/10

© 2010 Gensler

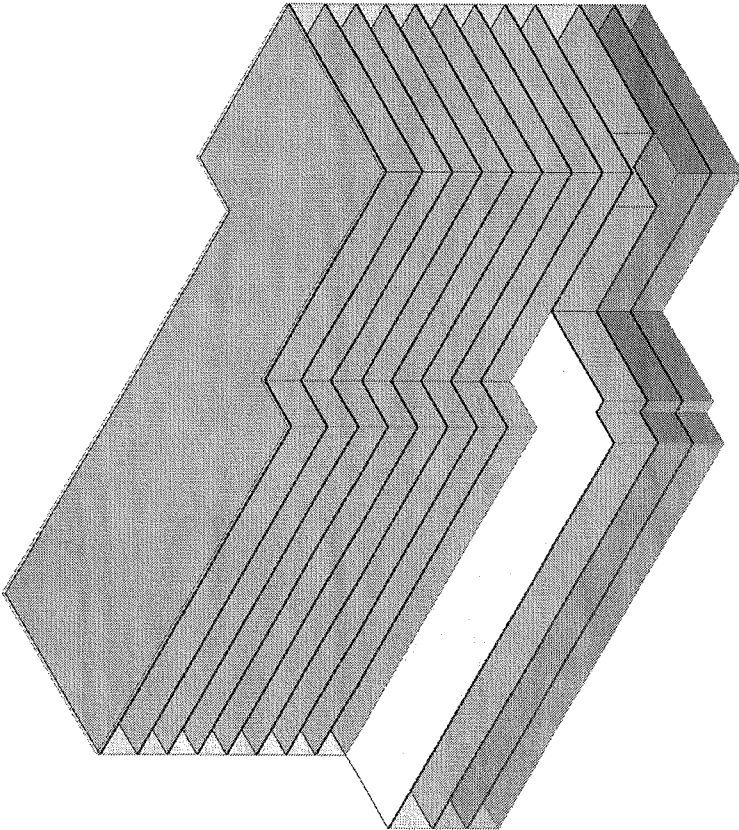


M STREET

LOWE
Gensler

M STREET TEST FIT
 TYPICAL FLOOR 152 UNITS
 (REVISED 11/26/10)

11/26/10
 © 2010 Gensler



FLOOR PLATE SCHEDULE	
LEVEL	GROSS FLOOR AREA
GF LEVEL	18020 SF
LEVEL 2	10710 SF
LEVEL 3	10710 SF
LEVEL 4	10710 SF
LEVEL 5	10710 SF
LEVEL 6	10710 SF
LEVEL 7	10710 SF
LEVEL 8	10710 SF
LEVEL 9	10710 SF
Grand total: 9	103710 SF

NOTE:
 FLOOR AREAS REFLECT FULL FLOOR PLATES MASURED TO THE EXTERIOR EDGE OF WALL AS PLANNED DURING TEST FIT STAGE. THEY INCLUDE ELEVATOR SHAFTS, STAIRS, ETC IN EACH FLOOR. THESE ARE PROVIDED FOR REFERENCE ONLY.

EXHIBIT B

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., August 13, 2008

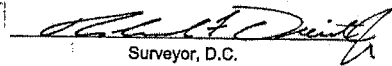
Plat for Building Permit of SQUARE 70 LOT 190

Scale: 1 inch = 50 feet

Recorded in Book 171 Page 184

Receipt No. 05949

Furnished to: JAN MARUT


Surveyor, D.C.

By: L.E.S. 

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

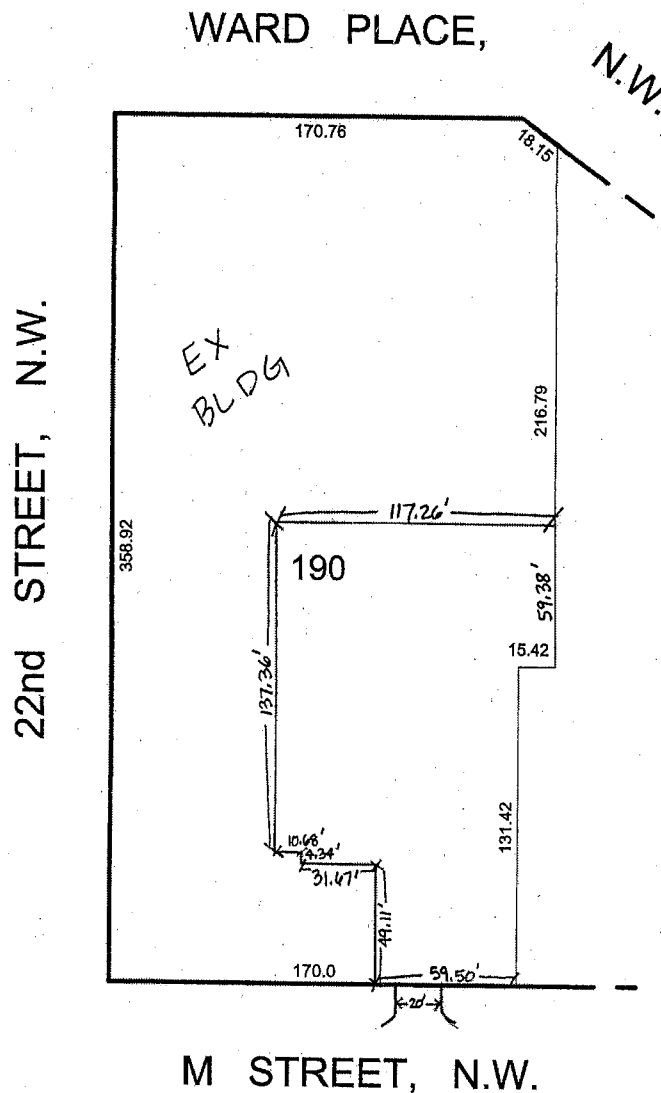


EXHIBIT C

LI-2-3
5/1/58

DISTRICT OF COLUMBIA GOVERNMENT
DEPARTMENT OF LICENSES AND INSPECTIONS
ZONING DIVISION

ZA-78-
FILE NO. 663

ZONING COMPUTATION SHEET - COMMERCIAL USE

1. Owner MR. U.G. AUGER		2. Location 1221-22 ND ST, N.W.		3. Square 70	
4. Lot 187		5. Zone CR		6. Use of Building or Structure HOTEL	
				7. New ☒ Addition to Alter existing	
8. Type of Structure Conforming Nonconforming		9. Use of Structure Conforming ☒ Nonconforming		10. Width of Adjacent Streets, 22 ND ST. - 90' M ST. - 90' WARD PL. - 50'	
				11. Width of Adjacent Alleys PUBLIC ALLEY-30'	
12. Width of Restriction Lines None		13. Application of Act of June 1, 1910 Height of Bldg. - 110' Excess Height - None		14. Type of Lot Corner ☒ Through ☒ Triangular ☐ Alley ☐ Interior ☐	
				15. Number of Dwelling Units HOTEL ROOMS 354	
16. Lot Area Required - NP 59,291.95 Provided -		17. Lot Occupancy No Allowed - LIMIT Provided - 54,918.26		18. Gross Floor Area Total 213,864.42 204,160.77 F.A.R. = 4,703.65	
				19. Cellar Area Total 81,616.05	
				20. Floor Area Ratio G.O. = 355,751.7 Allowed - 213,864.42 Provided - 204,160.77	
21. Number of Residential Parking Spaces MAX HOTEL SPACES = 89 Required - NONE Provided - 89 Open Area - None Within Bldg. -		22. Number of Commercial Parking Spaces Required - Provided - Open Area - Within Bldg. -		23. Number of Loading Berths Required - 2 MAX = 4 SERVICE SPACE REQ = 6 Provided - 2 LOAD BERTHS 6 SERVICE SPACES	
24. Height of Bldg. Curb, to first floor - 90' - 1.7' to high point of roof - 90' Grade, to first floor - .85' to ceiling top story - 90.85' to high point of roof - 107.52'		25. Number of Stories Allowed - NP. Provided - 9 Basement - None Cellar - 3 PENTHOUSE - ☒		26. Rear Yard Depth - None - None Side Yard Width - None - None Open Court Width - 16.3 - 46.5' Closed Court Width - 14.47 - 301.42 Closed Court Area - None - None	

REMARKS:

(PENTHOUSE)

REFERENCE ELEVATION -

T.C. = 57.2' 1ST FL. = 55.5'
MIDDLE OF LOT ON 'M' ST.

~~BED ON EXCESS PARKING~~

COMPLIES WITH REQUIREMENT

FEB 2 1979 DE ZONING REGULATIONS

PENTHOUSE = .37 = 21,938.02
F.A.R.
PROVIDED = 9,703.65
HEIGHT = 17.52'

~~TOPO FROM HIGHWAY~~ (SUBMITTED 7/18/78)

~~PLANS TO M.P.O. ON POOF STRUCTURES~~ - Will submit on 12-14-78 to Zoning

TRIED TO REACH MR. GITLIN ON ^{EXCESS} PARKING 9/14/78. ARCHITECT CONTACTED -
(840-9700) Changes made 9/15/78 - R Smith 9/15/78

Open Courts widths

2 1/2" / ft. of ht.

① Court above function room -
Req = 16.3' Provided = 46.5'

② Small court
Req = 6' Provided = 8'

③ Total open court (above public
space & existing restaurant)

Req = 14.47' PROVIDED = 301.42

~~TOPO FROM HIGHWAY - (SUBMITTED 11/10/78)~~

~~PLANS TO M.P.O. ON ROOF STRUCTURES - Will submit on 12-14-78 to Zoning~~

TRIED TO REACH MR. GITLIN ON ^{EXCESS} PARKING 9/14/78. ARCHITECT CONTACTED -
(840-9700) Changes made 9/15/78 - R. Smith 9/15/78

ZONING COMPUTATION SHEET - COMMERCIAL USE

1. Owner Ulysses L. Lulu H. Anger		2. Location 1221, 22 nd St NW		3. Square 70	
4. Lot 190		5. Zone CR		6. Use of Building or Structure Hotel	
7. New Addition to ☒		8. Type of Structure Conforming ☒ Nonconforming		9. Use of Structure Conforming ☒ Nonconforming	
10. Width of Adjacent Streets, 22 nd St 90' Hard pl 50' M St 90'		11. Width of Adjacent Alleys None		12. Width of Restriction Lines None	
13. Application of Act of June 1, 1910 Height of Bldg. 110' Excess Height -		14. Type of Lot Corner ☒ Triangular Interior		15. Number of Dwelling Units Existing 350 Allowed 71	
16. Lot Area Required <u>NP</u> Provided 64445.98 sq ft		17. Lot Occupancy Allowed <u>NP</u> Provided -		18. Gross Floor Area Total Exist 222074.30 Add 37985.57 260059.87 sq ft	
19. Cellar Area Total 81616.05 sq ft (Existing)		20. Floor Area Rat (6.0) 362487.78 Allowed - 260059.87 sq ft Provided -		21. Number of Residential Parking Spaces Required <u>18</u> Provided - Open Area - Within Bldg. -	
22. Number of Commercial Parking Spaces Additional Required <u>18</u> Provided <u>18</u> Open Area - Within Bldg. ☒		23. Number of Loading Berths Required - Provided -		24. Height of Bldg. Allowed <u>90'</u> Curb, to first floor <u>0.8'</u> to high point of roof <u>90'</u> Grade, to first floor <u>91.65'</u> to ceiling top story - to high point of roof -	
25. Number of Stories Allowed <u>HL</u> Provided <u>9</u> Basement - Cellar <u>3 (Existing)</u>		26. Required Rear Yard Depth - Side Yard Width - Open Court Width - Closed Court Width - Closed Court Area -		27. Provided Rear Yard Depth - Side Yard Width - Open Court Width - Closed Court Width - Closed Court Area -	

REMARKS, * M St. ref. for ht 57.2'

gulf. the architect on 8/1/88
at 9:15 AM. Mr. Lee that he
was ready for signing of the
zoning office.

COMPLIES WITH REQUIREMENTS
OF ZONING REGULATIONS
8/11/88

Architect
GTR Silvia Maynard
229-9300

Allowable FAR
(6.0) → 386675.85 sq ft
(-) Appraised to lot 188 → 24188.10
362487.78 sq ft

EXHIBIT D

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



February 13, 2009

Norman M. Glasgow, Jr.
Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP
Suite 100
2099 Pennsylvania Avenue, N.W.
Washington D.C. 20006

Re: Square 70 – CR District Covenants Allocating Density

Gentlemen:

This is to confirm the substance of our discussion on Thursday, January 29, 2009, concerning the allocation of density on lot 190 in Square 70, the block bounded by M, N, 22nd and 21st Streets and New Hampshire Avenue, N.W. Lot 190 is located in the southwest corner of the Square at the northeast corner of the intersection of 22nd and M Streets. It is improved with a hotel which also formerly contained the Blackie's House of Beef restaurant and Lulu's restaurant and supper club. The subject property is zoned CR and has been so zoned since 1974.

The CR District allows a maximum floor area ratio (FAR) of 6.0, of which no more than 3.0 may be used for other than residential purposes. Under §631.3, "the allowable residential and nonresidential bulk of a CR District may be apportioned between two (2) or more lots in the same square, regardless of the limits on floor area; provided that the aggregate residential and nonresidential floor area may not exceed the limits for the CR District." Further, §631.4 requires that a covenant running with the land be executed by all owners of the properties involved and the District of Columbia.

You advised that a series of covenants, starting in 1975 and ending in 1985, were executed and recorded apportioning the density of lot 190 and a number of other lots in Square 70 also zoned CR. In the 1985 covenant, the property is indicated as having a total permitted gross floor area of 365,634.53 square feet.

Subsequent to the last covenant, an application was filed for a building permit to construct an addition to the existing hotel. The Zoning Administrator reviewed that application and prepared a Zoning Computation Sheet, No. 88-97, reflecting the density allowed. That sheet, dated August 11, 1988, as complying with the requirements of the Zoning Regulations, indicates that:

Lot area	64,445.98 sf
Allowable gross floor area @ 6.0	386,675.88 sf
Gross floor area apportioned to lot 188	24,188.10 sf
Remaining FAR available to lot 190	362,487.78 sf
Existing gross floor area at the time	222,074.30 sf
Gross floor area or proposed addition	37,985.57 sf
Total resulting gross floor area	260,059.87 sf

The Zoning Computation Sheet assumed a maximum permitted density of slightly less than that provided for in the 1985 covenant. As the more restrictive of the two numbers, I have relied on the Computation Sheet number for the purposes of this determination. You advised that a permit was issued and the building was constructed in accordance with the plans on which the computations were determined.

This information was presented to and reviewed by then Zoning Administrator Toye Bello in 2005. By letter dated March 2, 2005, he concluded that

"Based on the computations set forth above, I conclude that there are 102,427.91 square feet of gross floor area remaining on lot 190 available for future development on that lot. The computations do not distinguish between residential and nonresidential space on the lot. The available density could be used for residential purposes (including multiple dwellings or guest room areas or service areas within a hotel). Computations must be provided for any future development to demonstrate that the limit of 3.0 FAR on nonresidential floor area is not being exceeded."

Subsequent to the construction of the addition, permits were issued by the District in 2006 to demolish the one story portion of the building which contained Lulu's. Pursuant to a plat, dated March 14, 2006 and revised May 15, 2006, prepared by Wiles Mensch Corporation, and based on a letter, dated January 26, 2009, from Davis Carter Scott, architects, the gross floor area removed from the building pursuant to those permits constituted 18,212 square feet.

February 13, 2009
Page 3

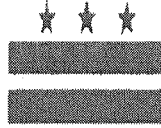
Based on the computations set forth above and following on the conclusions reached by the Zoning Administrator in 2005, I conclude that there are now 120,639.91 square feet of gross floor area remaining on lot 190 available for future development on that lot. That comprises the 102,427.91 square feet found in 2005 plus the addition of the 18,212 square feet removed pursuant to the 2006 permits. The available density may be used for residential purposes (including multiple dwellings or guest room areas or service areas within a hotel) and, within that total, up to 18,212 square feet of gross floor area may be used for nonresidential uses to replace the gross floor area formerly devoted to Lulu's. Further computations must be provided for any future development to demonstrate that the limit of 3.0 FAR on nonresidential floor area is not being exceeded.

Please let me know if I may be of further assistance.

Sincerely, Matthew Le Grant
Matthew Le Grant
Zoning Administrator

EXHIBIT E

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



October 12, 2010

Mr. Kyrus L. Freeman
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington DC 20006

Re: Parking Requirements for Record Lot 207 in Square 204 (the "Property")

Dear Mr. Freeman:

This is to confirm the substance of our discussion on Friday, October 1, 2010 concerning the above referenced Property. You have asked for confirmation of the parking computations and requirements applicable to the Property.

The Property is located in the northwest quadrant of the District and is generally bounded by V Street on the north, 14th Street on the east, U Street on the south, and 15th Street on the west. The Property is zoned R-5-D. The Property is improved with a multi-family dwelling building currently known as "Campbell Heights Apartments" but whose name is changing to "Paul Laurence Dunbar Apartments" and that contains 171 units. You provided a copy of the following items during our meeting:

1. A copy of a plat prepared by VIKa showing the existing conditions of the Property;
2. Certificate of Occupancy No. 1002566 authorizing use of the Property as a 171 unit apartment building with 51 required automobile parking spaces;
3. A copy of a plat and legal descriptions prepared by VIKa showing the proposed division of Record Lot 207 into two assessment and taxation ("A&T") lots;
4. A copy of the existing building's Resident Selection Criteria, indicating that the building's households must be an "Elderly/Disabled family;"
5. A copy of a Section 8 Housing Assistance Payments ("HAP") Contract identified as HAP Contract Number DC398023001, and extensions of the contract.

A. Parking Requirements

Pursuant to section 2101.1 of the Zoning Regulations, "Publically assisted housing, reserved for the elderly and/or handicapped" in all zoning districts are required to provide one (1) off-street parking space for each six (6) dwelling units. The information you submitted indicates that the building's residents are limited to elderly or disabled families receiving Section 8 assistance. I, therefore, conclude that the building is "publically assisted housing, reserved for the elderly and/or handicapped," and is thus required to provide one (1) off-street parking space for each six (6) dwelling units. The information you submitted indicates that the existing building includes 171 units. Thus, pursuant to section 2101.1 of the Zoning Regulations, and based on the above facts, I find that 29 off-street parking spaces are required for the existing building. Accordingly, I will advise DCRA's Permit Operations Division to amend the existing Certificate of Occupancy to indicate that 29 parking spaces are required for the existing building.

B. Location of Parking Spaces

You indicted that the owner of the Property is dividing Record Lot 207 into two A&T lots, with the existing building to be located on the "Proposed Residue Lot" A&T lot shown on the plat prepared by VIKA, and with the 29 parking spaces to be located on the "Proposed Lot A" A&T lot. You also indicated that at some point in the future, the owner anticipates constructing a new building on the "Proposed Lot A" A&T lot, connecting that new building to the existing building such that they constitute one building for zoning purposes, and locating the 29 parking spaces required for the existing building in a below-grade garage to be constructed under the future new building.

Section 2116.1 of the Zoning Regulations provides that, except as provided in other sections of the Zoning Regulations, all parking spaces must be located on the same lot with the buildings or structures they are intended to serve. Section 199 of the Zoning Regulations defines a "lot" as follows:

[T]he land bounded by definite lines that, when occupied or to be occupied by a building or structure and accessory buildings, includes the open spaces required under this title. A lot may or may not be the land so recorded in the records of the Surveyor of the District of Columbia.

11 DCMR §199.

Based upon the definition of "lot" in section 199 of the Zoning Regulations, I find that an A&T lot is a "lot" for the purposes of section 2116.1 of the Zoning Regulations. Therefore, placement of the 29 parking spaces required for the existing building on the new A&T lot -- "Proposed Lot A" -- can be done as a matter-of-right and does not require a special exception pursuant to section 2116.5 of the Zoning Regulations since those spaces will be located on the same underlying Record Lot as the building they are intended to serve.

In addition, if at some point the owner constructs a building on the new A&T lot, and such building is connected to the existing building to the extent, if any, required under then applicable zoning, the 29 parking spaces required for the existing building can be relocated to a

below-grade garage beneath the new building, provided that the underlying Record Lot 207 is maintained, and provided further that the 29 required parking spaces are accessible to the residents of the existing building.

Please let me know if you have any further questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

File: Determination Ltr re Parking SSL 204 207 to Freeman 10-12-2010