

## DeBear, Eric J.

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**From:** LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>  
**Sent:** Friday, May 7, 2021 3:11 PM  
**To:** Moldenhauer, Meridith; DeBear, Eric J.  
**Subject:** Confirmation: 2805 M Street St NW  
**Attachments:** DCOZ Zoning Map Export (54).pdf; LEGAL 51191232v1 05. Architectural Plans and Elevations.PDF

**\*\*EXTERNAL SENDER\*\***

Meredith Moldenhauer:

By means of this email I agree with the analysis and summary in the below email, and as shown on the attachments, and specifically that:

- This response email concerns our meeting of March 23, 2021 in which we discussed your client's property at 2805 M Street NW (Square 1212, Lot 0201) (the "Property"), which is located in the MU-4 zone.
- The Property is an existing historic structure with an office and retail use. The Property was partially destroyed by a car accident that ran into the rear of the building. In connection with the re-construction the client had to modify a stair to bring it into compliance.
- You filed a BZA application on behalf of your client seeking rear yard relief pursuant to Subtitle G § 1201.1. The rear yard relief arises from a proposed staircase at the rear of the Property, which will provide exterior ingress and egress to the existing second floor. The staircase is the only new construction that is proposed. Notably, there are no new windows proposed at the rear of the staircase, although there are existing windows on the rear elevation of the Property.
- The Property is already non-conforming as to rear yard (4'2" with 15 ft. required), but the proposed staircase would decrease the non-conformity to a 1 ft. rear yard at that portion of the Property. As such, we have filed for the rear yard relief under Subtitle G § 1201.1. Under Subtitle G § 1201.1 rear yard relief is a special exception pursuant to several conditions. The focus of our discuss relates to condition (b) No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall.
- Although your application was accepted, the Office of Zoning staff has raised a question as to whether subsection (b) is "applicable" to our application (subsection (a) only applies to apartment windows, but we are not proposing a residential use).
- It is your position that, since the application does not propose any new windows, but rather, just a staircase, subsection (b) is inapplicable or is otherwise satisfied. In other words, existing windows should not be considered in terms of the criteria under Subtitle G § 1201.1. Notably, under the special exception language for the RF zones and RA zones, the Zoning Regulations state:
  - An application for special exception relief under this section shall demonstrate that the proposed addition, new building, or accessory structure, shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. (Subtitle E-5201.4 and Subtitle F-5201.4):

Board of Zoning Adjustment  
District of Columbia  
CASE NO.20484  
EXHIBIT NO.29A

- In both the RF and RA zones, this language applies to special exception relief for a yard. Further, it does not state the application must demonstrate the “whole building” (in the instance of an addition) must meet the criteria under 5201.4.
- While this language does not appear in the MU zones, it is consistent with the general intent of special exceptions under the Zoning Regulations.
- Finally, you noted that under Subtitle C-202.2(c) governing nonconforming structures, “Any enlargement or addition not meeting paragraphs (a) and (b) must obtain relief from the applicable development standards.” This section requires the addition (not the whole structure) to obtain relief from the applicable development standards.
- Based on the above, I agree that, as to the applicability of Subtitle G § 1201.1(b) for the new BZA application filed for the Property, I confirm that an enlargement to a non-conforming rear yard only needs to comply with the special exception conditions for the new addition.

Please let me know if you have any further questions.

DISCLAIMER: This email is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the request for a determination. The determinations reached in this email are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this email. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This email is **NOT** a “final writing”, as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this email based on the information submitted for the Zoning Administrator’s review. Therefore this email does **NOT** vest an application for zoning or other DCRA approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DCRA.

**Matthew Le Grant**

Zoning Administrator

Office of the Zoning Administrator

Dept of Consumer and Regulatory Affairs

1100 4<sup>th</sup> St SW - Washington, DC 20024

[www.dkra.dc.gov](http://www.dkra.dc.gov)

Phone: Desk 202 442-4652 – Mobile 202-497-1742

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**From:** Moldenhauer, Meridith <MMoldenhauer@cozen.com>

**Sent:** Monday, March 22, 2021 4:47 PM

**To:** LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>

**Cc:** DeBear, Eric J. <EDeBear@cozen.com>

**Subject:** 2805 M Street

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Matt - This email concerns my client’s property at 2805 M Street NW (Square 1212, Lot 0201) (the “Property”), which is located in the MU-4 zone. The Property is an existing historic structure with an office and retail use. The Property was partially destroyed by a car accident that ran into the rear of the building. In connection with the re-construction the client had to modify a stair to bring it into compliance. We filed a BZA application on behalf of our client seeking rear yard relief pursuant to Subtitle G § 1201.1. The rear yard relief arises from a proposed staircase at the rear of the Property, which will provide exterior ingress and egress to the existing second floor. The staircase is the only new

construction that is proposed. Notably, there are no new windows proposed at the rear of the staircase, although there are existing windows on the rear elevation of the Property.

The Property is already non-conforming as to rear yard (4'2" with 15 ft. required), but the proposed staircase would decrease the non-conformity to a 1 ft. rear yard at that portion of the Property. As such, we have filed for the rear yard relief under Subtitle G § 1201.1. Under Subtitle G § 1201.1 rear yard relief is a special exception pursuant to several conditions. The focus of our discuss relates to condition (b) No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall.

Although our application was accepted, the Office of Zoning staff has raised a question as to whether subsection (b) is "applicable" to our application (subsection (a) only applies to apartment windows, but we are not proposing a residential use).

It is our position that, since the application does not propose any new windows, but rather, just a staircase, subsection (b) is inapplicable or is otherwise satisfied. In other words, existing windows should not be considered in terms of the criteria under Subtitle G § 1201.1. Notably, under the special exception language for the RF zones and RA zones, the Zoning Regulations state:

An application for special exception relief under this section **shall demonstrate that the proposed addition**, new building, or accessory structure, shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. (Subtitle E-5201.4 and Subtitle F-5201.4):

In both the RF and RA zones, this language applies to special exception relief for a yard. Further, it does not state the application must demonstrate the "whole building" (in the instance of an addition) must meet the criteria under 5201.4.

While this language does not appear in the MU zones, it is consistent with the general intent of special exceptions under the Zoning Regulations.

Finally, I would also note that under Subtitle C-202.2(c) governing nonconforming structures, "Any enlargement or addition not meeting paragraphs (a) and (b) must obtain relief from the applicable development standards." This section requires the addition (not the whole structure) to obtain relief from the applicable development standards.

Based on the above, we seek your interpretation as to the applicability of Subtitle G § 1201.1(b) for the new BZA application filed for the Property and would ask that you confirm that an enlargement to a non-conforming rear yard only needs to comply with the special exception conditions for the new addition.

I look forward to discussing this tomorrow.

Meridith



**Meridith Moldenhauer**  
**Member | Cozen O'Connor**  
1200 19th Street NW | Washington, DC 20036  
P: 202-747-0763 F: 202-683-9389 C: 202-246-7070  
[Email](#) | [Bio](#) | [Map](#) | [cozen.com](#)

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