

Tab B

DeBear, Eric J.

From: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
Sent: Thursday, May 26, 2022 11:06 AM
To: DeBear, Eric J.
Cc: Moldenhauer, Meridith; Vitale, Elisa (OP)
Subject: Confirmation: 4401-4435 Benning Road NE
Attachments: Floor Plans.pdf; Exhibit33.pdf

Importance: High

****EXTERNAL SENDER****

Eric DeBear and Meredith Moldenhauer:

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

- This response email concerns a matter we discussing during our virtual meeting of May 17, 2022 to discuss your client's new residential project at 4401-4435 Benning Road NE (Lots 40 and 61, Square 5085), which is located in the MU-7B zone.
- As was noted, the project is currently under voluntary design review as part of Zoning Commission Case No. 22-08. You noted that the project is 100% affordable and the application has the support of the ANC, Office of Planning and DDOT. On May 16, 2022, you presented the application at a public hearing to the Zoning Commission.
- During that May 16th hearing, the Commission requested clarification on two zoning-related items: 1) whether the side setbacks are treated as a court or a side yard and 2) the correct rear yard measurement. The Office of Planning stated that it would defer to the Zoning Administrator's interpretation on these two matters.

Court/Side Yard

- As reflected in the attached floor plans, on the western side (left on the image), the building is constructed to the lot line toward the rear, but there is a small setback that is 6-feet in width at the front. This setback continues up the entirety of the building. On the eastern side (right on the image), the building is entirely attached on the ground level. Starting at the second floor, there is a setback that is 9-feet in width by 63'8 1/2" in length. Toward the rear of the eastern side, the setback narrows to 3-feet in width.
- As part of the design review application, these setbacks were identified as courts. The Office of Planning report states there is no side yard provided, but references the court measurements of Subtitle G-202.1. (see pg. 3 of attached). However, during the hearing, the Commission questioned whether the setbacks are appropriately deemed a court or should be a side yard.
- In the MU-7B zone, under Subtitle G-406.3, "any portion of a building set back from the side lot line shall be considered a side yard and not a court." As discussed during our meeting, even though a side yard is defined to extend "for the full depth of a building or structure," the specific provisions in the MU-7B zone will govern. Since Subtitle G-406.3 states that "any portion" of a building that is setback is considered a side yard and not a court, the project's side setbacks are treated as side yards and must meet the side yard width requirements or seek flexibility/relief from the Commission. Under Subtitle G-406.1, no side yard is required for a building or structure other than a detached or semi-detached single dwelling unit. In the event a side yard is provided, "it

shall be at least two inches (2 in.) wide for each one foot (1 ft.) of [height of building](#) but no less than five feet (5 ft.).”

- Here, the proposed building height would require side yards of 15’6”. Accordingly, you sought my confirmation on the following relating to the side setbacks:

-That the side setbacks are deemed to be side yards, not courts, pursuant to Subtitle G-406.3.

-That the side yard width requirement is measured based on total building height, even where the eastern side yard begins at the second level.

-Within the design review case, flexibility is needed in the amount of 9’6” along the western side lot line (6-foot side yard provided); 6’6” for the front-portion along the eastern side lot line (9-foot side yard provided) and 12’6” at the rear (3-feet provided).

Rear Yard

- As part of the application, your client is seeking flexibility to have no rear yard when a 19.5-foot rear yard is required. As reflected in the attached floor plans, the rear of the building is constructed so that it abuts the rear lot line at the center point of the façade. This condition is consistent for all nine floors of the building. However, the rear lot line is curved so that there is a small open area on both sides of the rear lot line. To that end, the Commission raised the question of whether the proposal has no rear yard, or if the rear yard is actually varied along the rear property line.
- Under Subtitle B-100.2 a “rear yard” is defined as “a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title.” Therefore, by definition, a required rear yard must span the entire width of the lot along the rear lot line. Here, since the proposed building “touches” the rear lot line, there is no rear yard. Thus, the rear yard is not calculated with multiple distances or as an average. Additionally, the open spaces to each side of the rear lot line are treated as a court niche, which is defined as “an indentation, recess, or decorative architectural treatment of the exterior wall of a building, not a court, which opens onto a street, yard, alley, or court.”
- **Accordingly, I confirm the proposed project, as reflected in the attached ground floor plan, has a zero rear yard, and that the request for flexibility from the required 19.5-foot rear yard for a zero rear yard is consistent with the Zoning Regulations.**

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 4th St SW - Washington, DC 20024

www.dkra.dc.gov

From: DeBear, Eric J. <EDeBear@cozen.com>
Sent: Monday, May 23, 2022 11:53 AM
To: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
Cc: Moldenhauer, Meridith <MMoldenhauer@cozen.com>; Vitale, Elisa (OP) <elisa.vitale@dc.gov>
Subject: 4401-4435 Benning Road NE

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Matt,

Thank you for taking the time on Tuesday, May 17th to discuss our client's new residential project at 4401-4435 Benning Road NE (Lots 40 and 61, Square 5085), which is located in the MU-7B zone. As we noted, the project is currently under voluntary design review as part of Zoning Commission Case No. 22-08. The project is 100% affordable and the application has the support of the ANC, Office of Planning and DDOT. On May 16, 2022, we presented the application at a public hearing to the Zoning Commission. During the May 16th hearing, the Commission requested clarification on two zoning-related items: 1) whether the side setbacks are treated as a court or a side yard and 2) the correct rear yard measurement. The Office of Planning stated that it would defer to the Zoning Administrator's interpretation on these two matters.

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Here, the proposed building height would require side yards of 15'6". Accordingly, we seek your confirmation on the following relating to the side setbacks:

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Under Subtitle B-100.2 a “rear yard” is defined as “a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title. **The rear yard shall be for the full width of the lot and shall be unoccupied**, except as specifically authorized in this title.” Therefore, by definition, a required rear yard must span the entire width of the lot along the rear lot line. Here, since the proposed building “touches” the rear lot line, there is no rear yard. Thus, the rear yard is not calculated with multiple distances or as an average. Additionally, the open spaces to each side of the rear lot line are treated as a court niche, which is defined as “an indentation, recess, or decorative architectural treatment of the exterior wall of a building, not a court, which opens onto a street, yard, alley, or court.”

Accordingly, please confirm the proposed project, as reflected in the attached ground floor plan, has a zero rear yard, and that the request for flexibility from the required 19.5-foot rear yard for a zero rear yard is consistent with the Zoning Regulations.

As noted during our meeting, we would greatly appreciate an expedient response on this request, as our post-hearing submission to the Zoning Commission is due on May 27th.

Thank you,
Eric DeBear



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