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BY E-MAIL

November 6, 2006

NORMAN M. GLASGOW, JR.
202-419-2460
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Mr. Bill Crews
Zoning Administrator
Suite 2000
941 North Capitol Street, N. E.
Washington, D.C. 20002

Re: BZA Application No. 17521
601-645 H Street, N.E.

Dear Mr. Crews:

We have been provided with copies of letters dated October 24, October 31 and November 1, 2006, to your office collectively from ANC 6A, the 6th and H NE Neighborhood Association, the Capitol Hill Restoration Society and the Stanton Park Neighborhood Association. The letters request administrative rulings on certain issues regarding FAR for the development proposed in the above-referenced application. On behalf of the Applicant in the case, we respond to points set forth in the letters.

The letters pose two questions:

1. Under the Zoning Regulations, on a split-zoned lot, may "use" be transferred from a less restrictive zone district to a more restrictive zone district? (from the October 24, 2006, letter) The November 1, 2006, letter purports to "correct" that question but in fact it appears to pose a different question. At the risk of restating what the November 1, 2006 letter says, the question now appears to be "Do the regulations in §2514.1 apply to a lot which is divided by a zone boundary line but which was not in single ownership on May 12, 1958?"
2. Can FAR associated with a nonconforming use be transferred from a demolished structure to a new structure? (from the October 31, 2006, letter)

Before addressing the questions, we set forth the background of the property and the proposed development. The subject property, 601-645 H Street, N.E., is located on the south side of H Street between 6th and 7th Streets, N.E., and is known as Lot 177 in Square 859. The subject property is split-zoned with about 66,570 square feet located in the C-2-C zone and approximately 42,781 square feet of land area located in the C-2-A zone. The entire property is also subject to the

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H Street Neighborhood Commercial Overlay (the HS District) and is part of the Housing (HS-H) Sub-District.

The site is presently devoted to all office use, with a five story office component at the corner of 6th and H Streets, a five story office component at the corner of 7th and H Streets and a one story wing occupying a portion of the space between the two office towers. At the time that the building was constructed, the C-2-C District allowed a maximum nonresidential FAR of 2.0, or 133,140 square feet of gross floor area. At that time, the C-2-A District allowed a maximum nonresidential FAR of 1.5, or 64,172 square feet of gross floor area. The total nonresidential gross floor area permitted was 197,312 square feet. As constructed and existing today, there are approximately 180,000 square feet of gross floor area located in the C-2-C zoned portion of the site, and approximately 10,000 square feet located in the C-2-A zoned portion of the site.

We have attached a copy of a zoning computation sheet for Phase 1 of the building, which encompassed the 601 office building and the grocery store in the center. This specified the total commercial allowed on the site as 197,312 square feet of gross floor area and indicated that the amount then proposed was 112,093 square feet. The additional commercial gross floor area was included in the 645 building, which is located entirely within the C-2-C District and for which we have not been able to find a zoning computation sheet.

The proposed development of the site includes the demolition of the one story wing, renovation of the two office towers to allow retail use on the ground floor and construction of an addition between and connecting the two existing office towers. The addition, which will extend to the southern portion of the site, will contain retail use on a portion of the ground floor, office use on a portion of the second floor and residential use on the remainder of those floors and all of floors three through nine. The non-residential development (retail and office) will total no more than 197,312 square feet of gross floor area (including existing space to remain and new construction). The residential development will total 290,937 square feet of gross floor area (all new).

We note that the letters make several incorrect statements about the project and the Zoning Regulations, as follows:

- Office use is permitted as a matter-of-right in both the C-2-C and C-2-A zones and the H Street Overlay does not prohibit office use. There are therefore no nonconforming uses located on the subject property. Accordingly, there is no transfer of FAR associated with any nonconforming use.
- The existing building is not a nonconforming structure. By definition (§199.1), a nonconforming structure is one "lawfully existing at the time this title or any amendment to this title became effective, that does not conform to all provisions of this title or such amendment, other than use, parking, loading, and roof structure requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of

building, lot area, width of lot, floor area ratio, lot occupancy, yard, court, and residential recreation space requirements." The existing development complied with the C-2-A and C-2-C District requirements when it was built and we are not aware of any changes to those requirements with which the existing buildings do not comply. With respect to the H Street Overlay (§1320), there is no limitation on the amount of FAR (either residential or nonresidential) in an existing building. The only limitation on FAR applies to new construction (§§3121.2, 3121.3 and 1321.4) and the design requirements of §1324 clearly apply only to any lot for which a permit was applied for after October 25, 2004. Accordingly, the existing office buildings are not nonconforming structures.

- The proposed development does not seek to transfer FAR from either a nonconforming use or a nonconforming structure, since the existing development is neither. Rather, as discussed below, the FAR for the development is within the limitations set forth by the Regulations and no referral to or reliance upon any existing nonconformity is required.

With respect to the questions posed by the three letters:

1. The right to have 197,312 square feet of nonresidential development on the site is confirmed through the Regulations. As noted above, the maximum nonresidential FAR for C-2-A and C-2-C is 1.5 and 2.0, respectively. The H Street Overlay does not change those limits for existing buildings. Rather, the plain language of §1321.2, quoted in the October 31, 2006, letter correctly states that "The floor area ratio for *new construction* in the HS/H sub-district may not exceed 0.5 FAR for non-residential uses, except as provided in §1321.3." (emphasis added) Given the land area of the site, this would permit new nonresidential construction of approximately 54,675 square feet of gross floor area, whereas only 36,576 square feet of new nonresidential construction is proposed.
2. We do not think it is credible to argue that §1321.3 could be read to allow someone to use 0.5 FAR for new construction multiple times so as to achieve something on a piecemeal basis that could not be achieved on a unitary basis. We believe that it is clear under the HS Overlay that the total cumulative amount of nonresidential development constructed after March 10, 2006 (the effective date of the HS Overlay) is 0.5 FAR. In any event, in the pending proposed development, the applicant is not seeking any more than 0.5 FAR of new commercial development (in fact, the applicant is seeking only 0.33 FAR of new development.)
3. The Regulations must be read precisely to give full meaning to the literal language of the provisions. Sections 1321 and 1322 both deliberately and specifically apply to "new construction." If the Zoning Commission had intended those provisions to apply to all development, it need not and would not have used the word "new" to modify construction. See, for example, §§771.2 and 771.3 (FAR limits for C districts) deliberately applying different regulations to buildings before and after November 17, 1978, and §531.1 (FAR limits for SP Districts), making no distinctions and applying the same requirement to all buildings.

4. The reference in §2514.1 to May 12, 1958, is immaterial since the ability to shift around FAR on a single record lot is not dependent upon approval under that section. Section 2514.1 is a permissive provision: "When a zone district boundary line divides a lot that was in single ownership on May 12, 1958, the permitted use and bulk of a structure located on that lot *may* be determined as follows ..." (emphasis added) Note §199.2, "The word "shall" is mandatory and not discretionary."
5. The determination of how much square footage is permitted on a lot is based upon two definitions (§199.1): "gross floor area" and "floor area ratio." Gross floor area is defined as "the sum of the gross horizontal areas of the several floors of *all* buildings on the lot ..." Floor area ratio is defined as "A figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of *all* buildings on a lot by the area of that lot." (emphasis added in each case) Accordingly, the determination of FAR is based on all the square footage on the lot divided by the area of the lot, to achieve one FAR number, not on a determination of FAR by part of a lot.
6. The Zoning Administrator has consistently applied the Zoning Regulations in the manner described in ¶5, including, as a prime example, the existing development on this particular site. The existing building on this lot in the C-2-C District contains approximately 180,000 square feet of nonresidential gross floor area, which is more than the 133,140.32 square feet permitted only under the C-2-C District but within the total non-residential FAR for the entire lot.
7. Purely on a theoretical basis, since no action to allocate FAR is requested pursuant to §2514, we note that the commercial use (office and retail space) is being moved from the more restrictive zone (C-2-A) to the less restrictive zone (C-2-C), meaning that the nonresidential use is being located closer to the H Street frontage of the lot and further away from the adjoining residential area.
8. We note that both §§2514.1 and 2514.2 use the term "bulk," along with "use" and "height," in describing what is controlled by those sections. Bulk is a more generic term which has been interpreted to mean the volume of space which may be constructed, resulting from the combination of lot occupancy and setbacks. FAR and gross floor area are precise terms defined in the regulations with specific criteria as to how they are to be determined. For the purpose of calculating the maximum permitted gross floor area, the Applicant is not seeking to extend the C-2-C provisions into the area now zoned C-2-A, which would allow more nonresidential and more total gross floor area than are now included in the project, but only to use the gross floor area already permitted. As a separate matter, only to be able to increase the height of a portion of the building, the Applicant is requesting the Board to approve an extension of the C-2-C provisions thirty-five feet into the C-2-A District.

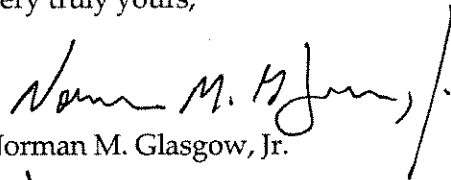
We believe that we have addressed the relevant portions of the arguments made in the letters regarding the ability to allocate gross floor area (both total gross floor area and nonresidential gross floor area) on a single lot that is divided by a zone boundary line. We believe

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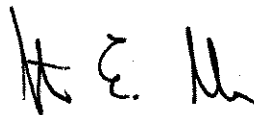
that the literal and correct reading of the Regulations, including the general provisions and the HS Overlay, as confirmed by consistent application by the Zoning Administrator, lead to the conclusion that the building as proposed complies with the Regulations and that no special exception or variance relief is required to construct the amount of development proposed or to distribute the gross floor area on the lot as proposed.

Should you have any questions concerning the foregoing, please do not hesitate to call.

Very truly yours,



Norman M. Glasgow, Jr.



Steven E. Sher
Director of Zoning and Land Use Services

Attachments

NMGJr/skp

cc: Joseph Fengler, ANC 6A
Monte Edwards, SPNA
Roosevelt Cain, Jr., 6th and H NE Neighborhood Association
Gary Peterson, CHRS
Travis Parker, OP
Matthew Le Grant, Deputy Zoning Administrator

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DISTRICT OF COLUMBIA GOVERNMENT
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
ZONING DIVISION

248.340
(RLA)
FILE NO.....

Circular

ZONING COMPUTATION SHEET - COMMERCIAL USE

1. Owner Parcel 18 Ltd. Partnership		2. Location 601 H ST. N.E. Phase I		3. Square 859	
4. Lot 177		5. Zone C-2-C/φ C-2-A		6. Use of Building or Structure Retail Grocery - 1 st Floor Office - 1 st thru 5 th floors Accessory parking & Storage Basement	
7. (How) Addition to Alter existing		8. Type of Structure Conforming ✓ Nonconforming		9. Use of Structure Conforming ✓ Nonconforming	
10. Width of Adjacent Streets, H St NE Row - 90' Roadway - 63.5' Sidewalk - N15' & S11.5' Parking - 0		11. Width of Adjacent Alleys 10', 12.3', 16' φ 20'		12. Width of Restriction Lines None	
13. Application of Act of June 1, 1910 Height of Bldg. - Excess Height -		14. Type of Lot <u>Corner</u> Through Triangular Alley Interior		15. Number of Dwelling Units	
16. Lot Area Required - N/P Provided 29,357.3 [±]		17. Lot Occupancy C-2-C 66,570.2 C-2-A 42,781.1 Allowed - 100% C-2-A 104,483.2 MAX Provided - 50.67% C-2-C 33,683		18. Gross Floor Area Total 112,093.0 [±] C-2-C 84,221 [±] Office C-2-A 17,424 [±] Retail C-2-A Ret - 10,448 [±]	
19. Cellar Area Total		20. Floor Area Ratio Allowed 133,241.52 [±] C-2-C - 2.0 C-2-A - 1.5 C-2-A 171,717 [±] Provided Total 112,093 C-2-C 84,221.08 Office C-2-A 17,424 [±] Retail C-2-A 10,448 Retail		21. Number of Retail Parking Spaces Required C-2-C 21 spaces C-2-A 31 spaces Provided 60 sp. 9'x19' 8 sp. 8'x10' + 3 HC SP 571 Spaces Total	
22. Number of Commercial Parking Spaces Office use Required C-2-C 46 spaces 10 sp 9'x19' (Lot) 25 sp 9'x19' (Lot) 3 HC SP (Lot) + 9'x10' Comp. (Lot) Within Bldg. 47 total		23. Number of Loading Berths Required Office C-2-C 2 berths @ 30' (12' w) 2 platforms 100' (8' w) 1 service sp 10'x20' See Below (Provided)		24. Height of Bldg. C-2-A 50' C-2-C Allowed 90' to first floor to high point of roof - Retail 24.92' Office use C-2-C Office 59.17' to first floor to ceiling top story - to high point of roof -	
25. Number of Stories Allowed - No limit Provided - 5 office 1 retail Basement - 1 office Cellar - None		26. Rear Yard Depth - Required 15' Provided 42.5'		27. Side Yard Width - 8.0' φ - 14' φ Open Court Width - Closed Court Width - Closed Court Area -	

MARKS:
1) Make revisions per telephone Rec'd 9/23/86
Conversation 9/18/86 11:05 am
2) Top approval

OBJECTIONS NOT INCLUDED IN ZONING APPROVAL
Complies with requirement of
Zoning Regulations
D. H. H. Co. 9/24/86
Per. [Signature] & [Signature]

Loading Requirements
Required
Retail (C-2-C) 1 berth @ 90'
1 platform @ 100' (8' w)
Retail C-2-A 1 berth @
30' deep (12' w);
1 platform @ 100'
(8' wide)
Provided
Same as required
Located at the
rear of office
and

H St. NE
N - 85'
away - 32'
sidewalk - 12'
King - 14.5'
7th St NE
Row - 90'
Roadway - 31'
Sidewalk - 12'
Parking - 17.5'