

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



September 8, 2015

David Avitabile  
Goulston & Storrs  
1999 K Street NW, Suite 500  
Washington, DC 20006

Re: Application of the H Street Overlay to 526-528 H Street, NE  
Square 832, Lots 9 and 10 ("Property")

Dear Mr. Avitabile:

The purpose of this letter is to summarize the issues that we reviewed in our meeting on July 16, 2015 regarding the redevelopment of property located at 526-528 H Street, NE. The Property is located in the HS-H/C-2-A Zone District and has a lot size of 3,217 square feet. The Property is improved with two rowhouses currently used for retail, service, and office uses. You have indicated that the two rowhouses were constructed before 1958. We discussed the proposed redevelopment of the two properties into a single mixed-use building with residential and commercial uses ("Project").

The Property is located in the C-2-A Zone District and in the "Housing" subdistrict of the H Street Neighborhood Commercial Overlay. The C-2-A Zone District permits a total floor area ratio ("FAR") of 2.5. Section 1323.4 of the Overlay grants a 0.5 FAR bonus for residential use to new construction that preserves an existing façade constructed before 1958. In addition, Section 1326.3 of the Overlay grants a 0.5 FAR bonus for developments that trigger and meeting the inclusionary zoning requirements of the Zoning Regulations.

**1. Maximum Permitted Density for Residential Projects Preserving a Façade**

Based on the plain language of the Overlay, I confirm that the two bonus density provisions referenced above are additive, therefore permitting a total density of 3.5 FAR in the HS-H / C-2-A Zone District for residential developments that trigger inclusionary zoning. In particular, the text of Section 1326.4 of the Overlay specifically contemplates properties utilizing both the density permitted under Sections 1326.3 and 1324.3. Per Section 1326.4, properties first use the IZ bonus, and then the bonus for preserving a pre-1958 façade.

## **2. Application of the Bonus for a Preserved Façade to Corner Lots**

We also discussed the application of the provisions providing a bonus for retaining a pre-1958 façade to a corner lot. Sections 1321.3 and 1324.3 each provide density bonuses for new construction that “preserves an existing façade constructed before 1958.” Section 199 of the Zoning Regulations does not define “façade.” Pursuant to Webster’s Unabridged Dictionary, “façade” is defined as “the front of a building” or, alternatively, “a face of a building . . . given special architectural treatment.” Furthermore, the H Street Overlay’s purposes focus on H Street, and Sections 1320.3 and 1320.7 define the designated “use area” based on lots that front on H Street, and Section 1320.7 establishes H Street as the “designated roadway” for purposes of the Overlay. Finally, some of the H Street Overlay provisions include specific references to corner lots (see, for example, Section 1324.2), which demonstrates that the Commission intended other provisions only apply to H Street. Based on the language of the above provisions, which focus on the H Street Overlay and refer to “an existing façade,” as well as the definition of “façade,” which refers to either the “front” or face of a building given special treatment, I conclude that only the H Street façade of a building must be preserved in order to trigger the above bonus density provisions.

## **3. Application of the Design Requirements to Projects Preserving a Façade**

We also discussed the impact of preserving a pre-1958 façade on the design requirements of Section 1324 of the Overlay. Based on the language in the Overlay and past practice by this office, I conclude that the design requirements of the Overlay set forth in Sections 1324.2, 1324.8, 1324.10 and 1324.11 of the Overlay do not apply to development that retains an existing pre-1958 façade or otherwise consists of an addition to an existing building. The retention of the existing façade sets the location of building entrances and windows, window dimensions, and window lines, which preclude the creation of higher ground floor ceiling heights as well as windows and entrances meeting the design requirements set forth above.

With respect to the requirement for primary entrances for residential uses under Section 1324.10, I conclude that a primary entrance is not required so long as any existing entrances along H Street continue to be used to serve nonresidential uses. In this case, for example, you explained that the preserved H Street façade has three existing entrances, two of which serve ground floor nonresidential uses, and a third entrance that leads to stairs up to a second-floor nonresidential use. So long as the ground and second floor continue to be used for nonresidential uses, you may locate the primary entrance to the residential use on 6<sup>th</sup> Street NE.

Finally, with respect to corner lots, I conclude that the design requirements of Sections 1324.8 through 1324.15 only apply along the H Street façade. Again, certain design requirements such as Section 1324.2 specifically describe how they apply to corner lots, which demonstrates that the Commission intended the other design requirements should only apply to

H Street. Note here that the requirements of 1324.2 would apply to the Property's 6<sup>th</sup> street frontage.

**4. Application of the Parking Requirements to Projects Preserving a Facade**

Finally, we discussed the impact of preserving a façade on the parking requirements of the Zoning Regulations. Pursuant to Sections 2100.4 through 2100.9, additional parking is not required for an established use that is retained within an existing building; parking is only required for changes in use as well as additions to the existing building. Similar provisions apply to the loading requirements. The Project proposes to maintain the existing ground- and second-floor retail and service uses, and you inquired to what extent the existing structure would need to be retained to exempt these uses from generating a new parking requirement.

As I have concluded in the past, the grandfathering of an existing structure depends on whether the extent of removal of the existing structure constitutes a raze. For alterations of an existing structure that maintain the footprint of the existing structure, the retention of a four foot height of the enclosing wall around the perimeter of the building is sufficient to retain the existing structure and any grandfathered rights related to that structure. For alterations that modify the footprint of the existing structure, I evaluate the percentage of the enclosing walls that are retained (based on the area of those walls) to determine whether the existing structure is being retained. For the Project, provided that the H Street façade and the lot line wall along the west of the Property area retained (which together constitute approximately 50% of the enclosing walls of the existing structure), I conclude that the remainder of the existing structure may be removed and rebuilt without terminating the grandfathered rights of the existing structure and uses with respect to parking and loading. Note, however, that parking and loading will be required for changes in use within the existing structure as well as any additions to the existing structure as set forth in Chapters 21 and 22 of the Zoning Regulations.

Please feel free to contact me if there are any questions.

Sincerely,   
Matthew Le Grant  
Zoning Administrator

cc: Bob Axelrod