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

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Re: 401 Tingey St., SE – "Parcel O" in The Yards - New Construction in SEFC/R-5-E District

Dear Ms. Brown:

This letter confirms our discussions on November 24, 2014, regarding zoning compliance of the proposed redevelopment of "Parcel O" in the Southeast Federal Center ("SEFC") located at 401 Tingey Street, S.E., with respect to (i) a building connection; (ii) height measurement; (iii) building setbacks; (iv) loading; (v) roof structures and penthouse; and (vi) balconies. I confirm that these proposed features of the building will comply with the current zoning regulations if they are constructed in accordance with the attached drawings and consistent with the analysis below.

Background

Forest City Enterprises ("Forest City") and PN Hoffman are the developers of the property known as Parcel O in the Southeast Federal Center, as shown on the attached site plan. The property is located in the SEFC/R-5-E District. PN Hoffman will be developing the north portion of the property (Parcel O-1), Forest City will be developing the south portion of the property (Parcel O-2), and together the two developments will constitute a single building for zoning purpose. The building will front on four streets: 4th, 5th, Tingey and Water Street, S.E. The building is U-shape in plan, with the open end fronting on Water Street.

Building Connection

The proposed connection between the two developments will be located at the west side of the building just behind the area labeled "mail room" on Sheet A2.01 (Ground Floor Plan) of the attached drawings. It will provide enclosed access between the north and south portions of the building at the main floor and thus satisfies the requirement for a meaningful connection, consistent with past interpretations of this office, and as most recently affirmed by the Board of Zoning Adjustment in BZA Appeal Nos. 18735 and 18737.

Building Height and Measuring Point

Pursuant to sections 1804.5 and 2511 of the Zoning Regulations, areas zoned SEFC/R-5-E are considered "mixed-use" districts, thereby allowing streets within those areas to be treated as "business streets" for purposes of the 1910 Height Act. Under the 1910 Height Act, buildings fronting on business streets may achieve a maximum height equal to the street width plus 20 feet. Tingey Street is 90 feet wide, thereby allowing this building to achieve a maximum height of 110 feet under the 1910 Height Act and section 1804.4 of the Zoning Regulations.

The 1910 Height Act and the Zoning Regulations provide different measuring points for building height and each development must comply with the most restrictive provision. The measuring point under the 1910 Height Act is the level of the *sidewalk* opposite the middle of the front of the building to the highest point of the roof. No parapet wall shall extend above the limit of height, except on non-fireproof dwellings. If the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit the greater height. *See* D.C. Official Code § 6-601.07. Conversely, under the Zoning Regulations, building height in residential districts is measured from the existing grade at the mid-point of the building façade of the principal building that is closest to a street lot line. 11 DCMR § 1991. ("building, height of"). For purposes of measuring height under the Zoning Regulations, the SEFC/R-5-E Zone District is a residential zone district.

Here, the front of the building that permits the greatest height is on 4th Street. As shown on the attached drawing prepared by Wiles Mench Corporation and labeled "Parcel O – 4th Street S.E., Measure/Mid Point Elevation", the sidewalk measuring point at the property line is at elevation 12.04 feet, while the existing grade at the mid-point of the building façade is at elevation 12.28 feet. Because the existing grade is higher than the sidewalk, it would result in a building height in excess of what is permitted under the 1910 Height Act. Consequently, in order to comply with both the 1910 Height and the Zoning Regulations, the height must be measured from the sidewalk on 4th Street.

The Height Act is silent on the location of the measuring point on the sidewalk. Here, as shown on that same drawing, the sidewalk will extend from the curb to the building façade, and will straddle public space and private property. The attached drawing indicates the measuring point will be established on the sidewalk at the property line. I conclude that the location of the measuring point at the property line is acceptable under the 1910 Height Act.

Building Setbacks

As shown on the Sheet A2.01 (Ground Floor Plan) of the attached drawings, the building is set back along 4th Street from the property line a distance of approximately 10 feet. Provided that 4th Street is treated as the front of the building, the 4th Street setback can be considered a front yard and is permissible under the Zoning Regulations with no minimum dimensional requirement.

As shown on that same drawing, the rear yard will be at 5th Street, S.E. Because the building will be located on a corner lot abutting three or more streets, the rear yard may be

measured from the rear of the building to the center line of 5th Street. *See* 11 DCMR § 404.2. The height of the building at the rear of the structure is approximately 110 feet, thereby generating a minimum rear yard depth of 27.5 feet. As shown on the drawings, the rear yard will have a minimum depth of approximately 27.5, and therefore complies with the rear yard requirement.

Loading

The north portion of the building to be developed by PN Hoffman will provide approximately 135 residential units, while the south portion developed by Forest City will contain approximately 190 units, for an overall total of approximately 325 units. Pursuant to 2200.1, this residential unit count generates a requirement for one 55-foot deep loading berth, one 200 square foot platform, and one service/delivery space at 20 feet deep. As shown on Sheet A2.01 (Ground Floor Plan), the building will provide the minimum required loading facilities for the residential uses.

The building will have a total gross floor area and cellar floor area of approximately 343,482 square feet. The building will also provide retail uses that comprise approximately 18,156 square feet, which is less than ten percent of the total gross floor area and cellar floor area. Because the residential uses will comprise more than 90 percent of the total gross floor area and cellar area, pursuant to section 2201.2 of the Zoning Regulations, loading facilities shall be calculated as though the residential uses will occupy the entire building. Consequently, no loading facilities are required for the retail uses.

Penthouses; Safety Railing

Multiple Roof Structures

The proposed building will have three separate penthouses to accommodate separate elevator cores: one for the north portion of the building developed by PN Hoffman, and one for each wing of the U-shaped portion of the Forest City portion of the building, as shown on Sheet A2.02 (Roof Plan) of the attached drawings. Pursuant to section 411.4 of the Zoning Regulations, when separate elevator cores are required to serve separate portions of a building, there may be one enclose for each elevator core. Consequently, three separate penthouses are permitted for this development.

Enclosing Walls Height

You have proposed different penthouse enclosure wallsfor the separate penthouses. Each penthouse will have enclosure walls of equal height, although those heights may be different for each penthouse. I conclude that such varying heights for separate enclosures are permitted by reading sections 411.4 and 411.5 in concert with each other; section 411.5 can reasonably be read to require that the walls for each enclosure be of equal height, but permit varying heights for separate enclosures when separate enclosures are otherwise permitted under section 411.4. We also discussed the possibility of sloping some of the penthouse roofs, including some sawtooth roof elements. Consistent with past interpretations of this office, a sloping roofline on a penthouse is permissible as long as it meets the 1:1 setback requirement. Sawtooth monitor roofs will also be

provided on the Parcel O-2 Building. These elements will be less than 4 feet in height and thus not subject to the roof structure requirements.

Your proposed building includes an architectural feature at the 4th Street façade, where a glass element extends above the roofline at the face of the building. The element forms part of a "glass trellis" with sloped rooflines. I conclude that this feature is a permissible architectural embellishment to the building.

Setbacks

Consistent with section 400.7(b), each roof structure and penthouse must be set back from each exterior walls a distance at least equal to its height above the roof up on which it is located. Sheet 1 of the attached drawings identifies the furthest extent of the exterior building wall from which the roof structure penthouses must be set back at a ratio of one-to-one. I confirm that the drawings accurately reflect the location of the exterior wall from which the setback must be measured.

For Parcel O-2, you have revised the plans to relocate the penthouses as shown on the attached drawing labeled Roof Plan (A2.02). I confirm that the revised drawing shows that both penthouses are set back one-to-one from the building's exterior walls.

The revised Parcel O-2 plans also depict shorter roof features between the penthouses and the courtyard on each wing. These roof features enclose portions of the egress stairs as they transfer inward toward the relocated penthouses. These shorter roof features measure 3'11" in height above the height of the main roof, which is less than 4 feet tall and therefore not subject to the roof structure requirements of Section 411 of the Zoning Regulations, including the uniform height and setback requirements. In addition, although portions of the building walls that face the courtyard constitute an exterior wall for zoning purposes, they do not constitute an exterior wall under established interpretations of the Height Act, and therefore no setback is required for these shorter roof features under the Height Act, either.

The project proposes safety railings at a height of 42 inches to be located at the roof edge. Pursuant to section 411.17, as long as the railing is less than four feet in height, I conclude that it is not subject to the setback requirements.

Balconies

Finally, we reviewed the proposed exterior balconies for the building to determine which portions would count toward the floor area ratio ("FAR"). Under the definition of "Gross floor area" under 11 DCMR 199.1 as to what constitutes gross floor area, exterior balconies that do not project six feet beyond the exterior wall of a building are not chargeable against FAR, but as per past interpretations of my office interior balconies are chargeable against FAR. As shown on Sheet 12 of the drawings labeled Parcel O-1 Zoning Diagrams, the portions of the proposed balconies that are surrounded on three sides of the exterior wall of the building and are covered will be treated as interior balconies and will count toward FAR. The portions of the proposed

exterior balconies that are bounded by two or fewer exterior walls of the building and safety railings on the remaining sides will not count toward FAR.

Conclusion

Based on the foregoing, I conclude that the proposed development of Parcel O complies with the Zoning Regulations as set forth above.

Should you have any questions, please do not hesitate to contact me.

Sincerely, Matthew Le Grant

Matthew Le Grant
Zoning Administrator

Attachments: Site Plan
Roof Plan
Ground floor plan
Measuring Point Diagram
Roof Structure elevations

File: 401 Tingey St SE to Brown 3-9-15