

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Karen Thomas, Case Manager  
*JL* Joel Lawson, Associate Director Development Review  
**DATE:** September 21, 2018  
**SUBJECT:** BZA Case 19802 – Special Exception requests pursuant to Subtitle E § 5201.1 to allow a partial third floor addition not meeting the rear yard requirement of E § 205.4; and to Subtitle C §1504 to permit roof deck railings not meeting the setback requirement of C § 1502.1 (b) and (c)

**I. RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of the following special exception pursuant to Subtitles E § 5201 and C § 1504:

- E § 205.4 (10 feet beyond adjacent house permitted as a matter-of-right, additional depth permitted as a special exception, 20 feet beyond adjacent house existing, 20 feet proposed).
- C § 1502.1 (b) and (c) (3 feet minimum setback required; 0 feet proposed): and

**II. LOCATION AND SITE DESCRIPTION**

Address:	1318 Constitution Avenue, NE
Applicant:	Ajit and Aditi Kulkarni
Legal Description:	Square 1033, Lot 0044
Ward / ANC:	6/ANC6A 04
Zone:	RF-1
Lot Characteristics:	The lot is rectangular with unremarkable topography and abuts a 10-foot wide alley at the rear.
Existing Development:	The property was developed in 1901 as a nonconforming semi-detached row dwelling, with subsequent use as a church and which has now reverted to a single-family dwelling.
Adjacent Properties:	The adjacent properties are also developed with existing row dwellings used as single-family homes.
Surrounding Neighborhood Character:	The surroundings are consistent with the development pattern of row homes within the RF-1 district, as well as some small apartment buildings and churches. The boundary of the Capitol Hill Historic District runs along Constitution Avenue opposite the subject square.

Proposed Development:	A partial third floor providing access to a roof deck is proposed as part of the home’s renovation. The third floor’s location on the roof, ten feet beyond the rear of the adjoining residence and placement of the roof deck’s railings require special exception relief. Although this resembles a penthouse addition, the applicant considers the stair addition a new third floor, as permitted under zoning. However, the regulations for rooftop decks would apply to the deck area, so the railing requires relief.
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**III. ZONING REQUIREMENTS and RELIEF REQUESTED**

RF-1 Zone	Regulation	Existing	Proposed <sup>1</sup>	Relief:
Height E § 303	35 ft. max., 3 stories	28 ft., 2 stories	35 ft. 3 stories	None required
Lot Width E § 201	18 ft. min.	24 ft.	24ft.	None required
Lot Area E § 201	1,800 sq. ft. min.	2,415 sq.ft.	2,415 sq.ft.	None required
Lot Occupancy E § 304	60% max.	56.4%	56.4%	None required
Front Yard E § 305	Not less than or greater n existing setbacks on the same block (15 ft.)	15 ft.	15 ft.	None required
Rear Yard E § 306	20 ft. min.	19.7 ft.	19.7 ft.	Existing nonconformity
Rear Yard E § 205.5	10 ft. maximum beyond the farthest rear wall of...an adjoining property	20 ft.	20 ft.	Relief required
Side Yard E § 307	None required, but 5 ft. min. if provided	3 feet	3 feet	Existing nonconformity
<a href="#">Railing setback C 1502.1 (b) (c)</a> (b) A distance equal to its height <u>from the rear building wall</u> of the roof upon which it is located; (c) A distance equal to its height <u>from the side building wall</u> of the roof upon which it is located ...	3 feet min.	N/A	0 feet	Relief required

#### IV. ANALYSIS

##### Subtitle E Chapter 5201 ADDITION TO A BUILDING OR ACCESSORY STRUCTURE

5201.1 *The Board of Zoning Adjustment may approve as a special exception in the RF zones relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:*

- (a) *Lot occupancy;*
- (b) *Yards;*
- (c) *Courts;*
- (d) *Minimum lot dimensions;*
- (e) *Pervious surface; and*
- (f) *The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.*

The semi-detached row structure was built as is, between 1890 and 1909, 20 feet beyond the rear wall of the adjoining property to the west. Based on the existing regulations (2016), it is a nonconforming structure due to the yards provision of E § 205.5.

5201.2 *Special exception relief under this section is applicable only to the following:*

- (a) *An addition to a residential building;*
- (b) *A new or enlarged accessory structure that is accessory to such a building; or*
- (c) *A reduction in the minimum setback requirements of an alley lot.*

The proposal is for a partial third floor addition and a roof deck.

5201.3 *An applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (a) *The light and air available to neighboring properties shall not be unduly affected;*

The proposed third floor would be above the adjoining 2-story building and there would be no windows on the addition's east elevation. Light and air to neighboring properties should not be unduly affected with minimal shadows cast on the adjoining property.

- (b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

As proposed, no windows would face the adjoining property to the west. Built-in seating around the north and east periphery of the deck area would create an approximate 2-foot separation from the rear and east railings, so that upon standing views into neighboring rear yards would be minimized. Similarly, when seated, views would be directed towards the interior. Thus, privacy to nearby neighbors should not be unduly compromised. The

applicant received written support from immediate neighbors to the east and west, which are included with the submission. ([Exhibits 13, 18](#)).

*(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage;*

Visibility from the street frontage along Constitution Avenue would be minimal, if at all since the deck and the partial third floor are located towards the rear of the building.

*(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and*

The applicant provided the relevant drawings and information to the record ([Exhibits 6, 7](#))

*(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).*

The lot occupancy of the structure (56.4%) would not be increased with the proposed partial third floor and deck.

*5201.4 The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

OP does not recommend any special design treatment.

*5201.5 This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.*

The structure would continue its use as a residence as permitted under the RF-1 regulations.

*5201.6 This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.*

The proposed height of the structure would be 35 feet, as the maximum height permitted in this zone.

## **Subtitle C § 1504 RELIEF TO PENTHOUSE REQUIREMENTS**

**1504.1** Relief to the requirements of Subtitle C § 1502 may be granted as a special exception by the Board of Zoning Adjustment subject to Subtitle X, Chapter 9 and subject to the following considerations:

- (a) The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;*
- (b) The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall;*
- (c) The relief requested would result in a roof structure that is visually less intrusive;*
- (d) Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;*
- (e) Every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and*
- (f) The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.*

The strict application of the regulations would reduce the useable deck area further than may be necessary and would create an inefficient space. Built-in seating around the edge of the deck would reduce the effective width of the outer area of the deck to approximately 10 feet wide, typical for a residential deck accessory to a row dwelling. The material of the railing, including what appears to be metal framing to the rear and west would allow the design to differ from the building wall at the rear and thus reduce the appearance of additional massing on the roof.

Grant of the special exception from the setback requirement would result in a deck structure that would be less visually intrusive, and would support the intent of the regulations, as light and air to neighboring homes would not be impeded due to the deck's location above the living areas of immediate neighbors.

## **V. COMMENTS OF OTHER DISTRICT AGENCIES**

At the writing of this report, other agencies' comments were not noted in the record.

## **VI. COMMUNITY COMMENTS TO DATE**

The applicant met with the ANC 6A on September 13, 2018 which provided support to the applicant's proposal. The ANC 6A's report will be filed separately to the Board.

The applicant received letters of support from immediate neighbors included in the record as [Exhibits 13 through 18](#).

Attachment: Location Map

Figure 1: Location Map

