

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Brandice Elliott, Case Manager
 JL Joel Lawson, Associate Director Development Review
DATE: March 1, 2016

SUBJECT: BZA Case 19202 – request for special exception relief under § 223 to permit a third story addition and rooftop access to an existing row dwelling at 2803 Sherman Avenue, N.W.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following special exception pursuant to § 223:

- § 403.2, Lot Occupancy (40% maximum, 70% proposed);
- § 405.9, Side Yard (8 feet required, 1 foot proposed);
- § 2001.3, Nonconforming Structure

OP recommends **approval** of the following special exceptions for roof structures:

- § 411.5, Penthouse on the Roof of a Dwelling
- § 411.11, Penthouse, Guardrail, and Deck Setback

II. LOCATION AND SITE DESCRIPTION:

Address:	2803 Sherman Avenue, N.W.
Applicant	Alon Eckhaus
Legal Description:	Square 2886, Lot 335
Ward/ANC:	1, 1B
Zone:	R-4 – Row dwellings
Historic District or Resource:	Not applicable
Lot Characteristics:	The rectangular lot is 1,385 square feet in area, having a frontage of 20.5 feet along Sherman Avenue. It does not abut a public way.
Existing Development:	Row dwelling, permitted in this zone.
Adjacent Properties:	To the north and east are existing semi-detached dwellings. The lot immediately south of the subject property is currently vacant. To the west, across Sherman Avenue, is a small, neighborhood service provider and associated parking lot.

Surrounding Neighborhood Character:	The surrounding neighborhood character is primarily residential, consisting of semi-detached dwellings and row dwellings.
Proposed Development:	The proposed development consists of a third story addition on top of an existing nonconforming two-story row dwelling. The existing dwelling is nonconforming in terms of lot occupancy and side yard. The lot occupancy would be reduced by removing an existing deck, and the third story addition would match the existing footprint of the row dwelling. A roof deck and penthouse would also be provided, with the penthouse at a maximum height of ten feet, and with a storage area of 30 square feet; however, required setbacks would not be provided.

III. ZONING REQUIREMENTS and RELIEF REQUESTED

R-4 Zone	Regulation	Existing	Proposed ¹	Relief:
Height (ft.) § 400	35 ft. max.	19.83 ft.	30.5 ft.	None required
Lot Width (ft.) § 401	18 ft. min.	20.5 ft.	20.5 ft.	None required
Lot Area (sq.ft.) § 401	1,800 sq.ft. min.	1,385 sq.ft.	1,385 sq.ft.	Existing nonconforming
Floor Area Ratio § 401	None prescribed	--	--	None required
Lot Occupancy § 403	40% max.	76.6%	70%	Required
Rear Yard (ft.) § 404	20 ft. min.	14.8 ft.	20 ft.	None required
Side Yard (ft.) § 405	8 ft. min.	1 ft.	1 ft.	Required
Penthouse, Guardrail, & Deck Setback (ft.) § 411.11	1:1 setback from front, rear, and side building walls	N/A	<u>Penthouse:</u> Front: 25.42 ft. Rear: 7.92 ft. Side: 0 ft. <u>Guardrail:</u> Front: 26.25 ft. Rear: 0.5 ft. Side: 0.5 ft. <u>Deck:</u> Front: 26.25 ft. Rear: 0.5 ft. Side: 0.5 ft.	Required

IV. OP ANALYSIS

Special Exception Relief pursuant to § 223 for Expansion of a Nonconforming Structure

223 ZONING RELIEF FOR ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1) AND FOR NEW OR ENLARGED ACCESSORY STRUCTURES

¹ Information provided by applicant.

- 223.1 *An addition to a one-family dwelling or flat, in those Residence districts where a flat is permitted, or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.*

The existing use is a row dwelling, which is permitted in this zone. The applicant has requested special exception relief under § 223 from the requirements of §403, Lot Occupancy; § 405, Side Yard; and § 2001.3, Additions to Nonconforming Structures. Additional relief for the penthouse, guardrail, and roof deck has been requested, for which the analysis is provided in a separate section of this report. The applicant proposes to convert the row dwelling into a flat, which is permitted by-right in this District, and has requested relief would allow for the construction of a third story addition and roof deck with a penthouse.

- 223.2 *The 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;*

Light and air available to neighboring properties should not be unduly affected. The third story addition would increase the height overall height approximately ten feet, but will be well under the 35 feet maximum permitted in the R-4 District. The existing one foot side yard would be maintained by the addition, preserving the space between the subject lot and property to the north. The existing deck at the rear of the dwelling would be removed, creating a conforming rear yard and reducing the lot occupancy. The adjacent two story dwellings should not be unduly impacted by the third story addition, as any shadows cast by the structure would fall to the top of those dwellings, where there is no livable area or outdoor space.

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

The proposed third story addition should not compromise the privacy of use and enjoyment of neighboring properties. The property to the north is a two story row dwelling, and a semi-detached two story row dwelling is under construction to the south. The proposal includes the removal of the deck, and adds floor area to the dwelling, internalizing the uses. The proposed roof deck would be set back approximately 50 feet from the front elevation, providing a buffer from street level.

- (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; and*

The proposed addition should not substantially visually intrude upon the character, scale and pattern of houses along the street frontage and other public ways. This particular block of Sherman Avenue is transitioning into taller row dwellings. While several of the dwellings remain at two stories, recent additions have increased the height of the dwellings at 2807 and 2809 Sherman Avenue to three stories, with roof decks visible from the street. In addition, the existing cornice at the top of the dwelling is in disrepair, but the applicant proposes to provide a similar cornice between the second and third stories to preserve the roofline that is apparent among two story dwellings on this block.

- (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.*

The applicant has provided plans, photographs, and elevations sufficient to represent the relationship of the proposed addition to adjacent buildings, as well as views from public ways.

- 223.3 *The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or **seventy percent (70%)** in the R-3, **R-4**, and R-5 Districts.*

The proposed lot occupancy, upon removal of the existing deck, will be 70%, which is permitted in the R-4 District with the approval of a special exception.

- 223.4 *The Board 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 treatment of the addition in the way of design, screening, exterior or interior lighting, building materials, or other features.

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

The proposed use is a flat, which is a by-right use in the R-4 District.

Special Exception Relief pursuant to §§ 411.5 and 411.11 for Roof Structures

411 PENTHOUSES

- 411.5 *Notwithstanding § 411.4, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail required by Title 12 of the DCMR (CONSTRUCTION CODE SUPPLEMENT OF 2013) for a roof deck, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, row house, or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under § 3104, provided the penthouse:*

- (a) *Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and*

The proposed penthouse is 9.83 feet in height, which is less than the ten feet permitted with a special exception, and consists of only one story.

- (b) *Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.*

The proposed penthouse contains only stair access to the roof, allowing residents access to the roof deck located along the rear and side of the dwelling. Since the original submission, the applicant has significantly reduced the storage area in the penthouse to 29.25 square feet, which is less than the 30 square feet permitted by special exception.

- 411.11 *The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10 and **411.18** upon a showing that:*

- (a) *Operating difficulties such as meeting Building Code 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;*

The proposed penthouse, roof deck, and guardrail do not comply with § 411.18, which requires these structures to be set back from the front, rear, and sides of the dwelling a distance equal to its height from each wall. The penthouse cannot be relocated due to its need to align with the existing staircase, which is located along the south building wall. In addition, relocating the stairs for the penthouse would result in a less efficient layout, with the stairs encroaching into the den on the third floor. The lot, having a width of 20.5 feet, is not wide enough for a ten foot high penthouse to provide compliant side setbacks.

- (b) *The intent and purpose of this chapter and this title will not be materially impaired by the structure; and*

The intent and purpose of the penthouse regulations should not be impaired by the proposed roof structures. Generous setbacks from the front of greater than 25 feet have been provided, which will reduce the visibility of the penthouse and guardrails from the street. While the guardrail and penthouse could potentially be visible from the rear, the applicant has provided a compliant rear yard of 20 feet, which provides an additional buffer from the dwelling to the east. The lot is an internal lot with only one street frontage, and would be removed from Girard Street by a distance of approximately 30 feet. So, although side setbacks have not been provided, the proposed structures are removed from the street, thereby reducing their visibility. In addition, the top of the proposed guardrail would be below the maximum permitted building height of 35 feet.

- (c) *The light and air of adjacent buildings will not be affected adversely.*

The applicant has indicated that adjacent neighbors have no opposition to the proposed roof structures, having obtained a letter of support from the neighbor to the south (2901 Sherman Avenue), and verbal support from the neighbor to the north (2905 Sherman Avenue). The proposed 9.83 foot high penthouse should not adversely affect the light and air of adjacent buildings.

i. Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?

The proposal for the roof structures is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. As provided above, the visibility of the penthouse, roof deck, and guardrail has been reduced through the provision of increased setbacks, where possible, which is the intent of the Zoning Regulations. Given that the structures would be separated from Sherman Avenue by a distance of over 25 feet, and from Girard Street by a distance of about 30 feet, a significant buffer has been provided, reducing their visibility from the street.

ii. Would the proposal appear to tend to affect adversely, the use of neighboring property?

The proposal for the penthouse, guardrail, and roof deck do not appear to adversely affect the use of neighboring property. The lot to the north is developed with a two story row dwelling, and the lot to the south is under construction with a two story dwelling. This particular block of Sherman Avenue is characterized by two and three story dwellings, with some having visible roof decks from the street. The adjacent neighbors have provided support to the applicant regarding this proposal.

V. COMMENTS OF OTHER DISTRICT AGENCIES

As of the date of this writing, comments from other District Agencies have not been provided.

VI. COMMUNITY COMMENTS

At its regularly scheduled meeting on February 15, 2016, ANC 1B voted to recommend approval of the requested relief. The neighbor to the south, at 2801 Sherman Avenue, has provided a letter in support of the request.

Attachment: Location Map

Location Map

