Applicant's Burden of Proof Statement for Special Exception Application (form 121)

Owner/Applicant	Architect	Attorney
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The applicant herein is applying for Special Exception under section 3104.1 as it relates to the two issues defined in the Zoning Review Board memo to the Board of Zoning Adjustment dated April 15, 2003, as follows:

Issue No	Issue	Sections Covered
One	Nonconforming Penthouse	section 223.1 section 411.11 section 400.7
Two	Lot Occupancy	section 223.1 section 403.2

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Issue Number One - Nonconforming Penthouse

Background:

The property is an R-3 row house in a Historical District and was built in 1910. It is red brick construction typical of the neighboring residences within the Historic District. An elevator penthouse is proposed for access to the roof. In designing this penthouse the architect has given special attention to the exterior finish of the proposed penthouse. He has specified an exterior finish of red brick to closely resemble or match the existing, prevailing historic designs. Whereas, roof penthouses for access to roofs or roof decks have been added to at least seven (7) other residences within the immediate one hundred feet (100 ft.) radius, they have been built using a less expensive exterior design of wood panel or cement board which is not as true to the prevailing historical design of the neighborhood as the proposed penthouse design in question here. The architect has specified brick to maintain the existing historical character. In addition the windows specified for the penthouse are similar to the historic windows in the house.

The penthouse location does not provide for the normal setbacks stipulated in section 400.7b of the Code. This row house is located on a lot twenty five feet (25 ft.) in width and eighty feet plus or minus (80 ft. ±) in depth. The elevator penthouse rises twelve feet nine inches (12 ft. 9 in.) above the roof on which it is located, thus it cannot be set back twelve feet nine inches (12ft. 9 in.) from the sides of the party walls. It is set back ten feet eight inches (10 ft. 8 in.) from the east party wall and abuts the west party wall. It is set back twenty six feet, one inch (26 ft. 1 in.) from the front of the house (north) and fourteen feet eleven inches (14 ft. 11 in.) from the (south) rear of the house (measured at the second floor). It abuts the rear (south) roof wall at the third floor.

BZA
Case No. 17032
Exhibit No. 7

Board of Zoning Adjustment
District of Columbia
CASE NO. 17032
EXHIBIT NO. 7

First Criteria for § 3104.1 Special Exception Approval

How will the proposed special exception be consistent with the general intent and purpose of the Zoning Regulations and Map.

Section 400 Height of Buildings or Structures

400.7 has three sections, (a), (b) and (c) relating to the penthouse which are addressed herein.

As to 400.7a **"It shall meet the requirements of section 411"**, the construction of the penthouse proposed in this application will meet the requirements of section 411 as itemized in the following section of this document titled 411 Roof Structures (see page 4).

As to 400.7b **"It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located."** It does not meet this normal requirement and a Special Exception is requested. We are depending upon the enabling wording in section 411.11 wherein it is stated that the Board of Zoning Adjustment shall be empowered to, "approve as a special exception under section 3104, the location, design, number, and all other aspects of such structure regulated under sections 411.3 through 411.6, **even if such structures do not meet the normal setback requirements of sections 400.7..."** The elevator penthouse in question meets the test criteria of section 411.11 as, "It is impracticable because of...size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive...or unreasonable."

1.) **Condition of unduly restrictive:**

The size of the building lot is twenty five feet (25 ft.) in width. The elevator penthouse is twelve feet, nine inches (12 ft. 9 in.) in height making it impossible to have a twelve feet, nine inches (12 ft. 9 in.) Setback from each side. Thus the size of the building lot makes the setback requirement "unduly restrictive", and impossible to comply with.

2.) **Condition of unreasonability:**

To more closely accommodate the normal setback requirement the elevator would have to be placed in the middle of the building. The elevator would therefore be placed in the middle of either the dining room, living room or reception room. This would destroy the symmetry of the interior design of this historic home and it is believed that no prudent homeowner would undertake such a radical alteration. This would be an "unreasonable" requirement.

No other location in the house provides the necessary functional space without ruining the function of existing rooms on each of the three floors.

In addition, because of the narrowness and topography of the lot in question, we rely on section 3103.2 which enables granting of relief, "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the

original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code, ... would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property..."

The design and construction of this 1910 house pre-dated the original adoption of the Zoning Regulations.

As to 400.7c **"It shall not exceed eighteen feet, six inches (18 ft. 6in.), in height..."** it meets this § 400.7c requirement in accordance with the architect's plans and rises only twelve feet, nine inches (12 ft. 9 in.) Above the roof upon which it is located.

Section 411 Roof Structures

subsections 411.3, 411.4, 411.5, 411.6 and 411.11

As to 411.3 the elevator penthouse will be as required by § 411.3 to, ***"harmonize with the main structure in architectural character, material, and color"***, because of the architect's design and the red brick exterior construction.

As to 411.4 the elevator penthouse will be as required by § 411.4 which is, ***"one (1) enclosure for each elevator core at each roof level"*** since there is only one elevator on one roof level.

As to 411.5 ***"Enclosing walls from roof level shall be of equal height, and shall rise vertically to a roof, except as provided in 411.6"*** As shown on the architect's plans the elevator penthouse will be as required by § 411.5,.

As to 411.6 **this section does not apply** as the mechanical equipment will be remotely located in the basement of the house.

Section 411.11 - Approval

As to 411.11 This section provides for approval of a special exception for elevator penthouses which do not meet the normal setback requirements to wit: **"the Board of Zoning Adjustment shall be empowered to approve, as a special exception under §3104 the location, design, number, and all other aspects of such structure regulated under §411.3 through §411.6, even if such structures do not meet the normal setback requirements of §§ 400.7..."** etc.

THEREFORE -

In response to the First Criteria for § 3104.1 Special Exception Approval for Penthouse

The proposed Special Exception will be consistent with the general intent and purpose of the Zoning Regulations and Map.

Second Criteria for § 3104.1 Special Exception Approval

How allowing the use will not adversely affect the use of the neighboring property - ie. traffic, noise, lighting, etc.

As to Traffic Traffic will not be affected by the elevator penthouse as the dwelling is a single family residence and will remain a single family residence. The elevator has no impact on traffic.

As to Noise Noise will not be affected as the machinery for operation of the elevator will be located in the basement of the residence fifty feet (50 ft.) below the elevator penthouse, and the dwelling will remain a single family residence.

As to Lighting The penthouse will not adversely affect the use of the neighboring properties to the east and west of the property in question as the neighboring properties will see little effect as relates to light as the elevator penthouse will neither cast a shadow onto those properties (except on the roof of the adjacent property to the west during morning hours only) nor come between the sunlight exposure from the south, and those properties.

Views from inside the homes of the east and west party wall neighbors will not be affected. If either party wall neighbor is on their rooftop they will see the penthouse but the harmony and character of the penthouse will be in keeping with the harmony and character of the Historic District and in fact will be more in character than the other roof penthouses in the area.

The penthouse is set back twenty six feet, one inch (26 ft. 1 in.) from the front of the house so it is only minimally visible from the street on which the house fronts on.

THEREFORE -

In response to the Second Criteria for § 3104.1 Special Exception Approval for Penthouse

The proposed Special Exception will not adversely affect the use of the neighboring property - ie. traffic, noise, lighting, etc.

Issue Number Two - Lot Occupancy

Background:

Applicant is requesting special exception so that a small breakfast nook can be added to the existing kitchen. The interior configuration of the first floor of this home includes 3 large well proportioned rooms with significant architectural detailing, running from front to back with a narrow galley kitchen along the west wall. The rooms remain as originally designed and built in 1910 and don't allow for informal meals. The combination of these factors dictates the most logical location for the modest kitchen addition. As can be seen from the architect's plans, the existing kitchen is very narrow and is too small for a table and chairs. When even one cabinet door is open an individual cannot pass through. The expansion of the kitchen within the existing walls of the house would require the relocation, at substantial cost of the bearing wall between the kitchen and the dining room to accommodate the necessary space. This would destroy the symmetry of the interior design of this historic home and it would be unreasonable for a homeowner to undertake such a radical alteration. Moreover it would not make sense to build a breakfast area elsewhere in the house, away from the kitchen, nor would it be practical to relocate the kitchen to another level of the house away from the dining room. Therefore a special exception for a lot coverage of 1,347 square feet on a lot of 2,096 square feet which results in a 64% maximum percentage of lot occupancy is requested (see Zoning Review Branch, Notes & Computations).

First Criteria for § 3104.1 Special Exception Approval

How will the proposed special exception be consistent with the general intent and purpose of the Zoning Regulations and Map.

Section 403 Percentage of Lot Occupancy

subsection 403.2

As to 403.2 § 403.2 provides that, "No structure, including its accessory building shall occupy its lot in excess of the percentage of lot occupancy set forth..." It goes on to "set forth" that an R-3 Row dwelling shall have a maximum percentage of lot occupancy of 60%. The requested breakfast nook addition will take the lot occupancy of the property in question to 64%

Section 223 Additions to One Family Dwellings or Flats

subsection 223.1

As to 223.1 § 223.1 enables the Board of Zoning Adjustment to permit, as a special exception, R-3 Row Dwellings which surpass the 60% limit if certain tests in subsection 223.2 and §223.3 are met. § 223.1 reads, **"An addition to a one-family dwelling or flat, in those Residence Districts where a flat is permitted, that 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."**

As to 223.2 States that, "The addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent property, in particular:"

Test (a): "The light and air available to neighboring properties shall not be unduly compromised."

There will be minimal affect to the party wall neighbor to the east because a wooden privacy fence currently exists between the properties and provides for privacy acceptable to both parties. The profile of the addition will be primarily shielded from view by the existing privacy fence. Because the addition is in an existing corner of the property there will be no affect on light to the party wall neighbor to the east. The design is acceptable to that party wall neighbor.

The addition will be viewable from the existing window located directly on the party wall of the neighbor to the west. In concert with this neighbor the architect was directed to design a niche and planter to address concerns the party wall neighbor to the west may have had and the design is acceptable to that party wall neighbor.

The addition will not face a front street and cannot be seen from a front street. The proposed addition faces an unnamed one way alley with minimal traffic flow at the rear of the house. It is located approximately 21 feet from that alley and the alley is located at a lower elevation.

Test (b): The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.

Regarding the party wall neighbor to the east, the privacy of use and enjoyment will be primarily unchanged as a result of the proposed addition due to the existing privacy fence. At present the other party wall neighbor (to the west) must close a blind covering a part of his window on the party wall line in order to maintain privacy. With the construction of the proposed addition the privacy of that neighbor will be enhanced and the blind will no longer need to be closed to achieve privacy. Thus privacy of use and enjoyment will be improved for the party wall neighbor to the west.

Test C: The addition 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.

Particular attention has been paid to architectural compatibility in the design of not only the proposed addition but also the elevator penthouse and the replacement of the existing deck. Extensive use of red brick has been incorporated into the finishes, along with raised panel inserts, double hung windows and cement board trim. Decorative wrought iron indicative of the style typically seen in such a Historic District has been incorporated into the patio and balcony designs. The proposed addition visually complements the historic character, scale and pattern of houses along the pubic way.

Test (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 drawing sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

Submitted with this application are plans, photographs, elevations and section drawing for the purpose of depicting the proposed addition. Additional presentation materials will be used in oral presentation.

As to 223.3 States that, "The lot occupancy of the dwelling or flat, together with the addition, 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 property in question is R-3

Thus the test in subsection 223.3 is the test of maximum percentage of lot occupancy. The Zoning Review Branch has reviewed the plans for this proposed addition and has prepared Notes and Computations. The result of the review and preparation of the Notes and Computations is that the proposed additin will result in a lot coverage of 1,347 square feet on a lot of 2,096 square feet which results in a 64% maximum percentage of lot occupancy. Thus the proposed addition meets the test of maximum percentage of lot occupancy of 70% or less.

THEREFORE -

In response to the First Criteria for § 3104.1 Special Exception Approval for lot occupancy

The proposed Special Exception will be consistent with the general intent and purpose of the Zoning Regulations and Map.

Second Criteria for § 3104.1 Special Exception Approval

How allowing the use will not adversely affect the use of the neighboring property - ie. traffic, noise, lighting, etc.

As to Traffic Traffic will not be affected by the breakfast nook addition as the dwelling is a single family residence and will remain a single family residence. The breakfast nook addition has no impact on traffic.

As to Noise Noise will not be affected by the breakfast nook addition as the dwelling will remain a single family residence.

As to Lighting "The light and air available to neighboring properties shall not be unduly compromised."

There will be minimal affect to the party wall neighbor to the east because a wooden privacy fence currently exists between the properties and provides for privacy acceptable to both parties. The profile of the addition will be primarily shielded from view by the existing privacy fence. Because the addition is in an

existing corner of the property there will be no affect on light to the party wall neighbor to the east. The design is acceptable to that party wall neighbor

The addition will be viewable from the existing window located directly on the party wall of the neighbor to the west. In concert with this neighbor the architect was directed to design a niche and planter to address concerns the party wall neighbor to the west may have had and the design is acceptable to that party wall neighbor.

The proposed addition will not face a front street and cannot be seen from a front street. It faces an unnamed one way alley with minimal traffic flow at the rear of the house. The proposed addition is located approximately 21 feet from that alley and the alley is located at a lower elevation. Because of privacy fences and other building additions it will be difficult, but not impossible, to see

THEREFORE -

In response to the Second Criteria for § 3104.1 Special Exception Approval for lot occupancy

The proposed Special Exception will not adversely affect the use of the neighboring property - ie. traffic, noise, lighting, etc.

Summation

Pursuant to the Zoning Review Branch memo to the Board of Zoning Adjustment dated April 15, 2003 it was indicated that this project needed the Board of Zoning Adjustment approval of a special exception relating to lot occupancy and a roof penthouse. With the arguments presented herein the aplicant has met the requirements precedent to approval and We respectfully request an order from the Board of Zoning Adjustment that the application for special exceptions for the elevator penthouse and the breakfast nook addition be approved.