

Statement of Burden of Proof:

Re: 434 4<sup>th</sup> Street NE  
Sq 780, Lot 51

Members of the Board of Zoning Adjustment:

1. Introduction:

The Owners of 434 4<sup>th</sup> Street NE in 2017 began the process in early 2017 of designing an infill addition to their rowhome. The intent was to include a rooftop deck and penthouse. The penthouse would enclose the stairs to the roof, and would be located in the new dogleg infill. These plans were shared with HPO and OP, with preliminary feedback that the approvals could possibly be handled at the staff level, depending upon the scope.

With submission of the plans into ProjectDox, HPO at review declined to approve at the staff level. The plans were then presented to the Capital Hill Restoration Society, and then to ANC 6C's Zoning Committee meeting, with approval at their full ANC meeting in September 2017. HPRB approval was subsequently granted via consent calendar at their September 28<sup>th</sup> 2017 meeting.

With permitting underway, DCRA's Zoning reviewer also declined to approve at the staff level. At this point, the Owner's did not wish to pursue BZA action, wishing instead to obtain a permit. The plans were altered, ultimately to remove the entirety of the penthouse and roof deck, and a building permit was granted on July 25<sup>th</sup> 2018 to construct the dogleg infill.

With a construction permit in-hand, the Owners wish now to re-visit the roof deck, and hereby petition the Board of Zoning Adjustment, pursuant to their authority granted DCMR Title 11, to grant Special Exception to permit construction of a penthouse, and associated roof deck.

2. Findings of Fact

- a) The property is an interior, rectangular shaped lot, located on the west side of the street at 434 4<sup>th</sup> Street NE between D and E Streets NE (Square 780, Lot 51) (the "Subject Property").
- b) The subject property is improved with an attached rowhouse dwelling 3-stories in height.
- c) The subject property is zoned RF-3, and is included in the Capitol Interest Overlay District.
- d) The existing structure is currently 890 square feet per level, is located on a 1,615 square foot lot, and occupies 55.1% of the lot.
- e) Permit number B-1707914, issued on July 25<sup>th</sup> 2018, will increase the footprint of the structure to its maximum lot occupancy, and will render the structure still conforming in all ways to current zoning guidelines.

- f) The adjacent properties are all 3-story rowhouse dwellings, to the north and south of the subject property.
- g) In accordance with both the general guidelines of Subtitle E Chapter 2 – General Guidelines for the RF zones, and Subtitle E Chapter 5 – Capital Precinct RF-3 Zone, the house and lot were conforming to current zoning standards.

### 3. Compliance with DCMR Title 11:

Pursuant to Subtitle E Chapter 5 Section 508, and to Subtitle C Chapter 15, the Owners are pursuing approval of a Special Exception to construct a penthouse to provide access to a proposed roof deck.

The proposed penthouse shall abide by the general penthouse regulations set forth in Subtitle C Chapter 15, as follows:

- C-1500.4(a) The height of the proposed penthouse shall be limited to no more than 10'-0". As currently designed, it is proposed to be 8'-0", though an additional 6" may be required to meet energy code insulation requirements.
- C-1500.4(b) The area of the penthouse as designed is limited to an enclosure for the new access stairs to the roof deck, and to an additional 30 square feet for storage of roof deck furniture.
- C-1500.6 The entirety of the penthouse structure is designed as a single enclosure
- C-1500.9 The enclosing walls are designed to a single, uniform, height.

### 4. Special Exception Criteria

Per Subtitle E Chapter 52 Section 5202.1, we believe that the project is, prima facie:

- a) Compatible with the present, and proposed, development of the neighbourhood, Addition of a deck and associated penthouse is permitted via Special Exception. Such addition was contemplated in the code, and does not materially alter the fabric of the neighbourhood.
- b) Consistent with the goals and mandates of Title V of the Legislative Branch Appropriation Act of 1976 (Public Law 94-59), and The minor additions proposed herein in no way affect the Master Planning of the Capitol Grounds, or larger area, in any material way.
- c) In accordance with the plan promulgated under the Act. The plan does not specifically address roof decks, nor do roof decks materially impair the fruition of the plan.

Therefore, the project, and the requested Special Exceptions, should be approved.

### 5. Relief

In addition to the Special Exception process to construct a penthouse, the proposed penthouse requires, and requests, relief from the following provision(s):

C-1502.1(c)(1)(A) One-to-one setback from the side building wall from an adjacent property that is of equal height, and is a row dwelling.

Relief may be granted by the Board of Zoning Adjustment, per Subtitle E Chapter 52 Section 5205.1, subject to the provisions of Subtitle C Chapter 15 Sections 1504.1 and 1504.2.

Specifically:

- C-1504.1(a) Strict application would require offset of the penthouse to the center of the existing house. This would require significant alteration, both architecturally and structurally, of the existing house, which is not contemplated in the project.
- C-1504.1(d) It would be prohibitively costly to increase the scope of the project to alter and renovate the interior of the existing house structurally and architecturally. Structural alterations would be required in the middle of the living space on both the main level and the upper bedroom level.
- C-1504.1(f) Neither will the intent of the chapter be materially impaired, nor will the light and air of adjacent structures be impaired by the proposed location of the penthouse.
- C-1504.2 The existing building is not constructed to the maximum height allowed by the Height Act, therefore relief is available.

## 6. Support

Letters of Support from numerous neighbours were obtained during the initial HPRB process. These letters are provided in this application, and include the (2) immediately adjacent neighbours, 432 4<sup>th</sup> Street and 436 4<sup>th</sup> Street.

## 7. Conclusion

In conclusion, we hereby request the Board of Zoning Adjustment to approve the project, via Special Exception(s) outlined in Sections C-1500 and E5200, based on:

- a) the conformity of the lot and structure to current zoning guidelines,
- b) the limitation of the proposed penthouse and structure to Section C-1504.2,
- c) the support of the neighbours,
- d) the support of the ANC, and
- e) the support of the Historic Preservation Office

Respectfully,

Michael E. Burns  
Architect, and Agent for Owners

Rick Genderson & Staci B. Walkes  
Owners