

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Jacob Hensley
1457 Swann Street, NW

STATEMENT OF COMPLIANCE WITH REVIEW STANDARDS

This statement is submitted for Jacob Hensley, owner of 1457 Swann Street, NW (Square 206, Lot 170) (the "Property"), in support of his application pursuant to 11 DCMR Subtitle X §901 for a special exception pursuant to Subtitle C §1500.4, a special exception pursuant to Subtitle C §1504.1 and specific to Subtitle C §1502.1(c)(1)(A), and a special exception pursuant to Subtitle E §205.5 of the Zoning Regulations to permit a 15 foot rear addition and a penthouse for roof deck access at the Property in the RF-2 District.

I. Background

Jacob Hensley, owner and resident of the Property, desires to increase the space and livability of his home and of the basement dwelling unit by constructing a 15 foot rear addition along with stair access to the roof. This desired addition and renovation will provide him with a dining area, a living area, a more functional kitchen, a master bedroom suite, and a den/office for working from home. It will also convert a portion of the roof to usable deck space and provide access to the roof. Furthermore, this project will provide better living conditions in the basement dwelling unit via a more practical kitchen and family room, dining space, and a 2nd bedroom.

II. Burden of Proof for Special Exception

Subtitle X §900.2: The Board of Zoning Adjustment is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the requested special exception meets the standards of Subtitle X §901 and any specific conditions specified in this subtitle.

Per Subtitle X §901.2, the Board of Zoning Adjustment is authorized under §8 of the Zoning Act, D.C. Official Code §6-641.07 (g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (c) Will meet such special conditions as may be specified in this title.

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning district, provided the specific regulatory requirements for the relief requested are met.

In evaluating requests for special exceptions, the Board is limited to a determination of whether the exception sought meets the requirements of the particular regulation on which the application is based. The applicant has the burden of showing that the proposal complies with the regulations; but once that showing has been made, the Board ordinarily must grant the application.

National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment, 753 A.2d984, 986 n.1 (DC 2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995)); see also *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973) (noting that "[s]pecial exceptions, unlike variances, are expressly provided for in the Zoning Regulations). If the specific requirements of the regulation are met, the Board is generally precluded from denying an application for special exception relief.

III. Compliance with Burden of Proof/Regulations

Subtitle X §901.2 (a): Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

The purpose and intent of the Zoning Regulations are to promote the public health, safety, morals, convenience, order, prosperity, and general welfare to:

- a) Provide adequate light and air;
- b) Prevent undue concentration of population and the overcrowding of land; and
- c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

Per Subtitle E §100.3, the purpose and intent of the RF zones is to:

- a) Recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low and moderate-density housing to the overall housing mix and health of the city;
- b) Allow for limited compatible non-residential uses;
- c) Allow for the matter-of-right development of existing lots of record
- d) Establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones;
- e) Allow for the limited conversion of rowhouse and other structures for flats; and
- f) Prohibit the conversion of flats and row houses for apartment buildings as anticipated in the RA zone.

Per Subtitles E §400.1 and E §400.2, the purpose and intent of the RF-2 zone is to:

- a) Recognize that Dupont Circle area is a unique resource in the District of Columbia that must be preserved and enhanced;
- b) Provide strong protections to retain its low scale, predominantly residential character independent small retail businesses, human scale streetscapes, and historic character;
- c) Enhance the residential character of the area by maintaining existing residential uses and controlling the scale and density of residential development;
- d) Protect the integrity of “contributing buildings,” as the term is defined by the Historic Landmark and Historic District Protection Act of 1978,);
- e) Preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide;
- f) Enhance the streetscape by maintaining the public space in front of buildings as landscaped green spaces; and
- g) Encourage greater use of public transportation and the free circulation of vehicles through public streets and alleys.

This application/proposed project meets these requirements. Specifically:

An existing low scale residential use is being maintained. The property exists as a flat and will remain as a flat. Additionally, with no proposed modifications to the existing landscaped green space in front of the building or to any aspects of the building visible from the street, the human scale streetscape, public space, neighborhood character, and housing stock are all being enhanced/maintained/preserved.

The proposed project yields an additional bedroom in the basement dwelling unit (takes it from a one bedroom unit to a two bedroom unit,) which provides a housing option in this walkable neighborhood for a larger pool of residents who can also take advantage of public transportation due to this neighborhood’s location within the city and its public transportation infrastructure. Additionally, the rent per bedroom of a two bedroom unit is less than a one bedroom unit, which assists with housing affordability.

The proposed project provides a more practically sized primary residence with dining space, additional living area, traditional master bedroom suite, and a small den/office for working from home. These improvements will support the applicant's ability to remain in the property, possibly start a family, and age in place.

The residential, low scale, and historical character of the neighborhood is being protected and retained. The applicant and his architect purposefully designed a very moderate, low scale addition that does not push the envelope with the zoning ordinance bulk standards in place or with the scale/size of other homes and prior additions in the square. Fortunately, this property is in a historic district (U Street Historic District), where stringent guidelines are in place and where professionals review proposed projects to ensure they maintain the proper scale and protect the character of the neighborhood. This project went in front of the Historic Preservation Review Board on July 29th, and 8-0 "the board found the scale and massing of the concept compatible with the character of the U Street Historic District."

The bulk standards in the Zoning Regulations are in place to ensure that adequate light and air will be provided to any individual property and adjacent properties in a specific Zone District. In other words, if a building is at or under the bulk standards, then it is in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps as they pertain to light and air. This proposed addition falls within the bulk standards for the RF-2 Zone.

Height: The matter-of-right maximum building height is 35 feet. Parapet walls can extend up to 4', so in essence, the maximum matter-of-right height of perimeter walls is 39 feet. This maximum height does not include penthouses. The height of this building following the addition, including the penthouse, will be approx. 35'9" (3'3" lower than the matter-of-right building perimeter wall height before any penthouse.)

Lot Occupancy: The matter-of-right lot occupancy of a flat is 60%. The lot occupancy of this building following the addition will be approx. 58.85%.

Rear Yard: The matter-of-right rear yard is 20 ft. The rear yard following the addition will be approx. 29.9 ft.

Side Yard: There is no side yard requirement for row buildings.

Subtitle X §901.2 (b): Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and

This application/proposed project meets these requirements. Specifically;

As stated above, this proposed project is within the bulk/development standards in the Zoning Regulations. These standards quantify the appropriate location on a lot and maximum size of a building in order to ensure that the adequate amount of light and air to properties is not encroached on, and the use of properties is not affected adversely. Again, this proposed addition is under the maximum matter-of-right lot occupancy and well under the maximum matter-of-right height and minimum rear yard requirements.

Although the applicant is not asking for special exception relief on the general bulk standards, relief is being requested regarding the 10 foot extension from adjacent property rear walls. In order to further the proof that the use of neighboring property is not affected adversely, a sun/shade model was commissioned and is included in this application package. The impact of this additional 5 foot extension has a minimal impact on direct sunlight/shade to neighboring properties.

Subtitle X §901.2 (c): Will meet such special conditions as may be specified in this title

Subtitle C §1500.4 Special Exception Relief: BZA may approve a penthouse as a special exception provided the penthouse: a) is no more than ten (10 ft.) in height and contains no more than one (1)

story; and b) contains only stair or elevator access to the roof, and a maximum of thirty (30 sq. ft.) of storage space ancillary to a rooftop deck.

This application/proposed project meets these requirements. Specifically;

The height of the penthouse will be the lowest possible in order to comply with the IBC minimum ceiling height requirement of 7'. It is anticipated that the penthouse height will be between 8'6" and 9'0" (roof sloped front to back to provide drainage) after accounting for structural elements of the roof, and in no case will the penthouse height exceed 9'. Additionally, the penthouse is only 1 story.

The penthouse only contains stair access and 30 sf of storage space ancillary to a roof deck.

Subtitle C §1502.1(c)(1)(A) by way of Subtitle C §1504.1 Special Exception Relief: a penthouse shall be setback a distance equal to its height from the side wall of the roof upon which it is located if in any zone, it is on a building used as a detached dwelling, semi-detached dwelling, rowhouse, or flat that is adjacent to a property that has a lower or equal permitted matter-of-right building height. Relief to the requirements of Subtitle C §§1500.6 – 1500.10 and 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.

This application/proposed project meets these requirements. Specifically;

The property is 17'6" wide. IBC requires a minimum ceiling height of 7' which drives a minimum penthouse height when accounting for roof structure of approx. 8'6". It is impossible to have stair access, let alone code compliant stair access, within the 1:1 side setback. The height and width of the stair access could only be 6". In other words, the width of the property makes compliance with the side setbacks impossible.

It is also unreasonable and prohibitively costly for stair access to the roof to be anywhere other than where it is proposed. The existing stairs in the home to the second floor are along this east wall, so it would require significant interior demolition and structural reconfiguration to shift this stair away from the wall. Additionally, with the property being 17'6" wide, and as a result the interior width being approx. 16' wide, placing the stairs anywhere other than along the side wall will greatly reduce the habitable area of the home.

- (b) The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall.

This application/proposed project meets these requirements. Specifically;

4' of the approx. 8'6" in height will be constructed to appear as a parapet wall on the east side of the roof. The remaining approx. 4'6" in structure height will be stepped in approx. 3" to provide a visual distinction that this penthouse is not an extension of the building wall.

- (c) The relief requested would result in a roof structure that is visually less intrusive.

This application/proposed project meets these requirements. Specifically;

The proposed penthouse for roof access is much less intrusive than the other option, which would be within matter-of-right standards. The other option would consist of a rear addition with a third story height 8' higher than the existing third story height, which would put the overall height of the addition at the 35 feet, and roof access would be through a stair within the confines of the addition.

- (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.

This application/proposed project meets these requirements. Specifically:

Please refer to information provided under (a) above. The width of the lot makes it impossible for the penthouse to achieve the 1:1 setback, and stair access cannot reasonably be located anywhere other than where it is proposed without causing the property owner an enormous amount of extra work and costs, and without causing the resulting home to be significantly less efficient.

- (e) Every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks.

This application/proposed project meets these requirements. Specifically:

The required side setback is impossible to achieve due to lot width.

- (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.

This application/proposed project meets these requirements. Specifically:

The maximum permitted matter-of-right height for buildings in the RF-2 zone is 35'. The building height is and will remain at 26'8". The proposed penthouse structure will barely, if at all, exceed the allowable building height in the zone, and it will be under the allowable perimeter wall height of 39' (parapet wall.) Additionally, it will be well under the allowable building plus penthouse structure height of 45'.

The residential and historic character of the zone and street is not impacted by this proposed penthouse structure as evidenced by HPRB's July 29th decision.

The majority of the penthouse structure is adjacent to the neighboring roof, with only 5' of it extending past the neighboring roof. Because the street consists of rowhomes, the adjacent neighbors do not and cannot have windows on the lot line that face the penthouse structure. Air and light to adjacent buildings is not materially affected by this penthouse, as further evidenced by the sun/shade model.

Subtitle E §205.5 Special Exception Relief: a rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9, and subject to Subtitle E §5201 if applicable.

This application/proposed project meets these requirements. Specifically:

Subtitle X §901.2:

Please refer to the burden of proof information in the earlier pages of this document relating to Subtitle X §901.2.

Subtitle E §5201.1(b):

Subtitle E §5201.4: An application for special exception relief under this section shall demonstrate that the proposed addition, new building, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
- (c) The proposed addition or structure, together with the original building, or the new principal building, as viewed from the street, alley, or other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage; and

- (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.

As evidenced by the sun/shade model, the affect on sunlight from this 15 foot addition vs. 10 foot addition is negligible. The height of the addition is 8'4" lower than the matter-of-right height, and the rear yard remaining after this 15 foot addition is almost 30 ft., which is 10ft. more than the minimum required in the zone, and on top of this there is also an alley running along the rear of the properties. There is and will be an abundant amount of light and air available to neighboring properties.

The above also supports the position that enjoyment of neighboring properties will not be compromised. Regarding privacy, it can be argued that this additional 5 ft. addition will increase the privacy of neighbors, and that it will also increase the enjoyment of neighboring properties. Summertime in DC can get very hot, and although the additional shade provided is minimal, some days any little bit people can get is welcomed.

This addition does not visually intrude upon the character, scale, and pattern of houses along the alley frontage as evidenced by HPRB's 8-0 decision. Many houses on the block extend as far or father than this desired 15 ft. addition, and many houses are greater in height.

We have included in the package a number of visuals, photographs, and elevations/sections to show the relationship of this proposed project to adjacent buildings.