

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Philip Bradford, AICP, Case Manager

JL Joel Lawson, Associate Director Development Review

DATE: March 7, 2025

SUBJECT: BZA Case 21226 – Request for special exception relief to allow a third story addition and three-story rear addition at 1206 Staples Street NE.

I. RECOMMENDATION

The Office of Planning (OP) recommends **denial** of the following special exception pursuant to Subtitle C § 1501.1(c) and Subtitle X § 901:

- C § 1501.1(b) Penthouse Use (must be within permitted building height - 35 ft. or 40 ft. by sp.ex.; 39.6 ft. max height of penthouse proposed)

Should the BZA decide to approve the above relief, OP recommends **approval** of the following special exception pursuant to Subtitle C § 1506.1 and Subtitle X § 901:

- C § 1504.1(a) Penthouse Setbacks (1:1 or 5.10 ft. required, 3 ft. proposed)

OP recommends **approval** of the following special exceptions pursuant to Subtitle E § 204.4, Subtitle E § 5201 and Subtitle X § 901:

- E § 204.1 Rooftop and Upper Floor Elements (Architectural features original to the building may not be altered; Alterations of the front façade proposed)
- E § 207.1 Rear Yard (20 ft. required, 36.83 ft. existing; 17.83 ft. proposed)
- E § 207.5 Rear Extension (10 ft. maximum, 0 ft. existing; 11.5 ft. proposed)
- E § 210.1 Lot Occupancy (60 % maximum, 42.87% existing; 65.67% proposed)

II. LOCATION AND SITE DESCRIPTION

Address:	1206 Staples Street NE
Applicant:	LeRoy Alexander Benons
Legal Description:	Square 4067, Lot 0058
Ward / ANC:	Ward 5, ANC 5D
Zone:	RF-1
Lot Characteristics:	Rectangular lot 19.33 ft. wide by 82.50 ft. long with a 15 ft. public alley at the rear of the lot.
Existing Development:	Two story with basement row dwelling.
Adjacent Properties:	Residential row dwellings.

Surrounding Neighborhood Character:	The surrounding neighborhood is primarily residential in character with single family row dwellings, with mixed use development located several blocks to the south along Florida Avenue NE and H Street NE.
Proposed Development:	Third floor addition and rear addition to the existing two-story row dwelling and convert the single dwelling unit dwelling to a flat.

III. ZONING REQUIREMENTS and RELIEF REQUESTED

RF-1 Zone	Regulation	Existing	Proposed	Relief:
Height E § 203	35 ft. max.	25.41 ft.	33.51 ft.	None required
Rooftop and Upper Floor Elements E § 203	May not be removed or altered	Roof with single dormer	Third story addition maintaining roof and dormer; new cornice and roof deck railing.	Special Exception Requested
Lot Width E § 201	18 ft. min.	19.33 ft.	19.33 ft.	None required
Lot Area E § 201	1,800 sq. ft. min.	1,595 sq.ft.	1,595 sq.ft.	None required
Lot Occupancy E § 210	60% max.	42.87%	65.67 %	Special Exception Requested
Front Yard E § 206	Within the range of existing structures	8 ft. 10 in.	8 ft. 10 in.	None required
Rear Yard E § 207	20 ft. min.	36.83 ft.	17.83 ft.	Special Exception Requested
Side Yard E § 208	None required, but 5 ft. min. if provided	0 ft.	0 ft.	None required
Parking C § 701	1 Required Space	1 space	1 space	None required
Penthouse Uses C § 1501	Within building height, or 40 ft. height max by sp.ex.	N/A	39.6 ft.	Special Exception Requested
Penthouse Setbacks C § 1504	1:1 Setback Required	N/A	3 ft. setback provided	Special Exception Requested

IV. ANALYSIS

A. Subtitle C Chapter 1501 PENTHOUSE USES

1501.1 *A penthouse or rooftop structure may house mechanical equipment or any use permitted within the zone, except that penthouse space shall be restricted as follows:*

(b) *Notwithstanding the requirements of paragraph (a), penthouse space shall only be permitted on the roof of a single household dwelling or flat in any zone, or on the roof of an apartment house converted pursuant to Subtitle U § 320.2, if it:*

- (1) *Is not located on an alley lot;*
- (2) *Is located entirely within the matter of right permitted height for the building;*
- (3) *Is a maximum of nine feet (9 ft.) in height and one (1) story; and*
- (4) *Contains only stair or elevator access to the roof plus a maximum of thirty square feet (30 sq. ft.) of space ancillary to a rooftop deck or terrace;*
- (c) *Penthouse space that satisfies the requirements of paragraph (b) of this subsection except that it would be partially or entirely above the matter-of-right permitted height for the building shall only be permitted if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9;*

The proposed penthouse space is not located entirely within the matter of right permitted height for the building. The ZA referral memo in Exhibit 10 notes the building height at 33.51 feet which is less than the matter of right height of 35 ft., however per the plans in Exhibit 37 the penthouse roof height for the stair access is 39.6 ft., which exceeds the matter of right height thus requiring special exception relief. Although the dwelling is not located on an alley lot, the penthouse is less than 9 feet and one story and only contains stair access ancillary to the rooftop deck, it extends beyond the permitted height, so review under Subtitle X Chapter 9 is required:, as follows.

Subtitle X Section 901 SPECIAL EXCEPTION REVIEW STANDARDS

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;*

For this relief, the applicant has provided no justification in the record. The RF-1 zone anticipates and allows a rooftop access within the permitted building height, but requires review for ones that exceed it. The intent is that any rooftop access that, in stairwell form, exceeds this height should typically be provided in some means other than an enclosed stairwell, such as an open stair or a roof hatch. The applicant has not provided justification for why this cannot be the case in this proposal.

- (b) *Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*

The proposed rooftop access is located along the south wall of the building, so should not case significant shadow on adjacent properties most times of the day and year. Although front setback relief is requested, it would provide some set back from both the front and rear facades of the building. It would be visible obliquely over the roofs of the adjacent houses.

- (c) *Subject in specific cases to the special conditions specified in this title.*

OP does not recommend any special treatment or conditions for the proposal, if it were to be approved.

B. Subtitle C Chapter 1506 RELIEF FROM PENTHOUSE OR ROOFTOP STRUCTURE SETBACK REQUIREMENTS

1506.1 Relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the Board of Zoning Adjustment subject to:

- (a) The special exception requirements of Subtitle X, Chapter 9;*
- (b) The applicant's demonstration that reasonable effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and*
- (c) The applicant's demonstration of at least one (1) of the following:*
 - (1) 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;*
 - (2) The relief requested would result in a better design of the penthouse or rooftop structure without appearing to be an extension of the building wall;*
 - (3) The relief requested would result in a penthouse or rooftop structure that is visually less intrusive; or*
 - (4) 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 Subtitle C § 115 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable.*

The applicant is requesting special exception relief from rooftop setback requirement of Subtitle C § 1504.1(b) from the front façade, as determined in the DoB memo at Exhibit 10 for the rooftop deck stair enclosure. The applicant's updated Burden of Proof in Exhibit 29 demonstrates that, if the BZA allows the relief for the proposed height of the stairwell, the strict application of the requirements of this chapter would result in construction that is unduly restrictive. The applicant states that the reason the setback is not met is due to the design maintaining the existing stairwell from the foundation to the roof truss. The design is also necessary as the single unit dwelling is being converted to a flat and the current design meets fire separation and egress requirements for the proposed dwellings.

Subtitle X Section 901 SPECIAL EXCEPTION REVIEW STANDARDS

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;*

The proposed stairwell would provide a setback from the front façade, but this was determined by DoB to be less than the 1:1 setback required. The intent would be to minimize the potential visual impact of the stairwell along the street. The setback provided should help to ensure that the requested relief from the front façade setback should not unduly impact this intent. The stairwell could be

visible obliquely from the street and from the alley, but a setback from the side wall is, in this case, not required.

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

The proposed enclosed stairwell is located along the generally south facing wall, and the setback relief should not result in adverse impacts on the use of neighboring property. It should not cast significant shadow over most times of the day, and should not result in a privacy impact.

(c) Subject in specific cases to the special conditions specified in this title.

OP does not recommend any special treatment or conditions for the proposal.

C. Subtitle E § 204 ROOF TOP OR UPPER FLOOR ELEMENTS - Subtitle E § 204.1 pursuant to E § 204.4 and X § 901

The applicant seeks to add a third floor to the existing two-story row dwelling which would involve retaining the existing roofline on the second floor and building a third-floor setback from the original roofline. The new upper floor elements contain a cornice and railing and alter the overall appearance of the roof top and upper floor of the building. These changes necessitate relief from the provision governing rooftop architectural elements. Subtitle E § 204.1 states:

...a roof top architectural element original to a principal building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape, or increasing its height, elevation, or size...

The Board can grant the requested relief pursuant to Subtitle E § 204.4 and X § 901. The relevant criteria are analyzed below.

204.4 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle E § 204.1 as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

(a) The proposed construction shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

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

The third-floor addition is proposed within the matter-of-right height limit for the primary structure and is slightly set back from the front building line of the rowhouses along the block face. The massing is consistent with other rooftop and upper floor element alterations within the immediate vicinity of the subject property and should not have an impact to light and air available to neighboring properties.

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

The third floor contains new windows facing the front and rear which do not substantially impact privacy and use of enjoyment as there are currently windows on these facades on the existing structure. The new rooftop deck is located at the front of the roof facing Staples Street NE which preserves privacy to adjacent homes with alley facing rear yards.

(3) *The proposed construction, 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 street or alley frontage;*

The proposed construction when viewed from the street and alley does not substantially visually intrude upon the character, scale, and pattern of the houses along the frontage. There are other comparable rooftop and upper floor element alterations on other structures on both sides of Staples Street NE, and the applicant has designed the third floor to be similar to these additions to fit within the context of the neighborhood.

(b) *In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed construction to adjacent buildings and views from public ways; and*

The applicant has provided plans and elevations that sufficiently represent the relationship of the proposed construction to adjacent buildings and views from public ways such as the street and alley.

(c) *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 or nearby properties, or to maintain the general character of a block.*

OP recommends no special treatments beyond those shown on the submitted plans.

Although the applicant has not requested relief from Subtitle E § 204.3 (potential impact on adjacent property solar panels), which can be granted Subtitle E § 204.54 and X § 901, OP also provides the following:

204.3 *Any new building, or alteration or addition to an existing building, including a penthouse or rooftop structure (the “proposed construction”) at the time of application, shall not significantly interfere with the operation of a solar energy system on an abutting property, unless agreed to by the owner of the solar energy system, subject to the following:*

(d) *All applications for the proposed construction, whether for a building permit or for zoning relief, must include one of the following:*

- (1) *An affidavit by the applicant stating that there is no solar energy system on an abutting property;*
- (2) *A comparative solar shading study that meets the minimum standard established by the Zoning Administrator for the purpose of determining the increased annual incident solar shading by percent; or*
- (3) *A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.*

The applicant has submitted a written agreement with the owner of the impacted solar energy system at 1208 Staples Street NE to the record in Exhibit 30.

D. Subtitle E Chapter 5201 REAR YARD, REAR EXTENSION, LOT OCCUPANCY

5201.1 *For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may grant relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:*

- (a) *Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;*
- (b) *Yards, including alley centerline setback;*
- (c) *Courts; and*
- (d) *Pervious surface.*

The applicant has requested relief from the lot occupancy and rear yard development standards consistent with this subsection.

5201.2 & 5201.3 *not relevant to this application*

5201.4 *An applicant for special exception 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, in particular:*

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

The light and air available to neighboring properties should not be unduly affected. The addition is within the height limit of the RF-1 zone, and the rear wall is 11.5 feet beyond the neighboring structure located at 1204 Staples Street NE and matches the rear wall of the 1208 Staples Street NE to the north. The lot occupancy increases from 42.87% to 65.67%, which is allowed by special exception.

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

The privacy and use of neighboring properties should not be unduly compromised as there are no windows facing the abutting properties to the north or south. There are new windows on the third-floor addition, along with a new roof deck, however these new elements offer viewpoints onto the street and alley that currently exist through windows at the second floor of the property. The roof deck is set back from the rear of the structure to maintain privacy of the rear yards on both adjacent properties.

- (c) *The proposed addition or accessory structure, together with the original building, or the new principal 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 street or alley frontage; and*

The proposed rear addition and third floor addition together with the original building remain complimentary to the existing architecture and would not intrude upon the character and pattern of the houses along the street frontage. The proposed alley façade is also in keeping with the character of existing houses along the alley. The proposed design maintains the existing roof and dormer and the proposed third-floor addition would be set back behind it. Per the applicant's burden of proof in Exhibit 29, it will be designed to match the same paint and textured stucco as the existing floors below.

(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 to sufficiently represent the relationship of the proposed additions to adjacent buildings and public ways.

5201.5 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 treatment for the proposal.

5201.6 This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception..

The proposed height and number of stories for the building complies with the RF-1 development standards. With the potential exception of the rooftop penthouse height, the proposal would not result in a building height, bulk, or use that would be inconsistent with the intent of the RF-1 zone.

Subtitle X Section 901 SPECIAL EXCEPTION REVIEW STANDARDS

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;

The RF-1 zone anticipates enlargements to single household row dwellings. In this case, the applicant meets the criteria for the lot occupancy and rear yard relief and the proposal would not result in a building bulk or height that is not anticipated by the zoning.

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

As analyzed above, the proposed upper and rear building additions should not have undue impacts on adjacent dwellings in terms of light, air, or privacy.

(c) Subject in specific cases to the special conditions specified in this title.

OP does not recommend any special treatment or conditions for the proposal.

V. OTHER DISTRICT AGENCIES

At Exhibit 21 is a report from DDOT stating no objection to the approval of the application. At the writing of this report, there are no comments from any other District agencies in the record.

VI. ADVISORY NEIGHBORHOOD COMMISSION

At Exhibit 27 is a letter from ANC 5D in support of the application. At Exhibit 31 is a letter from SMD 5D03 in support of the application.

VII. COMMUNITY COMMENTS

At Exhibits 19 and 33 are requests for party status in opposition to this application. At Exhibit 32 is a letter in opposition to the application.

Figure 1: Location Map

