

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Matt Jesick, Case Manager
MBR Maxine Brown-Roberts, Associate Director of Development Review

DATE: August 21, 2026

SUBJECT: BZA #21478 – 912 5th Street, NE – Request for relief to construct an addition to an existing single family row building

I. RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following requested special exceptions:

- C § 1501.1(c), pursuant to X § 900 – Penthouse height (Penthouse on roof of a conversion only permitted to be within the maximum height for the zone (35’); Special exception required for taller height; 43.5’ height proposed for top of penthouse);
- E § 210.1, pursuant to E § 5201 – Lot occupancy (61.2% on the 2nd floor existing; 60% permitted as a matter of right; 70% permitted by special exception; 70% proposed on 2nd floor).

II. LOCATION AND SITE DESCRIPTION

Applicant	Andrew Cooper, owner
Address	912 5 th Street, NE
Legal Description	Square 807, Lot 42
Ward / ANC	Ward 6, ANC 6C
Zone	RF-1 – Moderate Density Rowhouses and Flats
Historic District / Resource	None
Lot Characteristics and Existing Development	Nearly rectangular rowhouse lot, 17’ X ~95’; Existing single family, 2-story plus cellar rowhouse; Existing 2-story rear accessory building; 15’ public alley at the rear.
Adjacent Properties and Neighborhood Character	Similar rowhouses to the north; 2-story apartment buildings to the south; Surrounding neighborhood is primarily rowhouses, but one large apartment building is one block to the west; H Street commercial is one block to the south; Community center one block to the north.
Proposal	Construct a rear and third floor addition.

III. ZONING REQUIREMENTS AND RELIEF REQUESTED

Standard	Requirement	Existing	Proposed	Relief
Lot Width E 202	18'	17'	No change	Existing Non-Conforming
Lot Depth n/a	n/a	~95'	No change	Conforming
Lot Area E 202	1,800 sf	1,620 sf	No change	Existing Non-Conforming
Height E 203	35'	30'	35'	Conforming
Rear Yard E 207	20'	4.5'	No change	Existing Non-Conforming
Lot Occupancy E 210	60%	1 st Floor – 70% 2 nd Floor – 61.2% 3 rd Floor – n/a	1 st Floor – No change 2 nd Floor – 70% 3 rd Floor – 37.2%	Requested for 2 nd floor
Penthouse Height C 1501.1(b)(1)	On a sing. fam., flat, or conversion, penthouse height limited to MOR or SE height in the zone = 35'	n/a	43.5'	Requested

IV. ANALYSIS

Special Exception for Penthouse Height – Subtitle C § 1501.1(c), pursuant to X § 900

Subtitle C § 1501.1 allows for the use of a penthouse to access the roof of a flat, but typically restricts the height of the penthouse to be within the permitted building height for the zone. In this case, the design proposes a penthouse above the 35-foot height limit, up to a height of 43'6". The Board is authorized to grant relief for the extra height pursuant to C § 1501.1(c).

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:

- (a) Within residential zones in which the building is limited to a maximum of forty feet (40 ft.) or less, the penthouse use shall be limited to penthouse mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space;*

The property is in a zone, RF-1, where the matter of right height is 35 feet. OP estimates that the area of the penthouse would equate to 18.2% of the roof area.

- (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 located entirely within the matter of right permitted height for the building, or the special exception permitted height for the building when authorized by the Board of Zoning Adjustment;*

The applicant has requested special exception relief, pursuant to C § 1501.1(c), in order to permit a penthouse height above the matter of right height for the zone.

- (2) Is a maximum of nine feet (9 ft.) in height and one (1) story; and*

The penthouse would be one story and 8'6" in height.

- (3) 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;*

The penthouse would contain stair access to the roof. While the application does not specify the amount of ancillary floor area, at the time of permit the applicant will be required to demonstrate compliance with the 30 square foot limit of this subsection.

- (c) Penthouse space that satisfies the requirements of paragraph (b) of this subsection except that it would not satisfy Subtitle C § 1501.1(b)(1), shall only be permitted if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9;*

The applicant requests special exception relief to construct a penthouse to a height of 43.5'. Granting relief should be in harmony with the intent of the Zoning Regulations, which seek to minimize the appearance of penthouse structures on single family dwellings, flats, and apartment conversions. The proposed penthouse would be set back well over a 1-to-1 ratio from the front of the 3rd floor roof, and further from the front of the 2nd floor roof. That position should minimize the visibility of the rooftop structure from the street. From the rear of the building, the accessory buildings, which include a number of garages, including the existing 2-story garage on the subject property, should minimize the visibility of the penthouse. Also, granting the special exception should not affect adversely the use of neighboring property. Because of its position, shadow from the proposed penthouse should fall almost exclusively on the roof of the subject property. Please refer to Exhibit 19, the sun study. Furthermore, the penthouse would not impact air flow to, or affect the privacy of adjacent properties.

Special Exception for Lot Occupancy – Subtitle E § 210, pursuant to E § 5201

The design proposes a lot occupancy at the second floor of 70%, which can be approved by special exception pursuant to E § 5201. The relevant sections are reviewed below.

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;*

The light and air available to adjacent properties should not be unduly affected. A review of the sun study (Exhibit 19) indicates that the project would generate some new shadow on properties to the north. However, when comparing the amount of shadow in the matter of right scenario to the amount in the proposed scenario, the degree of change does not appear to rise to a level that would adversely affect the use or enjoyment of abutting properties. It should also be noted that much of the “new” shadow shown in Exhibit 19 appears to be generated by the proposed 3rd floor, which is well below the permitted lot occupancy. The 2nd floor, the floor for which relief is requested, 70% lot occupancy, would likely contribute some degree of new shadow on its own, but less than the 3rd floor. Furthermore, while the increased lot occupancy would permit construction of the rear addition at the 2nd floor, it would not expand the footprint of the building; The 2nd floor would be built above the footprint of the existing first floor. OP also concludes that the flow of air to nearby properties should not be unduly impacted.

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

The proposed addition should not unduly impact the privacy available to neighboring properties. Views to the west would be nearly identical to existing views from the property, and the design proposes no windows on the north or south walls.

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

The proposed construction should not substantially visually intrude upon the character of the street or alley. Granting relief for lot occupancy would allow for the addition to the second floor as proposed. Nothing at the front of the second floor would change as a result of the lot occupancy special exception. At the rear, the addition could have some visibility from the alley, but accessory buildings, including the 2-story accessory building on the subject property, should block views of the project. The alley appears to have a varied character, with the aforementioned accessory buildings, as well as rear fences and some homes with rear additions or decks. Furthermore, any minor change to the character of the alley would not be to a degree that would have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. (§ 5201.4).

- (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, new building, or accessory structure*

to adjacent buildings and views from public ways.

The application materials include plans, elevations, photos and site plans.

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 recommends no special treatments.

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.*

Granting relief would not result in the introduction of a nonconforming use. The applicant proposes to establish a flat, a matter of right use in the RF zone.

General Special Exception Criteria – Subtitle X § 901.2

901.2 (a) *[Granting the special exception] Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

Granting the requested lot occupancy relief should not impair the intent of the Regulations, which seek to provide open space, light, air, and privacy to both the subject property and adjacent properties. The proposed lot occupancy of 70% would result in some new shadow, but impacts to adjacent properties should not be undue. The amount of open space on the lot would not change, and views from and to the addition would be similar to the present condition.

901.2(b) *[Granting the special exception] Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;*

As addressed in the above analysis, the requested special exceptions should not unduly affect the use of neighboring property. There should not be undue impacts to light, air flow, privacy, or other factors.

V. COMMENTS OF OTHER DISTRICT AGENCIES

As of this writing there are no comments from other District agencies in the record.

VI. ANC COMMENTS

As of this writing there are no comments in the record from the ANC.

VII. COMMUNITY COMMENTS

Exhibit 20 is a letter from the Capitol Hill Restoration Society.

VIII. VICINITY MAP

