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Updated: April 29, 2025

Burden of Proof Statement and Narrative

BZA Zoning Special Exception Application of Stephen Jackson for 1128 4th Street NE

This statement is submitted by the owner, Stephen Jackson, of the property located at 1128 4th Street NE in the RF-1 zone district, square 0773 lot 0073. The property is an attached single-family rowhome surrounded by other attached single-family row homes.

The owner first lived on this block from 2009-2011. He purchased 1128 4th Street NE with his brother in 2013. In 2018, he and his now wife moved in together to an apartment building two blocks away from the house. (They lived in this apartment until they moved into 1128 in March 2022.)

He and his wife acquired the remainder of the house in 2020 with the goal of renovating the entirety of the house. Part of this renovation was addressing a dilapidated porch roof that was leaking in multiple spots, had extensive wood rot, and had birds nesting within the porch roof itself. Part of this renovation would be creating a deck atop the porch roof in a similar manner to porch roof decks in the neighborhood. While wishing to undertake an upgrade of the house, the owner consciously chose to not radically alter the appearance or character of their house with the addition of these porch railings.

The owner witnessed firsthand the dramatic transformation of the Near Northeast neighborhood, the changes of the H Street Corridor and the creation of the Union Market area. Dozens of apartment buildings sprung up over this period. The owner witnessed many stylistically incongruous pop-ups and rebuilt houses in this immediate area, including total rebuilds on the next block which do not match the character or spirit of the neighborhood.

Building plans were submitted to DCRA in January 2021 with a porch roof deck in them. After hitting a snag in the process, the architect removed the porch roof deck railings from the plans without the input of the owner. The addition of a door going onto the porch roof was kept in the plans despite a roof porch deck being removed from what became the approved designs.

After learning this was a zoning issue, the owner counted over two dozen similar porch roof decks within three blocks of the house which matched the idea for a porch roof deck. Three were added around 2019, two without plans and one with explicitly approved DCRA plans.

The demo began in March 2021 and the renovation moved extremely slowly due to the pandemic affecting supply chains. While undergoing the renovation, the owner and his now-wife became pregnant with their first child.

The owner and his wife moved into the house in March 2022 with the renovation still ongoing. Their first daughter was born in the beginning of April 2022.

With a new child and a door out to an unsafe roof, the owner decided that safety railings must be installed. Through the owner's own reading of the building and zoning code and interpretations, the owner decided that the architect must have found a quick solution without adequately raising with DCRA that this porch roof design might be permissible under DCRA and zoning guidance. The owner seeing that three neighboring houses with recent, similar porch roof decks added to the owner's confidence that there was precedent for adding these guard rails.

The black metal guard rails were installed on May 19, 2022.

On March 3, 2023, the owner received a notice of infraction from DCRA/DOB about the construction of the guard rails without a building permit.

In working through the DOB/DCRA process to get the necessary building permit to retroactively approve the construction of these guard rails, DOB determined that a Special Exception from the Board of Zoning before a building permit could be approved.

I, the owner, Stephen Jackson, am requesting a Special Exception to DCMR 11 Subtitle E § 204.1(a):

- *Except for properties subject to review by the Historic Preservation Review Board or their designee, or the U.S. Commission of Fine Arts, 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; provided that:*
 - (a) *For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line;*

As permitted under Title 11 Subtitle E § 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;*
 - (2) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and*

The addition of a metal railing has no effect on the light or air of neighboring properties.

The addition of a metal railing converting the roof top into a deck does not unduly compromise the privacy or enjoyment of neighboring properties. No new lines of sight into the two adjacent houses are created with the addition of this porch roof – these lines of sight already exist from the second story of windows of the houses across the street.

- (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 of the metal railings does not visually intrude upon the character, scale or pattern of houses along the street for a number of reasons. The metal railings added to the porch roof on the second level match the railings of the porch itself on the first level.

On the 1100 block of 4th Street NE there are nine different house shapes and designs. Many of these different shapes appear on the east side of the street, which have odd numbers. However, on the west side of the street, which have even numbers, there are numerous variations on the predominant rowhouse design. These variations include porch column type and shape (cylinders made of wood, squared columns made of brick, or rectangular prisms made of metal), whether the three windows of the second story are together or spaced out, and the placement and size of the dormer window on each roof.

There are over two dozen porch roof decks with similar metal railings within three blocks of this house. These are of various ages with half being built pre-2009, ten being built between 2009-2017 and the remainder being built post-2017.

This subtle transformation of a porch roof into a roof deck is the kind of smart adaptation of existing housing stock which should be encouraged in a neighborhood full of gawdy pop-ups and total rebuilds into duplexes.

The neighborhood of Noma and Union Market has seen the extensive construction of apartment buildings with balconies, including the erection of an eight-story building with balconies which is 120 yards away from 1128 4th on M Street NE and which was built around 2020.

(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

Please see the other components of this application.

(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.

Understood.

Additional requirements as permitted under Title 11 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;

The railings do not add to any height to the overall dimensions of the structure, do not block or impede the functioning of a chimney or other external vent on an adjacent property as required by any municipal code. Does not interfere with the operation of an existing or permitted solar energy system on an adjacent property. The railing is metal and not a solid wall and it will not affect the

light and air available to neighboring properties. The railing, as it has been constructed, does not pose a threat to public safety, health, peace and general welfare. As seen in the renderings and the current photos, the railings vary slightly from the existing conditions and are not overly intrusive while keeping the overall character of the home front and the neighboring properties. Anecdotally, many did not notice the addition of the railing at all until it was pointed out to them. This and the entirety of the application justify why this is thought to be in harmony with the intent and purpose of the zoning regulations and maps.

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

The proposed does not impinge on nor adversely affect any of the neighboring/adjacent properties. It does not prevent the emission of waste or water from any neighboring property, nor does it affect the overall amount of light. No new lines of sight into the two adjacent houses are created with the addition of this porch roof – these lines of sight already exist from the second story of windows of the houses across the street. Therefore, the porch roof does not alter the privacy of others in their homes. The porch roof/railing does not block or impede sightlines from any other homes. The metal railing on the deck is in keeping with the original character of the home and matches the railing on the porch itself. It is in keeping in with the character of similar porches and roofs on the block and in the neighborhood.

Sincerely,

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