

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Maxine Brown-Roberts – Project Manager  
*J* Joel Lawson, Associate Director Development Review  
**DATE:** September 21, 2018

**SUBJECT:** BZA 19791- Request for variance and special exception relief to construct a roof deck and stairs to a row dwelling at 433 New Jersey Avenue, SE.

**I. OFFICE OF PLANNING RECOMMENDATION**

The applicant, Chelsey Zitnay, proposes to add a roof deck and external access stairs to a row dwelling at 433 New Jersey Avenue, SE in the RF-3 zone. The Office of Planning (OP) recommends **approval** of the following:

Variance:

- Subtitle E § 504.1, lot occupancy (60% max. allowed, 70% by SE, 75.53% existing, 78.92% proposed), pursuant to Subtitle X § 1000.1; and
- Subtitle C § 202.2, enlargement of a nonconforming structure, pursuant to Subtitle X § 1000.1;

Special Exception:

- Subtitle C § 1502.1(c), side guard rail setback (minimum 3 ft. required, 0 ft. proposed), pursuant Subtitle E § 5205.1 and Subtitle C § 1504.1;

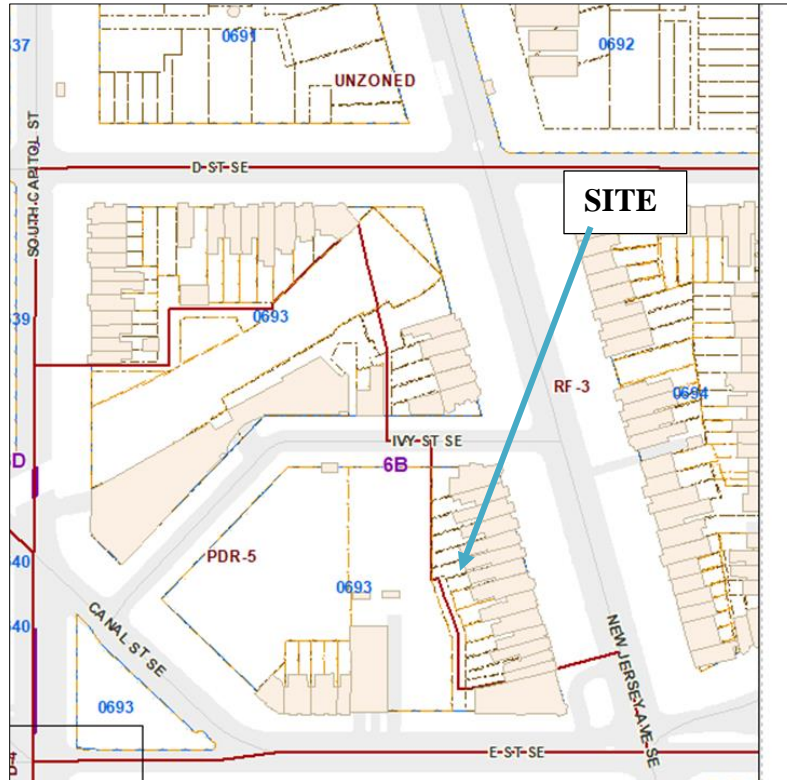
OP also believes that special exception review for Subtitle E § 5202, Special Exception Criteria Capitol Interest Zones is also necessary. This was brought to the attention of the Zoning Administrator and a revised referral letter was requested. To date, the applicant has not received a revised letter. If the BZA believes the special exception is required the analysis is provided in the report, and OP would recommend approval.

**II. LOCATION AND SITE DESCRIPTION**

Address	433 New Jersey Avenue, SE
Legal Description	Square 693, Lot 48
Ward and ANC	Ward 6, 6B
Lot Characteristics	The property is a 1,725 square feet, rectangular lot.
Zoning	RF-3, Capitol Interest Zones
Existing Development	A two-story plus row dwelling
Historic District	Capitol Hill Historic District

Adjacent Properties	To the north and south are two-story row dwellings; to the east are three-story row dwellings; and to the west is a federal government parking lot.
Neighborhood Character	The areas to the east and north are primarily residential, with two- and three-story rowhouse with some conversions to flats and apartments. Areas to the west and south are generally federal government offices and industrial uses.

Site Location



**III. PROJECT DESCRIPTION IN BRIEF**

The applicant proposes a roof deck with access stairs from the second floor of the row dwelling.

**VI. ZONING REQUIREMENTS**

<b>RF-3</b>	<b>Regulation</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Lot Size, Subtitle E § 201.1	1,800 sq. ft.	1,725 sq. ft.	1,725 sq. ft.	Existing Non-Conformity
Lot width, Subtitle E § 201.1	18 ft.	16.70 ft.	16.70 ft.	Existing Non-Conformity
Height, Subtitle E § 503.1	35 ft./3 stories	25 ft./2 stories	25 ft./2 stories	None
Lot Occupancy, Subtitle E § 504.1	60% max. 70% by SE	75.53%	78.92%	<b>Variance</b>
Rear Yard, Subtitle E § 506.1	20 ft.	20 ft.	20 ft.	None
Roof Deck Guard Rail Setback, Subtitle C § 1502.1(c)(A)	1:1 or 3 ft. on all sides	-	0 ft. from the south side building wall	<b>Special Exception</b>
Enlargement of Nonconforming Structure, Subtitle C § 202.2	No enlargement of a nonconforming structure	Nonconforming lot occupancy	Increase in the nonconforming lot occupancy	<b>Variance</b>

**V. OFFICE OF PLANNING ANALYSIS**

Variance

Relief from Subtitle E § 504.1, lot occupancy (60% max. allowed, 70% by SE, 75.53% existing, 78.92% proposed) and relief from Subtitle C § 202.2, enlargement of a nonconforming structure, pursuant to Subtitle X § 1000.1

*i. Exceptional Situation Resulting in a Practical Difficulty*

The expansion in lot occupancy and the nonconforming structure is due to the placement of the access stairs to the roof deck external to the building. The applicant is faced with an exceptional situation in that the existing interior stairs are steeper and narrower than currently allowed by the Building Code. If the stairs to the roof were to be placed internal to the building they could not be constructed to connect with or be in line with the existing stairs. Second, where the stair would meet the roof deck it would interfere with the neighbor’s chimney which would have to be extended. Extension of the wall to accommodate the deck could also result in snow drifts placing additional load on the neighbor’s roof. Further, placing the stairs internally towards the front of the house would be practically difficult as it would require the stairs to be built at the location of the existing master bath which would have to be removed (Exhibit 34, page A-1).

**ii. No Substantial Detriment to the Public Good**

Placing the stairs external to the building and expanding the lot occupancy should not be a substantial detriment to the public good, as the stairs would not be visible from New Jersey Avenue or the alley. The wall on the adjacent house to the south has no windows from which the stairs or the deck would be visible. Therefore, the light and air of the adjacent residents would not be affected and neither would there be any views into their living areas. Additionally, the chimney of the neighbor to the north would not be affected.

**iii. No Substantial Harm to the Zoning Regulations**

The proposed increase in lot occupancy would be only for the open, uncovered, stairs and not for occupied space. The lot occupancy requirement is to control development intensity on the property and allow for adequate light, air and privacy. The proposal should not significantly affect the light, air and privacy to adjacent residents and therefore would not substantially harm the Zoning Regulations.

Special Exception:

1. **Subtitle C § 1502.1(c), side guard rail setback (minimum 3 ft. required, 0 ft. proposed), pursuant to Subtitle E § 5205.1 and Subtitle C § 1504.1.**

**1504 RELIEF TO PENTHOUSE REQUIREMENTS**

*1504.1 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;*

If the required railing side setback was provided, access to the deck from the stairs would have to be offset in a way that would cause an awkward and possible harmful transition from the stairs to the deck.

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

No roof structure is being proposed. However, relief from the required side setback would result in a more functional, better design and would provide ease of movement from the stairs to the deck.

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

No roof structure is being proposed. The proposed deck and stairs would not be visible for New Jersey Avenue or the alley.

- (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;*

The house predated the current zoning regulations and the existing stairs do not meet today's Building Code standards. Placing the stairs internal to the building would affect the neighbors chimney and would require a major reconfiguration of the second floor. Meeting the setback requirement for the deck railing would therefore be unreasonable and restrictive.

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

No roof structure for mechanical equipment or elevator penthouse is being proposed.

- (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.*

The intent and purpose of this section is met, as the deck setback on the southern side would not affect the light and air of adjacent neighbors and neither would the deck and stairs be visible from the adjacent street and alley.

## 2. Subtitle E § 5202, Special Exception Criteria Capitol Interest Zones

### 5202 SPECIAL EXCEPTION CRITERIA CAPITOL INTEREST ZONES (RF-3)

5202.1 *In the RF-3 zone, in addition to any conditions relative to the specific special exception, any special exception application shall be subject to consideration by the Board of Zoning Adjustment as to whether the proposed development is:*

- (a) *Compatible with the present and proposed development of the neighborhood;*
- (b) *Consistent with the goals and mandates of the United States Congress in title V of the Legislative Branch Appropriation Act, 1976 (Master Plan for Future Development of the Capitol Grounds and Related Areas), approved July 25, 1975 (Pub.L. No. 94-59, 89 Stat. 288); and*
- (c) *In accordance with the plan promulgated under the Act.*

The proposed roof deck and access stairs would retain the present two-story, row dwelling character of the neighborhood as the roof deck and stairs would not be visible from New Jersey Avenue or the rear alley. The proposal will be reviewed by the Architect of the Capitol for consistency with goals and mandate of the Master Plan for Future Development of the Capitol Grounds and Related Areas.

5202.2 *Upon receipt of the application, the Board shall submit the application to the Architect of the Capitol for review and report.*

The application was submitted to the Architect of the Capitol for review and report.

5202.3 *The Board may require special treatment and impose reasonable conditions as it deems necessary to mitigate any adverse impacts identified in the consideration of the application.*

OP proposes no special treatment.

## **VI. COMMENTS OF OTHER DISTRICT AGENCIES**

The Department of Transportation (DDOT) has no objection to the proposal (Exhibit 31).

## **VII. COMMUNITY COMMENTS**

The property is within ANC-6B. On September 11, 2018, at a regularly scheduled meeting the ANC voted to recommend approval of the proposal; as of the date of this report, a filing from the ANC had not been submitted to the record.