

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19791 of Chelsea Zitnay**, as amended<sup>1</sup> pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1, and under Subtitle E § 5202 for Capitol Interest Zones review, and pursuant to Subtitle X, Chapter 10, for variances from the nonconforming structure requirements of Subtitle C § 202.2, and from the lot occupancy requirements of Subtitle E § 504.1, to construct a new roof deck and access stair on an existing principal dwelling unit in the RF-3 Zone at premises 433 New Jersey Avenue, S.E. (Square 693, Lot 48).

**HEARING DATE:** October 3, 2018  
**DECISION DATE:** October 3, 2018

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by a memorandum, dated April 17, 2018, from the Zoning Administrator, certifying the required relief. (Exhibit 6.)

The Board of Zoning Adjustment (“Board” or “BZA”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC’s report indicated that at a regularly scheduled, properly noticed public meeting on September 11, 2018, at which a quorum was present, the ANC voted 8-0-2 to support the application. (Exhibit 37.)

The Office of Planning (“OP”) submitted a timely report recommending approval of the relief requested and recommending the addition of special exception relief from Subtitle E § 5202, the

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<sup>1</sup> The Applicant amended the application through testimony at the hearing by adding to the original relief a special exception under Subtitle E § 5202 for Capitol Interest Zones review, per the recommendation of the Office of Planning. The Board accepted the Applicant’s testimony as evidence of the amendment, and did not require the filing of a self-certification form or an amended ZA’s memorandum (which, according to OP, was requested, but not received.) (See Exhibit 35, p. 1.)

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Special Exception Criteria Capitol Interest Zones. OP testified that it was also in support of this additional relief. (Exhibit 35.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 31.)

By its authority under Subtitle E § 5202, the Architect of the Capitol submitted a letter dated September 26, 2018 expressing support for the application. (Exhibit 36.)

The Capitol Hill Restoration Society filed a letter in support of the application. (Exhibit 38.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the nonconforming structure requirements of Subtitle C § 202.2, and from the lot occupancy requirements of Subtitle E § 504.1, to construct a new roof deck and access stair on an existing principal dwelling unit in the RF-3 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR Subtitle C § 202.2 and Subtitle E § 504.1, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1, and under Subtitle E § 5202 for Capitol Interest Zones review. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle

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X § 901.2, Subtitle C §§ 1504 and 1502.1, and Subtitle E § 5202, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.


It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 34 – UPDATED ARCHITECTURAL PLANS.**

**VOTE: 5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John and Robert E. Miller to APPROVE).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** October 10, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING

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THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.