

DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

Burden of Proof Statement

October 1, 2018 *Revised December 8, 2018 and December 17, 2018*

16 10th Street NE; Square 0941, Lot 0821

Case No. 19885

I. INTRODUCTION.

A. Overview.

This Statement is submitted on behalf of Lorens Helmchen (the “Applicant”), owner of the property located at 16 10th Street, NE (Square 0941, Lot 0821) (the “Subject Property”). The Subject Property is currently a single-family row house with a roof deck and stair Penthouse that were constructed by a prior owner as non-permitted construction. The Applicant is proposing to construct a new roof deck, stair penthouse, and replace the metal roof with a membrane and green roof (the “Project”).

The Subject Property is a small lot of 880 square feet in land area, seventeen and a half (17.5 ft.) feet wide and fifty-five feet long (55.94 ft.) The Subject Property has existed in its present day configuration as Record Lot 821 since at least 1908. It has been occupied as a single family home and will continue as the same use. The owner desires to repair an active leak in the roof surrounding the existing stair Penthouse. The leak has brought to the owner’s attention the fact that the stair Penthouse and deck, constructed by the prior owner, are of poor construction quality. The leak is not able to be repaired without substantial renovation. After review by the owner’s agent, Clair Marie Wholean AIA LEED AP BD+C, the agent informed the owner that this work was not permitted at the time of construction. The non-permitted work shall be called “Prior Non-Compliant Construction”). The Prior Non-Compliant Construction conforms neither to the DC Building



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Code, DC Existing Building Code, nor the DCMR Title 11. For example, the existing stair to the roof has treads and risers non-compliant with IBC 1003, resulting in a very steep slope. The owner desires to replace Prior Non-Compliant Construction with a new stair Penthouse, deck, and roof compliant with regulations in order to repair the leak and provide safe roof access. Replacing the Prior Non-Compliant Construction with new construction would be impossible without a zoning special exception, as described herein.

**B. Summary of Requested Relief.:**

1. Special Exception – Penthouse

According to 1500.4, *“a penthouse, other than screening for rooftop mechanical equipment or a guard-rail required by Title 12 of the DCMR, D.C. Construction Code for a roof deck, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under Subtitle X, Chapter 9, provided the penthouse:*

- a. Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and*
- b. Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.”*

The Penthouse to be constructed on the Subject Property is in compliance with 1500.4 in that it rises 9’-5” above the existing roof high point and is one story. This penthouse consists only of a stair and has no storage and no occupied space.

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## 2. Relief to Penthouse Requirements

Per 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;*
- b) The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall;*
- c) The relief requested would result in a roof structure that is visually less intrusive;*
- 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;*
- 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*
- 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.”*

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Relief is requested as follows:

**A. Penthouse Walls – Relief Requested**

Uniform height walls are required per 1500.9. This is not feasible due to historic view regulations.

Uniform height walls would be visible from adjacent sidewalks, not in compliance with the Capitol Hill Historic District. The stair enclosure has been designed with a sloping roof to be **minimally visible within** the historic view shed.

**B. Penthouse Setbacks – Relief Requested**

**a. Front Penthouse Setback – in compliance**

~~The front Penthouse setback is 13'-1" from the front building wall, in compliance with 1502.1a, as its height is 9'-5". Compliance with the front setback has been attempted, however it is not feasible due to the location of beams supporting the opening in the roof. The difference between a compliant front setback and the setback provided is only 1 ½".~~

**b. Rear Penthouse Setback – Relief Requested**

The rear penthouse setback is **7'-2"**. ~~The deck setback at the rear is 9 ½"~~. Per 1502.b this is to be ~~equal to the penthouse or deck height, respectively~~. Due to the historic view requirements, compliance with this setback is infeasible. In order to **minimize the view** from the street, the Penthouse must be moved to the rear of the house. If the rear setback were its height of **9'-5"**, the Penthouse would be **highly** visible from the street. Expanding the size of the **existing** penthouse is necessary to accommodate a code compliant stair slope. The location of the Penthouse has been optimized to **attempt compliance with the spirit of** the historic regulations and provide a safe stair. Strict application of the penthouse **rear** setback would be unduly restrictive as it would not be possible to build a stair with a slope meeting code, or that **doesn't result in a highly visible volume** from the street.

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**c. Side Penthouse Setback – Relief Requested**

The Penthouse side setback per 1502.c is not feasible for a 17'-6" wide lot. Two side setbacks of 9'-5" would be greater than the width of the lot. The Penthouse has been located so there is no setback on one side. The adjacent property owner does not occupy the roof, so there is no affect to light or air of this property. The intent of the Penthouse design is to provide safe roof access to correct the non-compliant construction. Strict application of penthouse side setback requirement would be unduly restrictive as it would not be possible to build any Penthouse at all. Every effort has been made to be in compliance with the required setbacks.

**d. Roof Deck 1:1 setback per 1502.1 – Relief Requested**

This article requires roof decks and guardrails to be set back from the edge of the roof a distance equal to its height on all sides. Application of this requirement is infeasible due to the small size of the roof. If this setback were applied, the new deck would be approximately half its current size. The resulting space would be significantly less functional than the current deck. The intent of the requirement is not to reduce functionality of an existing occupied roof space. Reducing functional space reduces property value. The intent of this requirement is to avoid having roof decks immediately adjacent to roof edges facing streets and public spaces. The design is consistent with this intent, with the only edge facing a public way having a setback of 13'-1". The design intent has prioritized the front setback over the other setback requirements to improve the level of compliance with the historic regulations.

**C. Extension of Building Wall – Penthouse is compliant**

The Penthouse design is not an extension of the building wall. The stair enclosure is minimally visible from the street, is constructed of wood, and is structurally separate from the masonry bearing walls, therefore it is not an extension of the building wall.

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**D. Visual Intrusion – Penthouse is compliant**

The stair enclosure is not visually intrusive as it is designed to be **minimally visible** from the street.

**E. DC Construction Code – Penthouse is compliant**

The stair Penthouse has been designed as a continuation of the existing stair. Due to the narrow width of the lot this is the only practical place for the stair Penthouse.

**F. Mechanical, Stair Electrical, & Elevator - Penthouse is compliant**

The stair Penthouse does not contain any mechanical space or electrical service space, it only contains stair access to the roof. There is no existing electrical room. There is an existing Air Conditioner that is being relocated so it will be invisible from the street, in compliance with historic view regulations.

**G. Light and Air - Penthouse is compliant**

There is no effect to the light and air of adjacent structures.

**H. Other Penthouse Requirements:**

**a. Penthouse Area per 1500.3 - Penthouse is compliant**

The existing penthouse is 31 sf and will be replaced with a new penthouse that is **100** sf.

As stated above enlarging the Penthouse is necessary to provide a code-compliant stair

slope. The new Penthouse is **15%** of the total roof area, in compliance with 1503.2.

**Because the whole roof is usable space,** the new penthouse is 15% of the usable rooftop space, in compliance with 1500.3b.

Total roof area: **657 sf**

Usable roof area **657 sf**



Penthouse area: 100 sf

**b. Penthouse Equipment per 1500.5 - Penthouse is compliant**

There is no antennae or other equipment on or inside the stair Penthouse.

**c. Single Penthouse per 1500.6 - Penthouse is compliant**

The project includes a single stair Penthouse.

**d. Roof Levels per 1500.7 – Not applicable**

The project includes a single roof level.

**e. Enclosure per 1500.8 – Not applicable**

The project includes a Penthouse for a stair, not mechanical equipment.

**a. Enclosing Walls per 1500.9 – Penthouse is compliant**

Enclosing walls are vertical.

**f. Habitable Space per 1500.8 – Not applicable**

There is no habitable space in this Penthouse.

**b. Penthouse Height per 1501 – Penthouse is compliant**

The height of the top of the Penthouse is 42'-0". There are no architectural embellishments. There is an existing chimney in the rear of the house, not attached to the Penthouse and not being altered by this project, which rises approximately 5'-0" above the low height of the existing roof.

**c. Penthouse Area per 1503.1a – Penthouse is compliant**

The new Penthouse area is included in the FAR calculation.

**d. Penthouse Area per 1503.2a – Penthouse is compliant**

**I. Height – Relief Requested**

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**a. Height – Relief Requested**

The maximum permitted height of buildings or structures and additions not including the penthouse in a RF-1 zone is not to exceed 35'-0" per 303.1. The top of the existing guardrail is ±36'-0" above grade and will be demolished. The height of the deck is 33'-8" plus railings of 3'-6" high, totaling 37'-2" above grade. The top of the new guardrail is therefore 2'-2" above the permitted height. The height of the deck is a result of the clear head space within the stair enclosure. The clear head room in the stair has been minimized to the greatest extent possible in order to minimize the height of the deck (refer to drawing A301.) Lowering the height of the deck and therefore railing would cause the headroom to be too low in the stair.

**II. BACKGROUND**

**A. Description of the Subject Property and Proposed Project.**

The Subject Property is a single-family row house located in the RF-1 Zone on a small lot of 880 square feet. The applicant is proposing to replace existing Prior Non-Compliant Construction with new compliant construction consisting of a Penthouse providing stair access to the roof, a roof deck, and new roofing including a green roof.

**B. Surrounding Area.**

The Subject Property is surrounded by primarily other single-family row houses on 10<sup>th</sup> Street Northeast. The Subject Property is on a block between Massachusetts Ave NE and East Capitol Street NE. On these streets there are a few other buildings such as a church and a few row homes that have been converted to multi-unit properties. Lincoln Park is one block to the East. To the north and south of the Subject Property are adjacent single-family row homes similar in size, lot utilization and





architectural character. Across the street on the other side of 10<sup>th</sup> street, and to the rear, there are also similar row homes.

### III. THE APPLICATION SATISFIES THE GENERAL AND SPECIFIC SPECIAL EXCEPTION REQUIREMENTS.

#### A. Overview.

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property; subject also, in this case, to the specific requirements for relief under Subtitle C § 703.2.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements.

If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

#### B. Requirements of Subtitle X § 901.2.

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps ...” (11 DCMR Subtitle X § 901.2). The Project proposes to replace existing Prior Non-Compliant Construction with approved construction.

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### C. Six-Part Test

The Board of Zoning Adjustment may grant a special exception if it finds that:

- (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;*

The existing property was purchased with a non-compliant penthouse in existence at the time of purchase. Because most properties in RF zones do not have Penthouses, this is an exceptional condition. Strict Enforcement of the Zoning Regulations would require the owner to remove the existing penthouse, roof deck and infill the roof opening. This reduces the usable area of the home and makes it less practical to install a vegetated roof, which is both desired by the owner and participating in the DC River Smart Rooftops program. Vegetated roofs require regular access to the roof for maintenance.

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

The proposed design brings the non-compliant construction into a code-compliant condition. This is a better design. The building wall as seen from the street, rear yard, or neighboring roof is not extended.

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

The proposed design is minimally visible from the street. It is visible from only a few locations for a space of approximately ten to fifteen feet. When a pedestrian walks out of this space it recedes from view.

- (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*

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*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;*

Refer to “D. DC Construction Code” above.

*(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*

Refer to descriptions of each setback above.

*(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 of the Zoning Regulations is unaltered. Refer also to “F. Light and Air” above.

#### IV. THE APPLICATION SATISFIES THE STANDARD FOR PENTHOUSE SPECIAL EXCEPTION AND RELIEF TO PENTHOUSE REQUIREMENTS.

The burden of proof for a special exception is well established. As set forth above, the Applicant meets the six-part test for the requested relief per 1504.1, and is compliant with the general Penthouse requirements.

#### VI. CONCLUSION.

For the reasons outlined in this Applicant’s Statement, the Applicant respectfully requests the special exception and variance relief as detailed above.

Respectfully Submitted,

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Clair Marie Wholean AIA LEED AP BD+C

Archfina, LLC Applicant's Statement

16 10th Street, NE

Date: October 1, 2018 *Revised December 8, 2018* and *December 17, 2018*

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