

Jennifer Verbeke, AIA  
Principal, MCDStudio  
4948 St. Elmo Ave Suite 304  
Bethesda, MD 20814

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Board of Zoning Adjustment  
Washington, DC Office of Zoning

Re: Special Exception for 906 11<sup>th</sup> Street, NE

To Whom It May Concern:

Burden of Proof Statement:

The owners of this property, David and Grace Kelly, are applying for the following:

1. A special exception pursuant to C-1500.4 (X-901.2) to permit a penthouse.
2. A special exception pursuant to C-1502.1 (c)(1)(A) and C-1502.1 (c)(5)( X-901.2) to permit a penthouse that does not conform with the side building wall and open court setbacks.
3. A special exception pursuant to C-1502.1 (c)(1)(A)(C-1504.1 and X-901.2) to permit a guardrail that does not conform with the side building wall setbacks.
4. A special exception pursuant to C-1500.9 (X-901.2) to permit a penthouse that does not have enclosing walls of equal, uniform height as measured from the roof level.

It is our understanding that for the Special Exception, it must comply with requirements found in Section X901. It is my understanding that we must address 3 points of a “burden of proof”

1. Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps
2. Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps
3. Will meet such special conditions as may be specified in this title.

Per C1500.3(a) A penthouse habitable space on a rowhouse shall be limited pursuant to Subtitle C1500.4; A Special Exception for a Penthouse (C1500.4) may be approved provided the penthouse:

1. Is no more than 10 feet in height and contains no more than one story
2. Contains only stair or elevator access to the roof and a maximum of 30 square feet of storage space ancillary to a rooftop deck.

Our responses are as follows:

X901 Point 1:

1. The proposed special exception for a penthouse, and one that does not conform with the side building wall and open court setbacks is consistent with the Zoning Regulations and the map for this area. There are already examples of roof decks and penthouses within the immediate area. Photos have been included of the end rowhouse at this block, number 900 11<sup>th</sup> Street NE, that show a roof deck on top of a third story addition with a penthouse on the side wall that provides access to the roof with this submission.

As noted in the DC zoning handbook, the purpose of the RF-1 zone is to provide for areas developed with attached row houses on small lots within which no more than 2 dwelling units are permitting. Adding this penthouse does not change the use or character of the single family rowhouse but instead makes a safer more useable access to a roof deck. The existing home has a roof deck currently. Given the existing neighborhood precedent, we believe the proposed penthouse and roof deck remains in harmony with the neighborhood.

The design of the interior staircase from the third floor to the proposed penthouse is proposed to be stacked upon the proposed staircase from the existing second floor to the proposed third floor. The staircase was placed here in order to allow for a wider bedroom at the front of the house. It should be noted that if the staircase was proposed to be stacked on the existing, it would still result in the same condition for both penthouse and penthouse setback relief, though on the opposite side of the house. The location of the penthouse is set back from the front of the house so as to not be visible from the front of the house at the street. While the penthouse may be viewed from oblique views, it would not be substantially different from the existing penthouse view at 900 11<sup>th</sup> St and is substantially less visually intrusive than the existing metal spiral staircase and catwalk.

It would be impossible for the penthouse to comply with the side yard setbacks within section C1502.1c: Setback a distance equal to its height from the side building wall of the roof upon which it is located. The proposed ceiling height of the penthouse minimum is approximately 7'-2". The minimum ceiling height per IBC is 7'-0". The proposed slope of the third story roof is to be similar in slope to the existing second story roof. With the proposed slope of the third story roof, this makes the penthouse approximately 9'-1.5" high at its peak. The property and house are 18' wide. It is impossible to provide a side setback equal to the height of the penthouse from both of the side building wall and still provide the minimum 3'-0" clear width required per IBC for a residential staircase due to the width of the existing rowhouse and property.

In an effort to minimize the overall size and height of the penthouse and to partially comply with some of the setback rules as allowed while still maintaining code required minimums, and in conjunction with comments received by the Office of Planning during their review of the project, a penthouse with a sloped roof over the stair area has been proposed. This would greatly minimize the height of the front of the penthouse and therefore minimize the relief requested from the side setbacks, but does require relief from C-1500.9, which requires that the enclosing walls of the penthouse be of equal, uniform height as measured from the roof level. Dashed lines have been provided on the elevations to show the difference between a penthouse that conforms with section C-1500.9 versus the proposed height. The extra volume space created by the exterior walls being the same height is not required for head room at the interior at the front of the building, but the height is required at the rear for clearance at the top of the stair landing/exit door area. The lower front wall of the penthouse would mean that a portion of the side walls of the penthouse would conform with some of the setback rules, though relief is still required for the portion at the stair landing and exit door.

The proposed penthouse would result in a safer access point to the roof deck for the owners than the current situation. The existing condition is a narrow spiral staircase from grade to a catwalk that connects the staircase to the roof deck. To extend this staircase an additional approximately 8' would be more visually obtrusive than the penthouse proposed, which has been setback from the front wall of the house and main rear line of the house. Though the

penthouse is close to the rear wall of the open court, this area is only visible from the directly adjacent backyards and is not substantially different from the existing roof deck/guard rail condition at this area. Responses to the Office of Planning comments that made changes to bring the proposed mechanical area into compliance may have eliminated the need for relief from the court setback but it has been left in this application as a precautionary measure.

X902 Point 2:

2. The penthouse would not create any adverse effects for the use of the neighboring property with access to air and light. The roof deck and penthouse condition would not be substantially different from the current conditions. This would work not affect the traffic or noise associated with this property. In addition, should the penthouse be permitted, the tall and unsightly spiral staircase at the rear would be removed, which would improve the backyard views of all of the neighboring properties along the pedestrian walkway. A few doors down, at 900 11<sup>th</sup> Street, a similar penthouse and roof deck exists. For these reasons, it is our opinion that the proposed penthouse will have an overall positive affect on the view from the neighbor's property and the neighborhood by eliminating the unsightly spiral staircase.

X901 Point 3 and Section C1500.4:

3. C-1500.3 permits a penthouse to house mechanical equipment on a rowhouse. Section C-1500.4 permits to Board of Zoning Adjustment to approve a penthouse as a special exception if the proposed Penthouse is no more than 10' in height and contains no more than 1 story, contains only stair access to the roof, and a maximum of thirty feet of storage space ancillary to a rooftop deck. The proposed penthouse is approximately 9'-1.5" at maximum peak height with only one story, providing stair access to the roof, which complies with the requirements of C1500.4(a) and (b).

In an effort to minimize the size and height of the penthouse and in working closely with staff at the Office of Planning to address their concerns, the full height mechanical closet previously proposed as part of this penthouse application has been lowered into the ceiling cavity so as to lower the penthouse at the mechanical area and remove it from the penthouse relief requested. The mechanical space has been provided within a penthouse less than 4'-0" above the roof level, which is not subject to the penthouse general regulations as per Section C1500.2. In lowering the height at this area, the court setback relief requested for the penthouse may not be necessary but it has been left in this application as a precaution pending final zoning rule.

In addition, it is our understanding that for a Special exception, it must also comply with the requirements of Section C1504.1(A-F), which may be approved subject to the following considerations:

- A. The strict application of the requirements 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 DC Construction Code, Title 12 DCMR requirements for roof access and stairwell separation to achieve reasonable efficiencies in lower floors; size of the 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 penthouses to be in compliance with the required setbacks;

- 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.

Our responses are as follows:

C1504.1 (A-F): (Penthouse Related)

A. Application of the side setback requirements for the penthouse structure would be impossible to comply with given the existing width of the building lot and rowhome. The property and house are 18' wide. It is impossible to provide a side setback on both sides of the penthouse structure equal to the height of the penthouse and still provide the minimum 3'-0" clear width required per IBC for a residential staircase due to the width of the existing rowhouse and property. Creating a lower front wall at the smaller proposed penthouse would mean that a portion of the side walls of the penthouse would conform with some of the setback rules, though relief is still required for the portion at the stair landing and exit door in order to maintain code compliant head height at the interior. The proposed design does comply with the front setback. It is set back from the building restriction line for the rear building line of the main house and the property. Though the penthouse is close to the rear wall of the open court, this area is only visible from the directly adjacent backyards and is not substantially different from the existing roof deck/guard rail condition at this area. Changes to bring the proposed mechanical area into compliance may have eliminated the need for relief from the court setback but it has been left in this application as a precautionary measure pending zoning rule.

Roof access through the proposed penthouse would be significantly safer and substantially less visibly intrusive than the existing metal spiral staircase and catwalk access to the existing roof deck. Though a staircase from the ground to the proposed new roof deck could be technically feasible, the staircase would be approximately 36 foot tall. From a construction standpoint, simply extending the existing spiral staircase would likely not be possible just based on the nature of the support systems of the metal spiral staircase. The entire unit would have to be replaced and would be challenging to install, likely requiring a crane or other large machinery. This would increase the cost of providing roof deck access and the impact on the neighbors during the physical construction process much more so than the construction of the proposed penthouse. In addition, the existing staircase already feels a little precarious and unsafe, just from the nature of a delicate spiral staircase with metal rail. Extending it an additional story would only compound this feeling. The proposed penthouse access would provide a significantly safer solution with less catastrophic fall risks.

B. The relief requested for a penthouse access to the roof deck results in a better design of the adjacent roof deck structure as it allows for a more connected roof deck design. The design of the penthouse structure itself has a canted low front wall so as to minimize its appearance while still maintaining required head clearances at the stairs inside. In requesting relief from Section C-1500.9, and proposing to lower the height of the front wall of the penthouse, it results in a much more minimal appearance, not visible from the street head on though oblique views may be possible. The proposed penthouse wall on the side wall of the existing lot is substantially smaller than the proposed new wall of the third story below, so the penthouse will not seem to be an extension of the full wall below. Please note that the proposed third story is allowed in the RF-1 zone and is not subject to BZA approval.

The penthouse requested would be less visibly intrusive than a separate multi-story staircase access from the ground, as is there currently. In addition, a 3-plus-story staircase (approximately 36-foot-tall) staircase would accentuate the vertically of the structure, whereas the proposed penthouse would look

much less invasive visually for both the occupants and the adjacent properties. If the rear staircase were to be removed, then the rear yard would look more open and similar to the adjacent rear yards.

C. The relief requested for a penthouse access to the roof deck would be visually less intrusive than an extension of the existing rear metal staircase and catwalk to the roof deck. The proposed penthouse design is setback from both the front and the rear of the house so that it will be minimally visible from the street and the pedestrian walkway behind. Relief to the equal height wall requirements would result in an even more minimal appearance from the side. The proposed penthouse is compliant with the front setback. The penthouse would not be visible from the street head on, though oblique views may be possible. Diagrams have been provided that show the sightlines from the 11<sup>th</sup> Street sidewalks and the pedestrian walkway behind. Oblique views would not be substantially different to the condition that existing penthouse roof deck access that exists at 900 11<sup>th</sup> Street NE, the end unit of this group of row homes.

The penthouse requested would be less visually intrusive than a separate multi-story staircase access from the ground, as is there currently. A taller staircase would be more obtrusive to the neighbors when using their backyard than the current staircase, whereas the proposed roof deck and penthouse would be less visible to neighbors enjoying their rear yard spaces.

D. Given the width of the building and the lot, and the number of stairs required from the third story to the top of the roof, it would be impossible to comply with the setback regulations. The peak of the proposed penthouse is at 9'-1.5" above the highest point of the roof. The penthouse roof has been sloped so as to minimize the height on the exterior while still maintaining code compliant head room on the interior. A 1:1 side yard setback as required by current zoning, coupled with the 18-foot-wide lot would result in a zero-width allowed staircase, which is impossible and unduly restrictive. In requesting relief to section C-1500.9 and proposing to lower the height of the front wall of the penthouse, portions of the side walls of the penthouse would be in compliance with the setback restrictions, though relief is still required for the walls surrounding the landing at the top of the stairs in order to maintain code compliant head height inside.

In addition, the construction process of the proposed penthouse would be simpler to construct and more straightforward using standard building construction methods and would require less scaffolding or heavy equipment than construction or replacement of a multi-story metal staircase at the rear yard. Construction of a multi-story staircase would be much more costly, as well as invasive to the neighbors, than construction of the proposed penthouse.

E. Every effort has been made to keep this request in compliance within the required setbacks. This penthouse has been put into compliance with the front setback requirements and the rear building setback requirements. Compliance with both side yard setbacks would be impossible given the existing width of the building and the lot, though relief to C1500.9 to allow non-uniform height walls would result in partial compliance of the side yard setbacks for a portion of the penthouse. The setback to the open court is requested as it creates a logical stair progression on the interior of the house to maximize room widths below in a narrow townhouse. It should be noted that if the staircase was proposed to be stacked on the existing, it would still result in the same condition for the side yard penthouse setback relief, though on the opposite side of the house. The proximity to the open court and would only be visible to the directly adjacent neighbors and would not be substantially different to their current view. Changes to bring the proposed mechanical area into compliance may have eliminated the need for relief from the court setback but have been left in this application as a precautionary measure.

The existing mechanical equipment is housed within the second-floor ceiling and roof plenum. With the addition of the third story, as allowed by the RF-1 zone, there is not enough space within the ceiling and roof plenum to comply with the height restrictions of the zone and leave adequate space for the mechanical equipment and allow for access when maintenance would be required. The mechanical equipment required to service the addition of the third story is proposed to be housed within a penthouse that is less than 4' above the parapet wall and would not be subject to the requirements of the penthouse general regulations per C1500.2.

F. The penthouse would not create any adverse effects for the use of the neighboring property with access to air and light. The third story addition is being built as a matter of right in an RF-1 zone and the proposed roof deck and penthouse condition would not be substantially different from the current conditions. This work would not affect the traffic or noise associated with this property. In addition, should the penthouse be permitted, the tall and unsightly spiral staircase at the rear would be removed, which would improve the backyard views of all of the neighboring properties along the pedestrian walkway. An extended stairway at the rear yard would be much more visible to the adjacent properties and from Eye Street than the proposed penthouse.

C1504.1(A-F): (Guardrail Related)

A. Application of the requirements are consistent with current building codes as roof decks are allowed within this zone and there is evidence of roof decks, rear decks and balconies within the nearby area. The existing house and property are only 18' wide. Strict application of the requirements of this section would require a side yard setback equal to a distance of the guardrail height from the side building wall of the roof upon which it is located would result in a roof deck of less than 10' wide. The existing deck is the width of the existing building.

B. The relief requested for the guardrail setbacks would not appear to be an extension of the building wall. The guardrail would look like materially different as it is a railing above a deck. The roof shall have a mono-pitch slight ( $\frac{1}{4}'' : 12''$ ) slope towards the rear yard to shed water, as the current roof and surrounding roofs do. The roof deck will be a flat walking surface above this, which will also serve to differentiate the roof deck and guardrail from the building wall.

C. The relief requested for the guardrail setbacks would result in a visually less intrusive roof structure as it has been set back from the rear of the house so as to mitigate some views from Eye Street. Relief of this section does not affect the view from the street, as the roof deck is beyond the sight lines from the street and the pedestrian walkway. The proposed roof deck width would be no different from the existing side conditions of the roof deck, which was consistent with zoning codes when built.

D. Width of the building lot and strict application of the requirements of this section would result in a roof deck of less than 10' wide. This is unduly restrictive and unreasonable from a cost benefit analysis as it would not be significantly different in cost to build the size deck proposed versus a narrow, less usable deck. The width of the roof deck requested is the same as the width of the existing roof deck. A deck at a lower level would not be subject to the side setbacks and would be the same width as proposed. The rear setback of the roof deck has been improved from the existing as part of this proposal.

E. Please see Penthouse related section above for response in regard to mechanical and stairway penthouses.

F. The intent of this chapter will not be materially impaired by relief of the guardrail setback requirement. Within the neighborhood, just a few doors down, 900 11<sup>th</sup> Street NE has both a roof deck and a penthouse for access to the roof. The penthouse wall appears to be on the side setback, similar to what has been proposed for 906. Additionally, 1107 Eye Street NE has both a third-floor addition and a roof deck. The roof deck also appears to be on the side yard setback. Photos have been included of these roof decks with this submission. The proposed roof deck width is the same as the existing roof deck width, which was allowed under previous zoning codes.

Additionally, the light and air of adjacent buildings will not be adversely affected by relief of the guardrail setback requirement. The proposed roof deck does not change the existing side conditions of the current roof deck and would therefore have no different affects to the neighbors than the existing conditions.