

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Jonathan Kirschenbaum, Case Manager
JL Joel Lawson, Associate Director Development Review
DATE: March 12, 2020

SUBJECT: BZA Case 20229 (906 11th Street, NE) to permit construction of a new penthouse enclosure and a roof deck on a row house.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following special exception relief:

- Penthouse Enclosure, Subtitle C § 1500.4, pursuant to Subtitle X § 901.2 (penthouse habitable space on a row house is permitted only by special exception);
- Penthouse Enclosure Walls of Equal Height, Subtitle C § 1500.9, pursuant to Subtitle C § 1504.1 (enclosing walls of a penthouse shall be of equal uniform height; no existing penthouse enclosure; proposed penthouse enclosure would have walls of unequal height ranging from five feet 1 inch to approx. 9 feet);
- Penthouse Enclosure Setbacks, Subtitle C § 1502.1(c)(1)(A) and Subtitle C § 1502.1(c)(5), pursuant to Subtitle C § 1504.1 (penthouse enclosure shall be set back a distance equal to its height from the side and court of the building; no existing penthouse enclosure; proposed penthouse enclosure is not set back from the sides of the building at a distance equal to its height); and
- Penthouse Guardrail Setbacks, Subtitle C § 1502.1(c)(1)(A), pursuant to Subtitle C § 1504.1 (penthouse guardrails shall be set back a distance equal to its height from the side of the building, existing penthouse guardrails are not setback from the sides or rear of the building; proposed penthouse guardrails are not set back from the sides of building).

OP has been working with the applicant to revise the design and bulk of the proposed penthouse enclosure to provide for a more conforming solution that would be less visually intrusive. The applicant has submitted revised drawings at Exhibit 35 and 39, which includes revised relief and OP has provided analysis of this revised proposal.

OP commends the applicant for revising the initial design of the penthouse enclosure. The redesign resulted in a need to request relief from the requirement that all penthouse walls be of equal height (to allow the stairwell roof to follow the slope of the stairs below), but also eliminated part of the penthouse enclosure abutting a court for which setback relief had been requested. However, out of an abundance of caution, the applicant has continued to ask for penthouse enclosure setback relief from the court.

II. LOCATION AND SITE DESCRIPTION

Address	906 11 th Street, SE
Applicant	David and Grace Kelly
Legal Description	Square 0957, Lot 0020
Ward, ANC	6/6A
Zone	RF-1
Lot Characteristics	Rectangular lot measuring 18 feet in width by 69 feet in depth. The lot is bounded by 11 Street, NE to the east, residential row buildings to the north, south, and west.
Existing Development	Row house.
Adjacent Properties	Residential row buildings.
Surrounding Neighborhood Character	Residential row buildings.
Proposed Development	The applicant proposes to construct a conforming third-story addition to the existing two-story row house. The existing roof deck and external staircase providing access to the roof would be removed. A new penthouse staircase enclosure and roof deck is proposed. Relief is required for the penthouse staircase enclosure and the guardrails for the proposed roof deck.

III. ZONING REQUIREMENTS and RELIEF REQUESTED

RF-1 Zone	Regulation	Existing	Proposed	Relief
Height (ft.) E § 303	35 ft. max./3 stories	27.1 ft./ 2 stories	34.6 ft./ 3 stories	None required
Lot Width (ft.) E § 201	18 ft.	18 ft.	No change	None required
Lot Area (sq. ft.) E § 201	1,800 sq. ft.	1,242 sq. ft.	No change	None required
Lot Occupancy E § 304	60% max.	61.1%	No change	None required
Rear Yard (ft.) E § 306	20 ft. min.	21.5 ft.	No change	None required
Front Setback (ft.) E § 305	Setback must be in range of existing front setbacks	Front wall is within range of existing front setbacks	No change	None required
Side Yard (ft.) E § 307.3	No side yard is required for a principal row building	n/a	No change	None required
Roof Top Architectural Element § 206.1	Removal or altering of roof top architectural elements prohibited	Roof top cornice	Retention of roof top cornice	None required

RF-1 Zone	Regulation	Existing	Proposed	Relief
Penthouse Enclosure C § 1500.4	Penthouse shall be permitted only by special exception if no more than 10 feet in height and contain only stair or elevator access to roof	n/a	Penthouse would be less than 10 feet in height and would only contain stair access to roof	Special exception relief
Penthouse Enclosure Setback Subtitle C § 1502.1(2)(A)	Penthouse enclosure must be set back a distance equal to its height from the side of the building	n/a	Penthouse enclosure would provide no setback from the northern side of the building or the court	Special exception relief requested
Penthouse Guardrails Setback Subtitle C § 1502.1(2)(A)	Guardrails must be set back a distance equal to its height from the side of the building	Existing guardrails are not setback from the sides or rear of the building	Guardrails would provide no setback from the sides of the building	Special exception relief requested
Penthouse Enclosure Height Subtitle C § 1500.9	Enclosing walls of a penthouse shall be of equal uniform height	n/a	Walls would range in height from 5'-1" to approx. 9'-0"	Special exception relief requested
Parking C § 701	1 parking space	0	No change	None required

IV. OFFICE OF PLANNING ANALYSIS

a) Special Exception Relief from Subtitle C § 1500.4, Penthouse Enclosure.

1500.4 Notwithstanding Subtitle C § 1500.3, 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*

The proposed penthouse enclosure, as revised, would be approximately nine feet four inches and would be one story in height.

- 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 proposed enclosure would only contain stair access to the roof.

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 penthouse would serve the purpose of providing access to a rooftop deck, which is permitted under the Zoning Regulations.

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

The proposed penthouse enclosure should not affect adversely the use of the neighboring properties to the north or south, and would not contain any habitable or mechanical space.

b) Special Exception Relief from Subtitle C § 1502.1(c)(1)(A) and C § 1500.9, Penthouse Setbacks and Walls of Unequal Height.

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 conditions:*

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 setback regulations require that a penthouse enclosure and rooftop guardrails be set back from the side walls and the court of the building at a distance equal to its height. In the revised design, with the smaller penthouse area and the use of a sloping roof on the stairwell, the proposed height of the penthouse would range between approximately 9 feet to 5 feet. A side setback from the southern building wall of 8 feet would be provided. This is about 1 foot less than what is required for the tallest point of the penthouse, but would be conforming for the majority of the penthouse which would be 8 feet or less in height.

Relief is also required from the northern side building wall. In order to lessen the amount of relief required, the applicant redesigned the penthouse enclosure, and while a small part of it would provide no setback, a portion would provide a 5 foot 8 inch setback.

The applicant states that the minimum ceiling height required under the building code is about 7 feet and the minimum width of a staircase required under the building code is 3 feet. It would therefore not be possible for a penthouse enclosure to comply with the setback requirements on a row house that is only 18 feet wide. Further, a staircase located toward the center of the roof would result in an inefficient layout of the floor below.

The applicant also states that the walls of the penthouse enclosure are at varying heights because of the need to provide for minimum ceiling height under the building code. If the applicant were required to meet the uniform wall requirement it would result in construction that is bulkier, prohibitively costly, and unreasonable because it would result in a significantly taller penthouse enclosure being constructed than what would otherwise be required to provide stair access to the roof.

If the guardrails complied with the side setback requirements, most of the roof deck would be substantially narrow at six feet and less than six feet at many portions of the roof.

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 penthouse enclosure would comply with the setback requirement from the front building wall. The applicant provided elevations (Exhibit 35) demonstrating that the penthouse enclosure would not be visible when standing on the street directly in front of the subject property and across the street from the subject property. The applicant also states that the proposed penthouse has the proposed sloped roof would minimize its appearance and potential visual impact. Further, the proposed penthouse enclosure would largely be set back from all walls of the building, which would result in a better design without appearing to be an extension of the building wall.

The guardrails would be non-solid with horizontal openings. This would help minimize the penthouse appearing to be an extension of the building wall below.

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

Setting most of the penthouse enclosure back from the side walls by at least five feet, except for a small portion that does not have a setback, and substantially back from the front and the rear, would minimize visibility from most vantage points. From the north and south, the continuous row of row houses should minimize potential visual impacts. The sloped roof of the penthouse away from the front of the building would also reduce any potential visual impacts.

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;

Full compliance for a stairwell would not be possible given the narrowness of the lot, and unreasonable given the layout of the floor below. The stairwell for the building is placed in its proposed position to maximize efficiency on the 2nd and 3rd floors. Locating the stairwell and the stair penthouse in the middle of the building would highly disrupt the layout of the floors below. The applicant also states that complying with the 1:1 setback would result in zero feet left to accommodate the staircase.

Complying with the uniform wall height requirement would result in a penthouse that is uniformly 9 feet height, which is not necessary and would be more costly to build.

If the guardrails complied with the side setback requirements, most of the roof deck would be substantially narrow at six feet and less than six feet at many portions of the roof.

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

The setbacks from the front and rear walls would be complying, and there would also be a substantial 8-foot setback from the side southern building wall and 5 foot setback from the northern building wall. The applicant stated that the decision was made to place the interior staircase towards the court to maximize interior floor area and bedroom widths on the floors below.

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 light and air available to neighboring properties should not be unduly impacted. The flow of air should not be altered significantly, compared to a conforming solution.

V. OTHER DISTRICT AGENCIES

No comments from other district agencies were filed at the time this report was filed to the record.

VI. ADVISORY NEIGHBORHOOD COMMISSION

No comments from ANC 6A had been filed to the record at the time this report was filed.

VII. COMMUNITY COMMENTS TO DATE

No comments from the community had been filed to the record at the time this report was filed.

Attachment: Location Map

