

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Crystal Myers, Development Review Specialist
JLS for
 Joel Lawson, Associate Director Development Review
DATE: December 10, 2021
SUBJECT: BZA Case 20585 to permit a rear addition with penthouse

I. BACKGROUND

The following case includes a request for relief from a provision of the Regulations that requires penthouses to have a 1:1 side setback. Under the current regulations, special exception relief from Subtitle C § 1502.1 is required. However, on October 14, 2021, the Zoning Commission took final action on ZC 14-13E, a text amendment to the penthouse and rooftop structure provisions, which includes an amendment to C § 1502.1, that removes the requirement for a setback from a side building wall. Even though the Zoning Commission has approved these changes, they will only go into effect when the amendments are published in the DC Register. The Applicant is therefore requesting relief from C § 1502.1 in case the approved text amendments are not published by the time of the BZA Hearing. If 14-13E is published prior to the hearing relief from C § 1502.1 will no longer be necessary.

II. RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following special exception pursuant to Subtitle E § 5201:

- C § 1500.4, Penthouse on a Rowhouse (not permitted by right; permitted by special exception if limited to a stairwell and 30 sq.ft. max, ancillary storage space as proposed)
- C § 1502.1, Side Penthouse Setback (currently 1:1 setback required; 0 feet proposed)
- E § 205.5, Rear Wall Extension (10 ft. max. permitted, 0 feet existing; 15 ft. proposed)

III. LOCATION AND SITE DESCRIPTION

Address	1457 Swann St. NW
Applicant	Patrick Brian Jones on behalf of Jacob Hensley
Legal Description	Square 206, Lot 170
Ward, ANC	Ward 2, ANC 2B
Zone	RF-2
Historic District	Greater U Street
Lot Characteristics	17.5 ft. x 90 ft. rectangular lot

Existing Development	Single-family rowhouse with a 9.33 ft. public alley in the rear
Adjacent Properties	Row houses
Surrounding Neighborhood Character	Mixed Use- rowhouse community with commercial development nearby on 14 th St. NW
Proposed Development	Rear addition, and a roof deck with access stair penthouse.

IV. LOCATION MAP



V. ZONING REQUIREMENTS and RELIEF REQUESTED¹

RF-2 Zone	Regulation	Existing	Proposed	Relief
Height E § 403 Penthouse C§ 1500	35 ft. max. 10 ft. penthouse (sp.ex)	29.2 ft.	unchanged with approx. 9 ft. penthouse	None Required
Lot Width E § 201	18 ft. min.	17.5 feet	17.5 feet	Existing non- conforming
Lot Area E § 201	1,800 sq. ft. min.	1,575 sq. ft.	1,575 sq. ft..	Existing non- conforming
Rear Wall E§ 205	10 ft. max	0 ft.	15 ft.	REQUIRED
Lot Occupancy E § 404	60% max.	42.19%	58.85%	None required
Rear Yard E § 406	20 ft. min.	44 ft.	29 ft.	None Required
Parking C § 701	1 space	1 space	1 space	None Required

¹ Existing and Proposed information provided by Applicant.

VI. ANALYSIS

Subtitle E Chapter 5201, Special Exception Relief for the Rear Wall Extension

5201.1 For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may grant relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;*
- (b) Yards, including alley centerline setback;*
- (c) Courts; and*
- (d) Pervious surface.*

The applicant is requesting rear yard relief to have a rear wall that is 15 feet beyond both adjacent neighbors' rear wall.

5201.4 An applicant for special exception under this section shall demonstrate that the proposed addition, new building, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

- (a) The light and air available to neighboring properties shall not be unduly affected;*

According to the Applicant's shadow study comparing the existing, matter-of-right, and proposed scenarios (Exhibit 10), the proposed addition with penthouse would cast additional shadow on the adjacent properties, but the impact should be small and not to an undue level, particularly when compared to the potential shadow of a by-right addition.

Early in the day, at 9:00 AM during the spring and fall, it would cast a small shadow on five of the neighboring rear yards to the west. In the summer at 9:00 AM it would cast a small shadow on three of the rear yards. By 12:00 PM in the spring, fall, and summer, it would only cast a small shadow on the adjacent neighbor to the west at 1459 Swann St. NW.

In the afternoon at 3:00 PM during the spring, fall, and summer the addition with penthouse would cast a small shadow on the neighbor to the east at 1455 Swann St. NW.

- (b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

The proposed addition with penthouse should not unduly compromise the privacy and enjoyment of the adjacent neighbors. There would be no windows facing the adjacent neighbors and the existing privacy fence would continue to maintain privacy at the ground level.

- (c) *The proposed addition or accessory structure, together with the original building, or the new principal building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage; and*

The proposed addition with penthouse would not be visible from the street. It would be visible from the rear alley, but should not substantially visually intrude on the character, scale, and pattern of the houses along the alley. Although the nearest neighboring houses do not have similar additions, there are other houses on both sides of the alley with rear additions similar to the proposed.

The Historic Preservation Review Board reviewed the proposed design at their July 29, 2021 meeting, and “*found the scale and massing of the concept compatible with the character of the U Street Historic District and delegated final review and approval to staff,*” (Exhibit 28).

- (d) *In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.*

The Applicant submitted photographs, shadow studies, and elevation drawings sufficient to represent the proposal from adjacent buildings and public ways.

- 5201.5 *The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

OP has no recommendations for special treatment.

- 5201.6 *This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.*

The application would not result in the introduction or expansion of a nonconforming use, or a lot occupancy, height, or number of stories beyond what is authorized in this section.

Subtitle X Chapter 901.4, General Special Exception Relief for Rear Wall Extension

Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;

The proposed addition with penthouse would be in harmony with the general purpose and intent of the Zoning Regulations and Maps. The zone is intended for residential flats and the proposal would improve the living space of both dwelling units while sufficiently addressing the relevant review criteria for relief, as noted above and with the development standards of the RF-2 zone.

Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;

As described above, the proposed 15-foot rear wall extension should not result in an undue impact on the use, light, air, or privacy of the neighboring properties.

Subtitle C Chapter 1500.4 for Special Exception Relief to permit a Penthouse

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 penthouse would be one story and no more than 9 feet 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 penthouse would have stair access and 30 sq. ft. of storage space ancillary to a rooftop deck.

Subtitle X Chapter 901.4, General Special Exception Relief for the penthouse

Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;

The proposed stairwell and storage penthouse structure would be in harmony with the general purpose and intent of the Zoning Regulations and Maps. The regulations permit this form of small penthouse by special exception, and the proposal is consistent with the criteria. A deck on a two-story rowhouse is not uncommon in this zone. In this case, an enclosed penthouse structure as proposed facilitates access to the deck using the area over the stairwell below.

Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;

The proposed penthouse should not unduly adversely affect the neighboring properties. The 27-foot 10-inch setback from the building front and stepping in the height approximately 3-inch on the eastern side should minimize potential impacts.

Subtitle C Chapter 1504.1, Special Exception Relief for the Penthouse Side Setback

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;*
- (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;*

Requiring full compliance would be unduly restrictive and unreasonable. At 17 ft. 6 in., the lot width is too narrow to provide a 1:1 side setback. The penthouse height would be approximately 8 ft. 6 in. A 1:1 side setback would not be possible for a code-compliant enclosed stair access on this lot.

The other option, to locate the stair access away from the eastern side wall, would require relocating the existing stairway inside the house. This would result in significant interior demolition and structural reconfiguration. It would also substantially reduce the habitable area inside the house. This option would be unduly restrictive, unreasonable and prohibitively costly.

- (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 penthouse should be a better design and not appear as an extension of the building wall. On the eastern side, the top half of the penthouse wall would be stepped in approximately 3 inches, to visually separate the penthouse from appearing part of the building wall.

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

The proposed penthouse would be set back approximately 27 ft. 10 in. from the front of the building so it would not be visible from the street. It would be visible from the alley and to the adjacent neighbors on each side but should not be visually intrusive.

- (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*

The lot is not wide enough for a code-compliant stairway penthouse to meet the 1:1 side penthouse setback requirement but provides more than the required setback from the front and rear building walls.

- (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 this title and chapter would not be materially impaired by the proposed structure. The 27 ft. 10 in. setback from the building front should minimize its visual impact on the area.

According to the submitted shadow study, the penthouse with the addition would slightly increase the amount of shadow cast on the neighboring properties but this increase should not be undue, particularly when compared to a by-right addition.

VII. HISTORIC PRESERVATION COMMENTS

The Historic Preservation Review Board voted in support of the project on July 29, 2021, (Exhibit 28).

VIII. OTHER DISTRICT AGENCIES

As of the writing of this report, no comments from other District agencies were submitted to the record.

IX. ADVISORY NEIGHBORHOOD COMMISSION

As of the writing of this report, no report from ANC 2B is in the record.

X. COMMUNITY COMMENTS TO DATE

The adjacent neighbor to the east, owner of 1455 Swann St. NW, submitted a request for party status in opposition, (Exhibit 23). The adjacent neighbor to the west, 1459 Swann St. NW submitted a message in support, (Exhibit 30).

Letters from neighbors in opposition are also in the record, (Exhibits 24-27, 31).