

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Matt Jesick, Case Manager
JL Joel Lawson, Associate Director Development Review

DATE: May 17, 2016

SUBJECT: BZA #19265 – 1018 9th Street, NE

I. RECOMMENDATION

With regard to this proposal to construct a third floor on an existing single family residence, the Office of Planning (OP) recommends **approval** of the requested special exception relief:

- § 403 Lot Occupancy (40% permitted; 63% existing on 1st and 2nd floors; 63% proposed for 3rd floor);
- § 411.5 Penthouse (Stair enclosure by special exception only; Stair enclosure proposed);
- § 411.18 Penthouse Setback (1-to-1 setback required from sides and rear of building; zero setback proposed from south and rear building wall, less than 1-to-1 proposed from the northwest building wall facing West Virginia Avenue);
- § 400.24 Architectural Features (Rooftop architectural features shall not be altered or removed; Proposal would alter existing roofline with the addition of a third floor).

OP notes that the following relief, while not requested, may be required. OP has alerted the applicant, and should they request these areas of relief, OP would recommend approval of the special exception to wall height and the variance to penthouse use.

- § 411.5(b) Penthouse Use (*Variance*; Only stair access and storage permitted in penthouse; Proposed sink and refrigerator in penthouse);
- § 411.10 Penthouse Enclosing Walls (Shall be of a uniform height; Sloping roof over stairs proposed).

II. LOCATION AND SITE DESCRIPTION

Address	1018 9 th Street, NE
Legal Description	Square 909, Lot 21
Zoning	R-4
Ward and ANC	6, 6A
Historic District	None

Lot Characteristics and Existing Development	926 square foot triangular lot; 40.8' wide at the front on 9 th Street and 45.3' deep on the southern property line; Existing two-story single family detached house.
Adjacent Properties and Neighborhood Character	The surrounding neighborhood is almost exclusively rowhouses. Gallaudet University is to the north across Florida Avenue.



III. PROJECT DESCRIPTION IN BRIEF

The applicant proposes to add a third floor and rooftop deck to an existing two-story semi-detached single family residence. The use will remain a single family residence.

IV. ZONING REQUIREMENTS AND REQUESTED RELIEF

The subject site is zoned R-4. The application would require relief as noted in the table below.

Item	Requirement	Existing / Proposed	Relief
§ 400 Height	35', 3 stories	31'3", 3 stories	Conforming
§ 400.24 Rooftop Architectural Features	Original rooftop elements shall not be altered or removed	Remove original details at second floor with addition of third floor	Requested

Item	Requirement	Existing / Proposed	Relief
§ 401 Lot Area	3,000 sf	926 sf	Existing Non-conforming
§ 401 Lot Width	30'	20.4'	Existing Non-conforming
§ 403 Lot Occupancy	40%	63% existing at 1st and 2nd 63% proposed at 3rd floor	Requested
§ 404 Rear Yard	20'	Approx. 5' existing; No change proposed	Existing Non-conforming
§ 405 Side Yard	8'	~24' at the front lot line	Conforming
§ 2101 Parking	1 space	None (1 existing in public space)	Existing Non-conforming
§ 411.5 Penthouse	No penthouse permitted in this zone except by special exception	Stair tower proposed	Requested
§ 411.5(b) Penthouse Use	Only stair access and storage in penthouse	Proposed sink and refrigerator	Required
§ 411.10 Penthouse Enclosing Walls	Enclosing walls shall be of uniform height	Sloping roof over stairs proposed	Required
§ 411.18(c) Penthouse Setback	1-to-1 setback from edge of building	Zero setback from side and rear building walls	Requested

V. ANALYSIS

Lot Occupancy Special Exception

The Board may grant special exception relief for lot occupancy pursuant to § 223. The criteria of that section are examined below.

223 ZONING RELIEF FOR ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1) AND FOR NEW OR ENLARGED ACCESSORY STRUCTURES

223.1 An addition to a one-family dwelling or flat, in those Residence districts where a flat is permitted, or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

Single family dwellings are a permitted use in this zone. The Applicant is requesting special exception relief under § 223 from the requirements of §403, Lot Occupancy.

223.2 The addition 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;**

The subject property is at the intersection of two streets to its northwest and east, which means that there are no adjacent properties on those sides, and the only adjacent house is to the south. The addition of a third story, therefore, should not create significant light or air impacts on adjacent properties.

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

The increase in allowable lot occupancy should not result in a detrimental impact on the privacy of adjacent neighbors. The third floor would have windows, but the amount of windows would not change with a slightly lesser conforming lot occupancy.

- (c) **The addition or accessory structure, together with the original 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 subject street frontage; and**

The addition would result in a building that is taller than the majority of its neighbors, but the increase in height of one story would not substantially visually intrude on the character of the block. The height proposed is within matter-of-right limits, and the increase in lot occupancy would not alter the visual appearance of the height of the building.

- (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 application includes plans, elevations and photographs of the property.

223.3 The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts.

The proposed lot occupancy in the R-4 zone is 63%.

223.4 The Board 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.

The Office of Planning recommends no special treatments as a result of the increased lot occupancy.

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.

The use as a single family dwelling will continue.

Penthouse Special Exceptions and Variance

Pursuant to § 411.5, the Board may permit by special exception a penthouse on a single family dwelling. The design proposes a stair tower in order to access a rooftop deck.

411.5 Notwithstanding § 411.4, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail required by Title 12 DCMR (CONSTRUCTION CODE SUPPLEMENT OF 2013) 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 § 3104, 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 would be 6.5 feet high.

(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.

As noted above, the design proposes a sink and refrigerator in the penthouse structure at the top of the stairs. Because of the small area of the lot and its triangular shape, the house has a very limited footprint. The limited footprint leads to a practical difficulty in providing amenities concomitant to a rooftop deck on the third floor of the house. This leads to a solution to provide a space of approximately six square feet dedicated to a small sink and under-counter refrigerator in the penthouse at the roof level. The size of this feature is much less than the 30 square feet permitted for storage space, and therefore should not impair the public good or the intent of the Zoning Regulations.

The provisions of § 3104 are discussed below:

i. Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?

The Zoning Regulations generally intend to provide for a livable city that is compatible with different types of households, including families with children, which often implies a need for outdoor space. The proposed penthouse would help to achieve that aim by allowing access to the roof, an important open space amenity on such a small lot. The structure would be located as far as possible from the front of the building and the adjacent streets, thereby minimizing its visibility, also in conformance with the goals of the Regulations.

ii. Would the proposal appear to tend to affect adversely the use of neighboring property?

Provision of the stairway penthouse should not affect adversely the use of neighboring properties. The structure would not add significantly to the amount of shadow cast by the house on nearby lots, especially since this house has two streets bounding its northwest and east sides. The use of the roof is permitted, and the stair tower could actually help protect the privacy of nearby residences through its location at the rear of the building adjacent to the lot to the south.

Pursuant to § 411.11, the Board may grant special relief from certain provisions governing penthouses. The required relief is analyzed below.

411.11 The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10 and 411.18 upon a showing that:

- (a) Operating difficulties such as meeting Building Code 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;**

The proposed design would require special exception relief from § 411.18, to allow setbacks of less than 1-to-1 from the edge of the building, and from § 411.10, to allow enclosing walls of unequal height. In this case the relief from the setbacks is appropriate because the existing stair column in the building is located at the southwest corner of the building. Relocating the entire stairwell would be a massive renovation for an existing rowhouse and would significantly disrupt the floorplans of the house. Relocating just the stairs from the third floor to the roof would similarly render the third floor almost unusable with two stairways occupying much of the

footprint. Creating a penthouse with one height of an enclosing wall would be unreasonable given the intent of the design to minimize the visibility of the structure. The sloping roof would decrease the visibility of the penthouse from 9th Street and minimize its mass generally.

- (b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and**

Granting relief to the setbacks and to the height of the roof would not impair the intent of the penthouse regulations. The sloping roof would minimize the mass of the structure and limit its visibility from 9th Street. Given the small size of the property, the penthouse's location at the very southwestern corner of the building places it as far as possible from both 9th Street and West Virginia Avenue.

- (c) The light and air of adjacent buildings will not be affected adversely.**

The light and air available to the house adjacent to the south would not be impacted by the penthouse setbacks or sloping roof. Any shadow cast by the proposed structure would be on the roof of the subject property or otherwise to the north, and not on the adjacent property to the south.

Architectural Features Special Exception

The application materials imply that relief is required from § 400.24(a), while the project would comply with §§ 400.24(b) and (c). The following is an analysis of the requested special exception relief.

400.24 In an R-4 Zone District, the following provisions shall apply:

- (a) A roof top architectural element original to the building such as a turret, tower or dormers, shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;**

400.25 In an R-4 Zone District, relief from the design requirements of § 400.24 may be approved by the Board of Zoning Adjustment as a special exception under § 3104, subject to the conditions of § 400.23(a), (b), and (c). [...]

400.23 In an R-4 Zone District, a building or other structure may be erected to a height not exceeding forty feet (40 ft.) if approved by the Board of Zoning Adjustment as a special exception, under § 3104, subject to the following conditions, except that if the building is being converted to an apartment house, special exception relief from the thirty-five foot (35 ft.) height limitation is only available pursuant to §§ 336 or 337 as applicable:

- (a) **The applicant shall demonstrate that the overall building or structure height or upper addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:**

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

The addition of the third story should not have an undue impact on nearby properties. Most new shadow would be cast on West Virginia Avenue and 9th Street. Impacts to airflow would be negligible or non-existent.

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

The privacy of nearby properties should not be unduly impacted. While the third floor would have windows, there would not be a substantially greater impact to privacy than with an existing second floor window.

- (3) **An addition shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;**

According to the applicant the addition would not impede the functioning of any vent or chimney on the adjacent property. The main chimney for the adjacent house appears to be on the south side of an open court, removed from the shared property line.

- (4) **An addition shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator; and**

The applicant has indicated that the project would comply with this provision. While no shadow study has been submitted, it is clear that any new shadow on properties to the north would be minimal, since the only adjacent house is to the south of the subject property.

- (5) **The resulting building or structure height, 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 subject street frontage;**

The addition would result in a building that is taller than the majority of its neighbors, but the increase in height of one story would not substantially visually intrude on the character of the block. The height proposed is within matter-of-right limits.

- (b) **The applicant shall demonstrate that overall building or structure height or an upper addition resulting from the additional five feet (5 ft.) will not have a substantially adverse effect on the defining architectural features of the building or result in the removal of such features; and**

This subsection is not applicable since the alteration to the façade features is not a result of an increase from 35' to 40'. The proposed height of the building, including the third floor, is only 31' 3".

- (c) **In demonstrating compliance with §§ 400.23(a) and (b), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new or extended building or structure to adjacent buildings and views from public ways.**

The application includes plans, elevations and photographs of the property.

VI. COMMUNITY COMMENTS

As of this writing OP has received no comments from the community. The applicant has submitted a list of signatures from nearby property owners and/or residents that indicate support for the project, and the ANC has voted unanimously to support the application.