

ANC 6C Planning, Zoning, and Economic Development Committee Report

ANC 6C Commission Meeting: May 10, 2017

PZE Meeting Date: May 3, 2017 6:30 pm

Meeting Location: Northeast Library
7th & D Streets NE

Committee Attendees: Mark Eckenwiler (Chair)
Joel Kelty
Bobbi Krengel
Chris Mitchell
Bill Sisolak
Dru Tallant

Other Commissioners Present: Commissioner Heather Edelman (6C06)

Agenda Items

1. **17 6th St. NE (HPA 17-298)** – Revised application of Tarpan & Emily Parekh for concept approval for rear, rooftop, and garage additions. Representative: Jennifer Fowler (architect). Hearing on May 25, 2017. [6C01]
2. **630 Lexington Pl. NE (HPA 17-401)** – Application of Lucas and Purvee Kempf for concept approval for rear and rooftop additions. Representative: Lacy Brittingham (architect). Hearing on May 25, 2017. [6C03]
3. **516 3rd St. NE (HPA 17-397)** – Application of Heather Howard for concept approval for front basement entrance, rear addition, and garage demolition. Representative: Gayll Worsley (architect). Hearing on May 25, 2017. [6C02]
4. **507 2nd St. NE (BZA 19494)** – Application of Nike USA, Inc., pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C §1504.1 from the penthouse setback requirement of Subtitle C §1502.1, to allow screening for mechanical equipment on an existing two-story plus cellar attached building in the MU-24 zone at premises 507 2nd St., NE (Square 754, Lot 31). Representative: Will Teass (architect). Hearing on May 17, 2017. [6C02] ([Hearing notice](#); [application file](#))
5. **1125 7th St. NE** – Discussion of potential BZA appeal of permit B1706219. [6C06]

Agenda Item #1: Discussion and Recommendations

17 6th St. NE (HPA 17-298) – Revised application of Tarpan & Emily Parekh for concept approval for rear, rooftop, and garage additions. Representative: Jennifer Fowler (architect). Hearing on May 25, 2017. [6C01]

Motion ***To recommend support with conditions (see below)***
 (carried 5-1)

Key Discussion Points:

1. ANC 6C and the PZE reviewed this case in April, generally supporting the HPRB application but opposing the parallel zoning application on the grounds of adverse impact to the air/light/privacy of 19 6th St.
2. The revised concept, which requires no zoning relief, pulls the proposed addition away from the lot line abutting the light well at 19 6th, creating a closed court. The garage (noncontributing) is also narrowed to bring lot occupancy under 60%, and the applicant retained the changes (e.g., to the front stairs and cornice) supported by the ANC in April.
3. Nancy Williams, one of the owners of 19 6th, expressed concern about the proposed closed court creating a safety risk by cutting off a potential emergency escape route for her tenants. One PZE member concurred with this concern; others did not find this persuasive, for several reasons:
 - a. there is no right of access across another's property, even for emergency escape.
 - b. egress issues are not properly within HPRB's purview.
 - c. the existing ~6' wood fence on the 19 6th St. side of the lot line at the light well is already a significant barrier to escape.
4. The only condition urged by PZE members was that the lead walk should be made narrower near the sidewalk, with the path widened only as necessary to accommodate the new basement entrance.

Agenda Item #2: Discussion and Recommendations

630 Lexington Pl. NE (HPA 17-401) – Application of Lucas and Purvee Kempf for concept approval for rear and rooftop additions. Representative: Lacy Brittingham (architect). Hearing on May 25, 2017. [6C03]

Motion ***To recommend support with conditions (see below)***
 (carried 6-0)

Key Discussion Points:

1. Applicant proposes to construct a rear addition (replacing an existing sleeping porch) and increase the height of the attic roof. Applicant provided letters of support from the owners of both adjacent properties.
2. The rooftop addition would not be visible from Lexington Pl.
3. The one area of concern to PZE members was the rear façade, which did not depict any break or other delineation between the old second and new third floors. The carried motion recommended further study of the rear façade, with emphasis on reducing the scale and/or mass of the rear third story.

Agenda Item #3: Discussion and Recommendations

516 3rd St. NE (HPA 17-397) – Application of Heather Howard for concept approval for front basement entrance, rear addition, and garage demolition. Representative: Gayll Worsley (architect). Hearing on May 25, 2017. [6C02]

Motion ***To recommend support with conditions***
 (carried 6-0)

Key Discussion Points:

1. The applicant proposes to remove an existing garage; add a front basement entrance; and construct a small rear addition.
2. PZE members supported the overall concept, but had modest concerns about
 - a. the needlessly wide lead walk;
 - b. the use of brick as a paving material;
 - c. the odd low brick barrier running from the base of the stoop;
 - d. the need to ensure that the current noncontributing iron stoop be replaced either with a salvaged historic stoop or one similar to those on the same block.

Agenda Item #4: Discussion and Recommendations

507 2nd St. NE (BZA 19494) – Application of Nike USA, Inc., pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C §1504.1 from the penthouse setback requirement of Subtitle C §1502.1, to allow screening for mechanical equipment on an existing two-story plus cellar attached building in the MU-24 zone at premises 507 2nd St., NE (Square 754, Lot 31). Representative: Will Teass (architect). Hearing on May 17, 2017. [6C02] (Hearing notice; application file)

Motion **To recommend opposition**
 (carried 4-2)

Key Discussion Points:

1. The applicant seeks after-the-fact zoning relief for an already built structure. Constructed under a prior permit, the rooftop HVAC unit and required screen wall were not built according to the approved permit drawings, but were instead placed further toward the rear of the building. The result fails to comply with the 1:1 setback requirement.
2. PZE members were sharply divided on this case. An initial motion to recommend support contingent on lowering the screen wall by 18” failed on a 3-3 vote.
3. A second motion (to oppose) passed by a split vote. In supporting the motion, the PZE Chair noted 11 DCMR subtitle C, section 1504.1(a), which states that an important criterion for relief is whether

[t]he 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 PZE majority agreed that the request for relief should be measured not according to the expense of curing the improper construction, but rather as if the request were made in advance of construction. Under that standard, the cost of complying with the building codes (as the issued permit in fact did) was by no means unreasonable. To the extent any cost must be borne in correcting the construction error, the PZE majority felt that the applicant’s contractor—who allegedly made the error—is liable for the cost of curing the mistake.

Agenda Item #5: Discussion and Recommendations

1125 7th St. NE – Discussion of potential BZA appeal of permit B1706219. [6C06]

Motion **To recommend appeal to the BZA**
(carried 6-0)

Key Discussion Points:

1. DCRA issued a construction permit (B1706219) on March 31 allowing the owner to expand the existing two-story rowhouse to three stories, and to build an equally large structure at the rear connected by a corridor partially below grade. The permitted structure would dwarf nearby residences.
2. The issuance of this permit involved several irregularities:
 - a. It purports to be a revision to two earlier permits—but those permit applications were withdrawn, not approved;
 - b. The cost of this permit for a major construction project: \$36.30.
 - c. The permit was issued extremely quickly (8 days from filing to issuance).
 - d. The permit does not state on its face the zoning classification of the property.
 - e. The neighbor notification required under DCRA's own December 2015 administrative rules was never made by the applicant.
3. On zoning issues *per se*, the PZE identified four separate areas of concern:
 - a. **Two buildings vs. one:** Under ZR16, “fig leaf” connections between two structures do not make them a single structure. Among other things, the connection must a) be fully above grade and b) either serve as shared space, such as a lobby, or provide unrestricted access between the connected portions. In this case, the majority of the connector’s floor plan is below grade (as basement corridor or stairs leading up). Moreover, it terminates in the locked door of “unit #2” at the rear of the property and thus does not give “unrestricted” access between the front and rear sections.

Because the rear portion is a separate building, it violates the rules for accessory structures, which must be small than/subordinate to the principal dwelling, and may not be taller than 20’/2 stories.
 - b. **Pervious surface requirement:** In the RF-1 zone, lots over 2000sf must have at least 20% pervious surface (i.e., ground or vegetated roof for rainwater retention). The plat submitted with the permit application claims that the entirety of the 40% lot area not covered by buildings is “permeable area”; however, the drawings clearly show several concrete areaways with drains leading to runoff-collection pipes. The only area that qualifies as pervious surface is the courtyard between the two buildings, which the plans mark as “grassy”; this covers ~156sf, or only 6.7% of the lot. No such notations appear on the rest of the supposed “permeable area,” including the two parking spots at rear.
 - c. **More than 2 units:** Zoning for this lot allows a maximum of 2 units. However, each of the two buildings shows a kitchen and bath on the basement/cellar level separate from the

kitchen and bath facilities on the upper floors. Even if these two basement units are not “principal units,” they appear to meet the definition of “accessory apartments.” Either way, the drawings depict more than the allowable two dwelling units.

- d. **Obstruction of chimney/vent on adjacent property:** Subtitle E, section 206.1(b) states that any roof top or upper floor addition “shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code.” The proposed structure would add a third story less than 3’ from a wood-stove vent on the roof of two-story 1123 7th St. NE.
4. Lyle Blanchard, Esq., counsel for the property owner, attended the meeting. He expressed the view that the connector makes the two structures a single building; the PZE members acknowledged that there is a fundamental difference of opinion that the BZA will need to resolve. On the pervious surface issue, Mr. Blanchard provided a new drawing claiming that the parking pads will be pervious; the Chair noted that this new drawing is not from the permit file, is not among the materials reviewed by the Zoning Administrator, and in no way binds the owner to perform the work depicted. Mr. Blanchard did not speak to the chimney/vent issue, and sought to explain the separate basement kitchens with the logic that “some people don’t want to have to go upstairs to prepare food.” At least one PZE member suggested that this claim insulted the intelligence of the committee.
5. Two neighbors owning adjacent properties (Kevin Cummins of #1123 and Amy Stouffer, who owns the property directly across the alley) spoke in favor of the appeal. They also raised other issues beyond the 4 items listed above, but the PZE did not find those items appropriate bases for a BZA appeal. A third nearby resident, Eric Kerensky (1115 7th) also spoke in favor of appeal.
6. In addition to recommending appeal to the BZA, the PZE motion also recommended sending a letter to the Council, OAG, and the Mayor calling for revocation of the permit and investigation into the circumstances of its issuance.