

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

## ANC 6C Commission Meeting: September 19, 2017

**PZE Meeting Date:** September 6, 2017 6:30 pm

**Meeting Location:** Northeast Library  
7<sup>th</sup> & D Streets NE

**Committee Attendees:** Mark Eckenwiler (Chair)  
Ryan McGinness (Vice Chair)  
Joel Kelty  
Bobbi Krengel  
Chris Mitchell  
Lauren Oswald  
Bill Sisolak

**Other Commissioners Present:** Christine Healey (6C01)

### Agenda Items

1. **104 8th St. NE (BZA 19575)** – Application of Ruth Fisher, pursuant to 11 DCMR Subtitle X, Chapter 9, for
  - a. a special exception under Subtitle E § 5201.1(f) from the nonconforming structure requirements of Subtitle C § 202.2, and
  - b. pursuant to Subtitle X, Chapter 10, a variance from the height requirements of Subtitle E § 303.1to construct a partial rooftop addition to an existing two-family flat in the RF-1 at premises 104 8th Street N.E. (Square 896, Lot 34). Representative: Jennifer Fowler (architect). Hearing on October 4, 2017. [6C01] ([Application file](#); [hearing notice](#))
2. **626 Lexington Pl. NE (HPA 17-521)** – Application of Bill and Carreen Behrens for concept approval to alter roof line and modify rear elevation. Representative: Jennifer Fowler (architect). Hearing on September 28, 2017. [6C03]
3. **10 3<sup>rd</sup> St. NE (BZA 19574)** – Application of Shirley Taylor
  - a. pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 320.2, and
  - b. pursuant to Subtitle X, Chapter 10, for an area variance from the minimum land area requirements of U § 320.2(d),

to permit the conversion of an existing residential building existing prior to May 12, 1958 into an apartment house with three units and a roof deck in the RF-3 Zone, at premises 10 3rd Street N.E. (Square 0759, Lot 0838). Representative: Jennifer Fowler (architect). Hearing on October 4, 2017. [6C01] ([Application file](#); [hearing notice](#))

4. **434 4th St. NE (HPA 17-577)** –Application of Staci Walkes for permit approval for side and rooftop additions. Representative: Michael Burns. Hearing on September 28, 2017. [6C02]
5. **304-308 K St. NE (BZA 19556)** – Application of 304, 306, 308 K Street NE, LLC,
  - a. pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1500.4 from the general penthouse regulations and Subtitle C § 1504.1 from the penthouse setback requirements of Subtitle C § 1502.1(c), and
  - b. pursuant to Subtitle X, Chapter 10, for a variance from the minimum lot dimension requirements of Subtitle E § 201.1,

to subdivide two existing lots into three record lots and to construct three attached flats in the RF-1 zone at premises 304, 306, and 308 K Street N.E. (Square 774, Lots 63 and 64). Representative: Toye Bello. Hearing on October 4, 2017. [6C06] ([Application file](#); [hearing notice](#))

6. **522½ K St. NE (BZA 13991A)** – Application of Curt Hansen, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance to BZA Order No. 13991 (Nov. 9, 1983) to
  - a. permit the addition of an accessory fast food establishment to an existing retail grocery store,
  - b. expand the retail use to the basement,
  - c. eliminate the restriction on operating hours,
  - d. eliminate the cap on the number of employees, and
  - e. eliminate the cap (currently zero) on customer seating

in the RF-1 zone at premises 522 ½ K Street N.E. (Square 830, Lot 56). Representative: Curt Hansen. Hearing on September 20, 2017. [6C06] ([Application file](#); [hearing notice](#))

## **Agenda Item #1: Discussion and Recommendations**

104 8th St. NE (BZA 19575) – Application of Ruth Fisher, pursuant to 11 DCMR Subtitle X, Chapter 9, for

- a. a special exception under Subtitle E § 5201.1(f) from the nonconforming structure requirements of Subtitle C § 202.2, and
- b. pursuant to Subtitle X, Chapter 10, a variance from the height requirements of Subtitle E § 303.1

to construct a partial rooftop addition to an existing two-family flat in the RF-1 at premises 104 8th Street N.E. (Square 896, Lot 34). Representative: Jennifer Fowler (architect). Hearing on October 4, 2017.  
[6C01]

Motion **To recommend opposition to the variance request (for 4<sup>th</sup> story), but support for special exception (for height exceeding 35' and for expanding a nonconforming structure)**  
(carried 4-2)

Key Discussion Points:

1. Applicant seeks to construct a new story (8' tall) occupying the rear portion of the existing roof. A parallel HPRB application is also pending.
2. The need for relief is triggered by several factors. First, the current structure occupies 68% of the lot. Although this figure would not increase under the proposal, a special exception is nevertheless needed to allow the upward expansion of a nonconforming structure. In addition, the new floor would bring the total height to 36' 2" (thus above the 35' maximum), thus requiring a special exception under 11 E DCMR 5203.
3. Finally, the addition would count as a fourth floor—one more than the maximum of three—because the basement ceiling is 6'9" above grade. (Only a cellar—a level with ceiling <4' above grade—is excluded from the number of floors.) A variance is therefore needed.
4. PZE members expressed no concerns about the special exception relief, especially in light of the minimal impacts on neighbors and those neighbors' written support.
5. However, there was significant concern over the variance request. A majority of the PZE felt that there is no "peculiar and exceptional practical difficulty" present as required by the regulations; on the contrary, many Hill rowhouses have similar conditions (three floors consisting of basement plus 2 stories above). There was concern that supporting relief in this case would set an improper precedent that would allow fourth floors on hundreds of Hill houses. Two PZE members were sympathetic to the application and would have voted to support the variance.
6. Marta Wagner (717 A St. NE) expressed concern that relief in this case would open the door to identical rooftop additions elsewhere on the applicant's block. However, both adjacent owners (at 102 and 106) submitted letters of support.

## **Agenda Item #2: Discussion and Recommendations**

*626 Lexington Pl. NE (HPA 17-521) – Application of Bill and Carreen Behrens for concept approval to alter roof line and modify rear elevation. Representative: Jennifer Fowler (architect). Hearing on September 28, 2017. [6C03]*

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

Key Discussion Points:

1. Applicant proposes to bump up the roof height and construct a mansard with dormer at the rear. No increase in footprint will result, and the addition would not be visible from the street.
2. The PZE and ANC 6C have supported several similar proposals on this same block, and PZE members had no concerns about this application.

### **Agenda Item #3: Discussion and Recommendations**

*10 3rd St. NE (BZA 19574) – Application of Shirley Taylor*

a. *pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 320.2, and*

b. *pursuant to Subtitle X, Chapter 10, for an area variance from the minimum land area requirements of U § 320.2(d),*

*to permit the conversion of an existing residential building existing prior to May 12, 1958 into an apartment house with three units and a roof deck in the RF-3 Zone, at premises 10 3rd Street N.E. (Square 0759, Lot 0838). Representative: Jennifer Fowler (architect). Hearing on October 4, 2017. [6C01]*

Motion ***To recommend opposition***

(carried 4-1; one abstention and one recusal from a late-arriving PZE member)

Key Discussion Points:

1. The applicant seeks zoning relief to convert an existing property from 2 legal units to 3 (2 in the main building and 1 in the 3-story accessory building at rear). Apart from construction of a roof deck on the rear building, no addition is proposed.
2. Applicant has a C of O for two units, but asserts that the property has been in use as a three-unit apartment building for the entire time – going back several decades – that the same family has owned it. Applicant is an absentee landlord and does not personally occupy the property.
3. Under the regulations, a special exception for such a conversion is available only in cases where the property has 900sf of land per proposed unit. Here, that would require a lot of at least 2700sf; the lot is in fact only 1985sf.
4. PZE members noted that in revising this regulation in recent years, the Zoning Commission expressly rejected (in case ZC 14-11) a proposal to eliminate the 900sf/unit minimum. As a result, the committee felt that this is a crucial requirement, not one to be taken lightly. Cf. section E 5200.2.
5. PZE members were also largely unpersuaded by the argument that 3-unit use over the past several decades provided a justification. The Chair noted an example of a similar property for which a 3-unit C of O was obtained by the owner at or around the time of adoption of the 1958 zoning regulations. Most PZE members felt that the decades-long operation of an illegal third unit should not be rewarded with a conversion not meeting the 900sf requirement.
6. Multiple neighbors spoke in opposition to the proposal. Bill Braithwaite—co-owner of adjacent 12 3<sup>rd</sup> St. NE—expressed opposition to the roof deck, citing concerns about noise and privacy. (The deck would provide a direct view into an upper-floor bathroom at the rear of his house.) Ron Langkamp of 24 3<sup>rd</sup> opposed the legalization of a third unit and likewise expressed concern about noise from the roof deck.
7. Applicant submitted letters of support from tenants of 10 3<sup>rd</sup>, but from no adjacent property owners.

## **Agenda Item #4: Discussion and Recommendations**

*434 4th St. NE (HPA 17-577) –Application of Staci Walkes for permit approval for side and rooftop additions. Representative: Michael Burns. Hearing on September 28, 2017. [6C02]*

Motion     ***To recommend support (with an ancillary action; see below)***  
                  (carried 6-1)

Key Discussion Points:

1. Applicant proposes infill an existing dogleg and construct a rooftop addition at the rear of the building.
2. PZE members were satisfied that the addition would not be visible from 4<sup>th</sup> St. or E St. and had no significant concerns. The applicant presented letters of support from the owners of 432 and 436 4<sup>th</sup> St.
3. The majority of discussion focused not on the substance of the application, but on the fact that the “architect” who prepared the plans is not licensed in DC, or even a nearby jurisdiction. (His email signature also indicates that his company provides “Architecture” services.) As part of the motion, PZE members also voted to recommend that the ANC send a letter to DCRA requesting that the agency examine whether the applicant’s representative is engaging in the unlawful practice of architecture.

## **Agenda Item #5: Discussion and Recommendations**

304-308 K St. NE (BZA 19556) – Application of 304, 306, 308 K Street NE, LLC,

a. pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1500.4 from the general penthouse regulations and Subtitle C § 1504.1 from the penthouse setback requirements of Subtitle C § 1502.1(c), and

b. pursuant to Subtitle X, Chapter 10, for a variance from the minimum lot dimension requirements of Subtitle E § 201.1,

to subdivide two existing lots into three record lots and to construct three attached flats in the RF-1 zone at premises 304, 306, and 308 K Street N.E. (Square 774, Lots 63 and 64). Representative: Toye Bello. Hearing on October 4, 2017. [6C06]

Motion **To recommend opposition**  
(carried 6-0; one abstention)

Key Discussion Points:

1. Applicant proposes to
  - a. subdivide two lots (combined width 48') into three 16' lots (narrower than 18' minimum) and construct three attached 3-story dwellings with roof decks; and
  - b. construct stairway penthouses not compliant with the setback requirements;
2. PZE members found the presentation and supporting materials incomplete and inadequate in numerous respects. Although the application states that the lots are 113' deep, the plat gives no dimension and the representative stated that the lots are in fact only 108' deep at present. (He indicated the owner intends to add additional depth by subdividing a lot abutting at the rear, but this is nowhere discussed or shown in any of the application drawings or other papers.
3. Similarly, the proposed penthouses are missing from all drawings except one, and are not dimensioned on the one exception. Thus, there is no indication of the structures' height.
4. Applicant asserts that a variance for lot width is needed owing to "peculiar and exceptional practical difficulties" in developing the 48'-wide parcel. When PZE members pointed out the option to divide it into two 24' lots—an option not discussed or even mentioned in the application—applicant asserted that this was not economically feasible. The Chair provided survey records showing that 608-612 Maryland Ave were subdivided in 2006 into three lots with 24.78', 23.91, and 28.94' of street frontage; all three were developed in 2007 into rowhouses which sold quickly at premium prices. (All have sold again recently, or been assessed, with a value well in excess of \$2 million.)
5. PZE members also noted that the need for penthouse setback relief would be unnecessary with 24' lots. Thus, this area of relief is created by the proposed substandard lot width.
6. Applicant sought to justify having 16' lots by noting that these are allowed under the inclusionary zoning rules. However, those rules are not compulsory here, and the applicant has no present intent to opt into (and thus comply with) the obligations associated with IZ development.
7. Finally, the applicant raised an additional zoning issue, one not discussed in the application or referenced in the public notice. 308 K St. would extend 28' (three stories in height for most of

that) past the rear of the existing rowhouse to its east; under a recently adopted change to the zoning regulations, special exception relief is needed for any addition extending over 10' past an adjacent principal dwelling. The applicant provided no letter stating the neighbor's views, and the PZE felt unable to assess the legally relevant impacts on the neighbor's air, light, and privacy.

8. After the meeting, the Chair also determined that under this 10'-popback rule, adverse impacts on the character, scale, and pattern of the street frontage are also relevant considerations per [11 DCMR E 5201.3\(c\)](#):

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[.]

In the Chair's personal opinion, the design and scale of the proposed structures is not in harmony with (and thus visually intrudes upon) the character of existing historic 2-story structures in the same row.