

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

ANC 6C Commission Meeting: October 11, 2017

PZE Meeting Date: October 4, 2017 6:30 pm

Meeting Location: Northeast Library
7th & D Streets NE

Committee Attendees: Mark Eckenwiler (Chair)
Bobbi Krengel
Dru Tallant

Other Commissioners Present: Heather Edelman (6C06)

Agenda Items

1. **643 F St. NE (BZA 19589)** – Application of Thad Hunkins, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions
 - a. under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 205.4, and
 - b. under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502to construct a one-story rear addition and roof deck to an existing one-family dwelling in the RF-1 Zone at premises 643 F Street N.E. (Square 861, Lot 188). Representative: Matt Dirksen. Hearing on November 1, 2017. [6C03] ([Application file](#); [hearing notice](#))
2. **226 Massachusetts Ave. NE (BZA 19609)** – Application of Massachusetts Avenue Properties LLC, pursuant to 11 DCMR § 3103.2, for variances
 - a. from the rear yard requirements of § 774.1,
 - b. from the height requirements of § 1203.1, and
 - c. from the off-street parking requirements of § 2101.1,to construct a new three-story office building in the CAP/CHC/C-2-A Zone at premises 226 Massachusetts Avenue, N.E. (Square 755, Lot 850). Representative: Cary Kadlecek, Esq., Goulston & Storrs. Hearing on October 25, 2017. [6C02] ([Application file](#); [hearing notice](#))
3. **512 H St. NE (BZA 19587)** – Application of Ace Cash Express, Inc., pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle H § 1200 from the designated use requirements of Subtitle H § 1101.3(a), to permit a financial services use in the NC-9 Zone at

premises 512 H Street, N.E. (Square 832, Lot 13). Representative: Shane Dettman, Holland & Knight. Hearing on October 18, 2017. [6C06] ([Application file](#); [hearing notice](#))

4. **Proposed letter to HPO requesting written status report on pending violation complaints**
(5 mins.)

5. **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 October 18, 2017. [6C06] ([Application file](#); [hearing notice](#))

6. **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 25, 2017. [6C01] ([Application file](#); [hearing notice](#))

Agenda Item #1: Discussion and Recommendations

643 F St. NE (BZA 19589) – Application of Thad Hunkins, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions

- a. under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 205.4, and
- b. under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502

to construct a one-story rear addition and roof deck to an existing one-family dwelling in the RF 1 Zone at premises 643 F Street N.E. (Square 861, Lot 188). Representative: Matt Dirksen. Hearing on November 1, 2017. [6C03]

Motion **To recommend support**
 (carried 2-1)

Key Discussion Points:

1. Applicant seeks to construct a new one-story addition with roof deck to replace (and extend) an existing unenclosed porch. Applicant presented letters of support from the adjacent property owners.
2. A majority of the PZE supported the application. A dissenting member objected to the esthetic qualities of the proposed addition (which will require clearance through HPO or HPRB in a separate process).

Agenda Item #2: Discussion and Recommendations

226 Massachusetts Ave. NE (BZA 19609) – Application of Massachusetts Avenue Properties LLC, pursuant to 11 DCMR § 3103.2, for variances

- a. *from the rear yard requirements of § 774.1,*
- b. *from the height requirements of § 1203.1, and*
- c. *from the off-street parking requirements of § 2101.1,*

to construct a new three-story office building in the CAP/CHC/C-2-A Zone at premises 226 Massachusetts Avenue, N.E. (Square 755, Lot 850). Representative: Allison Prince, Esq., Goulston & Storrs. Hearing on October 25, 2017. [6C02]

Motion ***To recommend support (with caveat noted below)***
(carried 2-1)

Key Discussion Points:

1. Applicant proposes to construct a new building on the site of the former Armand's pizzeria.
2. Owing to the lot's trapezoidal shape, applicant seeks relief from the 15' rear yard requirement by providing a triangular rear yard 15.1' deep at its greatest extent (and 7.7' deep on average). Because the lot is also landlocked, applicant also seeks an exemption from the requirement to provide 5 parking spaces.
3. Finally, the proposal requests a variance to construct to a height of 44'—4' above the maximum—in order to align the new structure's floor plate with the existing building to the west. Doing so allows for greater efficiency (e.g., no need to construct separate stairwells or other "core" elements that would consume a substantial fraction of the floor area).
4. PZE members generally agreed that the application meets the criteria for relief. However, there was significant dissatisfaction with the application's depictions of the public space as fully enclosed by a new barrier fence with stone columns. This apparent plan runs counter to the recommendations made by the PZE and ANC in June 2016) when the corresponding HPRB application came to us for review) for a plan that better engages with and welcomes the public instead of enclosing the public space within a security perimeter.
5. Accordingly, the PZE vote included a recommendation to note in the letter to BZA these objections to the public-space plan as inconsistent with the ANC's expressed wishes.

Agenda Item #3: Discussion and Recommendations

512 H St. NE (BZA 19587) – Application of Ace Cash Express, Inc., pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle H § 1200 from the designated use requirements of Subtitle H § 1101.3(a), to permit a financial services use in the NC-9 Zone at premises 512 H Street, N.E. (Square 832, Lot 13). Representative: Shane Dettman, Holland & Knight. Hearing on October 18, 2017. [6C06]

Motion ***To recommend support***
 (carried 2-1)

Key Discussion Points:

1. Applicant proposes to relocate its existing operation (at 601 H St. NE), which provides check cashing and money transmittal services, to a new address.
2. Under the current language of the H St. commercial overlay, a financial services business may not occupy more than 20% of the ground floor of a building absent zoning relief.
3. Two PZE members voted to support the application. The dissenting member objected that the use in question deadens the streetscape and is an undesirable business inconsistent with the revitalization of the corridor.

Agenda Item #4: Discussion and Recommendations

Proposed letter to HPO requesting written status report on pending violation complaints

Motion ***To recommend support***
 (carried 3-0)

Key Discussion Points:

1. The PZE Chair noted a longstanding concern with complaints to HPO staff about illegal work in the Historic District. Violations are allowed to persist for years, and often become permanent absent repeated inquiries by a complainant.
2. The PZE voted unanimously to recommend sending a letter to the head of HPO noting these longstanding concerns and requesting updates (both on enforcement actions to date and planned future actions) to address nine specific violations reported to HPO over the past two years.

Agenda Item #5: Discussion and Recommendations

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 October 18, 2017. [6C06]

Motion **To recommend support with conditions (see below)**
(carried 2-0)

Key Discussion Points:

1. Applicant seeks to amend the terms of a 1983 BZA order governing commercial use of this residentially zoned location. That 1983 order allowed the onsite cooking of food as part of the retail grocery use. It also
 - a. restricted the store hours to 8am-8pm Mon-Sat and 8am-6pm Sun;
 - b. capped the number of employees at two;
 - c. prohibited customer seating and limited food consumption to carry-out only.
2. The written application seeks a minimum of 18 indoor seats (although the filed drawings depict only 15 or 16 total indoor seats). At the PZE meeting, the applicant expressed a desire to also have 18 outdoor seats authorized by the new zoning order. (Such seats would still need to be approved by DDOT/Public Space for use as a sidewalk café.) Applicant stated that he does not intend to provide table service, but that patrons would be allowed to consume food onsite if they choose—thus the need for authorization for an accessory fast-food use.
3. PZE members agreed that 18 indoor seats (with updated drawings) would be appropriate so long as no wait staff served them. However, there was significant concern that adding an equal number of outdoor seats would cause the fast-food use to be so significant an operation that it would no longer be secondary to the principal grocery use. Accordingly, the PZE voted to recommend support for zoning authorization to have up to 6 outdoor seats, subject to DDOT/Public Space review.
4. The PZE voted to recommend allowing hours of 7am-9pm Mon-Sat and 7am-6pm Sun. (7am-9pm is the maximum allowed under the ZR16 regulations permitting corner stores.)
5. Applicant also seeks to provide a delivery service. The PZE recommended allowing this during the full hours of operation, subject to the limitation (as recommended by Office of Planning) that all deliveries be made by bicycle or on foot (i.e., not via motor vehicle).

6. The PZE recommends support for the request to increase the maximum number of employees to seven, as well as the request to expand retail use to the basement.
7. In general, the PZE supported the applicant's effort to improve and expand its services to the neighborhood, subject to the overall requirement that the grocery use remain the principal onsite activity and not be supplanted or overtaken by other uses such as fast-food service.
8. Commissioner Edelman stated her support at the meeting for the application and for the conditions proposed by the PZE.

Agenda Item #6: 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 25, 2017. [6C01]

Motion ***To recommend opposition***

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

N.B. The PZE reviewed this case in September.

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 3rd 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 3rd 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 3rd, but from no adjacent property owners.