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

ANC 6C Commission Meeting: April 11, 2018

PZE Meeting Date:        April 4, 2018 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:  Karen Wirt (6C02)

Agenda Items

1. **219 E St. NE (BZA 19730)** – Application of Sons of Italy Foundation,
   a. pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under the non-profit use provisions of Subtitle U § 203.1(n), and
   b. pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the gross floor area requirements of Subtitle U § 203.1(n)(2),
   to continue a non-profit office use in the RF-3 District at premises 219 E Street N.E. (Square 755, Lot 32). Representative: Samantha Mazo, Esq., Cozen O’Connor. Hearing on May 2, 2018. [6C02] (Application file; public notice for original April 11 hearing date)


3. **732 4th St. NE (BZA 19742)** – Application of Anthony Balestrieri, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, to construct a three-story rear addition to an existing principal dwelling unit in the RF-1 Zone at premises 732 4th Street N.E. (Square 777, Lot 34). Representative: Stephanie Erwin, Blue Star. **Calendared for expedited review** at BZA meeting on May 9, 2018. [6C04] (Application file; public notice of expedited review is at case exhibit 30)

4. **1139 6th St. NE (BZA 19674)** – Revised application of Kimberly Ziegler, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the lot occupancy
requirements of Subtitle E § 304.1 to construct a rear and third-story addition to an existing one-family dwelling in the RF-1 Zone at premises 1139 6th Street N.E. (Square 855, Lot 236). Representative: TBD. Hearing on April 25, 2018). [6C06] (Application file; public notice for original February 14 hearing date)

5. **B22-669 - Department of Buildings Establishment Act of 2018** – Discussion of legislation that would split the Department of Consumer and Regulatory Affairs (DCRA) into two separate agencies, with the new Department of Buildings responsible for construction and zoning permitting and inspections, as well as enforcement of the housing code. Hearing on April 19, 2018. (Hearing notice; text of legislation)

6. **ZC 17-23** – Rulemaking to amend the definitions for “attached,” “detached,” and “semi-detached” buildings, as well as to amend the regulations concerning side yards. Hearing on April 19, 2018. (Case file; hearing notice)
Agenda Item #1: Discussion and Recommendations

219 E St. NE (BZA 19730) – Application of Sons of Italy Foundation,

   a. pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under the non-profit use provisions of Subtitle U § 203.1(n), and

   b. pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the gross floor area requirements of Subtitle U § 203.1(n)(2),


[6C02]

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

Key Discussion Points:

1. The applicant requests zoning relief to continue using this property as the administrative office for its non-profit organization. Applicant has occupied the space in this manner since roughly 1980. Although certain paperwork (relating to applicant’s Basic Business Licenses) indicate a certificate of occupancy at some point in the past, DCRA has been unable to locate that C of O or to indicate what use it authorized.

2. Applicant’s operation involves four staff members working onsite. The organization hosts no events such as receptions or other large gatherings for outside guests. Applicant also submitted numerous letters of support of owners and occupants of nearby properties.

3. PZE members agreed that the applicant meets most of the criteria for a special exception except the square-footage minimum and expressed no objection to variance relief from that prong.

4. However, because this relief would run with the land, PZE members were wary of the possibility that the applicant might sell the property to another non-profit whose use would be less respectful of the neighborhood. Accordingly, the PZE recommends that the ANC seek two conditions from the BZA in supporting the application:

   a. that the requested use allow a maximum of five (5) employees on site, and

   b. that the non-profit use be prohibited from holding events (such as receptions or other large gatherings) onsite for outside guests.

   The applicant expressed agreement with these conditions at the PZE meeting.

5. On April 11, the applicant filed a pre-hearing statement with BZA repeating its agreement with the two proposed conditions.
Agenda Item #2: Discussion and Recommendations

732 4th St. NE (HPA 18-248) – Application of Anthony Balestrieri for concept approval for rear and rooftop additions. Representative: Stephanie Erwin, Blue Star. Hearing on April 26, 2018. [6C04]

Motion  
To recommend opposition
(carried 6-0)

Key Discussion Points:

1. The PZE and ANC previously reviewed, and voted to oppose, a different proposal from this same applicant for the property in January 2017.

2. The current proposal has the new third story pulled back from the row dwelling’s façade. However, PZE members were highly critical of inconsistencies in the drawings, which showed the setback from the façade plane as either 16’ or 19’. Applicant’s representative was unable to reconcile the differences or provide an accurate statement of the setback.

3. PZE members expressed numerous other concerns about the concept and the quality of the application itself. These included

   a. The jumble of materials—old brick, new brick, HardiPlank, and HardiPanels—proposed for the north elevation;

   b. The proportions of the windows (abutting 1-over-1s) on the north elevation of the rear addition;

   c. The plan to lower the ceiling of the second story by lowering the roof joists, thereby introducing substantial structural alterations; and

   d. The lack of photographs and drawings showing the site context.
Agenda Item #3: Discussion and Recommendations

732 4th St. NE (BZA 19742) – Application of Anthony Balestrieri, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, to construct a three-story rear addition to an existing principal dwelling unit in the RF-1 Zone at premises 732 4th Street N.E. (Square 777, Lot 34). Representative: Stephanie Erwin, Blue Star. Calendared for expedited review at BZA meeting on May 9, 2018. [6C04]

Motion  To recommend opposition  
(carried 6-0)

Key Discussion Points:

1. The applicant’s BZA submission suffers from many of the same defects as the HPRB application. PZE members noted that the BZA self-certification form, which must be signed by a DC-licensed attorney or architect, is signed by neither. Likewise, the figures given for the existing and proposed rear yard depth cannot be reconciled with figures given in the submitted drawings. The application cannot be adequately assessed in view of these important errors.

2. Because this case was submitted for expedited consideration, in order to oppose the ANC would need to send BZA a letter pursuant to 11-Y DCMR § 401.8 requesting that the case be removed from the expedited calendar and scheduled for public hearing. That letter would state our intent to send a witness and provide a summary of the proposed testimony.
Agenda Item #4: Discussion and Recommendations

1139 6th St. NE (BZA 19674) – Revised application of Kimberly Ziegler, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 to construct a rear and third-story addition to an existing one-family dwelling in the RF-1 Zone at premises 1139 6th Street N.E. (Square 855, Lot 236). Representative: TBD. Hearing on April 25, 2018). [6C06]

Motion  To recommend opposition
(carried 5-0-1)

Key Discussion Points:

1. The PZE reviewed a prior version of this application in February and voted to oppose. The applicant elected to postpone the BZA hearing and modify the proposal, so the full ANC has not previously seen this application.

2. Applicant seeks to construct a rear and third-story (rooftop) addition to this rowhouse. Neighbors on either side provided letters of support.

3. The criteria for special-exception relief (both for altering roof elements such as turrets and for lot occupancy above 60%) require that any addition not substantially alter the “character, scale and pattern” of the street frontage. PZE members agreed that the houses in this row show significant uniformity; most retain their original turrets, and none have visible third-story additions. All PZE members felt that the proposed addition would substantially and adversely impact the character/scale/pattern of this uniform and largely intact row.

4. One factor contributing to the prominence and visibility of the third-floor addition, apart from its proximity to the façade, is the unusual decision to create a 2’ 8.5” gap between between the ceiling of the second story and the floor of the third story. (Such spaces, occupied by joists and sub-flooring, are typically ~1’ in thickness.)

5. In the Chair’s opinion, this conclusion is consistent with past votes of the PZE and ANC for other projects subject to this same standard (including projects in the 600 block of F, the 1100 block of Abbey Place, and the 600 block of Orleans Place).

6. Sightline studies 4 and 5 show how the addition would appear, in context, from across the street:
Agenda Item #5: Discussion and Recommendations

B22-669 - Department of Buildings Establishment Act of 2018 – Discussion of legislation that would split the Department of Consumer and Regulatory Affairs (DCRA) into two separate agencies, with the new Department of Buildings responsible for construction and zoning permitting and inspections, as well as enforcement of the housing code. Hearing on April 19, 2018.

Motion  To recommend support with extensive comments/suggested revisions (carried 6-0)

Key Discussion Points:

1. See the attached document summarizing the bill’s major features and recommending specific changes. The PZE adopted this summary as its recommendation.
Agenda Item #6: Discussion and Recommendations

ZC 17-23 – Rulemaking to amend the definitions for “attached,” “detached,” and “semi-detached” buildings, as well as to amend the regulations concerning side yards. Hearing on April 19, 2018.

Motion n/a

Key Discussion Points:

1. The PZE discussed the proposed rulemaking, but did not feel strongly that the matter requires comment. Accordingly, the committee took no action.
Major Provisions of the Bill

Bill would split DCRA into two agencies:

- **Department of Buildings (DOB)** responsible for construction, zoning, and housing code administration (permitting, code maintenance/revision) and enforcement
- Department of Licensing and Consumer Protections retaining other DCRA duties

DOB, led by a Director, would have the following components:

- Office of the Director (HR, OGC, Comms, IT)
- Admin Services (customer service/complaint res.; fleet mgmt.; contracting/procurement)
- Ofc. of Construction & Bldg Stds led by **Chief Bldg Official (CBO)**
  - Permitting operations
  - Construction compliance (code revision)
  - Inspections
  - Green Bldg Division
  - Surveyor
  - 3rd-party inspections
  - Zoning Administration
- Ofc of Residential Inspection (vacant/blighted; rental housing inspections; housing rehabilitation, incl abatement of violations)
- Ofc of Strategic Code Enforcement led by **Strategic Enforcement Administrator (SEA)**
  - Code enforcement division (coordinate and monitor enforcement of cited violations; issue NOIs)
  - Civil Infractions and Fine Assessment Division (handle OAH hearings; collect fines & impose liens)

Notably, the CBO and SEA would require Council confirmation; would have fixed five-year terms; and would be removable only for cause to make them more insulated from political pressure. A CBO nominee would also be required to have certain minimum qualifications.

Section 107 requires City Admin to prepare & submit a detailed transition plan with timeline.

Sections 201 and 202 require the SEA, once DOB is created, to develop a yearly enforcement plan and submit a detailed annual enforcement report.
Reactions

On balance, this bill appears to be a generally good proposal to address certain structural problems within DCRA. The current agency is so large, and its portfolio so varied, that it is unclear whether any Director is capable of running it effectively. The current Director certainly has not done so.

Creating statutory protections for key officials (and in the case of the CBO, minimum qualifications) is a positive step toward more responsible governance.

That said, the legislation would benefit from several improvements:

- **CBO qualifications:** The statement of the CBO’s qualifications (lines 110-113) should include a preference for candidates with a degree in architecture or structural engineering.

- **Scope of the CBO’s authority:** The bill’s list of the CBO’s regulatory authority includes only a small number of the subtitles in Title 12, DCMR. (For example, it omits the Electrical Code, the Plumbing Code, the Mechanical Code, and the Fire Code, among other provisions.) The Council should expand this authority to cover all of the disciplines in Title 12.
  - Relatedly, we do not believe that there needs to be a Green Building Division under the CBO separate from the permitting, compliance, and inspection divisions.

  Conversely, the CBO’s authority should not encompass the zoning regulations. Unlike with Title 12, the issues involved in administering zoning regulations cover other subjects (usage) besides the physical characteristics of structures and require their own specialized set of skills and experience.

- **Accordingly, we recommend that the Zoning Administrator have authority over the subject matter described in lines 212-220.** The ZA, like the CBO, should be Council-confirmed; term-appointed; removable only for cause; and subject to certain minimum qualifications. (In addition to senior-level work experience, those qualifications should express a preference for candidates who hold a graduate degree in law, architecture, or land use/urban planning.) The Office of the ZA would not be located within the Office of Construction and Building Standards led by the CBO, as proposed at lines 212-220, but would instead be a separate counterpart component.

- **Confirmation of term-appointed officials:** The CBO, like the SEA and the ZA proposed above, should be confirmed anew. We oppose the proposal to retain the incumbent CBO without Council confirmation.

- **Conflicting authorities among officials:** While we support the concept of having the SEA monitor the work of the CBO’s inspections and enforcement staff—almost as a quasi IG—we are concerned that the bill does not clearly demarcate the boundaries between their duties. For example, line 145 tasks the SEA with “general administration of
the Department’s enforcement efforts,” but tasks the ZA’s office (under the CBO in the bill) with “enforc[ing] zoning regulations.”

Clarity around DCRA’s current processes for inspection; enforcement; fine adjudication, reduction, and collection; and abatement of illegal conditions would provide useful guidance on how to draw these dividing lines.

- Relatedly, the legislation does not always make clear that enforcement efforts must not stop at fines for improper work, but must also pursue removal/abatement of any improper use or structure. (We have seen multiple cases in which DCRA a) assessed a fine for an addition constructed with no permit but b) failed to follow up to require the removal of the illegal structure.) For example, line 130 refers only to the collection/enforcement of fines; likewise, lines 236-247 discuss both fines and “compel[ling] compliance through judicial orders,” but overlooks the fact that in current practice DCRA—and not OAG—is responsible for enforcing abatement orders before OAH.

- **Public access to Department records:** As the Council is well aware, DCRA has for years failed to comply with its obligations under D.C. Official Code § 2-536(a)(8A) to make building permit application files available to the public at no cost on a public website. However, lines 163-167 of the bill (describing the duties of the IT unit within the Office of the Director) make no mention of such services. Enabling and supporting public access to all relevant records must be made an explicit part of this office’s responsibilities.

- **Reporting on fines:** The fine-collection data in the required annual report (lines 310 *et seq.*) should also indicate whether a citation was eligible, as a second or subsequent violation, for an escalated fine. (*See, e.g.*, the schedule of escalating fines set forth at 16 DCMR 3201.1.) Likewise, the report should provide a reason in any case where the maximum available fine was not imposed or collected.

**Secondary Revisions**

The Department of Buildings charter (lines 70-74) should expressly include the zoning regulations among the regulations and codes to be enforced and administered (lines 73-74).

**Cosmetic Corrections**

Lines 41-45: “proscribe” should be “prescribe”

Line 127: The reference to the CIO should probably cross-reference lines 221 *et seq.*, which describe the CIO’s duties.

Lines 213-214: Because the Zoning Administrator reviews all significant construction permit applications, the citation should be to all of Title 11, DCMR and not only to subtitle X.
Lines 218-220: “Refers developers” should be “Refer applicants”. Strike “and the Zoning Board,” as BZA handles all non-PUD variances and special exceptions. Also, such relief is from the zoning regulations themselves and not (as implied by the current language) from the ZA’s rulings. (If the intent is to include appeals from an adverse ZA ruling—which would also be handled by BZA—then clarification is needed.)

Line 221: The section numbering skips from 106(a)(3) to 106(a)(5).

Line 223: Suggest “inspect” in lieu of “investigate.”