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

ANC 6C Commission Meeting: June 13, 2018

PZE Meeting Date: June 6, 2018 6:30 pm

Meeting Location: Northeast Library
7th & D Streets NE

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

Other Commissioners Present: Christine Healey (6C01)

Agenda Items

1. **212 A St. NE (HPA 18-426)** – Application of Ryan Amons (Connell & Schmidt) for concept approval for new rear and side additions, and to demolish existing and construct new garage. Representative: Ryan Amons. Hearing on June 28, 2018. [6C01]


3. **Square 750 map amendment (2nd & K Sts.; ZC 18-07)** – Discussion of ANC recommendation to the Zoning Commission on whether to set down for public hearing the request of Lean Development to change the zoning of four lots on the southeast corner of 2nd & K Sts. NE from PDR-1 (moderate-density commercial and production/distribution/repair) to a mix of MU-4 (moderate-density mixed use) and MU-5A (medium-density, compact mixed-use development with an emphasis on residential use). [6C06] (case file)
Agenda Item #1: Discussion and Recommendations

212 A St. NE (HPA 18-426) – Application of Ryan Amons (Connell & Schmidt) for concept approval for new rear and side additions, and to demolish existing and construct new garage. Representative: Ryan Amons. Hearing on June 28, 2018. [6C01]

Motion  To recommend support with conditions
(carried 6-0; one late-arriving PZE member missed this vote)

Key Discussion Points:

1. The applicant proposes to renovate this two-story semi-detached rowhouse, constructing new rear and one-story side additions and replacing the existing garage with a two-story carriage house. In February, ANC 6C supported this same applicant’s request to make almost identical improvements to the mirror image twin rowhouse at 214 A St. (HPRB approved the concept that same month.)

2. PZE members noted that the front elevation did not depict the profile or materials proposed for the gate in front of the areaway on the west side of the primary façade. The committee vote recommended that this feature be clearly shown (and suggested that the gate be 3’ or less in height, 50% or more open, and constructed of steel).
Agenda Item #2: Discussion and Recommendations

637 E St. NE (HPA 18-432) – Application of Amber and Jon Beckmann for concept approval for new basement entry. Representative: Scott Sterl (licensed architect). Hearing on June 28, 2018. [6C03]

Motion  To recommend opposition
(carried 6-0-1)

Key Discussion Points:

1. The applicants request permission to cut into the existing historic retaining wall (granite blocks with beaded grapevine mortar, typical of walls on this entire square) to create an access way at sidewalk level and a ramp down to a new basement entrance.

2. Policy HP-2.5.4 (Landscaped Yards in Public Space) states that the Board should "[p]reserve the continuous and open green quality of landscaped front and side yards in public space [and t]ake special care … in historic districts to protect this public environment from intrusions, whether from excess paving, vehicular access and parking, high walls and fencing, or undue disruption of the natural contours or bermed terraces.” PZE members were unanimous in the view that the proposed alteration is inconsistent with the guidelines, and the applicants’ architect conceded as much.

3. The applicants did not offer a serious argument—let alone a persuasive one—that legitimate medical need warrants an exception here. According to the architect, these new purchasers of the property “may rent the future basement apartment [and] may also have one or two of their mobility-challenged relatives living there from time to time.” PZE members agreed that relief is not justified on this weak showing of need. PZE members were likewise unpersuaded by reference to a number of similar alterations made (apparently without HPRB approval) on other properties on this square.
Agenda Item #3: Discussion and Recommendations

Square 750 map amendment (2nd & K Sts.; ZC 18-07) – Discussion of ANC recommendation to the Zoning Commission on whether to set down for public hearing the request of Lean Development to change the zoning of four lots on the southeast corner of 2nd & K Sts. NE from PDR-1 (moderate-density commercial and production/distribution/repair) to a mix of MU-4 (moderate-density mixed use) and MU-5A (medium-density, compact mixed-use development with an emphasis on residential use). [6C06]

Motion To recommend that the ANC submit setdown comments as described below (carried 7-0)

Key Discussion Points:

1. The owner of four lots at the southeast corner of 2nd/K Sts. NE filed to rezone them as summarized above. (This same applicant made an informational presentation in March on a potential PUD including these and other adjacent lots.)

2. This case was filed very recently (May 22), so the PZE was not looking at this on the merits. Rather, the question is whether to offer comment to the ZC on whether it should "set down" the case—that is, certify that the application is in good enough shape to hold a formal public hearing.

3. There is an important procedural issue at stake. Map amendment requests come in two types: "contested cases" (called "applications") and "rulemaking cases" (aka "petitions"). The functional difference is that for contested cases, there is earlier and better notice to nearby owners; also, those neighbors can seek party status, cross-examine witnesses, etc. In a rulemaking, the ANC & OP get great weight, but everyone else is relegated to the status of a public witness, assuming they even hear about the case to begin with.

4. Contested cases are those which present issues for resolution at a public hearing that potentially have a limited scope of impact, and involve primarily questions of fact applicable to that limited scope of impact, while broader issues of public policy are secondary concerns. ... [They include] map amendments filed by the property owner or owners for a single property or for multiple properties that are contiguous or are only separated by a street or alley.

   Section Z 201.2.

5. Rulemaking proceedings, by contrast, are those where

   [t]he petitioner owns all of the property proposed to be rezoned, but the ownership pattern is geographically scattered or otherwise of a character that raises land use policy questions to a greater degree than highly localized issues of fact and effects on neighboring properties.

   Section Z 201.7(b)(2).
6. The owner filed this map amendment request as a rulemaking. However, the PZE agreed that lots here are contiguous; the questions that will be discussed on the merits are very site-specific; and any broader public-policy issues are very much secondary; and that this should be treated instead as a contested case. (Section Z 201.9 expressly allows an ANC to suggest that the ZC treat a request as a contested case even when it has been filed as a rulemaking, and vice versa.)

7. The owner’s counsel claimed that a controlling DC AG opinion requires any map amendment to be filed as a rulemaking when it seeks to bring zoning into line with the Comprehensive Plan. However, counsel did not provide a copy of the alleged opinion, and the PZE took the unanimous position that a) such a result would be flatly inconsistent with the regulations and b) the public interests at stake in this case require that nearby owners be given individual notice.

8. Accordingly, the PZE recommends that the ANC submit comments to the ZC taking no position as to whether the case should be set down, but urging that if the case is set down, that the ZC classify it as a contested case/application and not a rulemaking.

9. After the PZE meeting, the PZE Chair consulted with OAG and determined that no such DC AG opinion exists. There is a recent order (ZC 17-17, issued May 14) finding that a rulemaking is appropriate for the downzoning of a single lot, as the only issues at stake are “legislative questions” whether the proposed new zone would be consistent with the Comp Plan and not factual questions about site impacts. (This is because in a downzoning, the allowed uses are typically less intensive than the current use of the site and/or of adjacent parcels.)

10. ZC 18-07, however, is a request for upzoning, meaning that the issues to be considered are not merely “legislative” questions of broad policy appropriate for a rulemaking, but rather specific factual questions about the potential impacts of increased intensity of use on the site.