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

ANC 6C Commission Meeting: October 10, 2018

PZE Meeting Date: October 3, 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

Other Commissioners Present: n/a

Agenda Items


2. **912 5th St. NE (BZA 19838)** – Amended application of Andrew Cooper, 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 two-story accessory structure containing a garage in the RF-1 zone at premises 912 5th Street NE (Square 807, Lot 42). Representative: Jennifer Fowler (licensed architect). Hearing date: Oct. 24, 2018. [6C05] (Application file; hearing notice for original application, which sought slightly different relief)

3. **Square 750 map amendment (2nd & K Sts. NE; ZC 18-07)** – Application of Lean Development for map amendment 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). Representative: Samantha Mazo, Esq. Hearing date: Nov. 8, 2018. [6C06] (Case file)

4. **Appeal of Station Townhouses LLC (701 2nd St. NE; BZA 19861)** – Discussion of potential ANC 6C participation in appeal from Zoning Administrator’s proposed revocation of the Certificate of Occupancy (based on repeated short-term rentals inconsistent with the C of O). Representative: Ivan Baron, Esq. Hearing date: Nov. 7, 2018. [6C04] (Case file)

5. **Proposed rewrite of DCMR Title 12 (Construction Codes)** – Comments due Oct. 28. (Register notice)
Agenda Item #1: Discussion and Recommendations

613 Lexington Place NE (HPA 18-670) – Application of Oliver Fischer and Catherine Kannam for concept approval for rooftop addition (attic pop-up & third-story porch on rear addition). Representative: Jennifer Fowler (licensed architect). Hearing date: Oct. 25, 2018. [6C03]

Motion  **To recommend support**  
(carried 3-0, with one abstention and one PZE member arriving after the vote)

Key Discussion Points:

1. The applicant seeks approval a) to increase the height of the third-floor attic and b) to construct an unenclosed, roofed porch atop the existing two-story rear addition. Architect Jennifer Fowler presented on behalf of the applicants.

2. The proposal is consistent with numerous similar past applications for attic pop-ups on this block. Because of the height of the houses and the fact that many sit on a rise well above sidewalk level, such rooftop additions cannot be seen from Lexington Place. A sightline study provided by Ms. Fowler showed this to be the case here as well.

3. No members of the public spoke in opposition. The applicant provided a letter of support from the owner of 611 Lexington.
Agenda Item #2: Discussion and Recommendations

912 5th St. NE (BZA 19838) – Amended application of Andrew Cooper, 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 two-story accessory structure containing a garage in the RF-1 zone at premises 912 5th Street NE (Square 807, Lot 42). Representative: Jennifer Fowler (licensed architect). Hearing date: Oct. 24, 2018. [6C05]

Motion To recommend support (carried 4-0, with one abstention)

Key Discussion Points:

1. The applicant seeks approval to construct a new two-story garage with second-story habitable space. Architect Jennifer Fowler presented on behalf of the applicant.

2. Special-exception relief is necessary because the proposed accessory structure would increase lot occupancy to 70%. The criteria for such requests—as members of the Commission likely recall from past cases—include the potential for significant adverse impact on air/light privacy for nearby residents and the potential impact on the character/scale/pattern of the streetscape. No such adverse factors are present here.

3. The proposed garage would have no windows on either side, eliminating any privacy impacts on neighbors to the south (on Eye St.). The garage windows facing toward the house could in theory have a privacy impact on the neighbor at 914 5th; that neighbor signed a letter of support.

4. Because the garage would be minimally, if at all, visible from the street, there would no character/scale/pattern impact on the streetscape.
Agenda Item #3: Discussion and Recommendations

Square 750 map amendment (2nd & K Sts. NE; ZC 18-07) – Application of Lean Development for map amendment 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). Representative: Samantha Mazo, Esq.

Hearing date: Nov. 8, 2018. [6C06]

Motion To recommend opposition
(carried 4-1)

Key Discussion Points:

1. The applicant asks the Zoning Commission to rezone four lots on the southeast corner of 2nd & K Sts. NE. The team presenting for the applicant included Samantha Mazo, Esq. and architect Sas Gharai.

2. The lots at issue are currently zoned PDR-1 (industrial). The applicant proposes to rezone the north half of the aggregated parcel to MU-4 (moderate-density mixed-use, i.e., commercial and residential) and the south half to MU-5A (more intensive medium-density mixed-use):
3. The test in map-amendment (re-zoning) cases is whether the proposed change is “not inconsistent with the Comprehensive Plan.” Because the Comp Plan has numerous different elements and two separate planning maps—the Future Land Use Map (FLUM) and the Generalized Policy Map (GPM)—this analysis has several factors.

4. A number of factors support the application. For example, the FLUM designates the site for “mixed use Low Density Commercial and Moderate Density Residential land uses.” Likewise, the NoMa Small Area Plan calls for “moderate to medium densities” on the site.

5. All in attendance agreed that the present industrial zoning makes no sense for the site, which is (like the entire block north of Parker St.) currently residential in character. However, PZE members expressed significant reservations about the proposed rezoning in light of the Comp Plan’s designation (in the GPM) of this area as a “Neighborhood Conservation Area.” The Comp Plan (10-A DCMR 223.4-.5) describes these areas as follows:

   a. Neighborhood Conservation areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated. Neighborhood Conservation Areas that are designated “PDR” on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided.

   b. The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map.

6. Although most of the block is already zoned MU-5A, that is not reflected at all in the existing built environment. The K St. side is an unbroken row of essentially identical two-story historic rowhouses with projecting bays. Parker Street’s north side consists almost entirely of very small flat-front two-story historic rowhouses. Although there are a few visible commercial uses—most notable, Indigo restaurant on the corner of 3rd & K—they occupy buildings whose street-facing form has not changed in a century. (Moreover, the current zoning of the majority of this block is not per se a relevant factor under the Comp Plan analysis.)

7. The proposed zones would allow new construction of 50’ (MU-4) to 65’ (MU-5A), as well as office use occupying floor area of 150% of the lot area.
8. A clear majority of the PZE opposed the application on the following grounds:

   a. The proposed zones are inconsistent with the standards in the GPM for Neighborhood Conservation Areas and would only increase the potential for the existing scale to be altered substantially.

   b. The application does not truly harmonize zoning on the block. It inexplicably leaves two lots immediately to the east (811 and 812) totally or partially zoned PDR-1.

   c. More intensive development on the west end of the square is likely to have significant adverse consequences for the local transportation network. As ANC 6C has repeatedly urged, traffic volume and speeds on K St. are far too high. Second Street, one lane in each direction, is already significantly overburdened owing to other development to the south and (lesser extent) to the north. And the 10’ east-west alley—which at its west end opened onto 2nd St. until the Council closed that portion in 1995—is poorly configured to provide access for the necessary loading and parking for any future 2nd St. project.

9. A neighbor (Larysa Kurylas, 911 2nd St. NE) expressed some concerns about the application, including a misstatement in the initial filing about the height of 911 2nd St. (It is 70’ tall, not 110’ as alleged on page 5).
Agenda Item #4: Discussion and Recommendations

Appeal of Station Townhouses LLC (701 2nd St. NE; BZA 19861) – Discussion of potential ANC 6C participation in appeal from Zoning Administrator's proposed revocation of the Certificate of Occupancy (based on repeated short-term rentals inconsistent with the C of O). Representative: Ivan Baron, Esq. Hearing date: Nov. 7, 2018. [6C04]

Motion  To recommend submitting a written statement (see below)
(carried 3-0, with two abstentions)

Key Discussion Points:

1. In June, DCRA issue a notice of intent to revoke Station House’s certificate of occupancy for allowing repeated residential rentals short than 30 days. (This practice is sometimes referred to as “hoteling.”)

2. Station House appealed, alleging inter alia that the party at fault was a corporate-housing company to which it had leased 26 long-term units. Station House argues that it played no role in the hoteling activity.

3. Online evidence paints a very different picture. The onsite Director of Operations responded, using an official Station House account, to numerous negative online reviews complaining about the adverse effects of the short-term rentals. In some cases, this Director acknowledged knowing of the corporate-housing company’s practices and explicitly condoned them. This was true even in a case where the complaining party made clear that her stay was only for 4 nights.

4. Long-term residents have also complained to the PZE Chair, in whose SMD the site lies. More than one has attested that the concierge desk on the first floor actively served as a check-in desks for short-term visitors, providing them welcome packets with elevator and room keys, etc.

5. Ivan Baron, in-house counsel for one of the companies that owns the property, conceded that the concierge desk had operated in this manner (and that at least one employee was fired as a result after DCRA issued the revocation notice). He also reported that of the 26 leases at issue, all but two have been terminated; the remaining two are dedicated solely to long-term rentals.

6. PZE members acknowledged Station House’s practices have improved since it was cited by DCRA. At the same time, they felt it important for the BZA to have complete and accurate information, and noted that Station House’s claims in its written appeal of ignorance/innocence are untruthful.

7. ANC 6C is automatically a party to the appeal, and need not request party status.

8. PZE members recommended taking no position on whether the appeal should be granted or denied, but also recommended submitting a written statement documenting the inaccuracies in Station House’s appeal.
Agenda Item #5: Discussion and Recommendations

Proposed rewrite of DCMR Title 12 (Construction Codes) – Comments due Oct. 28.

Motion  To recommend submitting comments (with letter to Council)  
(carried 5-0)

Key Discussion Points:

1. On Friday, September 28, DCRA published a 316-page rulemaking proposing to overhaul DCMR Title 12, which contains the Construction Codes regulating permit review and issuance; after-hours permits; and numerous related topics.

2. Because of the length of the proposed rulemaking—as well as the PZE’s October workload and the short time between Register publication and the PZE meeting—the committee considered only one aspect of the proposed regulations.

3. Under existing regulations (12-A DCMR § 103.5), ANC commissioners are exempt from having to pay fees to DCRA for research and copying related to FOIA requests:

   Public Access to Records. In accordance with procedures established by the code official, official records of the Department shall be available for public inspection at all appropriate times pursuant to the Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531 et seq. (2012 Repl.)). Pursuant to D.C. Official Code § 2-532 (2012 Repl.), the Department may collect a fee in accordance with 1 DCMR § 408 for researching and copying any requested documents, except that Advisory Neighborhood Commissioners shall not be required to pay this fee.

4. This language was imposed on DCRA by the Council in 2004 (D.C. Law 15-205, § 1223, 51 DCR 8441).

5. DCRA has a poor record when it comes to transparency. A statute passed by the Council requires DCRA to make all construction permit documents available online at no charge, but the agency has never done so. Trying to get permit drawings, certificates of occupancy, etc. is a major ordeal even for an ANC; individual citizens find that their document requests are simply ignored on a routine basis.

6. DCRA’s proposed changes to section 103.5 would give them another weapon to use against ANC commissioners. Instead of ignoring requests or refusing to produce documents, DCRA could start demanding payment for access to records that ANC commissioners can FOIA for free today.

7. The PZE voted unanimously to submit comments opposing this deletion, both because it is bad policy and because DCRA may not administratively delete language inserted into the regulation through Council legislation. The PZE also recommended sending a letter to the Council complaining of DCRA’s unlawful attempt.

8. After the PZE met, the Chair reviewed additional provisions of the rulemaking and noted several other objectionable changes (as well as a few improvements). Many of
these provisions touch upon issues ANC 6C has previously taken positions on, including after-hours permits (and the standard for issuance); the need for permits to display legal work days and hours; the need to require permit applicants to submit photographs of existing building exteriors; and the inadequacy of the 10-day limit on filing OAH appeals.

9. Appended to this report is a list of additional issues and the PZE Chair’s recommendations. The Chair proposes that ANC 6C also submit these comments to DCRA and flag them in the letter to the Council.
Section 105.1.3 (Authorized Work Hours)

Both the current regulation (section 105.1.3) and the new proposed regulation prohibit work on “legal holidays.” Unfortunately, the D.C. Official Code provides conflicting definitions for what qualifies as a legal holiday, and it is unclear which one applies to 12-A DCMR.


DC Code 28-2701, by contrast, defines these eleven days, plus certain other days (and half-days), as “holidays in the District for all purposes”:

- New Year’s Day, January 1; Dr. Martin Luther King, Jr.’s Birthday, the third Monday in January; Washington’s Birthday, the third Monday in February; District of Columbia Emancipation Day, April 16; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veteran’s Day, November 11; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25; every Saturday, after twelve o’clock noon; any day appointed by the President of the United States as a day of public feasting or thanksgiving; and the day of the inauguration of the President, in every fourth year….

(Amphasis added.)

A further problem is that under current DCRA practice, no information about permissible work days/hours appears on the face of a permit. Owners and workers are often unaware of the restrictions, and MPD officers are often unfamiliar with the rules and unwilling to take enforcement action (such as making arrests or issuing cease-and-desist orders to those performing work outside authorized hours).

Finally, the proposed new regulation would exempt certain concrete-pouring activity from the days/hours restrictions. This activity is invariably noisy, and therefore highly disruptive in residential areas or near residences. The current process continues to work well, with contractors typically receiving permission after engaging with the local ANC; a blanket exemption is unnecessary and a predictable source of future problems.

Recommendations:

1. Either list all holidays explicitly in the regulation or provide a cross-reference to the statutory definition (or other source) enumerating all relevant holidays.

2. Insert language at the end of this subsection requiring legal work days/hours to be displayed on the face of each permit, along with supplemental language, as follows:
Other than after-hours permits, all permits shall display the legal days and hours for performing construction activity, along with a list of legal holidays (or a concise URL to a website enumerating those holidays). This notice shall also state that the Metropolitan Police Department is authorized to enforce against work performed outside legal hours. All such text shall appear on the face of the permit in type at least as large as that showing the address of the property.

3. **Delete the blanket exemption for certain concrete-pouring activities.**
Section 105.4.1.1 (After-Hours Permits)

The proposed regulation modifies the current regulation (section 105.1.3) in several respects.

First, it requires ANC approval for the permit. While this is a step in the right direction, the timing of permit applications often does not allow for a full ANC vote. A more workable standard would be to require the support of the commissioner(s) for the affected single-member district(s) (or, where a seat is vacant, the support of the relevant ANC Chair or the Chair’s designee).

Second, approval would be necessary from any other ANC whose boundaries include property adjoining the work site, but “adjoining” is not defined. It is unclear, for example, whether work directly across a street dividing two ANCs would qualify.

Last, the new regulation would delete the current standard that after-hours work be necessary to prevent a threat to public safety, health, and welfare. That standard would be replaced with two separate exceptions, “emergency conditions” and “the public interest.” Neither term is defined, and each is so vague as to be a gaping loophole subject to abuse. (For example, if a contractor waits until the last minute to apply, is that an “emergency”?) These changes would effectively gut the current after-hours restrictions.

Recommendations:

1. Replace the requirement for full ANC approval with language requiring the support of the commissioner(s) for the affected single-member district(s) (or, where such a seat is vacant, the support of the relevant ANC Chair or the Chair’s designee).

2. Require additional approval from any ANC commissioner (as described in #1 above) whose SMD is within 200’ of the work site.

3. Retain the current “public safety, health, and welfare” test instead of adopting the vague and overbroad “emergency” and “public interest” exceptions.
Section 105.10.1 (Permits for Unsafe/Abandoned Premises)

The rulemaking proposes a new, more restrictive time frame for completion of permitted work at unsafe/abandoned/deteriorated properties. This is a welcome change.

Note that the language concerning extensions of such permits refers incorrectly to section 105.6.

Recommendation:

1. Correct the cross-reference for permit extensions from section 105.6 to section 105.11.
ANC 6C has observed repeated instances of applicants submitting fraudulent applications in which non-existent structures are depicted as an existing condition, or in which dimensions are materially falsified. (Such applicants then attempt to construct these structures, intending to circumvent lot-occupancy limits or other zoning restrictions.) A good example of such a fraudulent application is the one challenged by ANC 6C in BZA 19207, resulting in its revocation.

We have also observed numerous instances in which applicants fail to distinguish clearly between existing conditions and proposed work. DCRA reviewers have on multiple occasions approved plans despite such clear defects.

A requirement to provide elevation photographs would help prevent such abuses.

**Recommendation:**

1. At the end of proposed section 106.2.13(4) [concerning elevations], add the following text: “In addition, all applications proposing exterior alteration(s) or addition(s) shall include photographs clearly showing all existing elevations.”
Section 112.2 (Appeal of a Final Decision of the Code Official based on Alleged Violations of the Construction Codes)

Like current section 112.2.1, the proposed text of this section would essentially require any person—including an aggrieved owner of adjacent property—to file an OAH appeal within 10 business days.

This short time frame makes sense for appeals by a permit applicant, who possesses all the relevant information. However, it is wholly inadequate to protect the interests of an adjacent property owner, for several reasons:

- An aggrieved third party rarely receives complete drawings from a permit holder. This is especially true where relations are tense or hostile.

- Notwithstanding its statutory obligation to make construction permit drawings and other documents (including the full permit file) available to the public online at no cost, DCRA does not do so. (See 2016 opinion letter from DC Office of Open Government at https://www.open-dc.gov/sites/default/files/OOG%20002_1.29.16%20AO_Redacted.pdf finding DCRA “woefully out of compliance” with the mandate of D.C. Official Code § 2-536(a)(8A) & (b).)

- As a result, citizens must explicitly request documents from DCRA, a process that can take weeks or more to produce results.

- After finally receiving such documents, an adjacent owner necessarily requires additional time to review them (or retain the services of an architect or other licensed professional to do so).

Recommendations:

1. **Grant third parties 60 days to file OAH appeals.** This is consistent with the 60 days allotted for BZA appeals, which likewise often entail highly technical analysis of plans and drawings.

2. **Revise counterpart section 112.7 accordingly.** That provision allows for appeals to the Code Official within 10 days. Because it requires an appellant to submit “technical support,” far more than 10 days is needed to obtain the underlying records, analyze them, and prepare a responsive submission.