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

ANC 6C Commission Meeting: February 13, 2019

PZE Meeting Date: February 6, 2019 6:30 pm

Meeting Location: Northeast Library
7th & D Streets NE

Committee Attendees: Mark Eckenwiler (Chair), 6C04
Mary Albert
Bobbi Krengel
Bill Sisolak
Drury Tallant

Other Commissioners Present: Jay Adelstein, 6C03

Agenda Items


2. **918 7th St. NE (BZA 19928)** – Application of David Glaudemans, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E §§ 206.2 and 5203.3 from the rooftop architectural elements protections of Subtitle E § 206.1(a), to construct a third-story addition to an existing two-story attached principal dwelling unit in the RF-1 Zone at 918 7th Street NE (Square 857, Lot 848). Representative: Applicant/owner. Hearing date: Mar. 6, 2019. [6C05] (Case file)

3. **209 M St. NE/Uline Arena (BZA 19926)** – Application of VBR Brewing Corporation, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use regulations of Subtitle U § 802.1(b), to permit live performances in an eating and drinking establishment in the PDR-1 Zone at 209 M Street NE (Square 748, Lot 81). Representative: Cameron Raspet (founder, Red Bear Brewing). Hearing date: Feb. 27, 2019. [6C06] (Case file)

4. **2019 Council oversight hearings** – Discussion of proposed topics for ANC 6C testimony.

5. **Illegal construction by contractors at Verizon switching station (7th/Constitution)**
Agenda Item #1: Discussion and Recommendations

224 C St. NE (HPA 19-107) – Revised application of Martin Locraft (on behalf of owner James J. Hogan Jr.) for concept approval for a second-story garage addition. Representative: Martin Locraft. Hearing date: Feb. 28, 2019. [6C02]

Motion  To recommend support with one condition  
(carried 4-1)

Key Discussion Points:

1. The applicant (and architect V.W. Fowlkes) returned with a revised concept adding several new windows on the north, alley-facing elevation—and false windows on the eastern elevation—of the garage addition. It also modifies the garage door to a more historically sensitive wood-paneled roll-up door that reads as a swing-out double-gate.

2. PZE members noted the project’s significant visibility from 3rd St. and voted to recommend support contingent on the applicant using for the addition’s facades a darker, more subdued color than the proposed off-white. PZE members felt that a darker color would blend in more with the context and make the addition less visually prominent.
Agenda Item #2: Discussion and Recommendations

918 7th St. NE (BZA 19928) – Application of David Glaudemans, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E §§ 206.2 and 5203.3 from the rooftop architectural elements protections of Subtitle E § 206.1(a), to construct a third-story addition to an existing two-story attached principal dwelling unit in the RF-1 Zone at 918 7th Street NE (Square 857, Lot 848). Representative: Applicant/owner. Hearing date: Mar. 6, 2019. [6C05]

Motion To recommend support
(carried 5-0)

Key Discussion Points:

1. The applicant proposes to remove an existing roof overhang on the front façade and construct a new third story with a mansard roof and dormer.

2. PZE members noted that the overhang in question is similar to those seen elsewhere, as in past applications from owners on Abbey Place. What sets this application is that unlike Abbey Place—where there is marked consistency and a distinctive “character, scale, and pattern” to the streetscape, as referenced in the special-exception standard—the subject property sits next to only one twin building with the same façade design. The remainder of the block displays a variety of styles.

3. As a result, removal of the protected architectural element in this case would not have a substantial adverse impact on “character, scale, and pattern” under section 5203.3.

4. PZE members also offered some design suggestions for the project, but these remarks fall outside the scope of the zoning standards and do not form any part of the motion to support, which passed unanimously without any conditions.
Agenda Item #3: Discussion and Recommendations

209 M St. NE/Uline Arena (BZA 19926) – Application of VBR Brewing Corporation, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use regulations of Subtitle U § 802.1(b), to permit live performances in an eating and drinking establishment in the PDR-1 Zone at 209 M Street NE (Square 748, Lot 81). Representative: Cameron Raspet (founder, Red Bear Brewing). Hearing date: Feb. 27, 2019. [6C06]

Motion  To recommend support, with relief limited to a five-year term
(carried 5-0)

Key Discussion Points:

1. The applicant seeks permission to host live entertainment in this brewery space, which sits in the historic Uline Ice House and faces west onto the plaza in front of REI.

2. Although the property sits across 3rd St. from a residential zone, PZE members concluded that it does not “abut” a residential zone (which would disqualify the request for special-exception relief and require a variance instead).

3. Members also felt comfortable that under the present circumstances, the interior space—which has soundproofing, and for which the entrance faces away from 3rd St.—would not create undesirable conditions if the proposed use were authorized.

4. However, PZE members noted that the immediate environs will undergo major changes in the next few years, as several major projects with residential components will be constructed, including
   a. Central Armature/1200 3rd St., part of which lies directly across M St.
   b. 300 M St., on the opposite corner of the nearby intersection at 3rd, and
   c. 301-331 N St., which has a substantial presence along 3rd St. and has already broken ground.

5. Under 11-U DCMR 802.1(b)(5), BZA may impose protections such as requirements for soundproofing, restrictions on hours, or a limited duration for the special exception. Given the significant changes coming to the immediate locale, PZE members agreed that it would make sense to impose a five-year term, thus allowing for re-assessment under the new conditions. The applicant did not object to this recommendation.
Agenda Item #4: Discussion and Recommendations

2019 Council oversight hearings – Discussion of proposed topics for ANC 6C testimony.

Motions  See below  
(all motions carried 5-0)

Key Discussion Points:

1. The PZE chair discussed the Feb. 6 Council roundtable on the question of which DCRA issues the Council should focus on in the next two years. Because that roundtable was not announced until after the January 2019 meeting of ANC 6C, the PZE chair gave testimony in his individual capacity. That testimony, attached (sans exhibits) to this report, closely mirrored ANC 6C’s written testimony on the same question in 2017.

2. The first motion was to recommend that ANC 6C adopt the PZE chair’s testimony, with minor revisions, as its own. (The roundtable record is open until Feb. 20.) The motion also recommended that the Feb. 6 testimony serve as a template for DCRA oversight testimony on Feb. 27. The motion passed.

3. The second motion was to recommend that ANC 6C authorize testimony at the DCOZ oversight hearing on Feb. 28. The PZE noted that in a case last year where ANC 6C opposed an application, BZA considered and voted on that case even though the PZE chair—the authorized witness—had advised the BZA Secretary of his unavailability during a one-hour period that afternoon. The PZE chair noted that the presiding officer (BZA’s vice-chair) could instead have moved the case to later in the afternoon or held it open, and then returned to it later that afternoon.

4. PZE members, agreeing that the BZA action failed to adequately respect the ANC’s wish to provide testimony, voted to support the motion.
Agenda Item #5: Discussion and Recommendations

Illegal construction by contractors at Verizon switching station (7th/Constitution)

Motion  To recommend that the ANC demand the appearance of a Verizon representative at a future PZE or ANC meeting
(carried 5-0)

Key Discussion Points:

1. Mr. Sisolak brought to the PZE’s attention a recent episode in which major construction, including the removal of portions of an exterior wall, was performed at this Verizon site with no corresponding construction permit or HPRB review/approval. A SWO was imposed after the project was substantially complete.

2. Members noted that the site is the Historic District and that the switching station is undoubtedly a contributing structure protected by the Historic Preservation Act. They also noted longstanding misuse by Verizon employees and/or contractors of the so-parking zone on 7th to drive over the curb (and sidewalk) to a parking pad on the site.

3. PZE members also discussed the need to refer the misused loading zone to 6C’s TPS for possible action.
Mr. Chairman and Members of the Committee,

Two years ago, the Committee posed the same question under consideration this morning: what DCRA issues should the Committee pursue?

ANC 6C provided written and in-person testimony identifying seven areas meriting the Committee’s attention. (A copy is appended as Attachment A.) ANC 6C was unable to consider the question this year owing to the timing of the notice for today’s roundtable. My testimony today reflects my individual views, and—until we meet on February 13 to vote—not necessarily those of ANC 6C.

Of the seven areas we identified in 2017, six remain in urgent need of Council scrutiny.

1. Public access to construction permit documents
2. Construction permit application review
3. Issuance of after-hours permits
4. Office of the Zoning Administrator
5. Vacant building enforcement
6. Stop-work orders and collection of associated fines

1. Public access to construction permit documents

As you’ve heard me say countless times, District FOIA law requires DCRA to post all construction permit application documents—plans, drawings, etc.—on a website for public access at no cost.\(^1\) DCRA is not now and never has been compliant with this law. After we took our concerns to the Office of Open Government in 2015, that office issued a scathing letter\(^2\) on January 29, 2016 stating that “DCRA is woefully out of compliance with FOIA” and criticizing DCRA’s practice of forcing residents to pay an outside service to make paper copies of such records.

\(^1\) See D.C. Official Code § 2-536(a)(8A).

\(^2\) A copy of that letter can be viewed online at [http://www.open-dc.gov/sites/default/files/OOG%2002_1.29.16%20AO_Redacted.pdf](http://www.open-dc.gov/sites/default/files/OOG%2002_1.29.16%20AO_Redacted.pdf).
In 2016, the Council appropriated $2.98 million for DCRA to create the required website, but a solution is still not in place. As ANC 6C explained in its March 2018 testimony for DCRA budget oversight, the current “prototype” system, e-Records,

- offers only spotty coverage of the universe of current permit documents;
- is not updated promptly, meaning that residents lack timely access to the few documents available; and
- uses a proprietary viewer that does not allow document downloads or printing.

Because the current regulations give an adjacent property owner only 10 days to file an appeal with OAH after a permit is issued, the practical result is that homeowners are routinely denied the opportunity to challenge improper permits that may result in serious damage to their homes. Appeals to BZA may be filed as much as 60 days later, but here, too, e-Records does not offer timely, reliable access to the documents necessary for such appeals.

Two years ago, ANC 6C suggested that the Council amend the construction code to give residents more time to appeal permits to OAH in view of the difficulty of obtaining relevant records. That recommendation remains a sound one.

In addition, the Council should ask the Auditor to investigate how the $2.98 million given DCRA starting in FY17 was used and why the promised system—which DCRA indicated could be created in 24 months—does not exist.

2. **Construction permit application review**

DCRA continues to approve permits on the basis of facially deficient application documents. In 2018 alone, ANC 6C

- filed a BZA appeal (19813) for a permit where the drawings not only contained numerous false dimensions for the existing structures, but also failed to distinguish between existing conditions and the proposed work. Without such clear distinctions—which are required by the regulations—DCRA is simply incapable of assessing whether a project complies with the zoning regulations. (DCRA revoked the permit in question after the filing of the BZA appeal.)

- identified a certificate of occupancy issued in clear error by DCRA. After substantial effort by ANC 6C documenting the obvious noncompliance with important provisions of the zoning regulations, DCRA relented and revoked that C of O.

The Council should explore the reasons for these recurring failures.

---

3 See 12A DCMR § 112.2.1.

4 See 12A DCMR § 106.1.12.
As ANC 6C has pointed out in years past, DCRA’s lax permit review not only tolerates but affirmatively encourages unscrupulous actors. The potential rewards for filing an incomplete or facially inadequate application—both in terms of lowered compliance costs and in terms of the ability to build illegally large structures—far outweigh any potential downside.

3. **Issuance of after-hours permits**

The construction code imposes stringent limits on when overnight or Sunday work may be conducted in or near residential districts, but DCRA has repeatedly ignored those restrictions to the detriment of residents in ANC 6C and elsewhere. Sometimes DCRA ignores an applicant’s false statement about whether the work is within 500’ of a residential zone; at other times, DCRA improperly issues permits for noisy construction work throughout the night for several weeks, severely disrupting residents’ ability to sleep.

ANC 6C wrote to the Council in September 2017 noting these problems and urging the Council to adopt legislation narrowing and clarifying the standard for after-hours permit approval. Although DCRA has a pending a rulemaking to revamp the Construction Codes, the Council should not await the outcome of that potentially lengthy process, but instead act to address this urgent issue.

4. **Office of the Zoning Administrator**

The Zoning Administrator plays a critical gatekeeper role: he reviews building permit applications to ensure that they comply with the zoning regulations, and where necessary withholds approval until an applicant obtains required relief from the BZA or Zoning Commission. He also oversees enforcement against work performed in violation of the zoning regulations (either without or inconsistent with issued permits). When this system breaks down, illegal work often avoids public scrutiny and is allowed to remain in place, to the detriment of neighbors and others in the community.

Our repeated experience has been that Zoning Administrator Matt LeGrant ignores obvious zoning problems even when they are brought directly to his attention, and that at times his interpretations of the regulations are arbitrary, capricious, and inconsistent over time. ANC 6C’s testimony over the past three years documents repeated instances of this dereliction, and I will not recite them again here. Suffice it to say that since November 2015, ANC 6C has filed four different BZA appeals; in each one, the defective permit was revoked, surrendered, or revised in acknowledgment of its noncompliance.

---

5. See 12A DCMR § 105.1.3.

6. See Attachment B.

7. As noted in section 1 above, DCRA’s policy of making permit application documents largely inaccessible to the public—in clear violation of District law—substantially hinders outside review of such errors.
More disturbingly, Mr. LeGrant gave false testimony under oath before the BZA last fall on an important administrative issue (i.e., when DCRA deems an application “accepted as complete,” an important requirement under several grandfathering provisions in the zoning regulations). This flagrant dishonesty on the part of a public official is completely unacceptable.

The Council should closely examine not only the work of this office, but also the need to require the ZA to be a licensed professional (such as an architect or attorney). In our comments on 2018 Department of Buildings Establishment Act, ANC 6C made specific recommendations on this issue.8

5. **Vacant building enforcement**

As ANC 6C testified before the Committee at the fall 2017 roundtable in the wake of the Auditor’s report, ANC 6C’s experience is that DCRA’s Vacant Building Enforcement Unit is slow to act and unresponsive to requests, even those from ANC commissioners that include detailed information (such as photos, etc.) about blighted properties. I urge the Committee to continue aggressive oversight of VBEU so residents see meaningful action to address eyesore properties across the District.

6. **Stop-work orders and collection of associated fines**

In August 2017, ANC 6C wrote the following in a letter to the Chairman:

> [O]ne question meriting further attention is whether DCRA makes full and consistent use of the fine schedules for construction and housing violations, both in terms of the initial amount in the notice of violation and with respect to the sums ultimately collected. Although the regulations have an escalating schedule of fines for repeat violators—see 16 DCMR § 3201—our sense is that higher fines are rarely (if ever) imposed. Worse, even when DCRA imposes fines, it appears that they frequently forgive some or all of the fine amount.

The Committee should look into this issue to determine whether the laws are being applied as written, and whether DCRA’s practices adequately deter future violations. Our sense is that they do not.

* * *

Thank you for the opportunity to testify. I welcome any follow-up questions the Committee may have.

---

8 “The [Zoning Administrator] 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.” Testimony of ANC 6C (appended as Attachment C).