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

ANC 6C Commission Meeting: March 13, 2019

PZE Meeting Date: March 6, 2019 6:30 pm
Meeting Location: Northeast Library
7th & D Streets NE
Committee Attendees: Mark Eckenwiler (Chair), 6C04
Mary Albert
Joel Kelty, 6C05
Bobbi Krengel
Lauren Oswalt
Bill Sisolak
Drury Tallant
Other Commissioners Present: Karen Wirt, 6C02 (6C Chair)
Jay Adelstein, 6C03
Christine Healey, 6C01

Agenda Items

1. **120 7th St. NE** – Discussion of recent illegal construction activity at Verizon facility. Representatives: Mario Acosta-Velez (Director, State Government Affairs), Monica Burgess (Senior Project Manager, Operations), and Ron Marx. [6C01]

2. **224 C St. NE (BZA 19956)** – Application of James J. Hogan, Jr., pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle F § 5201 from the lot occupancy requirements of Subtitle F § 504.1, to permit a second floor addition to an existing accessory structure in the RA-7 Zone at premises 224 C Street NE (Square 756, Lot 804). Representative: Martin Locraft. Hearing date: Mar. 27, 2019. [6C02] (Case file)

3. **429 5th St. NE (HPA 19-214)** – Application of Jorge Euceda for concept approval for three-story rear addition and one-story rooftop addition. Representative: Carlos Piana (assistant to Scott Sterl, licensed architect). Hearing date: Mar. 28, 2019. [6C03] (Case file)

4. **707 H St. NE** – Discussion of potential BZA appeal from the January 22 issuance of certificate of occupancy CO1901156 in apparent violation of the maximum 1.5 FAR in the NC-16 zone. [6C05]

5. **2019 Council oversight hearings** – Discussion of further topics for ANC 6C testimony.
Agenda Item #1: Discussion and Recommendations

120 7th St. NE – Discussion of recent illegal construction activity at Verizon facility. Representatives: Mario Acosta-Velez (Director, State Government Affairs), Monica Burgess (Senior Project Manager, Operations), and Ron Marx. [6C01]

Motion To recommend the ANC actions described below (carried 7-0)

Key Discussion Points:

1. As discussed in the February PZE report, Verizon engaged in significant construction work at its 7th St. facility in January 2019 without proper permits. In addition to enforcement action taken by DDOT for public-space violations—discussion of which was deferred to the TPS Committee meeting—DCRA issued a stop-work order on or about January 30. A final permit for the work performed was issued by DCRA on February 28.

2. Verizon’s representatives failed to offer any satisfactory excuse for performance of the illegal work. Monica Burgess stated (correctly) that the application had already cleared mechanical review (on Jan. 15); however, what matters is not approval in one discipline, but instead issuance of a final permit, rendering this excuse inadequate.

3. PZE members posed numerous questions to Verizon, including about the permit application’s compliance with the zoning regulations. Commissioner Kelty identified a possible concern relating to the minimal setback of a new rooftop mechanical unit from the edge of the building. Other members focused on the long-term noise impacts of the new cooling equipment.

4. In addition, the materials provided by Verizon included no photographs of the building or its surroundings. Such photos are required to be included in a permit application for work in a historic district, per 10-C DCMR § 309.

5. The PZE motion recommended that the ANC
   a. ask Verizon to identify a point of contact who will engage with nearby residents to discuss and seek to resolved noise concerns; and
   b. send a letter to HPO asking why the permit received HPO approval despite the apparent lack of photographs.
Agenda Item #2: Discussion and Recommendations

224 C St. NE (BZA 19956) – Application of James J. Hogan, Jr., pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle F § 5201 from the lot occupancy requirements of Subtitle F § 504.1, to permit a second floor addition to an existing accessory structure in the RA-7 Zone at premises 224 C Street NE (Square 756, Lot 804). Representative: Martin Locraft. Hearing date: Mar. 27, 2019. [6C02]

Motion  To recommend support, but with a caveat (see below) (carried 5-2)

Key Discussion Points:

1. This project previously came to the ANC for HPRB review. The ANC supported it (on the condition that a darker material be used for the façade), and HPRB recently approved the concept.

2. In this BZA case, the applicant seeks to increase the lot occupancy from the existing 62.8%—already nonconforming—to 64.8%. The increase would be attributable to the projecting balcony, facing into the rear yard, proposed for the south elevation of the garage’s new second story.

3. Two neighbors—Doris Blackman and Minoo Rouhanian—spoke in opposition, focusing largely on the applicant’s alleged lack of engagement with neighbors and the partial obstruction of views of the rear of St. Joseph’s Church as seen from the properties fronting on 3rd St.

4. Both the PZE chair and 6C Chairman Wirt have received numerous reports that the owners are not occupying the property, but instead using it for business purposes in violation of the rules applicable in this residential (RA-7) zone. The PZE chair has confirmed that the co-owners are partners in a business, and at least one is married to a different person. Moreover, the named applicant (Mr. Hogan) confirmed in email that the property is not his primary residence, meaning that he is ineligible for the narrow “home occupation” exception to the prohibition on commercial activity. PZE members also noted misleading statements in the BZA application concerning the intended use of the property.

5. Accordingly, the PZE chair cautioned the applicant’s representative that the ANC is aware of these issues and will not hesitate to pursue them.

6. At the same time, a majority of the PZE felt that any violations in this regard are unrelated to the minimal relief sought, which is very similar to other applications in past years supported by the ANC.

7. Accordingly, the PZE voted to recommend support for the application, but with the proviso that the ANC call the BZA’s attention to the concerns above, and especially to the misleading statements in the application. The PZE members voting in opposition did not state their reasons; the chair believes that they had concerns about supporting the application in light of the applicant’s unclean hands.
8. **Post-PZE meeting:** Late on the afternoon of Tuesday, March 12, the applicant’s representative wrote that the applicant has “decided to accede to the neighbors' concerns and forgo the 2nd story addition at 224 C Street.” The PZE chair notes that the applicant has not yet formally withdrawn the BZA application and recommends that the ANC take up the matter unless that takes place prior to our meeting. Note that the ANC can always withhold a letter intended for the BZA if the applicant files a timely withdrawal after our vote but before the BZA hearing.
Agenda Item #3: Discussion and Recommendations

429 5th St. NE (HPA 19-214) – Application of Jorge Euceda for concept approval for three-story rear addition and one-story rooftop addition. Representative: Carlos Piana (assistant to Scott Sterl, licensed architect). Hearing date: Mar. 28, 2019. [6C03]

Motion  To recommend that the ANC make requests of HPO as described below
(carried 7-0)

Key Discussion Points:

1. The applicant proposes to construct a new rear addition, as well as a partial third story on the rear half of the existing two-story rowhouse.

2. PZE members stated a number of concerns about this concept proposal, including defective sightline drawings (using the bay cornice and not the main façade); unsightly cladding on the front of the rooftop addition; adequacy of notice to neighbors (and the brief time between submission of the application and review by the PZE); and potential issues with water ponding on the roof and damaging either this property or the taller one next door.

3. Accordingly, the PZE voted to recommend that the ANC request a one-month continuance of the Board’s consideration of this case, along with asking HPO to require the applicant to install a rooftop mockup prior to the ANC’s April meeting cycle. Commissioner Adelstein, in whose SMD this property sits, concurred with these suggestions.

4. The PZE also encouraged the applicant to consider its concerns and prepare revised drawings for next month.

5. Post-PZE meeting: Because HPO does not require a full ANC vote for postponement, the PZE chair made the requests for delay and installation of a mockup. HPO staff agreed, so the ANC need not take action this month.
Agenda Item #4: Discussion and Recommendations

707 H St. NE – Discussion of potential BZA appeal from the January 22 issuance of certificate of occupancy CO1901156 in apparent violation of the maximum 1.5 FAR in the NC-16 zone. [6C05]

Motions To recommend that the ANC pursue a BZA appeal (carried 7-0)

Key Discussion Points:

1. This involves the site of the former Addis Restaurant, for which there is a new ABRA application. The applicant was invited to the PZE meeting but did not appear.

2. Last year, Addis submitted a substantial-change application for its liquor license. In reviewing this, the PZE chair and Chairman Wirt—handling that matter during the 6C05 vacancy—became concerned that the application sought permission to use more of the space than was allowed under zoning.

3. On further investigation, the PZE chair discovered that the Zoning Administrator had issued a Certificate of Occupancy (COO) that appeared to allow commercial use of floor area exceeding the maximum 1.5 FAR for the relevant zone (NC-16). After insistent pressure, the ZA moved in November 2018 to revoke the COO and two associated construction permits.

4. While preparing DCRA oversight testimony last month, the PZE chair found that DCRA had issued a new, seemingly identical COO for the same location on Jan. 22, 2019. At the time of the PZE meeting, DCRA had not produced copies of the COO application; however, the terms of the COO—authorizing use of the third floor for a restaurant—and the new tenant’s ABRA request for a “summer garden” (here, a roof deck) raised at least two separate issues:

   a. the same FAR issue as with the prior COO; and

   b. a violation of the requirement in the zoning regulations that a restaurant obtain a special exception for any rooftop deck.

5. On the day of the PZE meeting, the ZA sent an email stating, “[m]y office is working with the Office of General Counsel to issue a Notice to Revoke the recent COO” and “[m]y office will review any future applications for rooftop use, and, if a new rooftop deck is proposed for dining activity, we will require [as you have noted] the applicant to seek BZA Special Exception.”

6. However, DCRA had not issued a Notice to Revoke as of the PZE meeting. Any appeal must be filed no later than 60 days from Jan. 22, the date of COO issuance. (Owing to the 60th day falling on a Saturday, the deadline is Monday, March 25.)
Agenda Item #5: Discussion and Recommendations

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

Motion  To recommend that the ANC authorize further DCRA oversight testimony on three specific issues (described below)  
(carried 7-0)

Key Discussion Points:

1. The PZE chair proposed three topics for the upcoming second-round DCRA oversight hearing, set for March 27.

2. The first topic relates to stop-work orders (SWOs) and DCRA enforcement. Last year, a judge at OAH issued two opinions requiring DCRA to lift stop-work orders even when the fine for the underlying violation(s) had not been paid. The result is that so long as the violation itself is cured (e.g., by getting a new or revised permit for unpermitted or beyond-scope work), DCRA can’t exert further leverage over the violator.

3. The PZE recommends that the ANC ask the Council to look into this & consider curative legislation. The deterrents against illegal work are too low and too few already, and this makes a bad situation worse. On those occasions when DCRA is willing to enforce, there should be teeth behind that.

4. The second topic relates to 707 H St. NE, the previous agenda item. Apart from the BZA appeal itself, the PZE recommends drawing the Council’s attention once again to the mysterious issuance of the recent COO given the revocation of an identical one less than two months earlier. The matter bears further investigation, and not just constant after-the-fact correction by the ANC.

5. Finally, there are several areas in which the ZA has adopted rules of interpretation that supplement—and at times seem to contradict—the text of the zoning regulations. Unfortunately, these rules are not published in any coherent, organized fashion. Although they appear at times in ZA determination letters, those letters a) are not text-searchable and b) sometimes provide contradictory and irreconcilable interpretations.

6. Accordingly, the PZE recommends that the ANC offer testimony urging the Council to press DCRA to publish a compilation of such interpretive rules. Doing so would make for a level playing field, with all parties able to ascertain DCRA’s official views instead of the rules remaining a matter of folklore and conjecture. This would promote greater consistency and transparency in DCRA’s practices.