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

ANC 6C Commission Meeting: Oct. 10, 2019

PZE Meeting Date: Oct. 2, 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
Dru Tallant
Trish Thomson

Other Commissioners Present: Christine Healey, 6C01

Agenda Items

1. **19 4th St. (rear) NE (BZA 19618A)** – Application of Hillsdale College, pursuant to 11 DCMR Subtitle Y § 705.1, for a two-year time extension of BZA Order No. 19618 approving a special exception under Subtitle U § 601.1(c), to permit a one-family dwelling unit in an existing structure on an alley lot in the RF-3 zone at premises 19 4th Street Rear NE (Square 816, Lot 18). Representative: TBD. No hearing; set for decision on Oct. 16, 2019. [6C01] (Case file)


3. **Zoning regulation amendments: nonconforming structures (ZC 19-14)** – Proposed text amendments to Subtitles C, D, E and X of Title 11, DCMR to clarify what relief is required and available for additions to a nonconforming structure. Hearing date: Nov. 7, 2019. (Case file)

4. **Council hearing on ANC-related legislation** – On Wednesday, October 16th, 2019, Councilmember Robert C. White Jr., Chair of the Committee on Facilities and Procurement, will hold a public hearing on two pending bills:
   a. B23-0245 (Advisory Neighborhood Commissions Participation in Planning Amendment Act of 2019), the stated purpose of which is to ensure that Advisory Neighborhood Commissions are provided adequate notice and an opportunity to provide recommendations on comprehensive plans, including amendments to, or elements of, a
comprehensive plan prior to the transmission of such plans to the Council for approval; and

b. B23-0308 (Development Expertise for ANC’s Amendment Act of 2019), the stated purpose of which is to establish a Department of Zoning, Planning and Development in the Office of Advisory Neighborhood Commissions to assist Commissioners in Planned Unit Development negotiations and residential housing development and maximize the amount of affordable housing units in residential Planned Unit Development projects and to include Planned Unit Developments in the definition of economic development incentives for the purpose of tracking community benefits and affordable housing units delivered.

(Hearing notice; text of B23-0245 & B23-0308)
Agenda Item #1: Discussion and Recommendations

19 4th St. (rear) NE (BZA 19618A) – Application of Hillsdale College, pursuant to 11 DCMR Subtitle Y § 705.1, for a two-year time extension of BZA Order No. 19618 approving a special exception under Subtitle U § 601.1(c), to permit a one-family dwelling unit in an existing structure on an alley lot in the RF-3 zone at premises 19 4th Street Rear NE (Square 816, Lot 18). Representative: Zach Williams, Esq. No hearing; set for decision on Oct. 16, 2019. [6C01]

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

Key Discussion Points:

1. The applicant purchased this property a year ago from Gillette Wing, the previous owner who sought and obtained BZA relief (with the support of ANC 6C) in 2017.

2. Because the 2017 order expires in December, the applicant seeks an extension of the allowable two years. When pressed by PZE members about the need for an extension given that a year has passed since the property changed hands, the owner pointed to two factors:
   a. Complications and delays in dealings with utilities, especially DC Water; and
   b. structural issues with the building, which the applicant discussed with HPO staff as recently as September 2019.

3. Commissioner Healey noted that the applicant has engaged in good-faith discussions with her about the project and expressed her support. A nearby neighbor, who purchased an adjacent property since issuance of the BZA order, expressed concern and upset over several issues that were fully addressed in the prior BZA proceeding.
Agenda Item #2: Discussion and Recommendations


Motion  To recommend submitting a letter/testimony (see below)  
(carried 4-1-1)

Key Discussion Points:

1. In 2018, the DC Council passed legislation creating a regulatory framework around short-term rentals (STRs) such as Airbnb. The Council legislation
   
   a. prohibits an owner (“host”) from having onsite STRs except for a homestead-deduction eligible property occupied by the host as his/her primary residence;
   
   b. allows a host to rent any part of the property—either in the host’s unit or in another unit on the property—while the host is physically present;
   
   c. allows a maximum occupancy of the greater of 8 persons or 2 persons per bedroom; and
   
   d. allows a host to rent for STRs for up to 90 days when the host is absent (with an option to petition for longer periods in cases involving employment overseas or medical care elsewhere)

2. Although that legislation became law in 2019, it has no practical effect because only the Zoning Commission (ZC) has legal authority to establish such use-related restrictions.

3. The draft amendments put forward for consideration by the Office of Planning (OP) do not alter any of the rules established by the Council, nor do they replicate them in the zoning regulations. Instead, the Council legislation is incorporated into the regulations via a cross-reference in the definitions. Doing so would allow the Council to modify the substantive rules without review by the ZC.

4. PZE members felt strongly that OP’s recommendations would amount to a near-total abdication of authority in this area by the ZC. PZE members believed instead that the ZC should embed substantive standards in the regulations based on its independent judgment.

5. In addition, the PZE felt that STRs have substantial adverse effects on housing costs, as the opportunity to extract maximum value from a property drives up both sale prices and rental housing costs.

6. Accordingly, the PZE recommended that the ZC adopt more stringent rules, including
a. limiting STRs to the host’s own dwelling unit (and not to additional units on the property);
b. restricting occupancy to the lesser of 6 persons or 2 persons/bedroom; and
c. restricting “owner-absent” STRs to 60 days (with an option to seek additional time per the Council legislation exceptions).
Agenda Item #3: Discussion and Recommendations

Zoning regulation amendments: nonconforming structures (ZC 19-14) – Proposed text amendments to Subtitles C, D, E and X of Title 11, DCMR to clarify what relief is required and available for additions to a nonconforming structure. Hearing date: Nov. 7, 2019.

Motion  To recommend submitting a letter/testimony  
(carried 6-0)

Key Discussion Points:

1. This proposed rulemaking seeks to make a number of modest technical revisions to the zoning regulations concerning special exceptions under section E 5201. The PZE has only a handful of technical comments on the proposed text, including
   a. noting that proposed E 5201.1 should, but does not as drafted, also cover a new building on a regulation-size lot;
   b. striking “lot occupancy” in new E 5201.6.
   c. making these same corrections to the counterpart provisions in Subtitles D (Residential zones) and F (Residential apartment zones).

2. However, the PZE noted that the rulemaking fails to address numerous known deficiencies in sections E 206 (relating to upper-story additions) and E 5203 (special exceptions for from relief from height restrictions, including those of E 206). The PZE considered both of these sections at its January 2018 meeting, electing to await a proposal from OP instead of having the ANC petition for changes on its own. The PZE chair was in close contact with OP both before and after this meeting, making the omission from the current rulemaking especially perplexing.

3. As indicated in the attached redlines, the PZE recommends several changes to E 206 & E 5203:
   a. Clarify the meaning of E 206.1 by inserting additional language currently found only in the section title;
   b. Delete section 206.2 allowing for special-exception relief from this section. As noted below, relief today under E 5203 requires no showing & has no stated criteria; variance relief would still be available.
   c. Add a new E 206.2 treating appropriate in-kind replacement of cornices, turrets, etc. (protected from removal under E 206.1) as not being a prohibited removal/significant alteration.
   d. Close the loophole in E 5203 that allows new buildings over 35’, but not upper-floor additions, to interfere with adjacent solar systems and/or chimneys.
e. Strike the portion of E 5203 that allows the BZA to arbitrarily waive any two requirements. (There is no parallel waiver provision in E 5201.)

f. Strike E 5203.3, providing for special-exception relief from E 206. This subsection is cumbersome & unreadable; cross-refers to a non-existent subsection; and establishes no criteria/standards for granting such relief.
Agenda Item #4: Discussion and Recommendations

Council hearing on ANC-related legislation – On Wednesday, October 16th, 2019, Councilmember Robert C. White Jr., Chair of the Committee on Facilities and Procurement, will hold a public hearing on two pending bills:

a. B23-0245 (Advisory Neighborhood Commissions Participation in Planning Amendment Act of 2019), the stated purpose of which is to ensure that Advisory Neighborhood Commissions are provided adequate notice and an opportunity to provide recommendations on comprehensive plans, including amendments to, or elements of, a comprehensive plan prior to the transmission of such plans to the Council for approval; and

b. B23-0308 (Development Expertise for ANCs Amendment Act of 2019), the stated purpose of which is to establish a Department of Zoning, Planning and Development in the Office of Advisory Neighborhood Commissions to assist Commissioners in Planned Unit Development negotiations and residential housing development and maximize the amount of affordable housing units in residential Planned Unit Development projects and to include Planned Unit Developments in the definition of economic development incentives for the purpose of tracking community benefits and affordable housing units delivered.

Motion To recommend submitting a letter/testimony (see below)
(carried 6-0)

Key Discussion Points:

1. B23-0245 would add Comprehensive Plan amendments to the list of agency actions for which an ANC must receive advance notice. The PZE recommends supporting this bill.

2. B23-0308 would add a unit within OANC to advise ANCs on zoning matters, gather community input, assist in the negotiation of PUD benefits, etc. PZE members felt that the bill is well intended, bit noted that PUDs are increasingly rare; that filling such a position(s) with qualified, competent staff might prove exceedingly difficult; that existing District statutory obligations to support ANCs (such as with free office space) are not carried out; and that other types of central support (such as for acquisition of audio and/or video equipment for use in ANC meetings) are urgently needed.
206 ROOF TOP OR UPPER FLOOR ADDITIONS

206.1 In an RF zone district, the following provisions shall apply to any rooftop or upper-floor addition:

(a) A rooftop architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the rooftop architectural elements shall not include identified rooftop architectural elements facing the structure’s rear lot line. For all other lots, the rooftop architectural elements shall include identified rooftop architectural elements on all sides of the structure;

(b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; and

(c) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph, the following quoted phrases shall have the associated meanings:

(1) “Significantly interfere” shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator; and

(2) “Existing solar energy system” shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or an application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:

(A) Legally permitted, installed, and operating; or

(B) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not
including grid interconnection delays caused solely by a utility company connecting to the solar energy system.

**206.2** In an RF zone district, relief from the design requirements of Subtitle E § 206.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X Chapter 9, subject to the conditions of Subtitle E § 5203.3.

**206.2** For purposes of section 206.1(a), a roof top architectural element shall not be deemed to be “removed or significantly altered” if

(a) the original element is so substantially eroded or damaged that repair is not economically feasible, and

(b) a replacement element with the same dimensions, profile, and appearance, and made of the same or substantially similar materials, is installed within thirty (30) days of removal.

SOURCE: Final Rulemaking published at 63 DCR 2447, 2887 (March 4, 2016 – Part 2); as amended by Final Rulemaking published at 63 DCR 10620 (August 19, 2016); as amended by Final Rulemaking published at 64 DCR 4055 (April 28, 2017); as amended by Final Rulemaking published at 64 DCR 8596 (September 1, 2017).
5203 BUILDING HEIGHT

5203.1 The Board of Zoning Adjustment may grant as a special exception a maximum building height for a principal residential building and any additions thereto of forty feet (40 ft.) subject to the following conditions:

(a) The building is not on an alley lot;

(b) Any new principal building or addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;

(c) As described in Subtitle E § 206.1(c), any new principal building or addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system; Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator;

(d) A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure’s rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure; A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;

(e) Any new principal building or addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(1) The light and air available to neighboring properties shall not be unduly affected;

(2) The privacy of use and enjoyment of neighboring properties shall
(3) The conversion and any associated new principal building or additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley; and

(f) In demonstrating compliance with Subtitle E § 5203.1(e) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new principal building or addition to adjacent buildings and views from public ways.

5203.2 The Board of Zoning Adjustment may modify or waive not more than two (2) of the requirements specified in Subtitle E §§ 5203.1(a) through (f) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle E § 5203.1(e).

5203.3 A special exception to the requirements of Subtitle E § 206 shall be subject to the conditions of Subtitle E § 5203.1(b), (c), and (d). If relief is granted from compliance with Subtitle E § 206.1(b) or (c), the special exception shall not be conditioned upon compliance with that same requirement as stated in Subtitle E § 5203.1(b)(3) and (4).

5203.4 The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

SOURCE: Final Rulemaking published at 63 DCR 2447, 2887 (March 4, 2016 – Part 2); as amended by Final Rulemaking published at 63 DCR 10620 (August 19, 2016).