Board of Zoning Adjustment
of the District of Columbia
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re: BZA 20163 (719 6th St. NE)

Dear Members of the Board,

On January 8, 2020, at a duly noticed and regularly scheduled monthly meeting, with a quorum of six out of six commissioners and the public present, this case came before ANC 6C. The commissioners voted 6-0 to oppose this application and to authorize Commissioners Mark Eckenwiler (6C04) and Joel Kelty (6C05) to present testimony at the hearing.

The applicant requests after-the-fact approval for a three-story rear addition, already constructed, extending 13.32 feet past the rear wall of the adjacent property at 721 6th St. NE. As discussed below, ANC 6C opposes this application for two reasons. First, contrary to the applicant’s claims, the addition here has a substantially adverse impact on the air and light available to 721 6th St. NE. Second, the applicant comes to the Board with unclean hands, having constructed the addition despite repeated advance warnings from DCRA about the 10’ rear-addition rule and having submitted multiple statements and documents falsely describing the existing condition.

The Addition’s Substantial Adverse Impacts

In order to obtain special-exception relief from 11-E DCMR § 205.4, an applicant must satisfy the criteria set forth in 11-E DCMR §§ 5201.3 through 5201.6. Those provisions include requirements that

- “the addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property”;
- “[t]he light and air available to neighboring properties shall not be unduly affected”;

1 “[A] rear wall of a row or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property.”
“[i]n demonstrating compliance … the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings”.

The application here fails all three of these tests. Most obviously, the 9’6” addition—fully three stories above grade at the rear, and extending 13.32 feet past 721 6th St. to the north—casts substantial shade on the latter. The effect of constructing the addition is self-evident.
ANC 6C does not find the applicant’s submitted shadow study (Case Exhibit 52C) relevant, informative, or persuasive. Most obviously, this exhibit fails to depict the difference between the original, pre-construction condition and the proposed, now-existing structure. Instead, it shows—inaccurately\(^2\)—the purported difference between a hypothetical matter-of-right condition and the illegally built addition.

Section 5201.3 refers simply (and repeatedly) to “the addition,” not to the “the portion of the addition which exceeds the matter-of-right construction envelope.” Accordingly, the “graphical representations” must present the true before-and-after comparison. Case Exhibit 52C fails to do so, and therefore fails to “represent the relationship of the proposed addition or accessory structure to adjacent buildings” in the manner required by 11-E DCMR § 5201.3(d).

For these reasons, the Board should deny the application.

**The Applicant’s Unclean Hands**

Even without the deficiencies noted above, ANC 6C would oppose this application for a second, entirely separate reason. The applicant paints a picture of a simple, innocent miscalculation by the project architect. In fact, the applicant received repeated warnings of the 10’ rear-addition rule (and the need to comply with it); submitted multiple drawings from more than one person falsely depicting the relationship between the rear façades of 719 and 721 6th; and constructed the addition before he had legal permission to do so even with a permit. At best, the applicant acted in deliberate disregard of the facts and the applicable rules. The Board should, as an equitable matter, deny relief to an applicant with such unclean hands.

To begin with, during permit processing the DCRA zoning reviewer repeatedly rejected the application and demanded that the applicant supply materials showing compliance with the 10’ rear-addition restriction. In response, the applicant insisted on each occasion that the project was in compliance and submitted drawings signed by two different people falsely showing the rear façades aligned. The full timeline is as follows:

- **July 3, 2018:** Zoning reviewer Ramon Washington, quoting the language of 11-E DCMR § 205.4, demands a site plan and sends the application back for correction. See Attachment A.

- In response, the applicant provides a written response insisting that “THE REAR WALL DOES NOT PROJECT MORE THAN 10’ FROM THE ADJACENT NEIGHBOUR’S REAR WALL. SEE SHEET DOEE 0001.” *Id.* Sheet DOEE 0001, stamped and signed by architect Gayll Worsley, includes a proposed site plan showing the rear façades aligned and a 9’ (not 9’6”) addition.\(^3\) See *id.*

---

\(^2\) As discussed below, the addition as built extends 13.32’, not 13’, past 721 6th. Similarly, the applicant’s own permit drawings depict a 9’6” addition—see Case Exhibit 52B, Sheet A003—and not the 9’ addition shown on the submitted shadow study.

\(^3\) Sheet DOEE 0001 also falsely depicted the rear of 717 6th as extending several feet past the rear of 719, with the proposed addition bringing them roughly into parity. As seen from the wall check discussed below, this overstated the depth of the façade at 717 by roughly 9’.
• **Sept. 17, 2018:** DCRA reviewer Washington repeats his prior criticism calling for a site plan with the rear walls of adjacent properties clearly labeled. See Attachment B.

• In response, the applicant repeats his assertion that the project’s rear wall will not extend more than 10’ from the adjacent properties’ rear walls, citing sheet DOE 0001 again as well as sheets A0002 and A0003. See id. (Neither of the last two sheets contains any relevant context drawings. See Case Exhibit 52B.)

• **Oct. 16, 2018:** Obviously exasperated, Washington repeats his comment a third time and forbids the applicant from submitting new materials until after an in-person meeting. See Attachment C. In response, the applicant refers the reviewer to an attached plat. See id. That plat—certified not by the project architect, but by a second person, Mr. Yaw Oteng-Agipong—falsely shows the existing rear façades of 719 and 721 in perfect alignment and a 9’ (not 9’6”) addition.4 (As with DOE 0001, the plat also materially misrepresents the depth of 717 6th.) Id.

• **Dec. 10, 2018:** DCRA issues the permit in reliance on these incorrect drawings, attested to by two different persons acting on the applicant’s behalf.

However, the applicant’s wrongful conduct did not end there.

Before a permit holder may build any wall more than 1’ above the footer, he or she must obtain a wall-check report from a licensed surveyor. See 12-A DCMR § 109.3.1.2 (“Authorization to continue construction of any building or other structure beyond construction of the foundation shall not be issued until a wall report has been prepared and submitted to the Department.”)

In April 2019, the applicant’s third-party surveyor performed the wall check. As submitted to DCRA, see Attachment D, the report showed the addition extending 13.32’ past the rear of 721 6th (and 9.83’ past 717 6th). DCRA imposed a stop-work order on May 13, 2019.

![Extract from the Wall-Check Report (Attachment D)](image)

---

4 The purported certification date on this plat is May 22, 2018. However, it is clear that the underlying plat has been re-used and revised by the applicant at various times without changing the certification date. See, e.g., Case Exhibit 2 (plat submitted to the Board showing an entirely different drawing with the same certification date).
There are only two possible explanations for how the addition came to be constructed. Either the applicant built it before the wall check—in itself illegal—or built the addition after conducting the wall check that unambiguously showed the illegal extent of the addition. Neither possibility reflects favorably on the applicant.

One final point: the applicant claims that “[t]he architect’s permit drawings were based on an inaccurate map from Property Quest” [sic]. Case Exhibit 8, p. 2. This assertion is simply not credible. The PropertyQuest map is inaccurate, but only because it shows the rear of 719 6th as shallower in depth than 721:

![PropertyQuest Map]

PropertyQuest therefore cannot explain the drawing (Attachment A, sheet DOEE 0001) submitted by the project architect to DCRA falsely showing the two façades in line with each other. Likewise, it cannot explain the plat submitted to DCRA by a different person—Mr. Oteng-Agipong—untruthfully showing the façades aligned.

For these reasons as well, ANC 6C opposes the application and urges the Board to deny it.

* * *

To sum up, the applicant was warned repeatedly during permit review about the 10’ rear-addition restriction; reassured DCRA repeatedly that the project was compliant with that rule; submitted multiple drawings (from two different people) that depicted the adjacent structures falsely, but not in a manner that could be explained by reliance on PropertyQuest; and then built the addition either before completion of the wall check or, worse, built it after having the wall check and knowing of the violation of the 10’ rule.

The applicant has shaded the truth in his submissions to the Board

- by misstating the extent of the addition (actually 13.32’ past the rear of 721 6th);
- by offering conflicting information about the change in building depth (9’6” in the architectural drawings, 9’ in the applicant’s statement and plat); and
- by selectively omitting certain documents from the permit submission, including the plat (Attachment C) filed in support of the permit application, and attempting to pass off a
completely new plat drawing (Case Exhibit 2) with the certification date of the earlier plat.

The applicant has constructed an addition that unduly and adversely affects the light and air available to the adjacent property at 721 6th St. NE.

For all these reasons, the Board should deny the application.

Thank you for giving great weight to the views of ANC 6C.

Sincerely,

Karen Wirt
Chair, ANC 6C
TABLE OF ATTACHMENTS

A.  July 3, 2018 permit reviewer zoning comments and applicant response (with sheet DOEE 0001)
B.  Sept. 17, 2018 permit reviewer zoning comments and applicant response
C.  Oct. 16, 2018 permit reviewer zoning comments and applicant response (with plat)
D.  April 2019 wall-check report
Attachment A
Plan Check Comments

Jul 3, 2018

PLAT COMMENT - 1 - PROPOSED ADDITION EXCEEDS THE MAXIMUM LOT OCCUPANCY FOR THE RF-1 ZONE, REDUCE OR SEEK BZA RELIEF.

PLAT COMMENT - 2 - A REAR WALL OF AN ATTACHED OR SEMI-DETACHED BUILDING SHALL NOT BE CONSTRUCTED TO EXTEND FARTHER THAN TEN FEET (10 FT.) BEYOND THE FARTHEST REAR WALL OF ANY ADJOINING PRINCIPAL RESIDENTIAL BUILDING ON ANY ADJACENT PROPERTY, DCMR TITLE 11, SUBSECTION E205.4. PROVIDE A SITE PLAN SHOWING THE EXTERIOR REAR WALL OF ADJACENT PROPERTIES CLEARLY Labeled.
B1809291 – 719 6TH STREET NE –COMMENTS RESPONSE.

MECHANICAL:
1. SHEET M0002 HAS BEEN CORRECTED. MOST OF THE EXHAUST ARE IN THE SHAFT TO THE ROOF.
2. THERE IS ONLY ONE GAS METER.

PLUMBING:
1. SEE SHEET M0001 FOR WATER HAMMER ARRESTOR.
2. SEE SHEET P0002 FOR HOSE BIBBS.

ELECTRICAL:
1. THERE IS ONLY ONE ELECTRICAL METER. SEE SHEET E0001.

ENERGY:
1. THERE IS ONLY ONE HVAC SYSTEM. SEE SHEET M0002. SEE NOTE # 11 OF MECHANICAL NOTES ON SHEET M0001
2. JOIST SIZES SHOWN ON SHEET A0009 HAS BEEN CORRECTED.

ZONING:
1. PROPOSED ADDITION DOES NOT EXCEED 60% OF LOT COVERAGE.
2. THE REAR WALL DOES NOT PROJECT MORE THAN 10' FROM THE ADJACENT NEIGHBOUR’S REAR WALL. SEE SHEET DOEE 0001.
3. THERE IS NO ROOF STRUCTURE. ROOF TOP DECK IS REMOVED.

STRUCTURE:
1. SEE SUPPORTING DOCUMENT FOR NOTIFICATION LETTERS.
2. THE NAME AND ADDRESS OF THE DESIGNER IS SHOWN ON THE TITLE BLOCK.
3. NORTH ARROW IS SHOWN. SEE SHEET A0003, A0004 AND DOEE 0001.
4. THE EXTERIOR WALL FOOTING IS SHOWN AS 30" NOT 3'. SEE ATTACHED CALCULATION ON SUPPORTING DOCUMENT.
5. SEE SUPPORTING DOCUMENT FOR CALCULATIONS.
6. BASEMENT CONCRETE FLOOR IS NEW. SEE SHEET A0009
7. STAIR IS CHANGED. SEE SHEET A0003. ROOF TOP DECK IS REMOVED.
8. THE KITCHEN ISLAND IS THE SAME AS DINING ROOM TABLE WHICH SUPPORTED BY FOUR JOISTS.
9. THE NEW WINDERS ARE REMOVED. THE WINDERS SHOWN ARE EXISTING.
10. THE INSULATION IS R-15 AIR IMPERMEABLE FOAM INSULATION PLUS R-35 AIR PERMEABLE RIGID INSULATION.
11. LIGHT IS INSTALLED IN THE STAIR LANDING. SEE SHEET E0002.
12. SMOKE ALARM AND CARBON MONOXIDE IS INSTALLED.
Attachment B
Zoning Review
Zoning Review - HFC

Contact
Ramon Washington

Plan Check Comments

Sep 17, 2018

PLAT COMMENT - PLAT STILL SHOWS ROOF TOP DECK. FLOOR PLANS SHOW ROOF TOP DECK HAS BEEN REMOVED. MAKE REQUIRED CORRECTIONS TO PLAT. PREVIOUS COMMENTS NOT ADDRESSED. PROPOSED ADDITION EXCEEDS THE MAXIMUM LOT OCCUPANCY FOR THE RF-1 ZONE, REDUCE OR SEEK BZA RELIEF.

PLAT COMMENT - 2 - A REAR WALL OF AN ATTACHED OR SEMI-DETACHED BUILDING SHALL NOT BE CONSTRUCTED TO EXTEND FARTHER THAN TEN FEET (10 FT.) BEYOND THE FARTHEST REAR WALL OF ANY ADJOINING PRINCIPAL RESIDENTIAL BUILDING ON ANY ADJACENT PROPERTY, DCMR TITLE 11, SUBSECTION E205.4. PROVIDE A SITE PLAN SHOWING THE EXTERIOR REAR WALL OF ADJACENT PROPERTIES CLEARLY LABELED.
B1809291 – 719 6<sup>TH</sup> STREET N.E. – 2<sup>ND</sup> COMMENTS RESPONSE

PLUMBING:
1. SEE NOTE ON SHEET P0001 FOR WATER HAMMER ARRESTOR.

ENERGY:
1. SEE SUPPORTING DOCUMENT FOLDER FOR MANUAL J

ZONING:
1. PLAT PLAN HAS BEEN CORRECTED
2. THE REAR WALL DOES NOT PROJECT MORE THAN 10’ FROM THE ADJACENT NEIGHBOUR’S REAR WALL. SEE SHEET DOEE 0001, A0002 & A0003
3. THERE IS NO ROOF STRUCTURE. ROOF TOP DECK IS REMOVED.

STRUCTURE:
1. SEE SUPPORTING DOCUMENT FOR NOTIFICATION LETTERS.
2. THE NAME AND ADDRESS OF THE DESIGNER IS SHOWN ON THE TITLE BLOCK.
3. NORTH ARROW IS SHOWN. SEE SHEET A0003, A0004 AND DOEE 0001.
4. SEE SUPPORTING DOCUMENT FOR ENGINEER’S CALCULATIONS
5. SEE SUPPORTING DOCUMENT FOR CALCULATIONS.
6. PERIMETER INSULATION IS SHOWN ON SHEET A0004
7. SEE ENGINEER’S CALCULATION SHEET ON SUPPORTING DOCUMENT
8. SEE SHEET A0004
9. LIGHT IS INSTALLED IN THE STAIR LANDING. SEE SHEET E0002.
10. SMOKE ALARM AND CARBON MONOXIDE IS SHOWN MORE THAN 6’ BATHROOM

DOEE:
1. ALL DUPLICATE SHEETS ARE REMOVED
2. THERE WILL BE NO HEAVY EQUIPMENT USED ON SITE. ONLY PICK-UP TRUCK WILL BE THERE TO HAUL DEBRIS
3. SEE SHEET DOEE 0002 FOR DUST CONTROL NOTES
4. SEE NOTE ON SHEET DOEE 0001
5. DOEE STORM DATA BASE HAS BEEN ENTERED
6. THERE IS NO TREE ON THE SITE
Attachment C
Plan Check Comments

Oct 16, 2018

DO NOT RESUBMIT THIS JOB UNTIL A MEETING IS HELD TO CONFIRM ALL COMMENTS HAVE BEEN ADDRESSED. EMAIL ME DIRECTLY TO SCHEDULE AN IN-PERSON MEETING. **PREVIOUS COMMENTS NOT ADDRESSED.** PROPOSED ADDITION EXCEEDS THE MAXIMUM LOT OCCUPANCY FOR THE RF-1 ZONE, REDUCE OR SEEK BZA RELIEF. **PLAT COMMENT - 2 - A REAR WALL OF AN ATTACHED OR SEMI-DETACHED BUILDING SHALL NOT BE CONSTRUCTED TO EXTEND FARTHER THAN TEN FEET (10 FT.) BEYOND THE FARTHEST REAR WALL OF ANY ADJOINING PRINCIPAL RESIDENTIAL BUILDING ON ANY ADJACENT PROPERTY, DCMR TITLE 11, SUBSECTION E205-4. PROVIDE A SITE PLAN SHOWING THE EXTERIOR REAR WALL OF ADJACENT PROPERTIES CLEARLY Labeled.**
3RD RESPONSE TO COMMENTS ON B809291

ENERGY:
1. MANUAL "J" HAS BEEN REDONE

DDOE:
1. THERE IS NO DUPLICATE COPY ON SHEET DOEE 0001
2. THE LENGTH AND WIDTH OF CONSTRUCTION ENTRANCE IS SHOWN ON SHEET DOEE 0001
3. THE TREE IS SHOWN ON SHEET DOEE 0001 WHICH IS APPROXIMATELY 12" IN DIAMETER AND WILL BE REMOVED.

STRUCTURAL:
1. SEE SUPPORTING DOCUMENT FOR OACC BUSINESS LICENSE
2. SEE NOTES ON THE ISLAND
3. DAMPROOF MATERIAL IS SHOWN ON SHEET A0009
4. SEE NEW CALCULATION BY THE ENGINEER

ZONING:
1. SEE ATTACHED PLAT PLAN
DISTRIBUTION OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 21, 2018

Plat for Building Permit of: SQUARE 859 LOT 121

Scale: 1 inch = 20 feet

Recorded in Book 16 Page 68

Receipt No. 18-03203 Drawn by: A.S.

Furnished to: ABDO B. ROFFE

I hereby certify that on this plat on which the Office of the Surveyor has drawn the dimensions of this lot, I have accurately and completely depicted and labeled the following:

1) all existing buildings and improvements - including parking spaces, covered porches, decks and retaining walls over four feet above grade, and any existing face-on-line or party wall labeled as such, as well as projections and improvements in public space - with complete and accurate dimensions;

2) all proposed demolition or raze of existing buildings duly labeled as such; all proposed buildings and improvements - including parking spaces, covered porches, decks and retaining walls over four feet above grade, any existing face-on-line or party wall labeled as such, as well as projections and improvements in public space and the improvements used to satisfy previous or green area ratio requirements - with complete and accurate dimensions, in conformity with the plans submitted with building permit application [18-03203];

3) any existing chimney or vent on an adjacent property that is located within 10 feet of this lot.

I also hereby certify that:

1) my depiction on this plat, as detailed above, is accurate and complete as of the date of my signature hereon;

2) there is no elevation change exceeding ten feet measured between lot lines, or if so, this elevation change is depicted on a site plan submitted with the plans for this permit application;

3) I have(n't) (circle one) filed a subdivision application with the Office of the Surveyor;

4) I have(n't) (circle one) filed a subdivision application with the Office of Tax & Revenue; and

5) if there are changes to the lot and its boundaries as shown on this plat, or to the proposed construction and plans as shown on this plat, that I shall obtain an updated plat from the Office of the Surveyor on which I will depict all existing and proposed construction and which I will then submit to the Office of the Zoning Administrator for review and approval prior to permit issuance.

The Office of the Zoning Administrator will only accept a Building Permit issued by the Office of the Surveyor within the 6 months prior to the date DCRA accepts a Building Permit Application as complete. I acknowledge that any inaccuracy or errors in my depiction on this plat will subject any permit or certificate of occupancy issued in reliance on this plat to enforcement, including revocation under Sections 103.6(1) and 110.5(2) of the Building Code (Title 12A of the DCMB) as well as prosecution and penalties under Section 404 of D.C. Law 14-164 (D.C. Official Code §22-2403).

Signature: [Signature]
Printed Name: [Printed Name]
Relationship to Lot Owner: [Relationship to Lot Owner]

If a registered design professional, provide license number [License Number] and include stamp below.

LA - 1188 X .6 = 712.8 SF.
EX. HM. - 580.88 SF.
NEW ADD. - 127.54 SF.
TOTAL - 708.42/1188 = 60%

12/10/18

SCALE: 1:20

Attachment D
WALL TEST REPORT

CINDER BLOCK WALLS LOCATED