

AGENDA

ANC 6A Economic Development & Zoning Committee
Tuesday October 23, 2007, 7-9:00 PM
Sherwood Recreation Center (640 10th St, NE)
2nd Floor Community Room

7:00 pm **Call to order**

7:01 **Ongoing Status Reports:**

1. 200 H (Drew Ronneberg) (3 minutes)
2. H Street Upzoning Moratorium (Rich Luna/Drew Ronneberg) (1 minute)
3. Vacant Properties (Heather Scott) (3 minutes)
4. Historic District Expansion/Creation (Annie Swingen) (3 minutes)

7:10 **Old Business - None**

7:10 **New Business**

1. 313 11th St NE. Upcoming HPRB case for a rooftop addition to a 2-story townhouse. Applicant is looking for ANC feedback. (20 min)
2. 1137 C St. NE. (Tentative) HPRB case. (20 min)
3. Open Discussion on Problems with Condo Warranties and Condo rehabs. Several residents have reported problems with DC existing Condo Laws. This time will be set aside for a discussion of these issues. (45 min)

8:30 **Additional Community Comment (time permitting)**

Everyone is welcome! Call Drew Ronneberg with questions at 431-4305.

Visit our website at <http://www.anc6a.org/>

Sign up for automated meeting reminders and community listserv at

<http://groups.yahoo.com/group/anc-6a/>

From Stephanie Nixon:

Hi Drew,

Given the wealth of apartments being converted to condominiums as well as some houses being converted (the rooming house section of R-4 law) within ANC6A - and particularly 6A08, it seems prudent that we take a strong look at this law and consider the concerns of residents who currently reside in condominiums in 6A that are new, rehabbed, refurbished, etc.

* This is extremely urgent as there are developers taking advantage of the laxity in the law and the laxity of DCRA inspections as well as advantage of new homeowners.

* There needs to be a definition of rehab, new, and refurbish in the law. Sometimes, builders say rehab when they actually constructed from the ground up - this garners them the ability to exclude items in the warranty and other times they say rehab when they did not strip the building to the studs and rebuild which leads to other issues within the building such as mold.

Although I cannot be present at your meetings secondary to a work conflict, I would appreciate your committee considering this concern and examining the new set of condominium bills. With your leadership and ability to analyze the information and organize the information, I foresee some strong definitions for the difference between rehab, refurbish, and new. As well as implications for said terminology in the warranty law.

I appreciate your consideration of this.

Councilmember Phil Mendelson

Councilmember Jim Graham

Councilmember Carol Schwartz

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Phil Mendelson, Jim Graham and Carol Schwartz introduced the following bill,
which was referred to the Committee on _____.

To enact regulations to implement the D.C. Law 13-46, the "Condominium Amendment Act of
1999".

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act
may be cited as the Condominium Warranty Bond Amendment Act of 2007."

Sec. 2. Title 14 of the District of Columbia Municipal Regulations is amended by adding
a new subtitle H is added to read as follows:

“SUBTITLE H: CONDOMINIUM CONVERSION

**“CHAPTER 70: CONDOMINIUM DECLARANTS' WARRANTY AGAINST
STRUCTURAL DEFECTS**

“7000 TERM OF WARRANTY

“7000.1 A declarant shall warrant against structural defects in each condominium unit for
two (2) years from the date each unit is first conveyed to a bona fide purchaser, and shall warrant
against structural defects in all of the common elements for 2 years. As to any portion of the
common elements, two (2) year period shall begin on the later of the date the portion has been
completed or the date of occurrence of any of the following:

“(a) If within any additional land or portion thereof that does not contain a unit, at the time the additional land is added to the condominium;

“(b) If within any convertible land or portion thereof that does not contain a unit, at the time the convertible land may no longer be converted;

“(c) If within any additional land or convertible land or portion of either that does contain a unit, at the time the first unit therein is first conveyed to a bona fide purchaser; or

“(d) If within any other portion of the condominium, at the time the first unit is conveyed to a bona fide purchaser.

“7001 LIMITED WARRANTY CONVERSION CONDOMINIUMS

“7001.1 A declarant of a conversion condominium may offer the units, common elements, or both in "as is" condition.

“7001.2 If the conversion condominium is offered in "as is" condition, the declarant's warranty against structural defects shall apply only to a defect in components installed by the declarant or work done by the declarant unless the declarant gives a more extensive warranty in writing.

“7002 EXCLUSION OR MODIFICATION OF WARRANTY

“7002.1 Except with respect to a purchaser of a unit that may be used for residential purposes, the warranty against structural defects:

“(a) May be excluded or modified by agreement of the parties; and

“(b) Is excluded by an expression of disclaimer such as "as is", "with all faults", or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

“7003 SECURITY FOR WARRANTY TO BE POSTED BY DECLARANT

“7003.1 Prior to the declarant's first conveyance of a residential unit to a purchaser, the declarant shall provide DCRA with an approved form of security to satisfy any costs that arise from the declarant's failure to satisfy the requirements of this Chapter.

“7003.2 The amount of security to be posted by the Declarant shall be equal to ten percent (10%) of the estimated construction or conversion costs. For purposes of this section, the total construction or conversion costs shall include all costs to the Declarant associated with constructing or converting the Condominium and, specifically, includes all construction costs associated with the project and all other expenditures by Declarant related to the construction or conversion.

“7003.3 The Declarant shall estimate the total construction or conversion costs at the same time the Condominium's Registration Statement is submitted for approval. The total estimated construction or conversion costs set forth in the Registration Statement shall be based on actual costs and accurate and reliable cost estimates may be used to the extent actual costs are not available.

“7003.4 Prior to sale of the first unit and posting of the security, the Declarant shall certify the known construction or conversion costs and estimate the remaining construction or conversion costs in an affidavit to be submitted to DCRA or subpart of agency. Acceptance of the affidavit or the security tendered shall not be interpreted as a determination by DCRA that the amount of security to be posted to meet the requirements of this Chapter.

“7003.5 Declarant shall file an updated certification with accompanying affidavit every 6 months after the date of initially posting the security, until all construction at the project is completed. If the estimated or actual total construction or conversion costs increase by ten percent (10%) or more from the amount set forth in the affidavit filed prior to sale of the first

unit, Declarant shall post additional security in the amount of ten percent (10%) of the increase in total construction or conversion costs.

“7003.6 Any unit owner or the Unit Owners' Association may challenge the adequacy of the security posted by filing a written notification with DCRA or subpart of agency pursuant to Section 7006.2 herein. The Office of Adjudication of the Department of Consumer and Regulatory Affairs shall determine all such challenges in accordance with that Office's procedures.

“7004 FORM OF SECURITY TO BE POSTED

“7004.1 The Declarant may post the required security in the form of a Letter of Credit, a bond, a lien on Declarant's equity in unsold units in the Condominium or such other form of security as may be approved by the DCRA as being a liquid asset which could be drawn upon to satisfy Declarant's warranty obligations (the "security" or "security interest"). Whatever form of security is chosen by the Declarant, the language of the instrument establishing the security interest must be approved in advance by the DCRA. Approval of the language of the instrument does not indicate any determination by the Director as to the sufficiency of the amount of security posted or whether that security has been posted for the appropriate term.

“7004.2 Security, in the form of a Letter of Credit, must be in the form of an irrevocable standby Letter of Credit drawn on a financial institution insured by the federal government. The Letter of Credit must provide that it may be drawn upon at site, at a location in the District of Columbia, upon presentation of the original or a substitute original of the Letter of Credit. Written notification certified by the Director stating that the Declarant has failed to comply with the terms of the Declarant's warranty contained in the registration package should also be included with the ten (10) day notice of default provided to the Declarant by certified mail or

personal service. In addition, the Letter of Credit must contain a provision that obligates the
financial institution, upon request of the Declarant and/or the Director, to issue a substitute
original of the Letter of Credit and/or any amendments thereto.

“7004.3 The Declarant must provide the original of the Letter of Credit to the Director
prior to the Declarant's first conveyance of a residential unit to a purchaser. The Declarant must
provide the Director with the original of any amendments to the Letter of Credit. In the event that
the original of the Letter of Credit and/or any amendments thereto cannot be located, the
Declarant, at the request of the Director, must obtain and deliver to the Director a substitute
original from the issuing financial institution.

“7004.4 Should the Declarant decide to post the required security in the form of a lien
(the "Lien") on unsold condominium units, the value of Declarant's equity in a unit shall be
computed as follows:

“a) Ninety percent of the current listed sales price of the unit (or, if not listed, then
the current list price of comparable units in the Condominium); reduced by

“b) Any lien or encumbrance specifically secured by the unit; and

“c) The unit's pro-rata share of any lien or encumbrance for which the unit stands
as security. By way of example, this would include the unit's pro-rata share of a blanket deed of
trust against the property created prior to conversion, and the pro rata calculation would be in
relation to the other units still securing the lien or encumbrance.

“The total equity of the lien must, at all times, equal or exceed ten percent (10%) of the
total construction or conversion costs. Should there be any increase in the amount of the liens or
encumbrances affecting the unit, or should the listed sales price of the unit(s) (or comparable
units) decrease by more than ten percent (10%) from the sales price used to determine Declarant's

equity, Declarant must submit a statement to the DCRA who shall then require Declarant to post 1
whatever additional security may be necessary to ensure that ten percent of the Declarant's total 2
construction or conversion costs is available as security. 3

“7005 TERM OF THE SECURITY TO BE POSTED 4

“7005.1 The security posted by the Declarant shall stay in place in its full amount for a 5
minimum of two years following the Declarant's first conveyance of a residential unit to an arm's 6
length purchaser. At the Declarant's request, beginning two years after the conveyance of the first 7
unit, the amount of security may be reduced in pro rata segments. The reduction(s) shall be based 8
on the percentage interest in the residential portion of the Condominium of those residential units 9
first conveyed in an arm's length transaction more than two years prior to the request. The 10
Declarant may request that the amount of Declarant's security may be reduced once every six 11
months. In no event shall the security be reduced below 50% of the original amount of the 12
security until one year after transfer of control of the residential executive board of the Unit 13
Owners' Association to the purchasing residential unit owners other than the Declarant. After five 14
years from the conveyance of the first residential unit to a purchaser, provided at least one year 15
has passed following transfer of control of the residential executive board to purchasing 16
residential unit owners other than the Declarant, the Declarant may treat unsold residential units 17
as resale units and shall be relieved of the security requirements set forth in these Regulations. 18

“7005.2 Whatever form of security is used, it must have an initial term of at least two 19
years. The Declarant must periodically extend whatever form of security is posted so that 20
adequate security is consistently in place throughout the period set forth in D.C. Official Code 21
Section 42-1903.16 and in these rules. Declarant shall provide proof of such extensions to the 22
Director no later than 60 days prior to the expiration of the security interest. If the Declarant fails 23

to extend such security as required herein, the DCRA shall take whatever actions are necessary to
draw upon the Declarant's Letter of Credit, or liquidate whatever other security has been posted
by the Declarant, at least 30 days prior to the premature expiration of the security interest.

“7006 WARRANTY CLAIMS

“7006.1 Notwithstanding any language to the contrary within these Regulations, if claims
for structural defects under D.C. Official Code Section 42-1903.16 are pending at the time any
security posted would otherwise no longer be required, then the security shall be required to be
maintained in at least the amount of the claims until the claims have been finally resolved and the
security has been made available to satisfy the Declarant's responsibilities.

“7006.2 For purposes of these Regulations, the term "claim" shall include any legal action
by an owner and/or the Unit Owners' Association claiming defects or deficiencies unremedied by
the Declarant in breach of Declarant's warranty obligations under D.C. Official Code Section 42-
1903.16. The term "claim" shall also include any written notification to the Director by an owner
and/or the Unit Owners' Association claiming that Declarant is in violation of D.C. Official Code
Section 42-1903.16 and/or any of these Regulations. Any such notification by an owner and/or
the Unit Owners' Association must be supported by a written affidavit and, if applicable, an
estimate by an architect, engineer, or other licensed professional, setting forth the cost of the
necessary repairs, replacements, modifications and/or other work necessary to remedy the
defect/deficiency identified.

“7006.3 Whenever necessary to ensure compliance with D.C. Official Code Section 42-
1903.16 and/or the requirements of these Regulations, the DCRA shall draw upon the Declarant's
Letter of Credit and/or liquidate whatever other security has been posted by the Declarant. In the
event the DCRA draws upon the Declarant's Letter of Credit or liquidates any other form of

security, all funds resulting therefrom shall be deposited into one or more escrow accounts at an FDIC insured financial institution in the District of Columbia. These escrow accounts must be established in such a way as to ensure that no withdrawals therefrom may be made without the signatures of an officer of the Unit Owner's Association and the signature of the DCRA. No withdrawals may be made from these escrow accounts unless said withdrawal is agreed to by Declarant or is allowed under the terms of a final order issued by an administrative law judge of the Office of Adjudication of the Department of Consumer and Regulatory Affairs or a judge in a court of competent jurisdiction.

“7007 MAINTENANCE NOT WARRANTED

“7007.1 Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

“7099 DEFINITIONS

“7099.1 For purposes of chapter 70 of this subtitle, the definitions in D.C. Official Code § 47-1901.2 (2001) are applicable to this chapter and the following words and terms shall have the meaning ascribed below:

“Conveyance- The transfer of title by written instrument.

“Structural Defect- A defect in a component that constitutes any unit or portion of the common elements that reduces the stability or safety of the structure below standards commonly accepted in the real estate market, or restricts the normally intended use of all or part of the structure and which requires repair, renovation, restoration, or replacement.”

Sec. 3. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December

24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)). 1

Sec. 4. Effective date. 2

This act shall take effect following approval by the Mayor (or in the event of veto by the 3
Mayor, action by the Council to override the veto), a 30-day period of Congressional review as 4
provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 5
24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of 6
Columbia Register. 7