

MINUTES
ANC 6A Economic Development & Zoning Space Committee Meeting
Virtual Meeting via Zoom
Wednesday, March 17, 2021 at 7:00 pm

Present:

Members: Brad Greenfield (Chair), Sam DeLuca, Michael Cushman, Dan McPheeters, Nick Alberti

Commissioners: Mike Soderman, Robb Dooling, Amber Gove, Sondra Phillips-Gilbert, Laura Gentile, Brian Alcorn

Brad Greenfield chaired the meeting.

Community Comment

None.

Previously Heard Cases

None.

Old Business

1. 1701 H Street, NE: (ZC 15-31A): PUD Modification of Consequence (modify number of balconies on eastern façade). ZC Set Down Date: Approximately April 23, 2021.

This project is a large PUD development that first came before the ANC over a year ago. The project was presented by Mr. Mike Perine. His company acquired the project in 2019 from Cap City Real Estate. Mr. Perine stated that they have filed for a zoning modification request for removal of some of the balconies in the plan, and adding a partial seventh level to the building. That later modification request is still active.

With the addition of the seventh floor, Mr. Perine stated that they were able to include more IZ units. 57% of the additional area requested would be dedicated to IZ units. The overall scope of the project is a ten story, 181 units, one level of underground parking with 45 parking spots. It is a mix of studio, 1 BR and 2 BR units. There is retail space on 17th Street. If the ZC agrees to the modifications, there will be 191 units. Amenities will include a pool, a concierge, a gym and a bike room.

Chairman Brad Greenfield asked how many IZ units are in the plan currently. Mr. Perine replied that there are currently 13 units without the additional modification, 17 with the modification. The current plan has 2 studio units, 4 1 BR and 7 2 BR units that are all IZ. 54% of the IZ units will be at 50% AMI. At the request of ANC 5D, the developer has 10% of the units being dedicated IZ, with the requirement from zoning at 8% (as part of its modification). Also as part of the plan, 65% of the IZ units will be offered to 50% AMI, with the zoning requirement being 50% of the IZ units being at 50% AMI.

Mr. Perine stated that they removed the balconies on one side of the building since they directly faced balconies on the other side because of the "L" shape of the building, and this created a privacy concern.

Mr. Greenfield asked if there was a community benefits package for the PUD. Mr. Perine said that there was already a public benefits package produced for the PUD that included

improved landscaping, and significant improvements (paving and lights) to the alley behind the building.

Mr. Greenfield asked if the address on the building will be on H Street, and will RPP restrictions be in place. Mr. Perine stated that the address will be on H, and that RPP restrictions were included originally as part of the PUD approval.

Commissioner Robb Dooling asked if it was possible to include 30% AMI units in the building. Mr. Perine said that the units that were being added would be 50% AMI, with some at 80% AMI. Mr. Perine noted that while it is possible to have 30% AMI units, none are planned.

Mr. Dooling stated that in ANC 6C there was a project similar to this one, but that they were able to negotiate 30% AMI units included in the building. Mr. Perine stated that they are not able to increase the IZ units or lower the AMI threshold and have the project remain economically viable.

Mr. Greenfield asked when the modification was scheduled to be heard. Mr. Perine said that he expects it to be set down in April 2021, but that it has not been scheduled yet.

Committee member Mike Cushman noted that many of the IZ units do not have balconies, and asked if the number of IZ units with balconies could be increased. Mr. Perine said that they had not considered whether IZ units had a particular ratio of balconies, but they would be happy to look at that.

Mr. Greenfield asked if Mr. Perine was looking for a letter of support for their upcoming modification. Mr. Perine stated that they would be looking for that.

Commissioner Sondra Phillips-Gilbert asked if the IZ units that did not have balconies could be made 30% AMI. Mr. Perine said that he did not think any of the units could be made 30% AMI without having negative economic consequences on the project. Mr. Greenfield noted that for a 2 BR at 50% AMI, a household income of \$32,650 would qualify for the apartment. Ms. Phillips-Gilbert stated that she would like to see some of the IZ units made 30% AMI. Committee member Sam DeLuca expressed agreement with Ms. Phillips-Gilbert, that more of the units should be made 30% AMI. Mr. Dooling noted that he did not feel comfortable supporting the project if there were not 30% AMI units.

Mr. Greenfield asked if ANC 5D has sent a letter of support for the PUD modification. Mr. Perine said that he believed that they had sent a letter of support for the modifications.

Committee member Dan McPheeters asked if there were any tax credit programs that were available to lenders or developers to increase the IZ units or provide them at a lower AMI. Mr. Perine said that he did not know of any, but he would love to find out about them.

Mr. Greenfield made a motion that the EDZ recommends that the ANC support the requested modification of consequence, on condition that the additional units are going to be proffered with the 7th floor addition be made 30% AMI, or substituted with the same number of units at 30% AMI. Committee member Nick Alberti seconded. The motion passed unanimously, 10-0.

2. 211 13th Street, NE (BZA Case#20450): Application Pursuant to Subtitle E § 205.5, Subtitle E § 206.4, Subtitle E § 5201, and Subtitle X § 901.2 for a Special Exception from the lot occupancy restrictions of Subtitle E § 304.1; the rear addition requirements of Subtitle E § 205.4; and the rooftop and upper floor restrictions of Subtitle E § 206.1 to construct a new three-story with cellar and roof deck, rear addition to an existing, two-story with cellar, semi-detached, principal dwelling unit in the RF-1 Zone. BZA Hearing Date: May 5, 2021.

The project was presented by Jennifer Fowler. Mr. Greenfield noted at the start of the discussion that the owners were friends of his, but he has no financial interest in the project so he will not recuse himself. Commissioner Gove stated that she too was a friend of the owners, but similarly did not have a financial interest and would not recuse.

Ms. Fowler noted that the project will go to 69.9% lot occupancy, and they will also need relief because they will extend more than 10 feet past an adjacent neighbor. The project is for a rear addition with a roof deck. The roof addition is set back from the front to make it less visible, but it would still be visible from the street.

Ms. Fowler noted that because of the location of the house, shadows would primarily be thrown on the alley. To ensure privacy, the windows on the roof addition will be set high.

Ms. Fowler noted that they have a letter of support from 209, 207 and 203 13th Street, 1301 and 1307 C Street. She noted that 209 C Street NE recently sold, and they have been in touch with the new owners and they are supportive, but they do not have a letter yet from the new owners. They expect to have a letter by the ANC 6A April 2021 meeting. Mr. Greenfield asked about 1305 C Street, the owners replied that this property is an apartment building, and they have reached out to them. While they are supportive, they have not been willing to sign a letter of support. Mr. Greenfield also asked about 230 Tennessee Avenue NE; the owners replied that they have not discussed it with them, but they will reach out.

Mr. Cushman asked how much more expensive it would be to do a brick treatment. Ms. Fowler replied that brick was pretty expensive. Mr. Cushman stated that he was very pleased with the window treatments addressing privacy. He also noted that the buildings on this block had long backyards, so that combined with the window treatment alleviated privacy concerns.

Mr. Greenfield made a motion that the EDZ recommends that the ANC support the requested relief, on condition that the applicant make best efforts to get letters of support from 209 C Street, 230 Tennessee and 1305 C Street. The motion was seconded by Mr. DeLuca. The motion passed 9-0-1, with one abstention.

3. 17 9th Street, NE (HPO Case#21-254): application for approval of the renovation of an existing single family row home with a rear and third floor addition in the Capitol Hill Historic District. HPO Hearing Date April 22, 2021. The

Robert Bailey presented the project. He (and Mr. Cushman) noted that the project does not include a third floor addition. Mr. Bailey noted that the project was the renovation and addition to an existing single family home. The project would go to two stories

throughout the building, and eliminate the dogleg. The project would go to a wood lap siding to preserve the historical character of the house.

Mr. Greenfield asked if there was a party wall on the property. Mr. Bailey noted that there was a small gap between the property and the neighbor to the south, so there was no party wall. There is a party wall on the north. The dogleg is on the southern side. Mr. Bailey stated that there was no fire-blocking on the north wall, so a new wall will need to be constructed.

Mr. Greenfield asked if the project had been discussed with the neighbor to the north. Mr. Bailey replied that they had discussions. Mr. Cushman asked if the neighbor to the north's property goes back the same distance as 17 9th Street NE. Mr. Bailey replied that the building itself is a little shorter, but there is a porch that will be flush with the property. The addition is not going any farther back than the existing end of the property. The neighbor's porch is one story.

Mr. Bailey said that there will be no visibility from the front since the addition is in the back of the house.

Mr. Greenfield asked if there had been discussions with the neighbor to the south. Mr. Bailey replied that they had reached out, including e-mailing the plans, but had not received any communication back. When the project has been discussed with the neighbor in person, he has been broadly supportive, but has not signed a letter of support.

Mr. Greenfield asked if there are other properties on this block where the dogleg has been filled in. Mr. Bailey replied that he did not know. Mr. Cushman noted that there is no way to see the back of the house, except from a neighbor's property. Mr. Bailey replied that this was true; it was a landlocked block.

Commissioner Mike Soderman stated that he supported the project.

Mr. Cushman noted that the plans included both wood siding and hardieplank siding. Mr. Bailey confirmed that wood siding will be used in the front, and hardieplank on the side. Mr. Cushman asked if the portion of the dogleg that is visible through the small gap between the buildings would be hardieplank. Mr. Bailey said it would be, but they would be willing to defer to the Office of Planning (OP) on this.

Mr. Alberti noted that, as of the prior day, there was not an Historic Preservation Office (HPO) case for this project. Mr. Bailey said that the application was submitted to HPO, and he followed up. HPO said that, for some reason, they would not have a case number for him until April 19, 2021, but that he would be going before them on the April 22, 2021, and he should move forward.

Mr. Alberti noted that he was opposed to filling in the dogleg, and that he thought it was a mistake to do that here and other properties in the historic district. Mr. Greenfield said that, in his mind, this was mitigated by the fact that the dogleg was not visible. Mr. Cushman noted that the neighbor to the south has no windows on that side, and so they are not losing light or air because the dogleg is being filled in.

Mr. Alberti asked if the neighboring property was two stories throughout. Mr. Bailey replied that the neighbor to the south was actually three stories.

Mr. Greenfield made a motion that the EDZ recommends that the ANC support the requested relief, on condition that the applicant make best efforts to get letters of support from 15 and 19 9th Street, NE. Commissioner Soderman seconded the motion. The motion passed 10-1.

4. 308 11th Street, NE (BZA Case #20382): Application pursuant to Subtitle E § 5201 and Subtitle X § 901.2 for a Special Exception from the lot occupancy requirements of Subtitle E § 304.1; and the alley centerline setback requirements of Subtitle E § 5004.1 to construct a third story addition and roof deck, to an existing two-story flat, and a second story addition to an accessory detached garage in the RF-1 Zone. BZA Hearing Date April 14, 2021.

Mr. Greenfield stated that both he and Commissioner Laura Gentile had discussions with the applicant, and Commissioner Gentile had discussions with the neighbors. Jennifer Fowler presented the project, with support from Marty Sullivan. This project came before the EDZ before, and it was tabled so that full consideration could be done.

Ms. Fowler stated that the project consisted of a third floor addition, set about 30 feet from the front of the house with a roof deck, and a second floor addition to an accessory building (garage), but this will also involve demolishing the existing garage. Ms. Fowler presented a site-line study, showing the third floor addition will not be visible from the street. Mr. Cushman noted that in the last consideration of the project by the EDZ, there was a request to do a full mock-up of the addition to ensure that it was not visible from the street, and he wanted to know if that had been done. Ms. Fowler noted that there was a stop-work order on the project in the main building, which prevents a mock-up from being completed.

Mr. Sullivan noted that the relief being sought related only to the work on the accessory building, and not the work on the main house. The project will expand lot occupancy from 67.2% to 69.8%, amounting to a 2 foot 10 inch extension. There is also relief required because the existing building is non-conforming.

Mr. Sullivan noted that they had a letter from the Zoning Administrator stating that the addition on the main building was a third floor addition, and it did not constitute a 4th floor.

Mr. Sullivan presented a shadow study that compared the proposed project with what can be done by right. This was the first time the shadow study had been presented to the EDZ or the neighbors. He noted that most of the shadow falls on the alley, or on the roof of neighboring garages. Mr. Cushman noted that the shadow study showed 3:00 pm shadows, and not 5:00 pm, when the impact would be greater. Mr. Sullivan said that they could expand the shadow study, but he did not expect the shadows to be much different at 5:00 pm.

Mary Joy Ballantyne and Winfield Wilson presented, representing neighbors who are opposed to the project. Ms. Ballantyne noted that some of the information presented was new to the neighbors. Ms. Ballantyne noted that there are approximately 28 neighbors

who are opposed to the project. Ms. Ballantyne discussed the historic nature of the neighborhood, and the similar architectural styles that is common across the buildings. She noted that all of the seven adjacent properties are non-conforming, and suffer from a lack of light and air.

Ms. Ballantyne presented drawings that showed the garage will be significantly taller than the neighboring garages. Ms. Ballantyne also had pictures of a mock-up that they had done that show that the addition will be visible from the street. Mr. Wilson stated that he and the neighbors had been open to communication and compromise, but that none had been forthcoming from Mr. Haider (the owner). Mr. Haider noted that he had met with the neighbors, but there did not seem like there was much willingness to compromise.

Mr. Alberti asked if the garage piece of the project was going to be going before HPRB. Ms. Fowler confirmed that this will be going before the HPRB. Mr. Alberti noted that based on past precedents, and looking only at the zoning aspects, he would be inclined to support the request for relief, but his opinion might change for the historic review. Mr. Greenfield asked if the applicant was looking for support for both BZA and HPRB. Mr. Alberti objected that there was no HPRB case yet, and it was not on the agenda for the meeting.

Mr. Cushman noted that he had been tracking this case for a while, and he felt that it was completely incompatible with the historic nature of this neighborhood. He also believed that there is a measurement issue that should be adjudicated before ANC 6A considers it. This issue was whether the basement constitutes a cellar, for which the Zoning Administrator has already issued a letter. Mr. Greenfield noted that while you can sue the Zoning Administrator, there is no internal appeal process. Mr. Cushman felt that the neighbors should present their concerns to the BZA, and that the ANC should wait until the BZA had decided this issue. Mr. Cushman noted that Mr. Sullivan had mentioned that lot occupancy is now calculated on a three dimensional basis, so a half sized second floor addition on the garage could be done by right, but that he thought this would not be acceptable to HPRB.

Commissioner Soderman stated that he did not agree with Mr. Cushman; there was a half floor addition in the historic district in his SMD. Commissioner Soderman noted that all that was being considered at this time was the zoning request, and this project was similar to other projects that ANC 6A had provided support for in the past.

Mr. Greenfield asked the neighbors if their garages currently have skylights or other access to light through the roof. They replied that they do not. Mr. Greenfield noted that he had walked the alley the day before, and there is a garage with a second floor addition at the other end of the alley. Ms. Ballantyne said that on the 11th Street side, there are no garages with second stories. There are garages with second stories on the 10^h Street side. When this was done it was done quickly, and nobody knew about it, and people were surprised because if they had known, they would have opposed it.

Ms. Ballantyne asked what standards ANC 6A would apply. Mr. Greenfield replied that typically the zoning regulations for lot occupancy focus primarily on light and air of neighbors. There is also a standard for not disrupting the nature of the neighborhood, but by its nature this is subjective criteria.

Mr. Dooling commented that he found it significant that the architectural drawings shows that, from the street, the addition would not be visible. He also noted that the costs of rent in this neighborhood limited the diversity of the residents, and he hoped that this could be changed in the future. He said that he did not like the idea of opposing a project just because it is out of character of the neighborhood.

Ms. Gentile stated that she appreciated the slides that Mr. Sullivan shared, but that this was the first time she had seen this information. She also stated that she did not believe that anyone had tried to exploit loopholes in the process to get this project through. Ms. Gentile did not think that the communication and outreach done for this project was very good. She recommended that the project be delayed to provide everyone with the chance to review the new information. Commissioner Soderman noted that it was not unusual for shadow studies to only be presented at EDZ or ANC meetings. Commissioner Gove also stated that she thought that a delay might be useful for further communication.

Mr. Greenfield asked when the project was scheduled to go before the BZA. Mr. Sullivan stated that it was scheduled to be heard on April 14, 2021. Mr. Greenfield asked if they would be willing to push that hearing date back. Mr. Sullivan said that they would prefer not to; since the BZA is so backlogged; if they ask for a delay, it could mean a couple of months.

Commissioner Soderman asked if there was anything that the applicants could do that would change the minds of the neighbors. Mr. Wilson said that they were open to looking at things, but he felt that the onus should be on the applicant to propose alternatives. Ms. Ballantyne objected to the process, and felt that there had been dishonesty.

Mr. Alberti noted that this is also going to be an HPRB case. He recommended that all of the neighbors keep this in mind, and have further communications and have an open mind before the HPRB case. Mr. DeLuca agreed with that assessment. Mr. DeLuca also noted that everyone should be very careful about making serious accusations about other participants.

Mr. Cushman felt that having an accessory building within 20 feet of the rear windows of neighbors was an issue for him. His objections are based on having a large neighbor bedroom facing windows in the accessory building providing direct views into neighbor bedrooms and with huge loss of privacy to the neighbors. Also, at 5:00 pm summertime, there would be loss of light.

Mr. Greenfield stated that the shadow study showed that there was not a significant impact on the light and air of the neighbors. He also noted that there is a garage with a second floor at the end of the alley, so he did not feel that the proposed project was out of character of the neighborhood. Mr. Greenfield noted that normally the EDZ would ask the applicants to make best efforts to get letters of support from neighbors, but that may not be warranted in this case.

Mr. Cushman recommended that the EDZ and the ANC take no position. Mr. Greenfield felt that he does not normally like recommending no position. Mr. Alberti noted that he supported recommending that the ANC take no position on the project. Commissioner Soderman noted that he is opposed to that idea.

Mr. Cushman made a motion that the EDZ recommend that the ANC take no position on the requested relief. The motion was seconded by Mr. Alberti. Commissioner Gove asked what the precedent that would be set if the ANC did not voice an opinion. Mr. Greenfield stated that the precedent is somewhat mitigated if EDZ does not take a position, but that there would be a risk of a precedent. Mr. Alberti stated that if the ANC does not voice an opinion, that does not negatively impact the applicant. The motion failed on a vote of 7-3.

Commissioner Soderman made a motion that the EDZ recommends that the ANC support the requested relief. Mr. Greenfield seconded the motion. The motion passed 9-2.

**Next Scheduled ED&Z Committee Meeting:
Wednesday, April 21, 2021
7:00-9:00 pm
WebEx information to be posted on ANC6A website**