

MINUTES
ANC 6A Economic Development & Zoning Space Committee Meeting
Virtual Meeting via Zoom
Wednesday, May 19, 2021 at 7:00 pm

Present:

Members: Brad Greenfield (Chair), Michael Cushman, Sam DeLuca

Commissioners: Brian Alcorn

Brad Greenfield chaired the meeting.

Community Comment

None.

Previously Heard Cases

None.

Old Business

None.

New Business

1. Discussion of the standard and approaches to be used for reviewing special exception requests to Subtitle E § 205.4 and 205.5 that governs the building of a rear wall that extends more than ten feet past an adjoining property.

The Committee reviewed the criteria established under § 205.4 and 205.5 for special exceptions to the rule that owners can not extend more than 10 feet beyond the rear wall of adjacent neighbors. Committee member Mike Cushman pointed out that this only includes finished walls, not porches. Chair Brad Greenfield noted that the rule was pretty recent.

Mr. Greenfield noted that among the criteria, there are only three criteria that have bearing on the 10 foot rule:

- The light and air available to neighboring properties shall not be unduly affected;
- The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
- The addition or accessory structure, together with the original building shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage

Mr. Cushman said that he found some Committee members' interpretation of "light and air" to be minimizing of sunlight.

Mr. Greenfield stated that the standard for intruding on the character of the neighborhood was tied to precedent; if there are other houses in the neighborhood that have similar additions/changes, than that would indicate that it does not impact the nature of the neighborhood.

Committee member Sam DeLuca asked if the city had a definition of what “unduly affected” means. Mr. Greenfield said that he had never seen a detailed definition of the term. Mr. DeLuca noted that in neighborhoods that are aligned north-south, almost any change would have an impact on light and air. Mr. DeLuca noted that depending on how we interpret undue impact, it could make it extraordinarily difficult to get a special exception. Mr. Greenfield stated that he believed the city has purposely not defined “unduly” and expects ANC’s to make that determination.

Mr. Cushman voiced the opinion that developments where someone comes in and does an addition where they take the morning sun away from their neighbor’s property is inherently a taking-by-the-rich against-the-poor. In his view, if the neighbor objects to a property, that should be given great weight by the ANC.

Mr. Greenfield strongly disagreed with the assessment that additions are rich versus poor, seeing them more as one family against another. Mr. Greenfield stated that giving great weight to a neighbor’s objections could lead to projects being held hostage by unreasonable neighbors. Mr. Greenfield also noted that the way special exceptions are structured, they establish criteria that if an applicant meets, they can expect to get the special exception. Mr. Cushman said that the answer might be that residents may need to move out of the city to find homes that meet their needs.

Mr. DeLuca said that people are moving into the city, and we should not be trying to create housing rules that make it difficult to increase housing utility/density. Mr. DeLuca said that the point of the meeting was to establish rules that are not just “we will know it when we see it”. Mr. DeLuca noted the recent case the EDZ heard (Case #20414) where the shadow difference between a by-right building and the proposed building was negligible. Mr. Greenfield agreed that the standard should be between by-right and proposed development, and this standard was not correctly applied in that case. Mr. Cushman expressed his opinion that the comparison should be between proposed and current structures, not by right.

Mr. Cushman expressed general concerns with shadow studies, saying that they are designed by architects to show minimal impact on light and air by displaying dates/times that minimize the impact. Mr. Greenfield noted that the EDZ can request specific dates and times for the shadow studies, noting that the EDZ has specified dates that they want the shadow study to show. Mr. Greenfield mentioned that the Department of Consumer and Regulatory Affairs (DCRA_ has a 3-D city zoning model that can generate shadow studies of current structures to help determine what dates/times would be most impactful.

Mr. Greenfield stated that shadow studies should show windows of adjacent neighbors so that an assessment of impact can be made. Mr. Greenfield also said that the EDZ should only consider the impact to living areas. Mr. Cushman asked if gardens should be counted as well.

Mr. Greenfield said that it would be possible for the EDZ to establish a standard where the Committee specifies the dates and times for shadow studies. The Committee could then ask applicants to assess the percentage of shadow that would increase from by-right to proposed buildings, developing a standard over time in the percentage that would reflect “unduly affected”. Mr. DeLuca expressed that this might be a good way

to approach the problem. Mr. Cushman stated that environmental considerations of light are situational, and he did not feel we should try to codify rules on what enjoyment means. Mr. Greenfield noted that enjoyment is very subjective and if this is the standard, then we are making projects totally dependent on the views of the neighbors.

The Committee had a discussion about whether special exceptions should be a rarity or should be granted if an applicant meets the established criteria. Mr. Cushman noted that special exceptions should be “special”, and should be given out rarely. Mr. Greenfield stated that the city does not use this standard and that special exceptions are regularly granted.

Mr. Cushman stated his opinion that the EDZ does not need to weigh in on every case, and he thinks that if there is opposition from a neighbor, the ANC should let the BZA decide the case without the ANC expressing an opinion. Mr. Greenfield views it as a “cop out” to not express an opinion from the EDZ on projects. Mr. DeLuca said that he did not feel that the ANC not expressing an opinion was a great idea; he felt that ANCs will know individual areas and understand the context. Mr. DeLuca noted that if the EDZ decided not to take a position at times, that does not address the problem, since we would still need to decide when to make a decision and when not to.

Commissioner Alcorn asked if the Bureau of Zoning Authority (BZA) has established standards on how they define “unduly impacted” and could EDZ use those standards to determine whether the Committee thinks those standards have been met. Mr. Greenfield said that he had never seen any standards like that. Mr. Cushman said that the BZA rejects egregious requests, and reasonable ones are generally approved.

There was an extended discussion of previous cases, and why different Committee members voted to support or oppose.

The Committee discussed what it meant for a project to disrupt the visual fabric of a neighborhood. Mr. Greenfield said that precedent was very important to this, if there had already been developments similar to the one proposed, that meant it did not disrupt the nature of the neighborhood. Mr. DeLuca expressed the view that it would be hard to establish a standard for this criterion, since it is an aesthetic determination. Mr. DeLuca said that for a project to “visually intrude” on a neighborhood, it would have to be very incongruous with the neighborhood structures. Mr. Greenfield and Mr. Cushman agreed that a standard for this criterion is not possible.

Mr. DeLuca proposed that rather than try to come up with objective standards to determine the impact on privacy and light/air, the EDZ developed a set of questions that would be asked in these cases. The idea would be that, through the use of these questions, the EDZ could develop a rubric that can be used to determine whether to support special exceptions. Mr. Greenfield supported the idea of developing a rubric. Mr. Cushman said that the EDZ should establish definitions of projects that are clearly not acceptable, and clearly acceptable.

Mr. Cushman expressed his opinion that we should avoid becoming so “cookie cutter” in our approach that applicants can game the system to get special exception

approval. Mr. Greenfield agreed that the ANC/EDZ would not have to publish the rubric, but the Committee often sees the same architects and lawyers come before the EDZ so they are likely to learn what we approve over time anyway.

Mr. Greenfield volunteered to contact BZA and find out if the standard it supports is comparing by-right to proposed. Mr. Greenfield said that he will ask each Committee member to come up with a list of questions for each of the criteria, and that the Committee can review these questions at its next meeting.

Next Scheduled ED&Z Committee Meeting:

Wednesday, June 16, 2021

7:00-9:00 PM

Zoom information to be posted on the ANC6A Website