

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

Present:

Members: Brad Greenfield (Chair), Dan McPheeters, Sam DeLuca, Mike Cushman, Jake Joyce  
Commissioners: Keya Chatterjee, Phil Toomajian (joined during the meeting)

Brad Greenfield chaired the meeting.

**Community Comment**

None

**Previously Heard Cases**

Mr. Greenfield summarized previously heard cases.

**Old Business**

1. 905 L Street, NE (BZA Case#20606): Request pursuant to Subtitle E § 5201 and Subtitle X § 901.2 for a special exception from the rear yard requirements of Subtitle E § 306.1, and pursuant to Subtitle X § 1002 for an area variance from the lot occupancy requirements of Subtitle E § 304.1 to construct a rear deck to an existing, attached, two-story with cellar, principal dwelling unit. BZA Case Scheduled for 02/02/2022.

The owner, Mr. Chris Brown, presented the project. This project was tabled at the October 2021 EDZ meeting. Mr. Greenfield noted that since that meeting, the relief request has changed to require a special exception for lot occupancy, rather than a variance. Mr. Brown confirmed that the project has changed to require 70% lot occupancy, requiring only a special exception. The special exception on yard setback is still required; the project has a setback of 19.125 square feet, when 20 square feet is allowed by right.

There were several questions brought up from the October meeting. There was a question about why a special exception for being 10 feet beyond an adjacent wall was not required. Mr. Brown stated that he did not know why BZA did not note that relief in their referral, but that he was checking. Mr. Greenfield asked the architect what distance the addition extends from the neighbor's rear wall. The architect replied that if they did not count the deck, then the difference is less than 10 feet and a special exception would not be needed. He said that he was not sure how DCRA calculated that distance.

Mr. Brown said that he has shared the project plans with his neighbors, and has letters of support from both adjacent neighbors. Tony Darrow, the architect for the project, said that they removed trellis work on the back deck and, that in combination with the deck being less than 4 feet above grade, resulted in it not counting against lot occupancy, which reduced the relief request. Mr. Darrow also said that they reduced the addition slightly to make the lot occupancy be 70%. Mr. Darrow said that he hoped the ANC would support the project in its new configuration, noting that the back room is now very tight.

Mr. Greenfield stated that he appreciated the change in the plans so that they did not require a variance. Mr. Cushman stated he was disappointed that the new plans had not

been posted online prior to the meeting. Mr. Cushman stated that he is against variances, so he was glad to see the new design. Mr. Darrow stated that he would be willing to come back after BZA has posted the updated plans and get the EDZ recommendation then. Mr. DeLuca stated that he was also concerned about the previous plans that included a variance, so he believes the new plans resolved his concerns. Mr. Greenfield stated that he felt like the EDZ could not take a vote now, since the exact relief request was unknown, but that the EDZ could consider the project as soon as BZA has accepted the new plan and reflected the new relief request. Mr. Greenfield noted that the special exception criteria for the 10 foot rule is identical to the special exception for lot occupancy, so it might be expeditious to accept a special exception request.

Mr. Greenfield asked if Mr. Brown is all right with coming back to the EDZ meeting once his relief request is finalized. Mr. Brown said that would be acceptable.

Mr. Greenfield tabled consideration of the relief request.

### **New Business**

2. 820 Constitution Ave, NE (HPRB Case #22-036): Historic review of the proposed construction of a two-story accessory building at the rear of the property that will not increase the number of dwelling units. HPRB Case scheduled for 12/16/2021.

Mr. Joseph Boyette represented the project. Mr. Greenfield noted that he and Mr. Boyette have known each other for some time, that his wife, Missy Boyette, used to be a member of the EDZ, but Mr. Greenfield did not feel that there was a conflict of interest, so he is not recusing himself.

Mr. Boyette said that the owners seek to get support for historic review for the construction of an accessory building in the rear of the yard. The home has two stories with a small cellar, and the plan is for the accessory building to be overflow, adding a fourth bedroom to be used for guests. His plan is that this accessory building would not be used for an Air BnB; it would only be used by the homeowners.

Mr. Boyette said that the site is very unusual; the home has a 3-foot easement that runs along the back of the home on 9<sup>th</sup> Street, allowing rear egress from 818 Constitution Avenue. The easement was needed because of a large accessory building at 820 Constitution Avenue. There is a dead end alley behind the properties on this block, but most of the 9<sup>th</sup> Street properties do not have access to that alley.

The easement has a 7 foot fence that runs along it, so there is not much visibility into properties. There is an existing accessory building that will be razed for the new building.

The new accessory building will be 2 stories. The first floor will be a large open room, with stairs up to a loft bedroom and bathroom. Mr. Boyette said that the facade would be painted exposed siding. The windows will be aluminum-clad wood windows, with stained cedar siding between the windows. There is an overhang from the second floor over the first floor to provide coverage over the door, and to make the second floor large enough for a bed and the bathroom.

Mr. Greenfield noted that in the pictures there appeared to be a large tree that would obstruct the view from the accessory building. Mr. Boyette confirmed that and said that

there were two trees: one is deciduous and the other is an evergreen. Mr. Greenfield asked if, other than trimming the trees, any changes would be made to the trees. Mr. Boyette said that the dogwood is far enough away from the accessory building that the roots will not be an issue. The evergreen is in a neighbor's rear yard, so it will not be an issue. Mr. Greenfield noted that the trees obstruct the view from the proposed accessory building, and would mitigate any privacy concerns.

Mr. Cushman stated that the Capitol Hill Restoration Society (CHRS) raised questions about privacy, and asked whether there were privacy concerns. Mr. Boyette said that CHRS did not go into that much detail, and their letter was a little vague.

Mr. Greenfield asked if the main building had an English basement, or if it was all one unit. Mr. Boyette replied that main building is two stories with a cellar. The cellar has no windows and is only seven feet tall, with the mechanical equipment in the center of the cellar, so there is potential for digging it out to make another dwelling unit. Mr. Greenfield asked if there was any potential to create a third dwelling unit. Mr. Boyette stated that the owners have no interest in anything like that.

Mr. Cushman asked if the owners would be amenable to having a codicil stating that the lot occupancy would not exceed 60%. Mr. Greenfield noted that there is no zoning relief being sought, so if the owners changed the building to exceed 60% they would have to get zoning relief.

Mr. Greenfield asked Mr. Boyette about letters of support from neighbors. Mr. Boyette said that the neighbor to the west, 818 Constitution Avenue has signed a letter of support, two neighbors to the east at 822 and 824 Constitution Avenue have signed letters of support, and they have signed letters from 200, 204, 206, 210, 214 and 216 9<sup>th</sup> Street. The neighbor at 826 is a renter, and they had trouble getting hold of the property owner. They have e-mailed them the plans today. There have been many attempts to discuss the plans with 208 and 212 9<sup>th</sup> Street, they finally left the plans with these owners today. 208 9<sup>th</sup> Street is not occupied.

Mr. Greenfield stated that he thought the project was pretty straightforward; there did not seem to be much impact on the privacy of the neighbors, the owners had letters of support from almost everyone that would be impacted and there was no zoning relief being sought. Mr. Greenfield said that he was inclined to support the request for support without any conditions. Mr. DeLuca and Mr. McPheeters agreed.

Mr. Greenfield made a motion that the EDZ recommend the ANC support the request for support with no conditions. Mr. McPheeters seconded the motion. The motion passed unanimously, 6-0.

3. 647 16th St NE (BZA Case #20612): Request for special exception zoning relief under Subtitle E § 5201 and Subtitle X § 902.1 from The lot occupancy requirements of Subtitle E § 304.1, and special exception zoning relief under Subtitle E § 5201, Subtitle E § 205.5, and Subtitle X § 902.1 from the rear addition requirements of Subtitle E § 205.4 To construct a third story and rear addition, and convert to a flat, an existing, attached, two-story with cellar, principal dwelling unit in the RF-1 zone. BZA Case scheduled for 02/09/2022.

Neither the owner nor any representative of this project shows up to represent the request for relief.

Mr. Greenfield tabled consideration of the relief request.

4. 628 9<sup>th</sup> Street, NE (BZA Case# 20651): Request for special exception zoning relief pursuant to Subtitle E § 5201 and Subtitle X § 901.2 from the rear yard requirements of Subtitle E § 306.1, and an area variance pursuant to Subtitle X § 1002 from the lot occupancy requirements of Subtitle E § 304.1, to construct a 2-story rear deck on the rear of their existing single-family rowhome in the RF-1 Zone<sup>1</sup>. BZA Case schedule 3/23/2022.

Jonathan Campbell, an architect, presented the project. He reported that the project is to renovate the home, and they will need relief to construct a two-story rear deck. There is an existing enclosed rear porch that is in a dilapidated state. The existing deck would be torn down, and a new deck put in its place. The property is currently non-conforming because of the current lot occupancy, as well as for the 20-foot rear yard setback.

Mr. Campbell showed photos of some of the neighboring properties, showing that many of the neighbors have decks that would be similar in size to the proposed deck.

Mr. Campbell reported that the plat has 1,020 square feet of lot area. The current structure, including the enclosed porch, covers 73% of the lot occupancy. He also noted that a 20-foot yard setback would encroach on the existing building by approximately eight feet. Because of the small lot the structure is on, almost any changes would require a variance and special exception. The project would include a 6-foot deck, going up to the second story, with stairs going into the back yard.

Mr. DeLuca asked if it was true to say that if the current porch was demolished and a new porch of the exact same dimensions build, a variance would still be required. Mr. Campbell replied that was true. Mr. Greenfield noted that the plans would increase the lot occupancy to 80%.

Mr. Campbell stated that the existing deck configuration has stairs coming straight off the deck, with about a 3-foot gap between the stairs and the fence. The new plan would extend the deck by a foot, but have the stairs go down the side to provide more room.

Mr. Greenfield asked if the stairs and deck would be required for code compliance to have a second egress from the building. Mr. Campbell confirmed that it is required for compliance. Mr. Greenfield asked if the size of the rear deck could be reduced. Mr. Campbell said that code requires a landing at the top of the stairs, so no matter what they do the deck will be larger than the old deck. Mr. Greenfield asked, if the architect tried to minimize the rear deck and still meet building code, how large would the deck be. Mr. Campbell did some quick calculations and estimated it would be about 75 or 76% of lot occupancy.

The owners of the property spoke on their behalf. They noted that because of a medical condition, the owner cannot always traverse stairs, and would use the upper deck to be

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<sup>1</sup> Note that the zoning relief shown here is not the relief request that was published in the EDZ agenda. This zoning request does reflect what was considered at the meeting.

able to go outside. They also noted that the small lot size prevented them from having much of a rear yard.

Mr. Cushman noted that he did not have a problem with going to the same lot occupancy they started from. Mr. Cushman raised the possibility of eliminating the lower deck, and just having the upper deck remain, and thought that should be something that should be considered.

Commissioner Toomajian noted that the lot size is particularly small, making the front and rear yards very small. He said that the unique nature of the property, combined with the need to bring the deck up to code, resulted in him supporting the project. He also noted that the unique conditions on this property are also common on this block, resulting in a lot of non-conforming properties.

Mr. DeLuca said that the unique nature of the property meant that any work done on it would require a variance. Mr. DeLuca stated that the tradeoff between 70% and 80% lot occupancy would be pretty trivial, and would force some crummy architectural tradeoffs to get a few feet of lot occupancy. Because of these conditions, Mr. DeLuca was inclined to support the project.

Mr. Greenfield expressed that the ANC should be very hesitant to support variance requests. Mr. Greenfield noted that once a variance was granted, the owners could expand to 100% lot occupancy if they wanted to. Mr. Greenfield also expressed concerns about the precedent that was being set. In the past, when the ANC has supported variance requests, it has been for projects where they were non-conforming but were not seeking to expand the building envelope. In this case, they are seeking to expand the size of the building. Mr. Greenfield noted that just bringing the deck up to code would require expanding the deck, so this would be a discussion of 80% lot occupancy or 75% lot occupancy.

The owner noted that the existing deck does not have much size currently, only having enough space to put a chair on the deck.

Mr. McPheeters noted that the zoning and safety concerns overwhelmed the precedent argument.

Mr. Cushman asked if there were photos showing the view from the house to see if there were any windows that they would be able to look into. One of the photos shows a building with windows across the alley. Mr. Cushman expressed that he did want the owners to be able to bring the deck up to code, but he had concerns about the idea of granting a variance, and that it would give the owners the ability to do almost anything they want after they get it. Mr. Cushman wondered if there was a design that could minimize the lot occupancy but still give safe egress and meet building codes.

Commissioner Toomajian said that there are unique considerations that should be noted. The first is the need to bring the deck up to code. He also noted that he cannot think of another block that is similarly situated with small lot sizes. Additionally, Commissioner Toomajian noted that this request had adjacent neighbor support, and that the neighbors do not consider this a meaningful change. Commissioner Toomajian thought that the small amount of space under consideration mitigated the risk of a precedent.

Mr. Greenfield said that if the ANC supported the variance, we could ask that a codicil be added limiting the lot occupancy to the number being proposed.

Mr. DeLuca asked if the risk of granting a variance would be true for any lot occupancy above 70%. He stated that just bringing the deck up to code will result in the same risk. Mr. Greenfield confirmed that this was true. Mr. Greenfield noted that if the ANC supports the variance request, any neighbor on the block could make the same argument and request a variance.

Mr. McPheeters asked if the deck was enclosed. Mr. Campbell said that it was not enclosed.

Mr. Cushman asked if the decks shown in neighboring yards (shown in pictures) would be the same dimensions as this deck. Mr. Campbell said that it would. Mr. Cushman asked if a variance was granted, and a further change was made, if another variance request would be required. Mr. Greenfield stated that it would not be; granting a variance means that that zoning rule no longer applies to this property, so any changes to lot occupancy could be done by right.

Mr. Greenfield asked if there was a lot occupancy number below 80%, but greater than 75% that would be acceptable for the project. Mr. Campbell said that we were talking about small amount of space, but that there were not a lot of permutations that could work and meet building code standards.

Mr. McPheeters stated that the unique nature of this block, and other considerations we are taking, make the risk of a precedent relatively small.

Mr. Cushman stated that he did not think that stairs counted against lot occupancy. Mr. Campbell said that because the deck is greater than 3 feet, it is included in lot occupancy.

A member of the community stated that he is a neighbor just across the alley. He said that there are many decks in this neighborhood that take up the entire yard, and that he supports this variance request.

The owners stated that they have a letter of support from the neighbor at 635 9<sup>th</sup> Street.

Mr. Greenfield stated that he thought the ANC should ask for a codicil if the variance request is supported. Mr. McPheeters noted that adding a codicil was not costless. Mr. DeLuca agreed with Mr. McPheeters that a codicil would be overkill.

Commissioner Toomajian made a motion that the ANC support the request for relief, on the condition that the lot occupancy be the modest amount contained in the proposed project. Mr. DeLuca seconded the motion. The motion passed unanimously, 7-0.

5. 1207 H Street, NE (ZC Case# TBD): Informational session about the request for a map amendment to change the property from its current NC-14 zoning (Mixed Use: Medium Density Residential and Medium Density Commercial) to NC-15 (medium density mixed use)

which permits a height of 70 feet and an FAR of 4.8, and will be subject to the enhanced affordability requirements under the IZ+ program.

Mr. Greenfield noted that this is an informational session only; that there had been a notification of intent to seek a zoning change, but there are no definite plans at this time. Mr. Benjamin Miller, the owner of the property, presented the project. Mr. Miller said that his zoning attorney, Allison Prince, is supposed to be attending, but was delayed by another meeting. He would do the best he could addressing any zoning questions.

Mr. Miller said that he has been active in the H Street corridor for a while. They had purchased Autozone in 2010. He also stated that he owns the Maketto building. The Autozone lease was signed in the mid-1990s as a 30 year lease, and the lease expires next year.

Mr. Miller said that they were in discussions with Autozone, but were also talking to the neighborhood and the Office of Planning, about potentially zoning it for development.

Mr. Miller stated that the property was amended to be zoned NC-14 in 2014 as part of the comprehensive plan. He said that the process to take it from NC-14 to NC-15 would be either through the PUD process, or through the new IZ+ process. He said that the city has prioritized affordable housing, creating a new structure in IZ+ where developers can exchange some zoning change in exchange for affordable housing. Mr. Miller has stated that no one has followed the IZ+ process yet; they would be the first development to follow this process.

Mr. Miller said that under existing rules, the affordable housing requirement is between 8% and 10%. Under IZ+ the affordable housing level would be 20%. He stated that there are not detailed plans required under IZ+, just a MS Word summary, with the zoning change exchanged for the increase in affordable housing. After the IZ+ process is completed, at that point it would go back to BZA to follow a normal zoning relief process.

Mr. DeLuca asked if the IZ+ program made stipulations on the AMI level that would be used for the units. Mr. Miller said that it does stipulate AMI, at either 80% AMI or 60%; he was unsure which it was. He said that these affordable housing requirements are recorded forever as part of the IZ+ process, so even if the development occurs 10 years later, the affordable housing requirements would still stand.

Mr. McPheeters noted that Mr. Miller was going through this process to maximize development options. Mr. McPheeters asked if, under any of the options under consideration, he would subdivide the property, or create multiple structures within the property to facilitate mixed use. Mr. Miller stated that he was unsure what was meant by subdivision, but that there would be retail on the ground floor, and apartments above. Mr. McPheeters clarified that he wanted to see if the existing parking lot would be included in development. Mr. Miller said that he would either leave Autozone, or develop the entire site, possibly digging down one or two levels for parking, but that this was a combination economics and BZA question.

Mr. Miller said that he met with some of the Linden Street Association members last week to get their thoughts. One of the questions that was asked, was what the scale of the development. He said that the closest approximate scale that would be nearby would be

1401 Florida Avenue. That property has more density and is taller than the upzoning that is being proposed, but it does give you an idea of the density and massing being considered.

Mr. McPheeters asked if this was about keeping options open, or if there was a plan in place that will be executed once the lease expires. Mr. Miller said that he was running all options in parallel at the moment.

Commissioner Chatterjee noted that the District Department of Transportation (DDOT) has said that there may be a bus lane designated on H Street, and that there were concerns about getting more affordable units within the ANC at a lower AMI, such as 30%. She noted that the median income among black residents was considerably lower than the median income in DC, and we have had quite a lot of black displacement in our ANC. Additionally, Commissioner Chatterjee noted that we had gotten pushback from developers about the viability of projects with lower AMI, and she wanted to hear Mr. Miller's feelings about these and similar development issues. Mr. Miller said that he probably would not be the developer of the project, so he can give his thoughts but they may not be dispositive in any meaningful way. Mr. Miller said that the IZ+ process is a straightforward exchange of zoning relief for increased affordable housing, and this was a different process from the planned unit development (PUD), which was a more arbitrary process, since there are a lot of different opinions that factor in. Mr. Miller said that there has always been the possibility of bonus density for increases in affordable housing in the PUD process, but that developers were reluctant to use it since it was punitive. He noted that part of the process for IZ+ would be seeing if the process can work since it has never been done.

Commissioner Toomajian noted that a notice of intent to file has been filed, but no zoning change has actually been filed yet. If a request for a zoning change is taken, that will go through a separate process, and the project would come before the ANC again. Mr. Toomajian thought that he was excited about the idea of adding affordable housing where there is currently a large surface parking lot. Commissioner Toomajian asked Mr. Miller when he thought he might be filing a zoning request if this goes forward. Mr. Miller said that they had not drafted any plans; they had filed the notice of intent two weeks ago, and there is a 45 day notice period. After that notice period expires, they would have the right to file the application for a zoning change, so if it gets filed it would likely be next year. Mr. Miller also noted that just asking for a zoning committee meeting is a three to four month wait, so it would likely be March 2022 before the first hearing.

Mr. Miller said that there were competing priorities as well. The Office of Planning does not think that Autozone, with a large surface parking lot, is the best use of the space. The Mayor's top priority is affordable housing. However, the Linden Street neighbors were more concerned with issues like how construction noise was going to affect them. Commissioner Toomajian stated his belief that developing the property would be a positive change, with benefits to the community.

Mr. DeLuca thanked Mr. Miller for presenting the project at this stage, since often when large developments come before the EDZ and the ANC, major decisions about the project have already been made. Mr. DeLuca noted, as Commissioner Chatterjee had said, that 60 - 80% AMI is really higher than is useful to a lot of people in the community, and since concrete plans have not been made, there should be more of an effort than is legally required to make more units available at a lower AMI.



Ms. Allison Prince joined the meeting; she is the zoning attorney for the project. She noted that the level of affordable housing is double the existing standard. Mr. Greenfield asked what AMI level was used for the IZ+ program. Ms. Prince said that the AMI level is 60%. Mr. Greenfield noted that several committee members and commissioners had requested that a lower AMI level be pursued. Ms. Prince said that part of the thought that went into the IZ+ program was to build in a high level of affordable housing, but not such a high level that developers would not pursue it. She said that, under the PUD process, the typical level of affordable housing between 12 and 15%. The IZ+ is a simpler process in exchange for more affordable housing. Ms. Prince said that many developers have not pursued the IZ+ process since they view the 20% affordable housing levels as prohibitive, so she was quite pleased that Mr. Miller is pursuing it, and that the Office of Planning will also be pleased.

Mr. McPheeters stated that since Mr. Miller was presenting so early in the process, that it would be appreciated if he looked at alternative financing mechanisms that were available. Mr. McPheeters noted that both FreddieMac and FannieMae are both in the tax credit game; FHA is doing more in that space well, people are figuring out how to work around opportunity zones through in-kind grants as well as financial contributions, and then there are shared equity structures and other types of longer-term structures that are becoming available. Mr. McPheeters asked that Mr. Miller make a good faith effort to look at some of those options. Mr. Miller said that was interesting and that sometimes you can use multiple financing options to piece together more of an impact. Mr. Miller also said that there are additional programs coming out of the Biden Administration currently, including programs that are being added to the infrastructure bill.

Ms. Prince went over the way that the IZ+ program works. She said that the Zoning Commission has said that since they value affordable housing so much, that should a developer be willing to accept the heightened zoning requirements, their zoning changes would be approved without conditions. The 20% affordable housing would be a minimum, so when the project is ultimately developed, if alternative funding mechanisms are included that improve that level, it is not precluded. However, there is not a mechanism in the IZ+ to commit to a level that is different than is included in the IZ+ program. This program was an attempt to get around the litigation that has surrounded the PUD process, by creating a structure that is so simple it is appeal-proof. Ms. Prince said that they could look into increased affordability levels and alternative financing, but when it is approved, it is approved with the zoning change and the 20% affordable housing level. Developers can always do more, but that is the level that is part of the IZ+ program.

Ms. Prince said that even once the zoning process is completed, the community can still have input as part of the design review. However, there is not a lot of negotiation related to affordability in the IZ+ program.

Mr. Cushman thanked Mr. Miller and Ms. Prince for appearing before the committee and being willing to be the first to go through the IZ+ program. He noted that Mr. McPheeters has brought up a lot of good ideas for the developer to look at.

A community member also echoed that they appreciated having the developer discuss the project at such an early stage. He also asked that the developer accept the challenge to

build more affordable housing for the community, and become an example for other developers.

A member of the community noted that the Autozone property was listed for sale, and asked Mr. Miller to explain what the plan for the property was. He also stated that there are a lot of people concerned about the level of parking that will be included in this development. Mr. Miller stated that he was exploring all his options for the property, including selling it. Regarding parking, Mr. Miller said that it was too early to say how many parking units will be included, and that will be discussed in the BZA process. Ms. Prince noted that if Mr. Miller goes forward with the IZ+ program, and then sells it, the affordable housing levels agreed to as part of the zoning would stay with the property, so anyone who developed the property would have to include that level of affordable housing.

A community member asked what the impact of the IZ+ zoning would be on the value of the property. Ms. Prince said that developers want to see a minimum density to make a development worthwhile, and a small change in zoning can help achieve this.

A community member who was at the Linden Street meeting last week expressed concern about the massing of the building, and how that will impact neighbors. Ms. Prince said that this was an essential part of the BZA process. She also noted that there would be an alley between the property and the neighbors, so there would be separation. She said that any way this property gets developed will have to take into account the impact on the neighbors, and it will need to fit into the neighborhood. The community member asked what the benefit to the neighborhood will be from the development. Ms. Prince noted that any project that goes in would require ground floor retail, but a lot of these questions would get answered in the BZA process.

**Next Scheduled ED&Z Committee Meeting:  
Wednesday, December 15, 2021  
7:00-9:00 pm  
Zoom information to be posted on ANC 6A Website**