

**Report of the Economic Development and Zoning Committee of ANC 6A
December 21, 2011**

Present: Members: Missy Boyette, Laura Gentile, Charmaine Josiah
Commissioners: Drew Ronneberg, David Holmes, Andrew Hysell

Drew Ronneberg chaired the meeting.

Community Comment

There were no community comments.

Status Reports

Resolution of Previously Heard BZA/HPA Cases: Drew Ronneberg stated that BZA case #18254 (1303 Linden Ct. NE) went before the BZA, but the resolution is unknown. He also gave an update on 1113-1117 H Street NE, a project that has come before the ED&Z Committee before. The ED&Z provided comments to the owner and architect, including a suggestion for a top element at the 3rd column of windows.

Vacant Properties: No update

Zoning Regulations Rewrite: Drew Ronneberg stated that key persons in charge of the rewrite have left the Zoning Office.

H Street Business Liaison Report: Charmaine reported that there is consideration of developing a retail group in order to get feedback from the community on the types of businesses that neighbors would want to see on H Street.

Old Business

None

New Business

BZA #18324 (1337 Maryland Avenue NE): The owners are seeking a use variance to allow three units in the existing building. The owners were not present to discuss the project; the attorney who filed on behalf of the owner was present. The building would be renovated in its current footprint, with no visible changes to the building. Drew Ronneberg requested that the attorney provide proof of the standards for a use variance. Related to financial hardship, the attorney stated that the basement currently has no other purpose and that when the owner purchased the property, he was not aware that the basement could not be rented out as a 3rd unit without a variance. Related to light and air, the attorney stated that there would be no alterations to the existing building, so there would be no affect on light and air. The zoning regulations for R-4 include conversions of dwellings for two or more families.

The attorney described that the use variance is required because each apartment, by zoning, is required to be 900 sf. He also stated that the irregularity of the lot is a hardship. Drew Ronneberg asked whether any of the neighboring homes have three separate units. The attorney was not aware.

Drew Ronneberg stated that he is skeptical of the issue as being a financial hardship. The attorney restated that the owner did not realize that a 3rd unit would not be allowed by current zoning. Drew Ronneberg stated that he did support a 3-unit use variance for a building on A Street, but in that case, the internal structure of the building made it difficult to create three units. He felt that a use variance in this situation is detrimental to the zoning code. He suggested that the owner use the cellar as shared space. Drew Ronneberg stated that he is aware of three instances in which a use variance has been supported by ED&Z, and these cases applied to either allowing commercial use in a historic area due to the fact that the area historically had been commercial use, or in very unique situations.

Missy Boyette inquired as to whether there is an internal stair in the building which provides access between the basement and first floors. The attorney stated that he was unaware of any stair. Missy Boyette asked whether the basement, if allowed to be rented out separately, is a legal unit (ceiling height, egress, etc.). The attorney responded that yes, it would meet these requirements.

Charmaine Josiah inquired about the adjacent empty lot that may be developed later to create a 5-unit condo between the two lots. She asked whether, if the lots were combined, this would trigger use variance. She stated that she can see the financial hardship, but does not see that the other two standards of variance can be met.

No neighbors were present. Charmaine Josiah inquired whether there was approval or discussion with neighbors. The attorney stated that he is not aware.

The attorney inquired whether, if proof of financial hardship can be provided by the owner, the Committee would take this into consideration. The case is scheduled for the April BZA hearing. Charmaine Josiah responded by saying that if she could see evidence of neighboring properties that are similar, and if there were a stronger case in terms of financial hardship, she would consider this. Drew Ronneberg surveyed the other committee members and the majority did not feel that this information would change their opinion of the lack of unique conditions at the site or the negative effects of setting a precedent.

The Committee voted 3-1-0 to recommend that the ANC write a letter to the BZA opposing the grant of the use variance. The vote will be presented to the full ANC during the January meeting.

Recommendation: The ANC write a letter to the BZA opposing the use variance relief requested by BZA #18324 (1337 Maryland Avenue NE).

BZA #67549 (1400 Maryland Avenue NE): Mr. Richard Aguglia, representing the applicant, gave the presentation. This project has come before the ED&Z Committee previously in 2008 and 2009. Mr. Aguglia started by provided some background.

The subject site was used as a gas station from 1969-1995. The owner has been trying to put a gas station back on the site since 2008. The first public space application (Dec. 2008) was denied because the site showed inappropriate use of public space and insufficient vehicular circulation. Mr. Aguglia stated that the architect, who is present, has revised the plans significantly.

The question at hand at this time is the use of public space. The BZA delayed the case until the Public Space Committee heard it/ they approved it with conditions, and then it took six months to receive a permit. The BZA order came out two or three days after the Public Space Permit had expired. The applicant has now refiled plans for public space which are "exactly the same."

Plans were presented by the architect, Bill Maiden. Mr. Maiden described that the building has been reduced in size, taking away 9.33' to make it smaller. The fuel call sign is located on private property and is 8' tall. The building was cut back in size in order to provide adequate queuing space. The number of gas pumps has been reduced from 4 to 2 (2 pumps with 4 positions). The landscape is on public space and will provide low height and low maintenance plantings. The trench drains are on private property. Two existing driveway aprons (previous design showed four) are being reworked to conform to public space requirements. The 14th Street apron has been relocated slightly to the north. The architect stated that there is no street parking on 14th Street. The east, west and south sides have a 3' high fence, with a 6' high fence on the alley (no alley access). Sidewalks use the same material as the apron (concrete aggregate), with a pedestrian walkway along each apron. The Public Space committee requested directional arrows be painted on the pavement, which the applicant will provide. The architect stated that the Maryland Avenue median is proposed to be extended to prevent U-turns. The applicant is asking for support for the driveway aprons, sidewalks and ornamental planting.

Drew Ronneberg explained that these plans were filed with DCRA for building permit in May of 2011. The Public Space Committee's previous rejection requested circulation diagrams, which the applicant has not provided to the ED&Z Committee. Mr. Aguglia stated that these diagrams were part of the BZA application and will provide copies to the ED&Z Committee.

Several clarifications were discussed. The architect clarified that a curb cut is for pedestrian use whereas a drive apron is for vehicular use. The architect also confirmed that all signage is located on private property. The applicant's representatives stated that the gas station's hours of operation will be 24 hrs/day, but that delivery of gas will be limited.

The applicant's representatives stated that in the previous denial, there were two conditions presented by the ANC that would require conformance in order for the Public Space Committee to grant approval - extension of median, and to take away anything that does not work or is not maintained. The applicant believes these items have been addressed.

Discussion opened up to community comment. A community member inquired as to where the gasoline will be stored. The response by the applicant was that the gasoline is stored underground and that there is currently no storage tank on site. Community member asked what will be done to make sure that the tank does not leak and to detect a leak. Monty Berhane, a representative of Capitol Petroleum, stated that the tank will be double-walled fiberglass with a 24-hour monitor. Community member asked for a plan to show the location of the underground tank.

Community member asked whether there were any plans to provide a green roof. Mr. Aguglia stated that this was initially suggested, but was later rejected as no one liked it. Community member asked whether the application has been submitted to DDOT. The applicant responded yes. However, DDOT has not seen the circulation plan. Community member asked that this be provided to the ANC and Public Space Committee (PSC).

Drew Ronneberg referred the applicant to BZA order item #11, stating that the BZA order condition regarding the median was intended to be a full closure of the median, along the entire length of the property, not a 5' extension. Applicant stated that this is up to the Public Space Committee; Mr. Aguglia added that the PSC request clearly states that a 5' extension is required. Drew Ronneberg replied that the ANC can raise this issue with the PSC.

Commissioner Holmes asked how many cars are able to queue from 14th Street. The architect responded that a queuing scenario would allow one car on private property and one on public property. Drew Ronneberg referenced Zoning section 2405, which states that there is no parking allowed in the space between the curb and the building line.

Omar Mahmud, the Chair of the Public Space Committee, stated that the proposal requires the community to put a lot of faith in the applicant. Mr. Berhane stated that he maintains both the public and private space and that he had contacted the police regarding encampments on the site. He stated that he can provide the ANC information on these calls regarding the maintenance of the site.

ANC Commissioner Andrew Hysell responded with some comments on the condition of the facility. He described that he was elected to the ANC a year ago and that, in the past year, this site has been a constant problem for his constituents. Mr. Berhane, the representative from the gas station, stated that he will give his business card so that he can be contacted when there are issues.

Omar Mahmud stated that he does not understand how the gas station owner will maintain the building when it is finished. Mr. Berhane stated that the Shell Company has standards, and that issues “won’t happen once we’re in there.” Mr. Mahmud responded by stating that he does not find these promises credible based on the inability of the company to follow up on issues over the past several years.

Commissioner Holmes asked how many attendants would be on site. The applicant responded that there would be at least two (6am-10pm), and one at the midnight shift.

Community members reacted to the 14th Street entrance as proposed as being problematic - a safety problem. Drew Ronneberg asked the applicant whether they’ll still build the project if they were required to close the median strip on Maryland Avenue per the BZA order. Mr. Berhane responded yes. A community member inquired as to whether the plans as shown accurately depict existing conditions. The owner responded yes.

Committee members deliberated. Laura Gentile stated that she is concerned about safety and maintenance of the proposed site. Missy Boyette reiterated that the ANC wants to see the circulation plan. When asked whether there were any parking spaces that would be eliminated by the proposed plan, Mr. Aguglia stated that no legal parking spaces would be eliminated.

Commissioner Hysell stated that a constituent got 37 signatures on a petition, and that the support is conditional on the BZA order having to be implemented if the project were to go forward. He also mentioned that the median extension remains an issue.

Community member Matt Ashburn who was present and who lives half a block away from the subject site, near two gas stations, stated that he was indifferent to the issue prior to attending this meeting, but that he is no longer in support due to the incredibility of the owner.

Drew Ronneberg stated that he feels that trying to circumvent the BZA order is unethical; the applicant either needs to close the median or have the BZA modify the order. Thus, one of the reasons for denial should be for non-compliance with the BZA order. He also expressed concern about queuing. If the median is closed, his recommendation to the PSC would be for one-way traffic through the site (enter from Maryland Ave, exit onto 14th Street).

A motion was made to oppose the Public Space application because:

1. The proposed layout fails to close the median strip per the BZA order
2. The applicant has not provided circulation plans
3. Circulation would be recommended as a one-way traffic pattern in which cars would enter the site from Maryland Avenue and exit on 14th Street
4. The owner has a poor reputation with the community based on past behavior

The Committee voted 5-0 to recommend that the ANC write a letter to the BZA / PSC opposing the application. The vote will be presented to the full ANC during the January meeting.

An additional motion was made to state that an ANC representative (Ronneberg, Holmes, Hysell, former Commissioner Schultheiss, or Mahmud) represent the ANC in from of the Public Space Committee.

Additional Community Comment

None

**Next Scheduled ED&Z Committee Meeting:
Wednesday, January 11, 2012
7-9 PM
640 10th St NE
Sherwood Recreation Center, 2nd Floor**