

**Statement of Advisory Neighborhood Commission 6C
In Support of Appeal to the Board of Zoning Adjustment
Concerning Permits B1509391 and B1512716**

Advisory Neighborhood Commission 6C submits this statement in support of its appeal concerning permits B1509391 and B1512716 issued for construction at 518 6th St. NE, also known as square 835, lot 29 (“the Property”).

SUMMARY OF ARGUMENT

On July 2, 2015, DCRA issued permit B1509391 to the owner of the Property, Redux Properties LLC (“Redux”) for extensive interior and exterior construction. Both the application form and the plans (prepared by a firm in Sofia, Bulgaria apparently unlicensed to practice architecture in the District of Columbia) contained numerous material omissions, inconsistencies, and false statements concerning the Property’s existing condition.

When the owner of an abutting rowhouse called DCRA’s attention to the most egregious of these misrepresentations—the depiction of the existing rear addition as a two-story structure, and not the actual one-story addition on the Property—Redux submitted revised plans calling instead for the addition of that second story. Once again, those plans materially misrepresented the Property’s existing condition.

On October 1, 2015, the Zoning Administrator authorized the issuance of permit B1512716 revising the July permit and allowing the second-floor addition. The Zoning Administrator apparently did so without conducting any zoning review or analysis of the proposed building envelope expansion. The file jacket for permit B1512716—that is, the DCRA form used to check off plan review for various disciplines such as plumbing, electrical, structural, etc.—bears no notes of any kind, either for zoning review or any other area. The permit file also contains no evidence that the applicant provided (or that the Zoning Administrator requested) a new Zoning Data Summary form or any other new or revised figures or calculations relevant to determining zoning compliance.

On October 15, the ANC Commissioner for the relevant district (6C04) emailed the Zoning Administrator and the Deputy Zoning Administrator drawing their attention to the fact “that the existing structure occupies over 60% of the lot, which would necessitate zoning relief for any addition.” Later that same day, and on numerous occasions over the following five weeks, the 6C04 Commissioner provided the Zoning Administrator and members of his staff increasingly detailed information—in the form of plan excerpts, lot-occupancy calculations, and citations to the controlling provisions of the DC zoning regulations—and called repeatedly for the revocation of permit B1512716.

After the 6C04 Commissioner advised the Zoning Administrator on November 13 that ANC 6C had voted unanimously to file this appeal (and again invited the Zoning

Administrator either to revoke the permit or to provide a justification for its issuance), there was no response. Indeed, the Zoning Administrator failed to take action even after the 6C04 Commissioner and the chair of ANC 6C escalated their objections to the DCRA Director.

Having made every effort to seek the Zoning Administrator's assistance in enforcing the law and protecting the interests of nearby property owners, ANC 6C is now left with no choice but to bring this appeal from

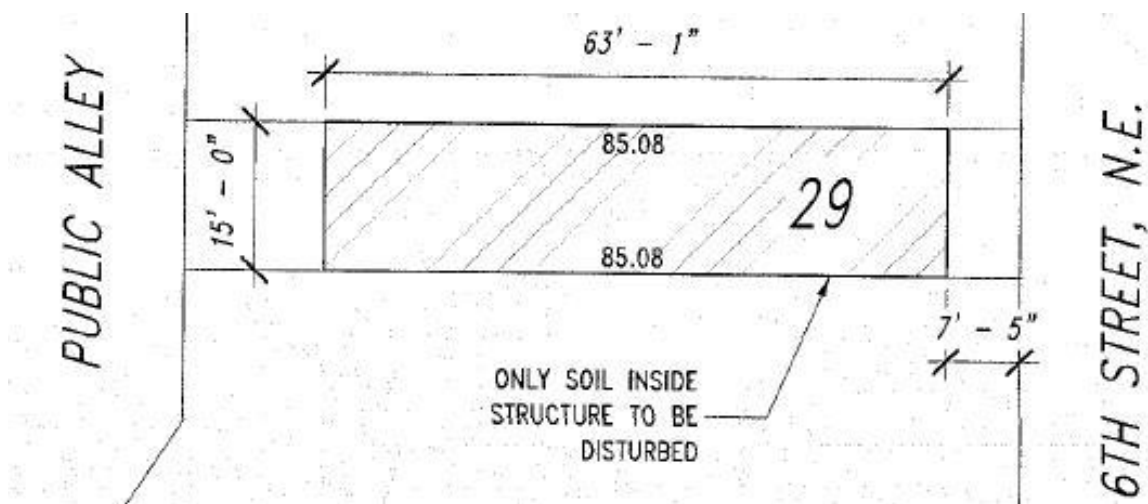
1. the issuance of permit B1512716, which purports to authorize the construction of an addition on the Property despite that fact that the existing structure occupies well over 60% of the lot, and
2. the refusal of the Zoning Administrator, despite prompt notice and abundant evidence of its illegality, to revoke permit B1512716.

We therefore respectfully ask the Board to revoke permit B1512716 (and permit B1509391 insofar as it is revised by permit B1512716).

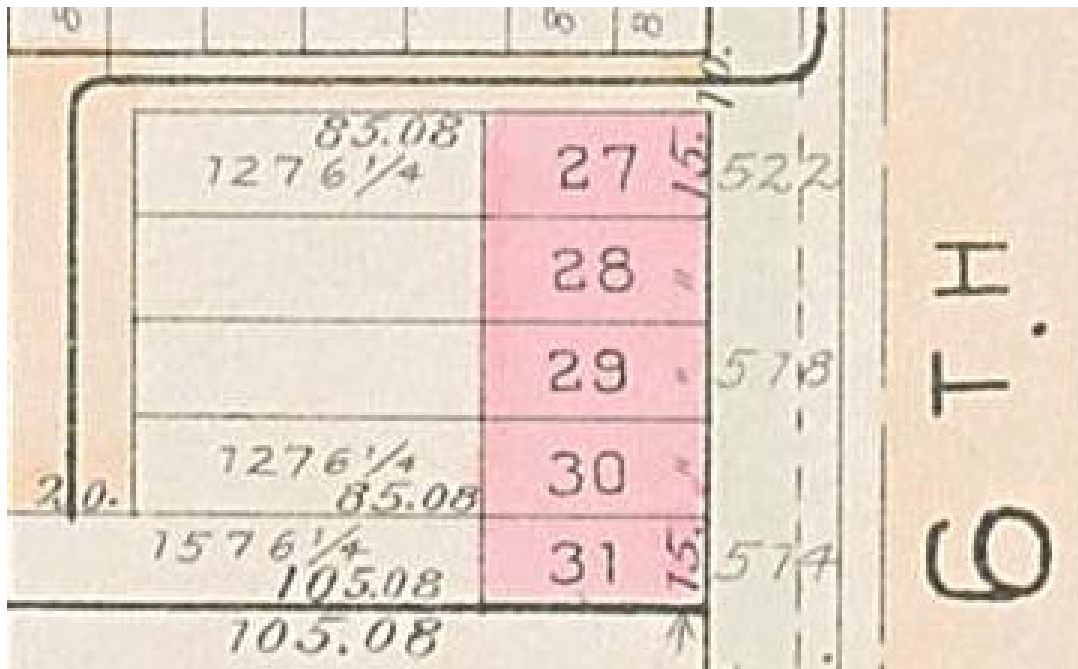
STATEMENT OF FACTS

A. The Lot and Existing Structure

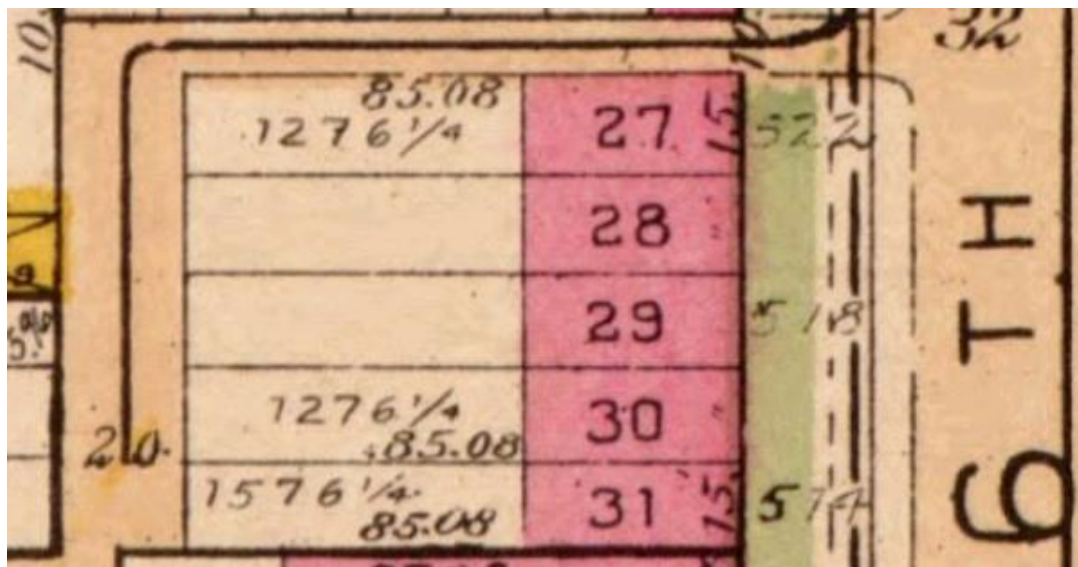
Square 835, lot 29—also known as 518 6th St. NE (“the Property”)—is a rectangular lot 15' wide (in the north south dimension) by 85.08' feet deep (east/west) with an area of 1276sf. It sits in the CAP/R-4 zone. The plans submitted in connection with permit B1509391 (appended hereto as Attachment B) include the following plat at sheet C-S.02:



Although this plat is not certified as an official building plat issued by the DC Office of the Surveyor (as required by 12A DCMR § 106.1.13), it does appear to depict the lot dimensions correctly. Both the 1893 Hopkins atlas (vol. 2, plate 20),



and the 1921 Baist atlas (vol. 2, plate 20),



depict the same dimensions, both for the Property and the adjacent lots.

Along with other lots in the row, the Property was improved circa 1890 with a three-story row dwelling roughly 35' deep:

- A November 6, 1920 plat prepared by the DC Surveyor shows a depth of 34'10" for the original structure on the Property. *See Attachment I.*
- A March 1, 1995 certified survey of adjacent lot 28 (aka 520 6th St. NE) gives a depth for that twin row dwelling, which has never been expanded, as 35'. *See Attachment J.*

Between 1920 and 1995, the accessory garage shown on the Surveyor's 1920 plat was razed and a one-story cinder-block addition constructed at the rear of the Property. The lot 28 survey from 1995 indicates that this one-story addition—which remains intact today—extends another 21.1' from the rear wall plane common to all the 35'-deep dwellings in this row.

The 6C04 Commissioner personally took measurements in November 2015 confirming these general dimensions. His measurements showed a depth of 20'11" for the Property's one-story addition and a rear yard depth of 29'1", giving an overall depth of 56' (*i.e.*, 85.08' minus 29.08') for the structure on the Property.



518 6th St. NE front view (Nov. 21, 2015)



518 6th St. NE rear view (Nov. 21, 2015)

B. Building Permit B1509391 (Issued July 2, 2015)

On or about June 25, 2015, Feroz Ashraf submitted an unsigned application, Form BLRA-33, on behalf of the Property's owner, Redux Properties LLC ("Redux") for a variety of interior and exterior work. See Attachment A. He marked the type of proposed work (Box 11 on page 1) as "Alteration and Repair," not "Addition" or "Addition Alteration Repair."

Among the many material omissions, inconsistencies, and false statements in that application are the following:

- Box 12 describes the proposed scope of work to include "fix carport area, repair rear deck." As seen clearly in the rear photo above, there is no "carport" and no deck, and we understand from a neighbor that no carport or deck has existed on the site for at least 20 years.
- Box 22 states that the work will not entail disturbing the earth or razing a building. In fact, the accompanying drawings show substantial proposed excavation. (See Attachment B, sheets A1.1 and A3.1 for plans of existing and proposed basement.) Boxes 23-27 are blank.
- Boxes B-1 and B-5 state that "all info" regarding the architect and engineer are on the plans, and boxes B-2 and B-6 are blank. The accompanying drawings indicate that Constructa, a company in Sofia, Bulgaria, prepared them. Neither the drawings nor Constructa's website (www.constructabg.com) appear to list DC architectural or engineering licenses, nor any indication that Constructa or its employees hold DC licenses to practice these professions.
- Boxes B-20 to B-22 list the length/width/height of the building as "0.00."
- Box B-35 states that the plans' certification by an engineer is attached. No such certification appears.
- Box B-37 states that the proposed increase in building volume is 0 cf.
- The Zoning Data Summary attached to the application supplies no zoning data other than the number of dwelling units and parking spaces.

Along with this application, Ashraf and Redux submitted the set of drawings (Attachment B) mentioned above. These drawings, too, suffer from innumerable material omissions, inconsistencies, and false statements, including but by no means limited to the following:

- **Most conspicuously, sheet A1.2 falsely shows the existing condition as including a two-story rear addition, and not the actual one-story addition.**

- Sheet A1.2 also falsely shows, at the third-floor level, a rooftop deck atop the non-existent second story of the addition.
- Nowhere in the plans—either on the uncertified plat shown above (on page 2) or anywhere else—is there a plat showing “completely dimensioned and drawn in ink to the same scale as the plat, the outline of all buildings, additions, or other structures existing and to be constructed,” as required by 12A DCMR § 106.1.13.1.
- Each and every drawing in the plans misrepresents the width of the existing structure on the Property as 14'. This is, of course, physically impossible, as the lot is 15' wide and the structure is a row dwelling sharing party walls with the originally identical row dwellings constructed at the same time on lots 28 and 30.
- Each and every drawing in the plans falsely depicts the length of the existing structure as 53'8". As established above, the structure actually consists of the original row dwelling (between 34'10" and 35' in depth) and the rear addition (between 20'11" and 21.1'), making the overall length a minimum of 55'9"—an error of more than two feet.
- Sheet C-S.01 contains a lot-occupancy calculation:

<u>SITE DATA:</u>	
ZONING: R-4 RESIDENTIAL	OLD CITY 1 NEIGHBOURHOOD J
	SQUARE 777
	LOT 37
SITE AREA: 1.280 SQUARE FEET	
0.0293 ACRES	
LOT COVERAGE:	
MAXIMUM ALLOWABLE = 60%*2.083 SF=768 SF	
COVERED AREA = 752 SF	
BUILDING HEIGHT:	
MAXIMUM ALLOWABLE = 40 FEET	
MAXIMUM STORES = 3	
<u>SETBACKS:</u>	
FRONT 0'	
SIDE 0'	
REAR 20'MIN	
GROSS BUILDING AREA:	SQUARE FEET
BASEMENT	781.33
FIRST FLOOR	781.33
SECOND FLOOR	781.33
THIRD FLOOR	488.50
TOTAL	2,832.49

Owing to the misrepresentations in the width and depth of the structure (and in the height of the rear addition), all of the gross building area figures given are materially false. So is the purported “covered area” calculation, which apparently derives the total of 752sf by multiplying two materially false dimensions (14’ width x 53’8” length). The actual “building area” is at least 836sf (15’ width x 55’9” length), and possibly more.

The “file jacket” for permit B1509391 (Attachment C) has no notations of any kind indicating that Zoning Administrator Matthew LeGrant or his staff conducted any zoning review. DCRA nevertheless issued permit B1509391 (Attachment D) on July 2, 2015.

C. Building Permit B1512716 (Issued October 1, 2015)

After a neighboring owner informed DCRA of some of the material false statements in the permit B1509391 plans, DCRA inspectors placed a stop-work order on the Property on August 4, 2015.

On or about September 15, 2015, Brian Craddock of Redux submitted a revised set of drawings (Attachment E) seeking permission to construct a second story on the rear addition. Although these plans corrected one prior misrepresentation—the height of the existing one-story rear addition—they repeated other material falsehoods and omissions contained in the previous drawings, including

- the depiction of a nonexistent deck atop the rear addition (sheets A1.2, A1.3, and A1.4);
- the untruthful depiction of the structure’s width as 14’; and
- the untruthful depiction of the structure’s depth as only 53’8”

The drawings also incorrectly showed the existing one-story addition as faced in brick, when in fact it is unadorned cinder block (CMU). See sheet A1.3. In addition, sheets A3.3 and C1.4 are irreconcilable: the former shows the proposed second-story addition being faced in brick, while the latter states that it will be sheathed with “Hardie Siding.”

The permit file contains no new application form; no new Zoning Data Summary sheet supplying the figures previously omitted from the permit B1509391 ZDS form; and no plat—certified or otherwise—showing the existing and proposed structures properly dimensioned in relation to the lot boundaries.

Despite these conspicuous omissions, it appears that Zoning Administrator Matthew LeGrant made no request for the missing information. Indeed, the “file jacket” for Permit B1512716 (Attachment F) bears no reviewer notes of any kind, either for zoning review or any other discipline:

Address of Project:

518 6TH ST NE

Job

E

Job No:

B1512716

Existing Use: Single Family

Existing No. of Stories: 3

Proposed Use: Single Family

Prop no of Stories: 3

Permit Type: Addition Alteration Repair

SSL: 0835 0029

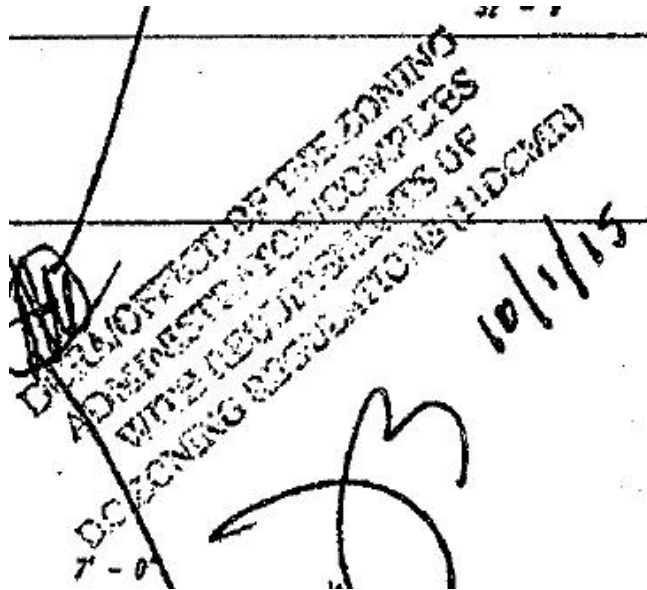
Description of Work:

New rear addition on 2nd level with balcony.

Required Reviews: (Checked boxes only)	Reviewer:	Completion Time:	Review Status:		
☐ Fine Arts:		☐ AM ☐ PM	☐ Approved	☐ HFC	☐ Conf. w/Applicant
☐ Historic:		☐ AM ☐ PM	☐ Approved	☐ HFC	☐ Conf. w/Applicant
☐ Public Space/DDOT:		☐ AM ☐ PM	☐ Approved	☐ HFC	☐ Conf. w/Applicant
☐ Zoning:		☐ AM ☐ PM	☐ Approved	☐ HFC	☐ Conf. w/Applicant
☐ Self-Inspection:		☐ AM ☐ PM	☐ Approved	☐ HFC	☐ Conf. w/Applicant

Detail of Permit B1512716 File Jacket

Despite these gross omissions, Zoning Administrator Matthew LeGrant's stamp of approval—certifying that the permit application drawings “compl[y] with requirements of DC zoning regulations”—was applied to several of the new drawings:



Detail of sheet A1.2

Thus, on October 1, 2015, Zoning Administrator Matthew LeGrant authorized the issuance of Permit B1512716 (Attachment G) for the construction of a “[n]ew rear addition on 2nd level with balcony.” (Note that no balcony appears in any of the supporting drawings.)

D. The Refusal of Zoning Administrator Matthew LeGrant to Revoke Permit B1512716 Despite Repeated Notification that Its Issuance Violated the Zoning Regulations

The 6C04 Commissioner emailed Zoning Administrator Matthew LeGrant on numerous occasions soon after the issuance of Permit B1512716, alerting LeGrant to the illegality of the permit and requesting that it be revoked (or, in the alternative, that LeGrant furnish an explanation of how the permit was compatible with the regulations). A chronology of those notifications:

- **October 15, 2015:** In an 11:48 a.m. email to Zoning Administrator Matthew LeGrant, his deputy Kathleen Beeton, and others at DCRA, the 6C04 Commissioner requested portions of the new permit application and stated **“I have reason to believe that the existing structure occupies over 60% of the lot, which would necessitate zoning relief for any addition.”**
- **October 15, 2015:** In a second email sent the same day at 12:30 p.m. to Zoning Administrator Matthew LeGrant, his deputy Kathleen Beeton, and others at DCRA, the 6C04 Commissioner provided additional detail about his concerns:

While I wait for a response from the permitting office, let me flag the concern here:

- **The lot is 85.08' x 15' = 1276sf.**
- **The drawings submitted [in] support of the original permit application show the existing structure as 53'8" (measured from the eastern lot boundary/front facade to the rear elevation) and 14' wide.**
- **53'8"/85.08' = 63.1% lot occupancy (since the 1' side yard counts toward building area)**

Can you explain to me why zoning relief is not required for the proposed rear second-story addition, given the existing nonconformity?

- **October 28, 2015:** After receiving no substantive reply from LeGrant or his staff (other than an October 16 email promising to review the plans and provide a response), the 6C04 Commissioner sent another email at 11:49 a.m. to LeGrant and Beeton with the request **“Can you please advise ASAP on the status of your review?”**

- **October 28, 2015:** In a second email sent the same day at 6:14 p.m. to LeGrant, Beeton, and a third OZA staff member (Rohan Reid), the 6C04 Commissioner stated that **“I’ve now reviewed the plans submitted for the most recent permit, which show the same dimensions (and resulting 63.1% lot occupancy) referenced in my Oct. 15 email.”**
- **November 2, 2015:** After receiving no response, the 6C04 Commissioner sent a fifth email to LeGrant, Beeton, and Reid stating the following:

Mr. Reid,

I have not received the update you promised to send last Thursday. I'd appreciate that response.

In the hopes that it will facilitate your review, I'm attaching a document that

- **describes the physical characteristics of the lot and existing structure**
 - **includes extracts from the relevant permit applications**
 - **identifies a variety of errors in those drawings and calculations, and**
 - **analyzes, with reference to specific provisions of Title 11 of the DCMR, the nonconformity of the existing structure (> 63% lot occupancy) and the consequent need for zoning relief for the planned addition**
- **November 13, 2015:** After no substantive response (apart from further claims on November 3 from Reid that Zoning Administrator Matthew LeGrant would review the file and reply at an unstated future date), the 6C04 Commissioner sent a sixth email to LeGrant, Beeton, and Reid advising them that ANC 6C had voted unanimously the previous evening to pursue an appeal to BZA, stating the following:

If you have an explanation of how these permits comply with the zoning regulations, I would appreciate receiving it as soon as possible. For your convenience, attached is an analysis of the factual and legal basis for our objections. (This is the same document I sent to you and your staff on November 2.)

It is unfortunate that matters have reached this point, but the failure of your office to provide any substantive response to my requests--let alone to revoke the permits as required by law--after more than four weeks leaves us no alternative.

I hope to hear from you soon.

A complete copy of this November 13 email and the document attached to it is appended hereto as Attachment H.

- **November 17, 2015:** After LeGrant and his staff failed to reply in any fashion to the November 13 email, ANC 6C's Chair sent an email to DCRA Director Melinda Bolling advising her of the situation; providing the same detailed evidence of the errors involved in LeGrant's administration of the zoning regulations; and requesting the Director's assistance in prompting action or a response. That email read, in pertinent part,

Director Bolling,

I'm writing to ask your help in getting Zoning Administrator Matt LeGrant to respond to urgent concerns about an issue here in ANC 6C.

Over a month ago, a member of the Commission wrote to Mr. LeGrant expressing the view that a recently issued construction permit for 518 6th St. NE violates the zoning regulations and should not have been issued. Despite repeated requests and increasingly detailed documentation of the permitting error, the Zoning Administrator has not revoked the permits at issue. Indeed, Mr. LeGrant and his staff have provided no response at all except to acknowledge receipt of the requests. (See the email chain below.)

Later that day, the DCRA Director replied by email, promising to work with DCRA staff and to provide an answer "as quickly as possible this week."

- **November 20, 2015:** At 1:29 p.m. on the following Friday, ANC 6C's Chair wrote again to the DCRA Director to advise her that "**we have had no response at all from Mr. LeGrant.**" When the Director responded by proposing yet another delay ("DCRA will produce the zoning response no later than close of business on Monday, November 23rd."), the 6C04 Commissioner indicated his urgent desire to resolve the issue immediately:

Director Bolling,

I'm prepared to get on the phone right now to speak to Mr. LeGrant or a member of his staff. The issue involved requires about five minutes of explanation and one simple calculation a 4th-grader could do. There really is nothing complex about this.

Will he make someone available now? He has had more than five full weeks to respond.

Late that same afternoon (at approximately 4:45 p.m.), the 6C04 Commissioner contacted LeGrant by telephone and repeated once again, with reference to specific facts and DCMR Title 11 sections, the basis for his view that the October 1 permit was illegally issued and had to be revoked. He also invited LeGrant to provide, in the alternative, an explanation as to why the ANC's objections were incorrect and how the permit at issue in fact fully complied with the zoning regulations.

LeGrant conceded that the application materials contained inconsistencies and irregularities, but refused either to justify the permits or to commit to revoking them. Instead, LeGrant proposed still further delay.

ANALYSIS

Although the events leading up to this appeal are many, and the full factual history complicated, the legal issues arising here under the DC zoning regulations are not difficult ones. On the contrary, it would be hard to find a simpler, more clear-cut case of a building permit that violates Title 11 of DCMR.

It is undisputed that the Property is a rectangular lot 15' x 85.08' located in a CAP/R-4 zone. Moreover, even the applicant's profoundly flawed application submissions to DCRA and the Zoning Administrator state that the existing structure on the Property is 53'8" deep. (As stated above, this materially understates the depth of the structure. Based on certified historical surveys of the Property and abutting lot 28, as well as measurements taken personally by the undersigned, the structure on the Property is in fact between 55'9" and 56' deep.)

Section 199.1 of DCMR, Title 11 defines "building area" in pertinent part as

the maximum horizontal projected area of a building and its accessory buildings. The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width....

Thus, even if one accepts the assertion in Redux's permit submissions that the structure is only 14' wide on the 15' lot—an incontrovertibly false statement—the definition above requires any such side yard(s) less than 5' wide to be included as "building area."

11 DCMR § 199.1 also defines "percentage of lot occupancy" in pertinent part as

a figure that expresses that portion of a lot lying within lot lines and building lines that is occupied or that may be occupied under the provisions of this title as building area....

Applying these simple rules, the Property's existing lot occupancy percentage is 53.67' / 85.08', or roughly 63.1%, even using the generously self-serving and incorrect dimensions supplied by Redux. (Using the more correct minimum 55'9" structure depth derived above, the lot occupancy is at least 65.5%.)

The table at 11 DCMR § 403.2 states clearly that the maximum lot occupancy for a row dwelling in an R-4 zone is 60%. It follows that the structure on the Property is a "nonconforming structure" as defined in section 199.1.

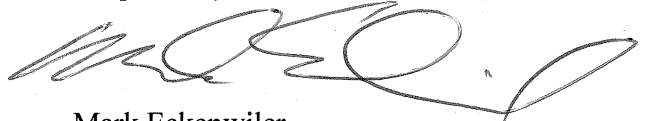
Finally, 11 DCMR § 2001.3(a) forbids any enlargement of or addition to a nonconforming structure devoted to a conforming use, such as the Property, unless it "conform[s] to percentage of lot occupancy requirements." (The lone exception to this rule—found at 11 DCMR § 2001.13—applies only to public recreation and community centers and is thus inapplicable in this case.)

The result is that **the second-story addition proposed under permit B1512716 is an enlargement that may not be constructed as a matter of right.** Such an addition can instead only be "permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of" 11 DCMR § 223. Zoning Administrator LeGrant's issuance of permit B1512716, as well as his obdurate and unexplained refusal to revoke that permit after repeatedly being made aware of the error, therefore violated the DC zoning regulations.

CONCLUSION

For all the reasons stated above, ANC 6C respectfully urges the Board to find that the Zoning Administrator violated the zoning regulations both in issuing permit B1512716 and in refusing thereafter to revoke it. Accordingly, we ask the Board to reverse the decision of the Zoning Administrator and to order the immediate revocation of permit B1512716, as well as the revocation of permit B1509391 to the extent it is modified by permit B1512716.

Respectfully submitted,



Mark Eckenwiler
Commissioner, ANC 6C04
(as authorized representative
for ANC 6C)

November 23, 2015

TABLE OF ATTACHMENTS

- A. Application Forms Submitted by Redux Properties LLC in Connection with Permit B1509391
- B. Plans and Drawings Submitted by Redux Properties LLC in Connection with Permit B1509391
- C. Permit B1509391 File Jacket
- D. Permit B1509391
- E. Plans and Drawings Submitted by Redux Properties LLC in Connection with Permit B1512716
- F. Permit B1512716 File Jacket
- G. Permit B1512716
- H. November 13, 2015 Email from ANC 6C04 Commissioner Mark Eckenwiler to Zoning Administrator Matthew LeGrant (with Document Included as Attachment Thereto)
- I. November 6, 1920 DC Surveyor Plat for Square 835, Lot 29
- J. March 1, 1995 Certified Survey of Square 835, Lot 28