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From: edplevy@aol.com
Sent: Tuesday, January 23, 2018 2:44 PM
To: DCOZ - BZA Submissions (DCOZ)
Subject: Case Number 19672; Milton Halem, Applicant; 3608 S Street, NW; Relief Sought: Special Exception

Letter in opposition to granting Special Exception

We are writing to oppose the request in case 19672 for a special exception ("the Special Exception Request").

We have lived in Burleith, at the address below, for nearly 47 years, and our two children grew up here. Over the years we have made many improvements to our house, including a substantial rear addition (which is about a third the size of the massive addition for which an exception from zoning requirements is requested in this case). We and our family have thoroughly enjoyed being a part of this community, and we'd like to remain here in years to come. But we believe that structures such as the one at issue in this case would erode Burleith's character and appeal, which we value so much.

The Special Exception Request was filed under 11 DCMR Subtitle D Section 1206.4. That section allows construction of a building addition, in cases such as this, "if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D Sections 5201.3(a) through 5201.3(d) and Sections 5201.4 through 5201.6."

To begin, the special exception requested here does not satisfy the provisions of Subtitle X, Chapter 9. In particular, section 901.2 states that a special exception can be granted if it "will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 3608 S Street, NW is in the R-20 zone. Section 100.2 of the Zoning Regulations, 11 DCMR Subtitle D Chapter 1, states in part that the "provisions of the regulations for R zones are intended to . . . recognize and reinforce the importance of neighborhood character." And section 1200.1, 11 DCMR Subtitle D Chapter 12, lists as one of the purposes of the R-19 and R-20 zones "to limit permitted ground coverage of new and expanded buildings and other construction to encourage a general compatibility between the siting of new or expanded buildings and the existing neighborhood." Clearly the proposed three story rear addition for which a special exception is requested here would not be in harmony with the purpose and intent of the Zoning Regulations as expressed in these provisions. The addition would be far larger, and occupy much more of the available back yard, total lot and air space, than most of the structures in its immediate vicinity, and than the overwhelming majority of houses in the larger Burleith community. The addition would not reinforce the character of the neighborhood, nor would it be compatible with the existing neighborhood. As far as I could see, neither the Applicant's burden of proof statement nor the Office of Planning (OP) report addresses whether grant of the special exception here would be in harmony with the purpose and intent of the Zoning Regulations. Furthermore, I would direct the BZA's attention to Exhibit 56, a statement by Burleith resident Jean Smith, that addresses this issue more fully than I have.

As to the criteria in section 5201.3, section 5201.3(a) requires that the Application for a special exception demonstrate that, "The light and air available to neighboring properties shall not be unduly affected." The solar study submitted by the Applicant appears to clearly show that, during the summer months, the proposed addition would substantially reduce the afternoon sunlight reaching the adjoining property to the east (3606 S Street, NW). Starting at about 2 PM the addition would cast very substantial shadows on this property, and for several subsequent hours each day sunlight would be blocked from the entire width of the yard. The solar study also seems to indicate that the afternoon shadows would reach the property further to the east (3604 S Street), although the study does not depict this property. During the winter, the proposed addition would block sunlight from reaching rear windows of the properties immediately to the west (in the morning) and to the east (in the afternoon), making these properties colder. (I can attest to this effect because, when direct sun reaches the south-facing windows of my own house, one can feel the warmth.)

The OP report asserts that the Applicant's solar study shows that the proposed addition's impact on the sunlight reaching the neighbors' rear yards "would not be undue when compared to the existing and by right scenarios." This statement is perplexing. The solar study seems to show that the proposed addition, in comparison with the existing situation, would block substantial amounts of sunlight currently reaching the adjacent properties, except at mid-day, when the sun is essentially overhead. As to the matter of right comparison, the solar study does not appear to describe exactly what it is representing as the matter of right scenario, so the studies of this scenario and OP's comment on it, are difficult to address. Nevertheless, at a minimum the solar study seems to show that, during the winter, significantly more shadow would be cast by the proposed addition than under the matter of right scenario. Finally, the OP report states that the two adjacent properties would receive adequate air flow because the rear yard of the project would be

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more than 40 feet. Our understanding, however, is that the Applicant will build a garage at the rear of the property, making the rear yard at most 20 feet, thus undercutting the statement in the OP report.

The owners of the two properties abutting 3608 S Street each submitted the same brief, standard form statement supporting the proposed addition. The OP report mentions these statements. Both statements are silent on the impact of the proposed addition on their property, including whether it would affect the available light and air, and on whether it would be in harmony with the purpose and intent of the Zoning Regulations. Thus, these statements offer no basis for concluding that the proposed addition meets the criteria for granting a special exception, identified in 11 DCMR Subtitle D Section 1206.4.

I want to emphasize that approval of a project by abutting property owners is not a basis for granting a special exception. First, the applicable criteria that concern nearby properties require consideration of impacts on "adjacent" and "neighboring" properties, and are not restricted to abutting properties. But more importantly, approval of an addition by abutting, adjacent and/or neighboring property owners is not mentioned in the special exception criteria that apply here. For example, 11 DCMR Subtitle D section 5201.3(a) states that the Application for a special exception shall demonstrate that, "The light and air available to neighboring properties shall not be unduly affected." It does not include any qualification such as "in the opinion of owners of those properties," or "as determined by" such owners. The criteria address the impact of an addition on the adjacent properties, not the impact on the owners.

As to the criterion in section 5201.3(b), concerning "privacy of use and enjoyment of neighboring properties," the OP report concludes that the proposed addition would not compromise the privacy and enjoyment of the two abutting properties, which it refers to as "neighboring properties." However, the proposed addition's third floor balcony faces out on an alley and on the back yards of properties to the south on the other side of that alley. The OP report does not address whether the balcony would affect the privacy and enjoyment of these properties, an issue the BZA needs to address.

Finally, section 5201.3(c) addresses whether a proposed addition, along with the original building, "as viewed from the street, alley or other public way" would substantially visually intrude "upon the character, scale and pattern of houses along the subject street frontage." I note that this provision concerns not only how the addition appears from the street frontage, but from the alley as well, although the provision seems limited to houses that are along the street frontage adjacent to the addition. As viewed from the alley behind 3608 S Street, the proposed addition would "substantially visually intrude upon the character, scale and pattern" of houses along the same side of S Street. The proposed addition would be larger than any of the existing additions, it would be very different in character from the rear facades of most of these houses, and would be completely out of character with all of the rear facades to its east.

We recognize that some of the problems with the addition at issue here also apply to some of the third story and rear additions in Burleith that comport with pre-existing zoning requirements. The BZA, however, should not increase the magnitude of those problems by granting relief from current zoning requirements, as would be the case here if it grants the Special Exception request.

Thank you for your consideration of these points.

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