



# Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

[www.anc1c.org](http://www.anc1c.org)

Representing Adams Morgan

## Commissioners:

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Ted Guthrie (1C03)

A. Tianna Scozzaro (1C04)

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Vacant (1C06)

Wilson Reynolds (1C07)

Amanda Fox Perry (1C08)

June 6, 2018

Fred Hill, Chairman  
Board of Zoning Adjustment  
441 4th Street, N.W., Suite 200-S  
Washington, D.C. 20001

RE: BZA 19771  
1834 Ontario Place NW

At a duly-noticed public meeting held June 6, 2018, with a quorum of 8 Commissioners present, Advisory Neighborhood Commission 1C passed the attached resolution, by a vote of 4-1, opposing the BZA 19771 special exception requests for 1834 Ontario Place NW.

Sincerely,

Wilson Reynolds  
Vice Chair, Advisory Neighborhood Commission 1C

Attachment

## **ANC1C Resolution Opposing BZA 19771 Special Exception - 1834 Ontario Place, NW**

### **RF-1 ZONING PROVISIONS WIDELY KNOWN, PROHIBITS PORCH REMOVAL**

Whereas, Lanier Heights, located within ANC1C in Adams Morgan, was rezoned to RF-1 in 2016 to control density and preserve the character of the neighborhood's residential single-family homes while permitting for the conversion of row houses to flats (2 units).

Whereas, there was widespread dissemination of information about new "14-11B" rules "clarifying changes to the rules prohibiting in an RF zone the removal or significant alteration of original rooftop architectural elements," which were set-down February 10, 2017, approved by the Zoning Commission on March 27, 2017, and published on April 28, 2017 as Subtitle E 206.1.

Whereas, the property owner's permit application (B1705868), to remove the original front porch and its roof, violates Subtitle E 206.1 rules which reads: "*(a) A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered..*" and was filed in March 2017, a month after 14-11B rules were first published, requested

Whereas the adjoining houses have original porches and similar facades, creating a row of compatible character and rhythm of architectural features on the block,

Whereas, the request to remove the front porch and roof and requested approval to create a front sunken patio at the lower level and construct a smaller entry roof and stairs to the first floor to replace the original front porch and roof, which would convert the 3-story row house to a 4-story façade facing Ontario Place, NW.

Whereas, the permit application that requested removal of the porch received initial approval by DCRA 6 months after 14-11B rules had been enacted, on October 20, 2017. This permit to convert the single-family dwelling to a two-dwelling flat also authorized a 10' addition to the rear of the row house (5' enclosure of existing porch and a new 5' addition) and 10' of added height.

Whereas, DCRA subsequently issued a Stop Work Order on February 12, 2018 that denied the applicant the ability to demolish the front porch and roof.

Whereas, DCRA's Office of the General Counsel denied the applicant's claim of estoppel to validate the original proposed demolition. As a result a new permit (B1805851) was issued March 27, 2018 requiring the existing porch to remain, in compliance with E-206.1.

### **BZA SPECIAL EXCEPTION FILED FOR PORCH REMOVAL, LOT OCCUPANCY, GARAGE**

Whereas, the property owner subsequently filed a Board of Zoning Adjustment (BZA) special exception request on April 18, 2018 (BZA 19771) to: (1) remove the porch and roof and construct a new narrower stair, stoop and entry roof; (2) exceed the 60% lot occupancy limit; and (3) construct an accessory garage of non-conforming size and height within the required rear yard setback.

Whereas, the Board is allowed to grant Special Exceptions for Accessory Buildings that exceed the required lot occupancy, up to 70% (10% above the 60% limit).

Whereas, DCRA has enforced the 60% lot occupancy limit on this same block, at 1892 Ontario Place NW.

Whereas, the new garage is not shown in context with the new addition and does not address the loss of light and air that would result.

Whereas, the application represents the lot occupancy with the new garage at 66%, assuming that the Board will allow removal of the original Architectural Element. But, when properly considered with the original porch to remain, the actual lot occupancy would be 69%.

Whereas, the special exception requests do not consider that relief from E-5004.2 (regarding size and height of buildings in rear yards) is typically waived by variance (E-101.3) or that the garage and addition reduce the pervious area calculation below the 20% minimum requirement of E-204.1 and requires additional relief under E-5201.1(e).

#### OFFICE OF PLANNING REPORT

Whereas, on 5/31/18, the Office of Planning submitted its report on BZA 19771, recommending denial of the request to remove the porch and approval of the requests for special exception relief under E-5201.1 (a) (b) to exceed lot occupancy and construct the accessory building.

Whereas, the OP report acknowledges that development standards for accessory buildings located in the rear yard setback (E § 5004.2) requires variance relief, there is only a limited explanation for how this case qualifies for the lesser test of special exception relief, in footnote 2 of OP's report:

*Typically, accessory building height relief would require variance relief, not special exception. In this type of case, the relief is related to the rear yard, and the ZA has determined that special exception relief pursuant to E § 5007 is available.*

#### ANC1C RESOLUTION

Therefore, be it resolved, that ANC1C opposes the BZA 19771 application's proposal in its current form. We therefore oppose removal of the porch architectural element, and call for further examination of the accessory building special exception for the following reasons:

- BZA 19771 includes multiple special exceptions that are in conflict with RF-1 provisions, are not clearly supported by special exception criteria; or are not specifically requested in the BZA application. Specifically:
  1. Special exception 1 to remove the rooftop architectural element:
    - ANC1C opposes removal of the Porch Architectural Element.
    - The Office of Planning recommends denial of the applicant's request for removal.
    - The request is not supported in the special exception provisions (E- 5203.1(d).
  - This alteration would not be in harmony with neighboring homes (E-303.1; E-5301(e), X-901.2), and

- This alteration would convert the 3-story row house to a prohibited 4-stories (E-303.1).
2. Special exception 2 lot occupancy calculations do not fully describe the on-site conditions and requests an excessive exception—up to 69%.
  3. Special exception 3 for the accessory building garage would locate the garage within the required rear yard setback (E-5004.2) and would create non-compliance with the pervious area requirement (E-204.1). There are multiple issues with this request:
    - While the OP report states that the rear yard setback can be modified as a special exception to allow construction of the non-compliant garage, the language of the zoning regulations typically require a variance to change the size and height of accessory buildings in the 20' required clear area. As such, ANC1C urges the BZA to look at this issue carefully.
    - Consideration of the lot occupancy request should be approached with the understanding that the lot occupancy will be 69%, with the recommended preservation of the porch.
    - The proposed garage is higher than neighboring garages (it includes a storage loft) and may have a substantially adverse effect on the use or enjoyment of the abutting properties
    - The pervious area is reduced to 16.8% with the construction of the garage and stairs to the garage and requires additional relief to be considered by the BZA, and not included in the application.
- o BZA 19771 fails to clearly and adequately document and describe current or proposed conditions, the proposed scope of work, all of the required zoning relief (E-5201.1(f)) and the potential adverse impact on neighboring properties (E- 5201.3).
  - o BZA 19771 seeks development rights well beyond what is allowable in RF-1.
  - o Endorsement of the extensive special exceptions would set a bad precedent for the neighborhood and its ability to enforce RF-1 provisions.

Furthermore, be it resolved that filing and representation may be carried out by any Commissioner on ANC 1C and expert designees and Alan Gambrell.

## **ADDENDUM: Detailed Review of Special Exceptions Requests and RF-1 Provisions**

The special exception application includes 3 special exception requests; creates multiple conditions contrary to RF-1 development standards; and does not clearly characterize the conditions created by the proposed structures and may understate the necessary relief needed to realize the intended design, as described below.

### **Special Exception 1- Removal of Architectural Element Would Not Be in Harmony with Neighboring Homes and is Not Supported in the Special Exception Provisions**

DCRA issued a Stop Work Order February 2018 and rescinded permit B1705868 because the permit was issued in error as the Zoning Administrator does not have the authority to relieve applicants from the requirements of E-206.1 (preservation of the architectural elements). This led to the reissuance of a new permit on March 27, 2017 (B1805851) to revise the original permit by requiring maintaining the original porch and porch roof of the property under conversion.

The applicant seeks a special exception to remove the original porch and porch roof, create a new sunken patio, and replace the porch with a new smaller stair, landing and roof. The Applicant's Statement asserts that E-5203.1(d) "seems to have been included in error." In reality, conditions for granting an RF special exception for removal of an architectural element are very restrictive and received extensive public and Office of Planning review under various ZC 14-11 zoning regulation reviews. Subtitle E-5203.1(d) restricts removal of architectural elements and further proscribes special exceptions that conflict with E-5203.1(e)(3) (substantial adverse impact including visual impact).

The proposed special exception would violate these provisions. Exposure of the basement façade would significantly increase as a result of removal of the original porch and roof. The newly configured façade would exaggerate the verticality of the row house by increasing the measured height of the building to 40' (impermissible without a special exception request) and creating an entry element 20' off the revised ground level. The new porch-less design would stand in contrast with its neighbors and would be at odds with the block's row of houses, which are punctuated by front porches and projecting bays. This effect is not clearly shown or represented by the applicant in the presented materials to the Board as required in E-5201.3 and would also be in conflict with Subtitle X-901.2.

E-206.1 reads: *"(a) A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size...."*

E-5203.3 reads: *"A special exception to the requirements of Subtitle E § 206 shall be subject to the conditions of Subtitle E § 5203.1(b), (c), and (d)."* In turn:

- E-5203.1 (d) reads: *"A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;"*
- E-5203.3(e) reads: *"Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:... (3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley;"*

X-901.2: *"The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of*

*Zoning Adjustment, the special exceptions: (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;”*

*E-5201.3 reads: “An applicant for special exception under this section shall demonstrate that the addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property....”*

### **Special Exception 2 Lot Occupancy Calculations**

The Board is allowed to grant Special Exceptions for Accessory Buildings that exceed the required lot occupancy, up to 70% (10% above the 60% limit). However, the new garage is not shown in context with the new addition and does not address the loss of light and air that would result.

The Applicant represents the lot occupancy with the new garage at 66%, assuming that the Board will allow removal of the original Architectural Element. But, when properly considered with the original porch to remain, the actual lot occupancy would equal 70%.

There are additional considerations related to the location of the garage in the rear yard setback and the loss of 3% or more pervious area.

*E-304 sets for the maximum allowed lot occupancy in the RF-1 zone for attached dwellings and flats at 60% in Table E § 304.1: MAXIMUM LOT OCCUPANCY.*

### **Special Exception 3 - Relief from the Size Restrictions of Accessory Structures in Required Rear Yards**

The project proposes an accessory garage of 394 SF and 13’-8” in height, that exceeds the limitations of Subtitle E-5004.2, which reads:

*“An accessory building shall be permitted in a required rear yard of a principal building pursuant to the following conditions: (a) The accessory building is less than ten feet (10 ft.) in height; and (b) The accessory building is less than one hundred square feet (100 sq. ft.) in gross floor area.”*

Clarification is needed from the Board to understand the differences between the Zoning Administrator (ZA) determination and OP’s footnote 1 that affirms variance relief is typically required for development standard relief under E-5004.2. Complicating this discussion is that the applicant splits the desired development footprint into two permits: first, securing the desired building footprint and then, in the second, citing required zoning relief from failures of the design. The only encountered hardship is from a design that pushes well beyond the required zoning development limits and development of adjacent properties.

The Board should take note of the addition approved in permit 1 that reduces the rear yard setback approximately 8’-6”. The intended garage would likely occupy 20% of the required setback and thus change the allowed size height of the structure from being defined in E-5002 and E-5003 to development standards defined under E-5004, which are limited in E-5201.

Furthermore, the Board should reject the accessory building as described below:

- a. Additional special exception relief is required for failure to provide the required 20% pervious area (only 16.8% drawn), the stairs and landing at the garage are not considered pervious.

- b. None of the adjacent garages include a storage loft.
- c. The application does not document per 5201.3(d) the effect of the new garage, which is higher in elevation than the first floor of the principle structure, effectively increasing the relative height of the garage to be 18' or how the necessary relief is a function of the newly built addition.
- d. The orientation of the site is NW by SE with the garage located in the southeast side in proximity to the rear façade and positioned to cast shadows onto the adjacent properties.
- e. The new development will have a substantially adverse effect on the use or enjoyment of the abutting properties and would allow for conditions that exceed those afforded neighboring properties.

Because the regulations do not contemplate an accessory building of that size and height in a required rear yard, relief from these requirements would mean the Board would have to consider reduction of the required rear yard setback of 20' (in addition to the loss of pervious area) in order to qualify for special exception relief per Subtitle E -5201.1(b) and E-5201-3.

Reducing the rear yard setback to 15', coupled with the 30' height of the principal building and the 14' height of the accessory building, would create a crowded condition on site where light and air are diminished for the property and adjacent neighbors.

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