

June 22, 2021

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

RE: BZA #20382, Joint Parties in Opposition Revised Motion to Strike Misleading Information

Chairperson Hill and Honorable Members of the Board:

We submitted a motion to strike on April 12, which the parties in opposition have not had an opportunity to discuss and on which the Board never had the opportunity to rule. The Applicant subsequently made revisions in its May 12, 2021 (Exhibit 67C) and June 9, 2021 (Exhibit 70) submissions that address some, but not all, of the misrepresentations. The Applicant's two recent submissions continue to falsely depict as "existing," exterior elevations, interior floorplans, and a rear addition for the principal building that are highly misleading because they:

- Do not depict preexisting or current conditions,
- Conceal unlawful construction and the scope of future construction,
- Buttress misleading information the Applicant has provided to other District officials (permitting, neighbor notification, HPRB, ANC, CHRS), undermining an accurate review process.

We urgently request the Board to strike this misleading information or require the Applicant to correct the information so that it is non-misleading. Throughout this process, the Applicant has established a pattern of providing misleading information in this case (see Motions to Strike Exhibits 55A & 76A), including concealing for at least a year that their special exceptions request for a 2-level garage exceeded 70% lot coverage, despite our sharing this concern with them as early as March 2021 (see Appendix below, CAS Engineering-DC Area Calculations).

I. If the misleading information has "no relevance" to this special exception request, it should be removed from the record.

The Applicant objects to removing/correcting the misleading drawings because they have "no relevance" to the zoning question. It

continues to elude us as to why the Applicant simply does not remove (or correct) the highly misleading drawings of the principal building from the Architectural Set (Exhibit 70). If they have “no relevance,” then they can be removed. If they are needed, then they must be corrected so they are not misleading. The misleading information is highly prejudicial because it conceals unlawful construction and it has already undermined, and will continue to undermine, the accuracy of permit review, HPRB review, the Neighbor Notification process, inspections, among others. The Applicant should remove or correct all misleading drawings and statements. In conjunction with this motion, we have submitted a sample set of architectural drawings with suggestions for correcting the most material misrepresentations, using the Applicant’s previous less-misleading drawings and a registered surveyor’s measurements.

The annotations of the drawings included below show *how* the drawings are misleading, and the explanations below describe *why* the misleading drawings are materially prejudicial.

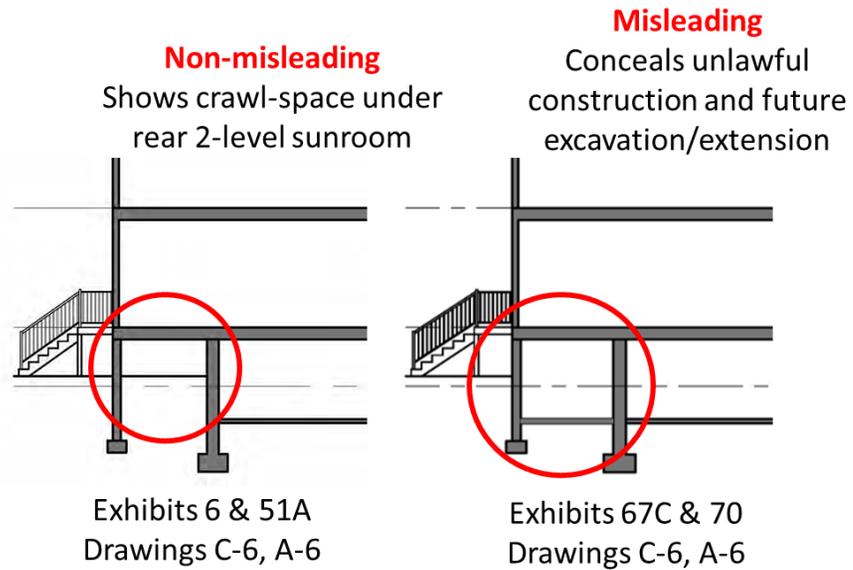
II. Exhibit 70, strike or correct C-6, D-1, A-1, A-4, A-5, A-6, D-1, because they conceal unlawful construction, conceal the future scope of construction, buttress the misleading information provided to other District officials, and impair an accurate review.

The Applicant’s misleading drawings of the principal building conceal the extent of completed construction, which went well beyond existing building permit B2007169 (see July 1, 2020 Stop Work Order, which is still in place¹). Nearly identical drawings have been submitted to other District officials. The Applicant’s misrepresentations have materially impaired and will continue to impair the accuracy of the review process.

- **Strike or Correct Drawings C-6, A-6, A-4, A-5, which falsely portray the basement extending into what is actually the crawl space under the 2-level rear sunroom.** The Applicant obtained permit B2007169 in May 2020 based on misleading drawings submitted by James Killelte that are essentially identical to the Applicant’s drawings submitted in this case (see misleading permit drawings in Appendix below). The Applicant’s drawings misleadingly depict a small, cosmetic renovation project of the principal building and **falsely portray a finished basement with a footprint identical to the upper two levels that extends under the 2-level rear sunroom** (C-6, A-6, A-4, A-5). This false depiction is nearly identical to the same false depiction in the B2007169 permit drawings. There is a crawl space, not a basement, under the 2-level rear sunroom, as shown in the Applicant’s photo on

¹ In May/June 2020, under building permit 2007169, the Applicant completely gutted the entire property and started excavating to extend the basement and prepare to underpin the party wall under the existing 2-story above-grade sunroom, which DCRA halted with the existing Stop Work Order.

pg. 1 of Exhibit 70 and as portrayed in the Applicant’s previous Architectural drawings (Exhibits 6 & 51A C-6, C-7, A-6).



- **Strike or Correct Drawings A-4, A-5 because they conceal as a “renovation,” the excavation and construction of the non-existent basement extension and the demolition and reconstruction of the 2-level rear sunroom.** This is the same misleading approach the Applicant has taken in the ongoing Neighbor Notification process (which the Applicant was required to enter after receiving the Stop Work Order), in which he states he will use new application B2100790 for the “renovation” and “underpinning” of a non-existence basement extension and the demolition and reconstruction of the 2-level rear sunroom. The scope of this permit application is, “REPLACE DAMAGED FLOOR JOIST AND UNDERPINNING AND WORK TO WINDOW WELLS.” There is, however, no finished basement wall in the crawl space under the rear 2-level rear sunroom that can be “underpinned” and the property has no window wells—these “exist” only falsely in the Applicant’s BZA architectural drawings and DCRA’s permit drawings.



Exhibit 70
(similar to 6, 51A, 67C)
Drawings A-4, A-5

Misleading
Conceals unlawful and future
excavation/extension/construction
as a “renovation”

- **Strike or correct Drawings D-1, A-1 because they conceal the scope of construction and impair accurate review.** (NOTE: overlays NTS but are best efforts.) The Applicant misleadingly portrays other elements of the interior of the main building as “existing” that never have existed or do not exist as depicted, including the exterior façade, the eat-in kitchen on the main level, and the entire second level layout. These misleading drawings are nearly identical to the falsely portrayed floor plans for existing permit B2007169, which impact an accurate review of application B2100790. **These misleading drawings cover up the Applicant’s stated intent, in July 2020, to tear down and replace the existing 2-level rear addition, potentially damaging the adjoining property, removing a fire barrier, and avoiding the neighbor notification process** (emails from Applicant July 2020):

“We'll need to remove anything that's on our side so that'll leave you with exposed insulation, lacking a fire barrier on your side . . . Your drywall would fall off since it's not screwed in and would be exposed to the elements even if it was screwed in. Can you please share your plan on how to address this?”

Exhibit 70 D-1, A-1
Main Floor

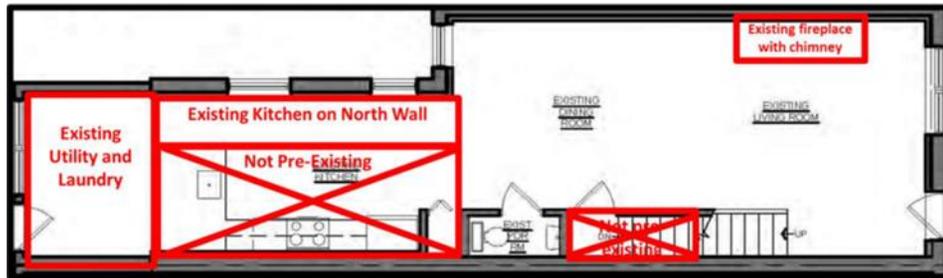
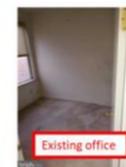


Exhibit 70 D-1, A-1
Second Floor



III. Exhibits 73 (Zoning Self-Certification) & 70 (Zoning Information), strike or correct misleading measurements and errors

- Correct Lot Occupancy in Exhibit 73, Zoning Self-Certification.** The Applicant’s revised Zoning Self-Certification shows an “existing lot occupancy” of 68.2% that conflicts with the “existing lot occupancy” of 67.8% in Exhibit 70. The lot occupancy between these two exhibits should be corrected so they are consistent.
- Exhibit 70, “Project Description.”** The Applicant misleadingly describes construction of the 2-level garage as, “new 2nd-floor addition above existing garage, garage footprint to be expanded.” Drawings D-1 show that the entire “existing” garage will be demolished, except the party walls. There will be a new 1st level and 2nd level. The 2nd level, therefore, will not be built above the “existing garage.” A less misleading description is, “Demolition of existing garage except for party walls, new 2-level garage with expanded footprint.”
- Exhibit 70, pg. 1 “Relief Needed . . . Subtitle C § 202.2.”** The Applicant still includes C § 202.2 as “relief needed.” The Applicant alleged in March 24, 2021 Prehearing Statement (Exhibit 45A) that the only zoning issue under review is lot

occupancy under Subtitle E § 304.1. The Applicant’s existing garage is non-conforming. The Applicant intends to increase the size of the garage, thereby increasing/extending the non-conformance of the garage. If the Applicant needs relief from Subtitle C § 202.2, he has not requested it in any superseding statements. The Applicant should address § 202.2 or remove this request.

ZONING INFORMATION: RELIEF NEEDED: Subtitle E §304.1, Subtitle C § 202.2	?
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- **Exhibit 70, the “Existing” garage SF is “328.3” not “303.3” and should be less than the “Proposed” SF.** All the Applicant’s previous submissions use 328.3 SF as the “existing garage” measurement. Presumably, this measurement should not change because it is for an existing structure. If it is not correct, this measurement still needs to be less than the **“Proposed Garage” SF, which may be incorrectly listed as “294.7” because it is being extended by 1 foot and therefore should be MORE than the existing garage.**

Garage	303.3 SF 328.3 SF	294.7 SF ?	N/A
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- **Exhibit 70, the rear yard is not 47.88’.** The “Existing Rear yard” should be “21.79.” The “Proposed Rear Yard” is a no more than “20.79” but is less than 20’ with the proposed window well. Per Subtitle E 5004.2 and B 100.2 (as interpreted by Zoning Administrator’s guidance <https://dcra.dc.gov/node/1521056>), accessory buildings do not alter the rear yard measurement so long as they are less than 10 ft. high and less than 100 sq. ft. in GFA. Since both the existing garage and the proposed garage exceed this limitation, the rear yard measurement is the distance between the rear-most wall of the principal building and the garage wall. Because the proposed basement excavation/extension will include a window well that extends into the rear yard, the rear yard will be less than 20 ft.

Rear Yard	47.88’ 21.79’	NO CHANGE <20.79’	20 FT MIN
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- Exhibit 70, the “cellar” SF is misleading. The “Existing” SF should be 610. The “Proposed” SF should be 690.** The Applicant falsely states the “existing” basement SF as 690. As explained above, the Applicant’s drawings both in this case and for permit B2007169 falsely depict as “existing” an extended excavated basement footprint that does not exist. The Applicant’s own photos and previous drawings (Exhibits 6 & 51A, C-6, C-7, A-6) show the basement does not extend into the crawl space under the 2-level rear above-grade sunroom.

Cellar	690 SF 610 SF	NO CHANGE 690 SF	N/A
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IV. Set Aside the ANC’s statement (Exhibit 52)

We respectfully request the Board to set aside the ANC’s support. The ANC’s support was based on an application for a special exception from lot occupancy of a multiple-family flat. The Applicant materially modified the application since the ANC’s decision, including by reducing the number of dwelling units to a single-family flat. During discussion of the project, Commissioners supported the benefits of the project’s multiple-family dwelling units—including the potential ADU above the garage—and the resulting community benefits, including additional living spaces for multiple families, increased urban density, and affordable housing. The Applicant removed this aspect of the project. Additionally, the ANC’s support errs in stating that the Applicant addressed the neighbor’s privacy concerns by frosting windows—the Applicant did not frost the windows with the most significant privacy concerns. Moreover, 39 neighbors strongly object to the development, and there is no neighbor support, which means the Commission’s support does not represent the voice of the neighborhood.

V. Accuracy of Building Height and “Cellar” Designation for “by right” Rooftop Pop-up

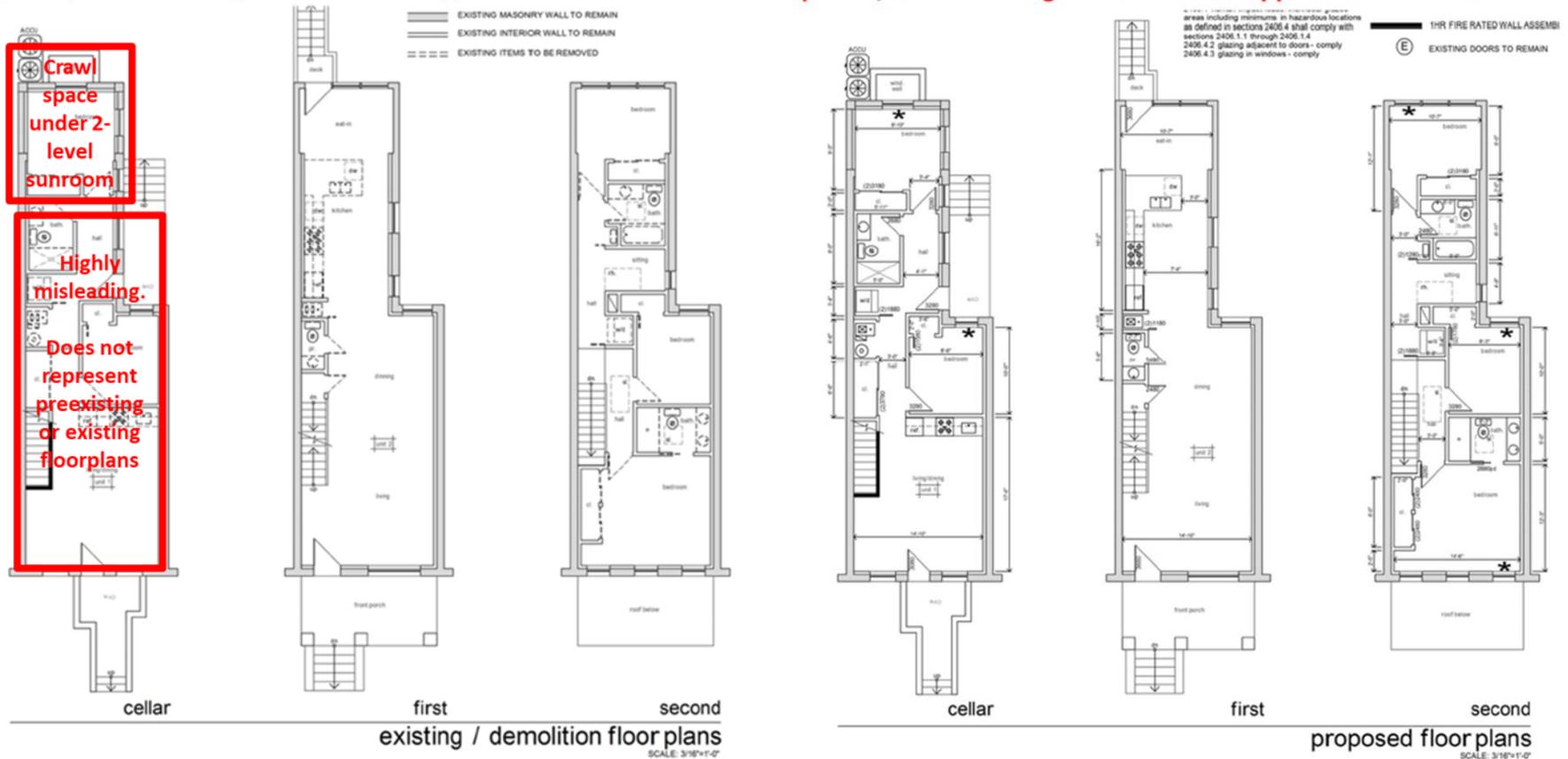
In light of the Applicant’s pattern of providing materially misleading information in this case (e.g., concealing lot occupancy, concealing unlawful construction, etc.), we question the Applicant’s own determination that the lowest level of the property is a “cellar” rather than a basement.

The Applicant has submitted two incorrect self-certifications, the first of which conceals the actual lot occupancy of the originally proposed 2-level garage (see Appendix below, CAS Engineering Area Calculations). The Applicant alleges that at the principal

building's Building Height Measuring Point, the height from the finished adjacent grade to the finished main floor is 4' 11", one inch shy of the lowest level being a basement. The Applicant's own filings show in multiple submissions he was over 70% lot occupancy. Given the Applicant's history, the precedent-setting of the rooftop pop-up in our neighborhood, and the strong neighborhood opposition, we think it is reasonable to request the Applicant to provide a **registered survey** confirming this height measurement. We have reviewed the Applicant's opinion from the Zoning Administrator and have identified gaps, but are unable to appeal it until a permit is issued because it is not considered final agency action.

APPENDIX

April 30, 2020 Drawings Submitted for Applicant's Permit B2007169 April 30, 2020 Drawings Submitted for Applicant's Permit B2007169



SCOPE OF PERMIT B2007169 (5.5.2020): "INTERIOR RENOVATION OF EXISTING FLAT TO INCLUDE REPLACEMENT OF KITCHEN AND BATHROOM FIXTURES AND APPLIANCES, DRYWALL, PAINT, TRIM, FLOORING, ETC. REPLACE ELECTRICAL AND PLUMBING FIXTURES AND UPGRADE HVAC SYSTEMS PROPOSED AND EXISTING FLOORS AND DWELLING UNITS"

SCOPE OF D2000386 (3.9.2020): "INTERIOR DEMOLITION OF NON-LOAD BEARING ELEMENTS (DEBRIS, FURNITURE, PLASTER, DRYWALL, KITCHEN CABINETS, ETC.)"



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CAS Project No. 21-256-DC

Area Calculations for Adjoining Property BZA Application #20382

	9/16/20 - Ex. 6		4/8/21 - Ex. 51A		5/10/21 - Ex. 67C		6/8/21 - Ex. 70	
	Sq. Ft.	%	Sq. Ft.	%	Sq. Ft.	%	Sq. Ft.	%
Lot Area (Record)	1710.94	n/a	1710.94	n/a	1710.94	n/a	1710.94	n/a
Lot Area (Survey)*	1704.59	n/a	1704.59	n/a	1704.59	n/a	1704.59	n/a
Existing Lot Occupancy (Record)	1160.6	67.83%	1160.6	67.83%	1160.6	67.83%	1160.6	67.83%
Existing Lot Occupancy (Survey)*	1157.4	67.90%	1157.4	67.90%	1157.4	67.90%	1157.4	67.90%
Proposed Lot Occupancy (Record)	1201.4	70.22%	1201.4	70.22%	1201.4	70.22%	1180.6	69.00%
Proposed Lot Occupancy (Survey)*	1198.0	70.28%	1198.0	70.28%	1198.0	70.28%	1177.3	69.07%

*Survey dimensions based off of lot width per survey by CAS Engineering-DC, LLC of 16.10 feet.

Coverages calculated from BZA 20382 Case Files available online and should be confirmed by Architect as interpretations were made as to graphic representations and dimension rounding. Analysis made at Client's request to ascertain changes to plans as proposed and impact of Record versus Survey dimensions on lot coverage for subject application.

