

Pre-Hearing Statement of Advisory Neighborhood Commission 6C

District of Columbia Board of Zoning Adjustment Appeal No. 21142

Advisory Neighborhood Commission 6C (ANC 6C) submits this pre-hearing statement in further support of its appeal from the issuance of certificate of permit B2308873 (“the Permit”). For the reasons set forth below, we respectfully urge the Board to order the revocation of the Permit on the grounds that its issuance violated the District’s zoning regulations.

STATEMENT OF FACTS

This appeal relates to 638 I (Eye) St. NE, aka square 857, lot 125 (“the Property”) in the RF-1 zone. The Property’s owner of record is Kevin R. Chen, 638 I St. NE, Washington, DC 20002. The Property lies entirely within the boundaries of ANC 6C.

The Property is improved by a historic two-story row dwelling featuring an original cornice.

The Department of Buildings (“DOB”) issued the Permit, Exhibit 3, on February 1, 2024. The Permit authorizes the construction of a third-floor addition rising directly above the second-floor façade.

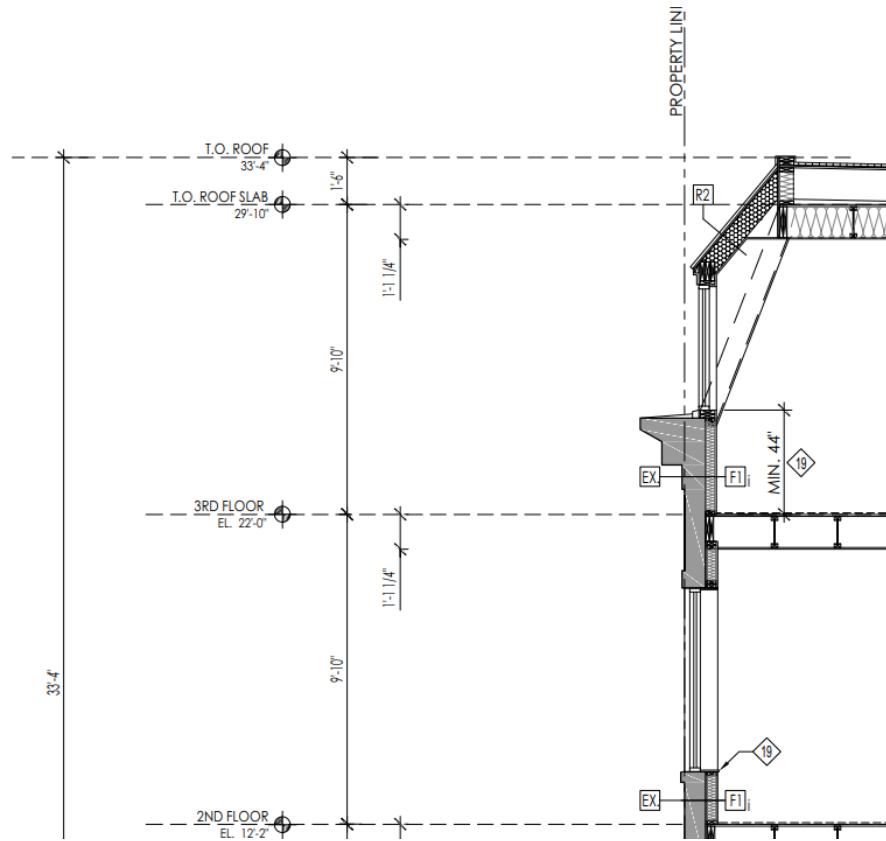
ANALYSIS

As explained below, the Board should revoke the Permit because it authorizes work in violation of 11-E DCMR section 204.1.

Section 204.1 states in relevant part that “a roof top architectural element original to a principal 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”

DOB’s published interpretation of E-204.1 imposes a requirement that a new upper-story addition be set back three feet from a protected rooftop architectural element. *See Interpretation ZA-007, <https://dob.dc.gov/node/1621581>.*

Despite the regulation and DOB’s own published interpretation, the Permit allows the construction of a third-floor addition rising directly above the second-floor front façade:



On February 4, 2024, a member of ANC 6C reported the permit error to the Zoning Administrator and others at DOB via email. On February 7, the Administrator replied, summarizing ZA Interpretation ZA-007 and purporting to justify its inapplicability to cornices:

Applicants should also be aware of the “three foot rule,” that an addition of a floor or penthouse, usually behind the protected architectural rooftop element, must be set back at least three feet from the element in order to help preserve it’s [sic] architectural integrity.

The ZA interpretation applies in cases a new addition is proposed and states that the addition has to be set back a minimum of 3 feet from the roof-top architectural embellishment, like a turret. The rationale behind the interpretation is to protect the architectural integrity of the existing roof-top architectural embellishment, so that it so it doe [sic] not lose its defining features by being incorporated into the new addition.

Consistent with the past practice under the former Zoning Administrator, **a cornice is not a roof-top architectural embellishment** and therefore a new addition may be constructed flush with an existing cornice.

The Administrator’s position ignores the clear language of section E-204.1, which expressly lists cornices as protected rooftop architectural elements. Moreover, the effect

of the ZA's position is that **it allows the total removal of the original cornice**. Why? Because the ZA has also emphatically staked out the position that an architectural feature cannot be a "cornice" if it does not occupy the extreme top position on a façade.

In BZA 19550, ANC 6C challenged a permit allowing the complete removal of a feature we considered (and still consider) to be a cornice. A photo of that element appears below.



ANC 6C took the position that the large bracketed horizontal feature above—sitting between the decorative brickwork and the smaller horizontal feature at the very top of the façade—is a "cornice" under section E-206. DOB—then known as DCRA—and the ZA insisted to the contrary that

the alleged "cornice" on the Property is not a rooftop architectural element. The photos ... demonstrate that the "cornice" on the Property is actually a façade element because it is located on the façade approximately 1 foot below the rooftop. Therefore, Appellant's assertion is without basis because the element at issue is not a rooftop element but a façade element.

BZA 19550 Exhibit 56 (DCRA's Amended Pre-hearing Statement) at 6-7.¹

Thus, DOB and the ZA take the position that an element must be at the top of the façade to qualify as a "cornice," and that anything even a few inches lower is not a "cornice" or any other rooftop element protected by section E-204.1.

¹ Available at <https://app.dcoz.dc.gov/Content/Search/Download.aspx?exhibitid=153758>.

The inevitable result of the ZA's position is this: once a property owner constructs an upper-story addition (or even a low parapet wall) with no setback, the original cornice **is no longer a “cornice” and can be significantly altered or even removed entirely as a matter of right.** This outcome is wholly inconsistent with the language, purpose, and intent of section E-204.1.

CONCLUSION

For all the reasons stated above, ANC 6C respectfully urges the Board to find that DOB and the Zoning Administrator violated the zoning regulations in issuing the Permit. Accordingly, we ask the Board to reverse the decision of the Zoning Administrator and to order the immediate revocation of the Permit.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2024, I served a copy of ANC 6C's pre-hearing statement on the following persons by electronic mail:

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