



Government of the District of Columbia  
**Advisory Neighborhood  
Commission 6C**

October 29, 2024

Board of Zoning Adjustment  
of the District of Columbia  
441 4th Street, NW  
Suite 210-S  
Washington, DC 20001

Re: BZA 21163 (627 A St. NE)

Dear Members of the Board,

ANC 6C writes to provide its comments on the application as revised since the October 9 hearing, as well as to respond to party-opponent Jessica Smith's motion to adjourn the November 6 continued hearing. Before addressing these issues, however, we feel it necessary to point out the new, unclear standard being applied by the Board in this case.

**The Standard Applied by the Board at the October 9 Hearing Cannot Be Reconciled with the Board's Prior Practices and Decisions**

Over the past several years, the Board has analyzed special exceptions under section E-5201 and its predecessors using a consistent standard. When assessing whether an addition would have undue adverse impacts on air, light, and privacy, the Board has looked to the difference between a) what could be built as a matter of right and b) what the applicant proposes to build. The Office of Planning has consistently taken this same approach.

In adopting this standard, the Board has emphatically rejected arguments comparing the proposed project to the existing conditions. For example, in BZA 20163, the owner constructed an illegal rear addition extending over 13 feet past the rear wall of the abutting neighbor and then requested after-the-fact relief. ANC 6C opposed the application, pointing to "the difference between the original, pre-construction condition and the proposed, now-existing structure" and the resulting adverse impacts. BZA 20163, Exhibit 58, p. 3.

Members of the Board unanimously disdained this argument:

- At the June 24, 2020 meeting, Ms. John stated, "Mr. Hart did such an excellent job of summarizing all of the issues. And so I support all of his comments, particularly with respect to the ANC, that even though the ANC had issues with potential impacts on light and air, **I thought that the matter of right option, to me, clearly showed that there was no undue or adverse impact on the two adjoining neighbors ....**" Transcript, p. 8 (emphasis added).

- Chairman Hill, at the same meeting: “I would agree with everything that all of my colleagues had said .... I did think that the additional three feet of shadowing from [*i.e.*, beyond] the [ten-foot] matter of right was not undue.” Transcript, p. 8.
- Chairman Hill, at the May 26, 2021 meeting: “While the rear addition would result in some shadow impact to the north abutter’s property, I still think that they will not [be undue] compared to the shadows resulting from the matter of right ....” Transcript, p. 31.
- Mr. Smith, at the same meeting: “I agree with you, Mr. Chairman. ... I do not believe it’s undue. The vast majority of the shadows are created by the matter of right shading.” Transcript, p. 33.

The Board’s initial order in that case, now void,<sup>1</sup> further illustrates the Board’s unambiguous position:

The Board does not find persuasive the ANC’s concerns that the Rear Addition’s light and air impacts on the North Abutter will be undue .... The Applicant’s shadow studies persuasively demonstrate that the Rear Addition will not result in undue impacts over a matter-of-right addition; [t]he ANC’s shadow study was not persuasive because it only included a limited range of dates and times, and it did not include the difference in shadows resulting from the Rear Addition and a matter-of-right addition ....

BZA Order 20163 (now void), p. 11 (Conclusions of Law ¶ 16).

The record for the present application—627 A St. NE—amply demonstrates that there is only a minimal difference between a theoretical matter-of-right addition and the applicant’s proposal. *See* Exhibit 78 (Applicant’s sun study). Inexplicably, however, at the hearing the Board treated these modest differences as a serious obstacle and required the applicant to submit new drawings reducing the depth of the accessory structure by three feet to mitigate, *inter alia*, alleged adverse impacts on the light afforded to 625 A.

Applicants, neighbors, and ANCs need to understand in advance the standards the Board will apply to special-exception cases like this. Erratic changes in the Board’s bases for decisions undermine everyone’s ability to participate in the public process by discussing how the regulations should apply.

Obviously, the Board has discretion to change its views and adopt new standards. If that is the case here, then the Board should clearly announce that change and likewise needs to describe in detail the standards it intends to apply in the future. If that is not happening here, then the Board should continue to apply its past standards rather than invent new *ad hoc* standards that vary unpredictably from case to case.

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<sup>1</sup> After ANC 6C moved for the Board to reconsider its decision, the Board granted the motion and then—over ANC 6C’s strenuous objection—reopened the record and on May 26, 2021 voted, based on the supplemented record, to grant the application. However, despite the passage of three and a half years since that vote, the Board has not issued a new written order, as legally mandated, reflecting its reliance upon the enlarged record.

### **ANC 6C Supports the Application as Revised**

Our original submission (Exhibit 61) explained in detail our reasons for supporting the application. Because the recent revisions—Exhibits 88 through 88D—serve only to reduce the size of the project and to mitigate the alleged privacy impacts, our prior analysis applies with even greater force. Rather than repeat it in full here, we incorporate it by reference.

### **ANC 6C Takes No Position on Party-Opponent Smith's Motion to Postpone**

Because party-opponent Smith failed to serve a copy of her motion on ANC 6C, we learned of it only today upon reviewing the case file. We neither consent to the motion nor oppose it.

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For all the reasons stated above, ANC 6C recommends that the application be granted.

Sincerely,



Mark Eckenwiler  
Chair, ANC 6C