



Government of the District of Columbia
Advisory Neighborhood
Commission 6C

July 14, 2023

Mr. Anthony Hood
Chair, District of Columbia Zoning Commission
441 4th St. NW, Suite 200S
Washington, DC 20001

Re: ZC 18-16, 19-27, 19-27A, & 19-27B (Rulemaking)

Dear Chairman Hood,

On July 12, 2023, at a duly noticed and regularly scheduled monthly meeting, with a quorum of six out of seven commissioners and the public present via teleconference, ANC 6C voted 6-0 to submit the following comments on the proposed rulemaking published in the June 16, 2023 DC Register.

Based on our review, ANC 6C understands the goal of the rulemaking to be reorganizing the regulations, not to make significant substantive changes. That said, we believe that proposed new 11-H § 903.5—found on page 141 of the published notice—needs to be revised or deleted altogether.

That provision reads as follows: “On Square 776, a maximum non-residential density of 1.5 FAR shall be permitted in the event that a grocery store is constructed Square 776 [sic].” A grocery store, the Giant at 360 H St. NE, has long since been constructed and in operation, so this is no longer a hypothetical circumstance. If the section cannot be deleted in its entirety, we suggest revising it to read, “On Square 776, a maximum non-residential density of 1.5 FAR shall be permitted for a grocery store use.”

In going over the proposed rulemaking (which would relocate 11-E § 206, a frequent source of ANC business, to section 204), we were reminded that over two years ago, ANC 6C asked the Zoning Commission to look at an ongoing problem with the Zoning Administrator’s interpretation of E-206 as applied to cornices. *See* Attachment A (letter dated April 29, 2021).

That same day, the Zoning Commission expressly asked OP to look at this issue, as well as a separate concern raised by Commissioner May concerning the use of parapet walls to evade setback requirements. *See* Attachment B (excerpt from ZC meeting transcript of April 29, 2021). Since that time, we have heard nothing from OP on the subject and are unaware of any progress in responding to the Zoning Commission’s request.

Thank you for giving great weight to the views of ANC 6C.

Sincerely,



Mark Eckewiler
Chair, ANC 6C

Attachment A



Government of the District of Columbia
Advisory Neighborhood
Commission 6C

April 29, 2021

Anthony J. Hood
Chair
Zoning Commission
of the District of Columbia
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re: Zoning Administrator Interpretation of 11-E § 206 (Rooftop Elements)

Dear Chairman Hood:

We write to advise you that Vice-Chair Eckenwiler's letter of April 4 (copy attached) reflects the official views of ANC 6C. We endorsed and adopted it after the fact by a vote of 6-0 at a duly noticed and regularly scheduled monthly meeting on April 14, with a quorum of six out of six commissioners and the public present via videoconference.

Thank you for giving great weight to the views of ANC 6C.

Sincerely,

Karen J. Wirt
Karen Wirt
Chair, ANC 6C

Attachment



Government of the District of Columbia
**Advisory Neighborhood
Commission SMD 6C04**

April 4, 2021

Anthony J. Hood
Chair
Zoning Commission
of the District of Columbia
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re: Defective Zoning Administrator Interpretation of 11-E § 206 (Rooftop Elements)

Dear Chairman Hood:

I write to alert the Commission to recent statements by Zoning Administrator Matthew Le Grant interpreting section E-206. As described below, the ZA's interpretation of that regulation eliminates any protection for cornices in several routine circumstances. I ask the Commission to take urgent action in response.

The Text and Purpose of Section E-206

As you know, section E-206 provides meaningful protection to "roof top architectural elements" original to a building in the RF zones. Thus, the current text of section E-206.1 states that in RF zones

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....

In establishing the ZR58 precursor to section E-206, the Commission cited to¹ and relied upon multiple Land Use Elements of the Comprehensive Plan. These include LU-2.1.9—still in effect today—which

[g]enerally discourage[s] ... new floors and roof structures ... being added to the tops of existing row houses and apartment buildings, particularly

¹ See ZC Order 14-11 (adopted by unanimous vote on June 8, 2015; effective upon Register publication on June 26, 2015) at 1.

where such additions would be out of character with the other structures on the block. Roof structures should only be permitted if they would not harm the architectural character of the building on which they would be added

In 2017, the Commission amended section E-206 to explicitly add cornices and porch roofs to the list of architectural features protected by section E-206. *See* ZC Order 14-11B (effective Apr. 28, 2017).

The ZA's Defective Interpretation of E-206 as Applied to Cornices

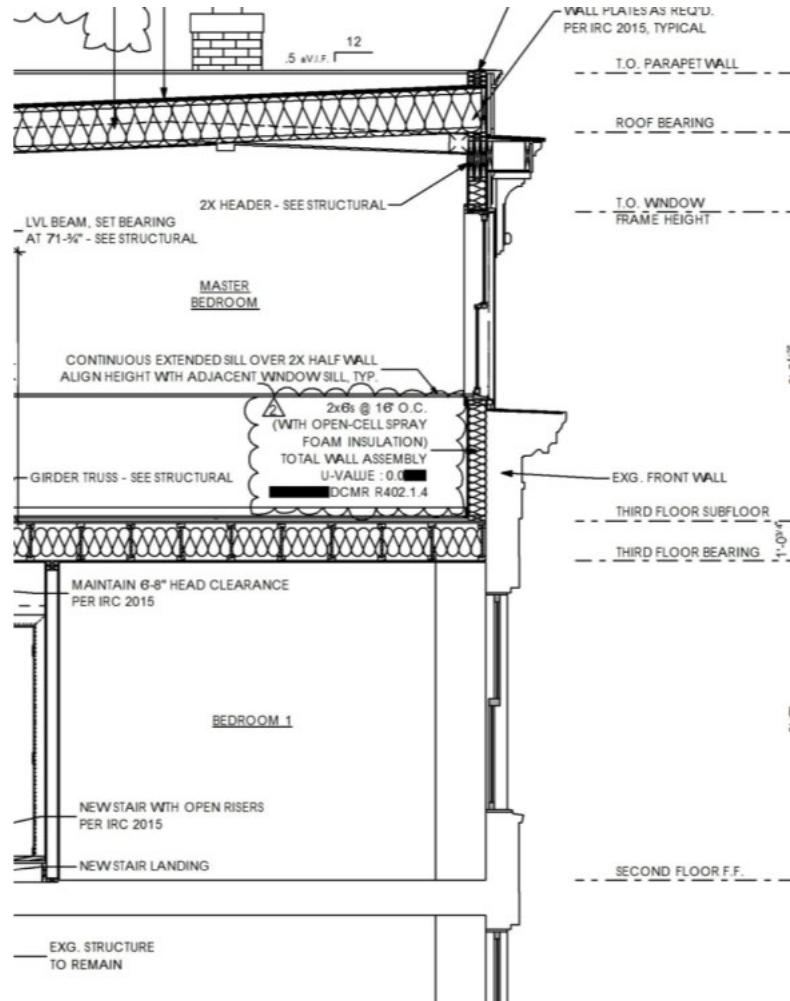
In his only published interpretation of section E-206, the ZA states that “the addition of a floor or penthouse—usually behind the element—must be set back at least three feet from the rooftop architectural element to preserve its architectural integrity.” ZA-007 (Oct. 1, 2019).²

In early March, however, I observed new construction in my SMD where the upper-story addition has zero setback:



² Available online at <https://dcra.dc.gov/node/1437876>.

The underlying permit drawings confirm that DCRA approved this configuration:



I promptly wrote to the ZA, expressing my concern that this is not in keeping with section E-206. As shown in his response (copy attached), the ZA asserts that his setback rule does not apply to cornices. (No such distinction is suggested in the text of ZA-007.)

The ZA's position is deeply problematic for two reasons. The first, purely esthetic reason is that allowing such construction diminishes the visual impact of the original cornice. That is especially true where, as in the drawing above, a new cornice is proposed for the top of the addition.

The second and far more consequential 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.

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 6-7.³

Thus, DCRA 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-206.

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-206. The ZA’s destructive interpretation calls for swift and decisive action by the Zoning Commission. By contrast, a laborious and time-consuming ANC 6C appeal to BZA about a single permit, likely requiring several months to conclude, would lack the urgency required here. (It would also be unfair to the individual homeowner who relied in good faith on the ZA’s permit

³ Available at <https://app.dcoz.dc.gov/Content/Search/Download.aspx?exhibitid=153758>.

approval and invested substantial resources in an addition already under construction.) That is why I am writing to you now, in my individual capacity, instead of waiting until ANC 6C's next meeting cycle.

Thank you for your consideration.

Sincerely,



Mark Eckewiler
Vice-Chair, ANC 6C

cc: Jennifer Steingasser, Office of Planning

Attachment

RE: B2012732 (727 4th NE)

LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>

Fri 3/12/2021 1:59 PM

To: Eckenwiler, Mark (SMD 6C04) <6C04@anc.dc.gov>

Commissioner Eckenwiler,

OK, and again my apologies as I do not understand why the message did not go through; Here is the email text that I had sent in KRM on March 5 and also earlier today to **6c04@anc.d.c.gov:**

Commissioner Mark Eckenwiler - ANC 6C04,

I have reviewed your concern regarding the compliance of building permit #B2012732, issued on 1-5-2021, for a third floor addition at 727 4th Street NE, as to its conformance with Section E-206.1. The project entails adding a third floor atop the existing two story row house, and is located in the RF-1 zone. You asked whether the project conformed with my office's setback requirement for upper floor additions from rooftop architectural element.

You are aware of the 'three foot rule' that my office has administratively required for upper floor additions to be set back from specified protected rooftop architectural elements. However, this rule does not apply to cornices.

Other rooftop architectural elements, including turrets, towers, mansard roofs, and dormers are subject to the three foot setback rule to preserve those element's architectural integrity. However, I have not applied this setback rule to cornices since the inception of the regulation, as cornices primarily reside on the building's façade. This is also explained in the the **Tutorial Video** on DCRA's Website at <https://dcra.dc.gov/node/1466106>. In the video, it denotes the exemption of cornices from the three foot setback rule.

Please let me know if you have any further questions on this matter

Please let me know if you do get this one.

Matthew Le Grant

Zoning Administrator

Office of the Zoning Administrator

Dept of Consumer and Regulatory Affairs

1100 4th St SW - Washington, DC 20024

www.dcra.dc.gov

Phone: Desk 202 442-4652 – Mobile 202-497-1742

Attachment B

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

THURSDAY

APRIL 29, 2021

The Regular Public Meeting of the District of Columbia Board of Zoning Commission convened via videoconference, pursuant to notice at 4:00 p.m. EDT, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chairperson
PETER SHAPIRO, Commissioner
PETER MAY, Commissioner
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF:

ANNE FOTHERGILL
JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.
ALEXANDRIA CAIN, ESQ.

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1 All right. Let's move to the next case. Got to have
2 some fun sometime.

3 All right. I think our next is correspondence, right,
4 Ms. Schellin?

5 MS. SCHELLIN: (Affirmative head nod.)

6 CHAIRPERSON HILL: Okay. Correspondence, Ms. Schellin.

7 MS. SCHELLIN: Yes, sir. Initially, we received a
8 letter from SMD Commissioner 6C04, Mark Eckenwiler; however,
9 today, we received a letter from ANC 6C advising that they voted
10 to adopt his comments as the full ANC's comments. And it's
11 regarding the ZA's interpretation of Subtitle E, Section 206.1.
12 It's with regard to the rooftop elements, and they are asking the
13 Commission to take action in response to their comments.

14 CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin. As
15 we all know, ANC 6C along with other ANCs across the city work
16 very hard in cases pertaining to zoning. I will -- let me open
17 it to hear from others, a path forward. I think this warrants
18 at least some investigation or some analysis or some
19 clarification. Let me open it up to others. Commissioner May.

20 COMMISSIONER MAY: So I can't say that I completely
21 agree with what Commissioner Eckenwiler has suggested will be the
22 outcomes in the future, but I do agree that there is some
23 confusion about this, and I think there's some areas where it
24 would be beneficial for us to have some greater clarity about
25 what constitutes a rooftop feature that needs to be preserved

1 under our regulations. And, you know, maybe we include things
2 like codifying the setback that the zoning administrator has made
3 a determination about or maybe not, I'm not sure about that one
4 in particular, but I think a little bit more clarity probably is
5 useful. But I'm interested in hearing what others have to say.

6 CHAIRPERSON HOOD: Okay, Commissioner Shapiro.

7 COMMISSIONER SHAPIRO: Yeah, Mr. Chair, I have no
8 concerns taking this up. We would take this up as a potential
9 text amendment, is that the idea?

10 COMMISSIONER MAY: I think we have to request that from
11 the Office of Planning.

12 CHAIRPERSON HOOD: Okay. Commissioner Turnbull?

13 COMMISSIONER TURNBULL: I would agree with Commissioner
14 May and Commissioner Shapiro. I've been on some BZA work in the
15 last month or so where we had a situation come up which involved
16 a cornice or crown molding or an architectural element that's
17 close to the roof and the interpretation of the setback. I think
18 Commissioner May is right. I think we need some clarity, some
19 more definition as to what a rooftop element is, especially in
20 its adjacency to the vertical wall that is next to -- a lot of
21 these things get to be very complicated. And if you simply throw
22 out a word, it may not cover exactly what the intent is of what
23 you're really looking at. So I think we need to carefully or
24 somehow very -- we need to clearly analyze what we're looking at.
25 And I'm looking at the pictures that Commissioner Eckewiler had

1 and some of these things are very fuzzy and you can get into some
2 really -- there's room to argue about what it is, I understand
3 that, but I think we do need the clarity because it can be
4 confusing for -- especially the BZA members to look at something
5 and understand exactly what it is. So I think the more clarity,
6 the better.

7 CHAIRPERSON HOOD: Okay. Vice Chair Miller. Ms.
8 Schellin raised her hand.

9 VICE CHAIRPERSON MILLER: Ms. Schellin can speak, if
10 she wants.

11 MS. SCHELLIN: I thought you were finished.

12 CHAIRPERSON HOOD: Vice Chair Miller.

13 VICE CHAIRPERSON MILLER: Thank you, Mr. Chairman. Yes,
14 I agree, clarity is always a useful thing to try to do. And so
15 I think what we're -- correct me if I'm wrong, I think what we're
16 collectively asking in response to the letter is for the Office
17 of Planning to look at the issue and analyze what clarity there
18 should be and maybe -- and perhaps propose a text amendment that
19 codifies what the zoning administrator is interpreting or changes
20 it to clarify it further. I think there are a number of zoning
21 administrator interpretations in a number of areas which might
22 fall into this broad category of things that need -- that the
23 Office of Planning may need to look at in terms of possible text
24 amendments to actually put --codify, as Mr. Turnbull or others
25 have said, in our regulations, what the interpretation is going

1 forward. If we agree with it and the Office of Planning thinks
2 it makes sense. So I think we're calling on the OP -- correct
3 me if I'm wrong, Mr. Chairman, to look at the issue that Mr.
4 Eckenwiler has raised and propose any changes or clarifications
5 that might be appropriate.

6 CHAIRPERSON HOOD: Okay. Thank you. And this would
7 not go with the text amendment -- would not apply to the text
8 amendment (audio interference) to the case that Mr. Eckenwiler
9 had mentioned in his letter, but this is something -- this is
10 separate and apart, but I will say I'm not really sure of the
11 process. I know we're sending it to OP, and I know Mr. Eckenwiler
12 has a way of -- he knows, I guess how to -- I just want to make
13 sure he is in the process, so his viewpoint is presented as well.
14 I know that Zoning -- ZA will be in the process. I want to make
15 sure since he and ANC 6C -- and then whatever they bring, so I'm
16 asking that, that they also be included in that discussion if
17 there's going to be a discussion, which I am sure there will be,
18 because when I look at what he submitted, I kind of -- I think I
19 fully understand it and I kind of agree with what he is saying,
20 but I need some more to help me get to where I need to be. All
21 right.

22 COMMISSIONER MAY: I think we're pretty much guaranteed
23 that Commissioner Eckenwiler is going to jump into the discussion
24 with the Office of Planning very quickly.

25 CHAIRPERSON HOOD: Okay. I just wanted to make sure

1 that there was a way that he could -- because if there is not a
2 hearing, I just wanted to make sure he had an avenue to be able
3 to -- get his point across as well. So hopefully that'll all
4 work out. I'm sure it will, but I just wanted to put that on
5 the record.

6 COMMISSIONER MAY: Mr. Chairman.

7 CHAIRPERSON HOOD: Yes, Commissioner May.

8 COMMISSIONER MAY: I am going to add one other thing.
9 I mean, if we're going to ask the Office of Planning to look at
10 this particular set of regulations, there is one other thing that
11 has popped up recently for me that I would love to sort of throw
12 into the mix of things that they're thinking about, which is one
13 of those unintended consequences. Right? And it has to do with
14 the use of parapet walls between rowhouses that has become a tool
15 for builders, developers to avoid doing required setbacks for
16 certain rooftop structures, including rails, guardrails. And I'm
17 not sure what the solution is, and I'm not necessarily sure that
18 what's happening is really that bad, except that sometimes you
19 wind up with these very high, I mean, you know, four-foot-high
20 parapet walls sticking out on these buildings in the front or the
21 back so that they can avoid those setback requirements. So I
22 think that's something that I would love to have the Office of
23 Planning look at as well to see if there is some better way to
24 do that.

25 CHAIRPERSON HOOD: Okay. Ms. Schellin, could you

1 convey that? I'm sure that they're probably listening, but if
2 you could convey that to them.

3 COMMISSIONER MAY: I think they're all here, yes.

4 MS. SCHELLIN: Yes, they are. And that's what I was
5 going to say when I thought you guys were already done, that I
6 received a message from Ms. Steingasser that said, "We hear the
7 ZC and will review the rooftop regs," so I am sure that they have
8 also heard Commissioner May's concern and they will take a look
9 at the parapet walls also that are of concern.

10 CHAIRPERSON HOOD: Okay. Great.

11 Commissioner Turnbull.

12 COMMISSIONER TURNBULL: I just wanted to follow up on
13 Commissioner May. Commissioner May have you found, I've seen it
14 too on several R-1 zones, RF-1 where -- do you find it more often
15 misused in the front of the building, or do you find it just
16 on the sides?

17 COMMISSIONER MAY: I have seen it primarily on the --
18 where it shows up to me and it looks really odd is where it's on
19 the -- it's on the sidewalls, the dividing walls between the
20 rowhouses. I will say, though, that one of the things that's
21 also troubling is that we can have apparently under our
22 regulations where we say, you know, it's -- the height is capped
23 at 35 feet. The zoning administrator says that, well, above the
24 35 feet, you can actually have that parapet wall at the front.
25 So you wind up with a 39-foot building or at least what looks

1 like a 39-foot building. I think that's a component of it as
2 well, because I'm not sure that having that parapet wall above
3 the 35 feet is an acceptable outcome because it sort of subverts
4 the intention of what we are doing. So I'm glad you brought that
5 up, because I was thinking about the sides, but the issue at the
6 front, okay.

7 COMMISSIONER MAY: Mr. Chair, you're muted.

8 CHAIRPERSON HOOD: I don't even feel like saying that
9 all over again. Anyway -- what I said, I think we've got a plan
10 going forward. Anything else, Commissioners?

11 Ms. Schellin, is there anything else on the agenda?

12 MS. SCHELLIN: There is nothing else.

13 CHAIRPERSON HOOD: Okay. So I want to thank everybody
14 for their -- I particularly want to thank our staff and everybody
15 who has helped us and even the residents who participate. I
16 think we've met three times this week, and I particularly want
17 to thank the Commissioners and everybody for everything that has
18 been put into this week.

19 Our next meeting -- and I'm not sure who --

20 COMMISSIONER SHAPIRO: Mr. Chair, do you have any final
21 words for BZA Chair Hill before we go?

22 COMMISSIONER HOOD: (Negative head shake.)

23 COMMISSIONER SHAPIRO: No?

24 COMMISSIONER HOOD: I know I got to call him before you
25 all tell him now.

1 Again, we also mentioned about Ms. Hanasack (phonetic),
2 who retired, I think on the 26th. I think the comments that we
3 said at the meeting about how she has really helped us, even
4 though a lot of times she would fill when Ms. Schellin may have
5 been out, but Ms. Schellin is not normally out, maybe once or
6 twice, and all the work she has done. We expressed our gratitude,
7 and we wish her well in her future endeavors. So we mentioned
8 all that, I think unless others want to opine again on that,
9 we'll just leave it at that, but I just wanted to say it at the
10 meeting as well.

11 And I know I need to call Cherry Hill before
12 Commissioner Shapiro talks to him.

13 But anyway, we meet again on May 3rd. It is Zoning
14 Commission Case Number 20-24, I think it is a map amendment by
15 the Office of Planning. But anyway, we'll get on the same web
16 platforms. So tune in at 4 o'clock on May 3rd, which I believe
17 is Monday.

18 MS. SCHELLIN: Yes.

19 CHAIRPERSON HOOD: Anything else, anybody?

20 MS. SCHELLIN: That's it.

21 CHAIRPERSON HOOD. With that, I want to thank everybody
22 again, and have a nice evening and have a great weekend. This
23 meeting is adjourned.

24 (Whereupon, the above-entitled matter went off the
25 record at 4:52 p.m.)

1 C E R T I F I C A T E
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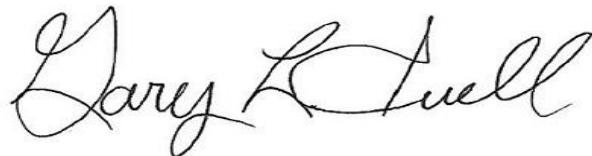
3 This is to certify that the foregoing transcript:

4 In the matter of: Public Meeting

5 Before: DCZC

6 Date: 04-29-21

7 Place: Teleconference

8
9 was duly recorded and accurately transcribed under my
10 direction; further, that said transcript is a true and
11 accurate record of the proceedings.12
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1617 GARY EUELL
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