

July 20, 2020

To: Zoning Commission
Fr: Alan Gambrell
Re: 19-21 Proposed OP language – Exhibit 34

- **Recommendation 1:** Many of OP’s proposed revisions on R and RF (1) architectural elements and (2) solar energy systems represent helpful streamlining of the regulations. Five provisions are recommended for adoption. One provision, E-206.2, is recommended for modification to clarify protection of architectural elements while allowing for ordinary repairs and replacement (see page 3).
- **Recommendation 2:** The ZC should not adopt the recommendations to open up all R and RF cases to special exception appeals for these two issues. First, contrary to OP’s position, these special exceptions are currently available only to cases involving building height to 40’ and conversions (see page 4 walkthrough), which has been repeatedly misapplied by OP and the BZA (see pages 5+). Second, although OP revised proposed special exception criteria, at the ZC’s request, they remain imprecise. Four provisions are recommended for rejection (see page 3).
- **Recommendation 3:** The proposed changes are extensive, difficult to follow, and untested. It is clear from a review of the transcripts that the ZC has some reservations. Therefore, the ZC should direct OP to further research and refine these special exception review criteria and share with the ZC what options they considered, adopted, and rejected. These efforts will be worthwhile. Sustainable DC Goals and the years spent developing 14-11 protections should not be put at risk by simply adopting provisions and field-testing them to see if they are workable. The ZC, ZA, DCRA, BZA and the community would be well-served by a more robust investigation.

Rationale for Recommendations

CONCERN ONE: 19-21 Would Eliminate 14-11 Rules that Limit Special Exceptions for Solar Energy and Architectural Element Cases. OP and the BZA appear to be under the impression that all RF cases are currently open to special exception review for both (1) Architectural Element and (2) Solar Energy. This is incorrect. These special exceptions are limited to building height and conversion cases.

- **Architectural Element Special Exceptions.** The zoning regulations currently state, four times, a firm “shall not be removed or significantly altered” prohibition regarding RF “roof top architectural element original to the building.” This is stated in E-206.1(a) and repeated in E-5203.1(d), U-301.2(3), and U-320.2(h). The prohibition is waived only for three special exceptions: (1) for a building height to 40 feet under E-5203.1, E-5203.2 allows for a waiver of 2 of the (a) through (f) conditions outlined in E-5203.1, including the architectural element protection; (2) for conversion of an existing residential building to an apartment house per U-320.2(l); and (3) for conversion of a non-residential building to an apartment house per U-320.3. Otherwise, RF rules do not allow for architectural element special exceptions. This is clear in a reading of E-5203.3,¹ which contains a cumbersome cross-reference to E-5203.1, “special exception is subject to conditions of E-5203.1(b), (c), and (d)” (see Attachment A, page 4). Perhaps that is why OP and the Board of Zoning Adjustment (BZA) have incorrectly interpreted this provision multiple times (see Attachment B, starting page 5, documentation of BZA cases).

¹ In E-5203.3, the phrase “special exception is subject to conditions of E-5203.1(b), (c), and (d)” is contradicted with the following, which also references a non-existent provision: “If relief is granted from compliance with Subtitle E § 206.1(b) or (c), the special exception shall not be conditioned upon compliance with that same requirement as stated in Subtitle E § 5203.1(b)(3) and (4).”

- **Solar Special Exceptions.** As with the above, the zoning regulations, in E-206.1(c), currently outline specific criteria on protection of solar energy systems for RF properties and limit special exceptions for such properties under E-5203.3. Building height and conversion cases are allowed, although the E-5203.3 phrase “special exception is subject to conditions of E-5203.1(b), (c), and (d)” is contradicted with the following, which also references a non-existent provision: “If relief is granted from compliance with Subtitle E § 206.1(b) or (c), the special exception shall not be conditioned upon compliance with that same requirement as stated in Subtitle E § 5203.1(b)(3) and (4).” [Note the error in this regulation, it’s reference to a non-existent provision, 5203.1(b)(3) and (4).]

CONCERN TWO: Proposed Special Exception Criteria are Imprecise and Unsuitable. OP proposes to provide the BZA and the Zoning Administrator (ZA) with overly broad interpretive discretion in assessing special exception appeals for solar and architectural elements. Zoning Commission members wisely raised these concerns in April and May. OP’s revisions are insufficient and are thus not recommended for adoption, for these reasons:

- **Criteria are Vague.** Take one example, replacing the vague phrase “good cause” with “applicant has made its best efforts.” The revision does not provide a clearer standard, nor do other criteria, like “to the extent reasonably practical” or “shall not have a substantially adverse effect.” An applicant can come before the BZA and claim to have reached out to neighbors 10 times, each time presenting a bad option. The neighbors may have jobs that disallow spending all day at the BZA to explain their opposition. The BZA will likely be persuaded to approve.
- **Nature of OP Research Should be Discussed.** The Office of Planning stated in their May 4 report that “OP has further researched solar access provisions.” OP should provide additional information on this research, including what jurisdictions or model ordinances were reviewed, which were incorporated, and which were excluded and why.
- **BZA/ZA Lack Relevant Expertise.** The BZA and ZA lack relevant professional expertise to make informed determinations regarding solar energy systems and architectural element protections and certainly cannot make informed decisions when guided by vague terminology (e.g., unspecific shading impact illustrations referenced in 5207.1(b) and the “special treatment” and “reasonable conditions” that the Board may deem “necessary”).
- **Clean Energy Goals are at Risk.** Sustainable DC Goals on solar energy production should not be opened up to unquantifiable and vague ZA and BZA discretion to waive under special exception cases.
- **BZA/ZA Track Record is Not Reassuring.** The risk of misapplication of these rules is real as the BZA and ZA have historically demonstrated an inability to correctly administer far more specific criteria (e.g., basement/cellar rule, meaningful connection). For example, the ZA recently demonstrated an inability to make an obvious determination that ordinary repairs and replacements of rooftop architectural elements in BZA 19950 (2019) were “visually indistinguishable” as he allowed for replacement of dormer windows in a style that did not reflect the original.
- **Criteria Could Subvert Right to Seek Court Appeal.** The wide discretion that is proposed is likely to subvert and effectively eliminate the ability of any party to exercise its right seek an appeal before the Court of Appeals given the wide berth typically granted to administrative agencies.

19-21 Recommendations

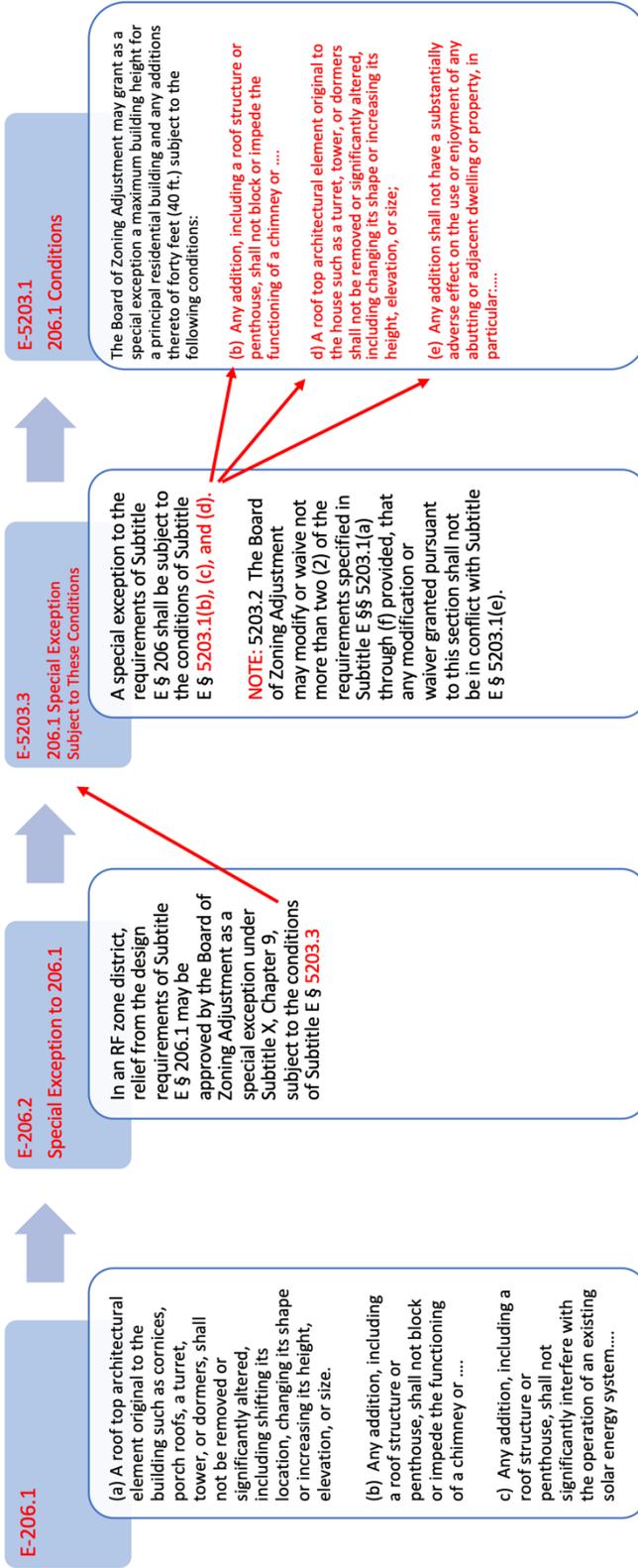
19-21 Architectural Element Recommendations: (1) Adopt (and modify) language to allow for repairs and deferral for HPRB and CFA review. (2) Reject language to allow for special exceptions for all RF cases. (3) Adopt language to continue to allow special exceptions for RF building height cases to 40' and other RF conversion cases. (4) Reject language that would allow BZA to overturn HPRB and CFA determinations in special exceptions.

Zone	Recommendation for Adoption	Reject
RF Zones		
	E-206.1	
	E-206.2 revise as: 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. However, ordinary repairs and/or replacement to a roof top architectural element shall be permitted when the replacement is visually indistinguishable from the original in style, dimensions, profile, and appearance when viewed from a public right of way.	
		E-206.4 (relief from E-206.1 and E-206.2)
		E-5207.1 (RF special exception)
RF Zones - Building Height to 40 Feet		
	E-5203	
RF Zones conversion of an existing non-residential building or structure to an apartment house		
	U-320.2 and restore U-320.2 (i), (j) and (k)	
RF Zones conversion of a non-residential building to apartment house		
	U-320.3	

19-21 Solar Energy Interference Recommendations: (1) Adopt protections for R Zones. (2) Reject new language to allow for special exceptions for RF Zones (non-conversions). (3) Adopt language to continue to allow special exceptions for other RF conversion cases.

Zone	Recommend for Adoption	Reject
R Zones		
	D-208.1	
		D-208.2 (relief from D-208.1)
		D-5207.1 (R special exception)
RF Zones		
	E-206.3	
		E-206.4 (relief from E-206.1 and E-206.2)
		E-5207.2 (relief from E-206.3)
RF Zones conversion of an existing non-residential building or structure to an apartment house		
	U-320.2 and restore U-320.2 (i), (j) and (k)	
RF Zones conversion of a non-residential building to apartment house		
	U-320.3	

Attachment A: RF 206.1 Protections/Exceptions: Architectural Element, Chimney, Solar Energy System



206.1 provides a special exception reference to 5203.3, which in turn provides a reference to a special exception for RF 40' building height under 5203.1. Thus, the 5203.3 special exception condition is either (a) limited to RF 40' building height special exceptions and/or (b) reinforces the prohibition on altering/removing architectural elements for RF non-special cases.

Attachment B: Select Review of RF-1 Properties and E-206.1(a)

As Adopted Under 14-11B 2/10/17 Notice of Proposed Rulemaking, ZC Rule 3/27/17

All cases heard after effective date of 14-11b. No cases involved conversion to apt house or increase height >35'

Address	OP Report	BZA Decision on Modification of Architectural Element
<p>1834 Ontario Place NW 2018</p> <p>Applicant requested special exception relief in order to remove the porch roof pursuant to 11-E DCMR § 5203.3, which permits relief from the restrictions of 11-E DCMR §206.1(a).</p>	<p>Denial BZA 19771- 5/31/18 Denial of the special exception pursuant to Subtitle E § 5203.3 - Architectural features - E § 206.1 - (existing front porch shall not be removed; proposed – partial removal of front porch).</p>	<p>Denied BZA 19771 6/13/18</p>
<p>723 Girard St NW 2017</p> <p>Applicant requests special exception approval for the Addition pursuant to 11E DCMR § 5203.3 from the restrictions on modifying architectural elements original to a building (11E DCMR §206.1(a)).</p>	<p>Approval BZA 19742 - 4/21/17 Approval of the following special exception pursuant to Subtitle E § 5203: E § 5203.3 Roof top addition (BZA may waive (2) requirements of (a-f) of 5203.1).</p>	<p>Approved BZA 19742 5/10/17 - The Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E § 5203.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map.</p> <p>Approved The porch canopy shall be constructed of a more substantive material and permanent fixture.</p>
<p>765 Gresham Pl NW 2017</p>	<p>Approval BZA 19516 6/6/17</p> <p>Approval of E § 206.1(a) to alter an existing porch roof, special exception pursuant to E§ 5203.</p>	<p>Approved BZA 19516 The Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle E §§ 5201, 304.1, and 206.1(a), and Subtitle C § 202.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map.</p>

Address	OP Report	BZA Decision on Modification of Architectural Element
<p>237 Warren Street, N.E. 2017</p> <p>ANC6B</p>	<p>Approval BZA 19565</p> <p>OP Report 9/8/17</p> <p>The Office of Planning (OP) recommends approval of the following special exceptions pursuant to Subtitle E § 5201: Subtitle E § 206.1 – Waiver to allow removal of rooftop architectural element</p> <p>The Applicant proposes to construct a third story above the existing two-story dwelling and a three-story addition at the rear of the house. The third story would have a mansard roof with dormer windows at the front and the Applicant has requested relief to remove the existing mansard roof.</p> <p>Table reads: RF-1 (Rooftop architectural element E § 206.1) REGULATION (Cannot be removed); EXISTING (Mansard roof on second story); PROPOSED (New mansard roof on third story); RELIEF (Requested)</p> <p>ANALYSIS: b Removal of rooftop architectural element - Special Exception Relief from Subtitle E § 206.1(a) pursuant to Subtitle E § 5203.3.</p> <p>Subtitle E Section 5203.3 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).</p> <p>(d) 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; The Applicant is proposing to construct a third story above the existing two story dwelling. The brick front façade</p>	<p>Approved BZA 19565 9/20/17</p> <p>“the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E §§ 5201, 205.4, 5203.3, and 206, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map.”</p>

Address	OP Report	BZA Decision on Modification of Architectural Element
	<p>would be extended to match the existing façade. The existing mansard roof would be removed and a new mansard roof and dormers would be constructed.</p> <p>5203.2 The Board of Zoning Adjustment may modify or waive not more than two (2) of the requirements specified in Subtitle E §§ 5203.1(a) through (f) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle E § 5203.1(e).</p> <p>The BZA can waive the Applicant’s requirement from 5203.1(d) and OP supports the waiver.</p>	
<p>2521 12th Street, NW 2017</p> <p>NOTE: These neighbors opposed removal of the architectural element.</p> <p>Marni von Wilpert and Paul Shabis (1200 Euclid St NW #1) Lillian Foo (1200 Euclid St NW #2) Kevin and Devin Sundeen (1200 Euclid St NW #3) Barrett Anderson (1200 Euclid St NW #4)</p> <p>ANC1B approved. ANC1B seems to have a pattern of approval for 206 violations.</p>	<p>Approval BZA 19546 8/25/17</p> <p>The Office of Planning (OP) recommends approval of the following: E § 206.1(a), Roof Top or Upper Floor Additions (removal of rooftop architectural elements not permitted, ornamental dormers proposed to be removed);</p> <p>(d) 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;</p> <p>The application proposes to alter the two nonfunctioning dormer windows by replacing them with two larger functioning dormer windows to serve the proposed third floor. The new dormers would be similarly located and of similar width as the existing. The brick end walls of the row house would be extended upward and capped to match the existing end walls, and roofing shingles of a color similar to adjacent properties would be installed. At the request of the ANC the applicant</p>	<p>9/13/17 Approved BZA 19546</p> <p>As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle E § 5203.3 from the roof top architectural element requirements of Subtitle E § 206.1(a),...</p> <p>“the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle C §§ 1500.4, 1500.9, and 1502.1(c)(2), and Subtitle E §§ 5203.3 and 206.1(a), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map....</p> <p>REAR YARD NOTE: The Applicant amended the application to add</p>

Address	OP Report	BZA Decision on Modification of Architectural Element
	<p>sloped the mansard roof away from the street to prevent it from appearing as a wall from the front.</p> <p>The existing porch roof would remain, with new decorative columns and front door added to match the those features on the adjacent row house to the south.</p>	<p>special exception relief from the penthouse wall height (C § 1500.9) and penthouse setback (C § 1502.1(c)(2)) requirements and to withdraw a request for relief from Subtitle E § 205.4 for rear addition. (Exhibit 35.)</p> <p>ANC1B recommended denial of the rear addition relief. (Exhibit 32.) The relief opposed by the ANC was withdrawn.</p>
<p>137 S St., NW</p> <p>ANC5E</p>	<p>Approval BZA 19624 11/22/17</p> <p>The Office of Planning (OP) recommends Approval of the following: E § 206.1 (a) Special exception to modify existing architectural roof top elements.</p> <p><i>E-5203.1 (d) 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;</i></p> <p>The proposal would require relief to significantly alter the existing roof top by raising the existing hip roof on the west side of the front façade about four feet and by creating a new mansard on the east side of the front facade</p>	<p>Approved BZA 19624 12/6/17</p> <p>Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E §§ 5203 and 206.1(a), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.</p>
<p>1139 6thSt., NE</p> <p>ANC6C</p>	<p>RELIEF NOT REQUIRED AS PLANS MODIFIED: MOOT POINT 4/13/18 BZA 19674</p> <p>E-206.1(a) special exception withdrawn. Relief from the Roof Top or Upper Floor Additions Restrictions in Subtitle E §§</p>	<p>NO RULING: PLANS MODIFIED SO E-206 NOT AT ISSUE BZA 19674 4/25/18</p>

Address	OP Report	BZA Decision on Modification of Architectural Element
	<p>206.1 and 206.2 pursuant to E and §5203.3</p> <p>Subtitle E - § 206 ROOF TOP OR UPPER FLOOR ADDITIONS REQUIREMENTS</p> <p>E - 206.1: In an RF zone district, the following provisions shall apply:</p> <p>(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. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure’s rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;</p> <p>The applicant has revised the proposal (Exhibit 81). There would be no alteration to an existing roof-top architectural element. The addition would be set-back three feet from the existing cornice and turret. OP has encouraged the applicant to use a material or color on the front face of the addition that would contrast with the existing two stories, to make a clear distinction between the existing building and the proposed addition.</p>	