



ADVISORY NEIGHBORHOOD COMMISSION 3E
TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS
c/o Lisner-Louise-Dickson-Hurt Home 5425 Western Avenue, NW Washington, DC 20015
www.anc3e.org

RESOLUTION OPPOSING APPLICATION IN BZA CASE NO. 17956

RESOLVED:

ANC 3E respectfully asks the Board of Zoning Appeals (BZA) to deny the above-referenced application, and asks further that BZA postpone its hearing on this matter for 30 days so that neighbors and the ANC may attempt to work with the applicant to find a mutually acceptable alternative project, and so that all neighbors receive proper notice of the application.

I. BACKGROUND

The application states that the subject property, 4355 Fessenden Street, NW, is located at Square 1655, Lot 22. This appears incorrect, as Lot 22 describes a home on the opposite side of 44th Street. Instead, the correct Lot appears to be 803. Because the notice neighbors within 200 feet of the property received from BZA apparently misspecified the lot in question, BZA's notice to neighbors may be legally insufficient. Moreover, some of our constituents say they live within a 200 foot radius of the subject property but received no notice at all.

The subject house is fully detached. It sits on a nonconforming lot at the corner of Fessenden and 44th St. NW. The lot, which is 2800 ft.², is among the smallest for a detached home in the area. The applicant contends that the minimum area provided by current law for a lot with such a house is 3000 ft.²; because, however, the subject house is fully detached, the applicable minimum lot area appears to be 4000 ft.². There is public space to both south and west of the property.

The applicant claims that he intends to live in the subject house. According to information available on the Internet, the applicant is the business of buying, renovating, and selling houses. Accordingly, we recommend that BZA take testimony from the applicant himself and explore fully his intended use of the subject property.

II. THE APPLICATION DOES NOT SATISFY THE CRITERIA FOR GRANT OF A SPECIAL EXCEPTION

The applicant specified on his application that he sought a special exception under Section 223. Although the applicant's "Preliminary Statement of Compliance with Burden of Proof" employed the standard for a variance, we understand from Acting Director Richard Nero, Jr. that the special exception standard applies. That standard permits granting of a special exception where the applicant proves the addition

shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(a) The light and air available to neighboring properties shall not be unduly affected;

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. . .

Section 223.2. Section 223.2(d) provides further that

[i]n demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.

The applicant's proposal fails each of the enumerated substantive requirements of Section 223.2, and the application materials provided to date to ANC 3E do not contain adequate graphical representations "sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways."

A. The Proposed Addition Will Unduly Affect The Light And Air Available To Neighboring Properties

The subject property occupies a corner lot. The rear of the main structure of the neighboring house on Fessenden Street is nearly parallel with the rear of the subject property's main structure. A small single story addition is attached to the neighboring house, with generous windows facing the subject property. The next-door neighbor uses this addition as a sunroom, as it is flooded – currently – with afternoon sunshine. The proposed addition to the subject property, which would stand three stories including its roof, would drastically reduce afternoon light to the next-door neighbor's sunroom as well as to other windows on the west side of the neighbor's house.

Furthermore, because the proposed addition would block a good part of what is currently open space stretching from the far side of 44th Street through the backyards of the adjacent houses east of the subject property, it would substantially reduce air flow to the yards of these houses.

Neither the photographs nor the schematic drawings supplied by the applicant adequately represent this relationship of the proposed addition to adjacent buildings.

B. The Proposed Addition Will Unduly Compromise The Privacy Of Use And Enjoyment Of Neighboring Properties

The proposed addition projects into the undersized property's backyard, and contains windows facing east on both floors. The location of these windows would substantially compromise privacy in the adjacent houses and their yards.

C. The Addition, Together With The Original Building, As Viewed From The Street, Will Substantially Visually Intrude Upon The Character, Scale, And Pattern Of Houses Along 44th Street, NW

Adding a 2 story addition (plus space for an attic) will substantially increase the bulk of the building on this small corner lot. The added bulk, which is not adequately captured by percentage lot occupancy, will materially affect the visual aspect of the home in the context of the neighborhood of predominantly older, modestly renovated single family homes.

III. THE APPLICATION AND MATERIALS SUBMITTED WITH IT CONTAIN ANOMALIES THAT MUST BE ADDRESSED

Constituents have noted several anomalies in the application and supporting materials, including the following, relative to Exhibits 2 and 7, which are drawings on the plat for the building permit, the drawings describing the scope of work, and elevation drawings:

- a. The South Elevation drawing sub-title indicates there is no change. However, the actual drawing indicates a new dormer window facing Fessenden St. Inclusion of a dormer window indicates that there may be plans to use the attic as habitable space; however, the neighbors have not seen plans for the attic or 3rd floor.
- b. Plans do not include north side, first floor, outside of the new addition, which has double doors opening onto the backyard. Though it is difficult to tell, elevation drawings suggest the first floor would be slightly above grade, leading neighbors to wonder about unstated plans that would alter the existing rear yard. The new addition will be 20.17 feet from the rear property line, very near the minimum rear yard setback.
- c. Trees in the rear yard are, neighbors contend, inaccurately placed on the plan. Neighbors would like to see a landscaping plan to better understand plans of for the rear yard and the existing trees.
- d. Exhibit 2 shows an existing fence along the West property line, along 44th Street. The fence in the front yard is noted as being 36 inches tall. Neighbors contend it is closer to 48 inches. The height of the fence along the backyard is not noted, but neighbors contend it is close to 96 inches tall. [The applicant stated at ANC 3E's July 30, 2009 meeting that he would work with neighbors to consider a new approach to fencing.]

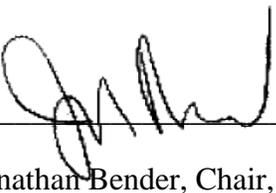
- e. Renovation plans will reduce the permeable surface area available to allow water drainage by 10%, neighbors say, which will force more water onto neighboring properties. The neighbors state that there is a longstanding issue of water drainage on the surrounding properties.

We respectfully request that the BZA require the applicant to provide such additional information to the ANC as is necessary to address these issues. Such information should be provided, in electronic form if possible, to facilitate distribution to neighbors. We further request that BZA require the applicant to supply this information at least three weeks prior to hearing on this matter, to afford the ANC and neighbors ample time to review and respond to the information.

IV. CONCLUSION

For all the foregoing reasons, ANC 3E respectfully asks BZA to deny the above-referenced application, and asks further that BZA postpone its hearing on this matter for 30 days so that neighbors and the ANC may attempt to work with the applicant to find a mutually acceptable alternative project, and so that all neighbors receive proper notice of the application.

ANC 3E approved this resolution at its meeting on July 30th, 2009, which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 4-0. Commissioners Jonathan Bender, Mathew Frumin, Sam Serebin, and Lucy Eldridge were present.



Jonathan Bender, Chair, ANC 3E