

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 26, 2020

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:57 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
CARLTON HART, Vice-Chair (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.  
DANIEL BASSETT, ESQ.  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN  
MATTHEW JESICK  
CRYSTAL MYERS

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The transcript constitutes the minutes from the Public Hearing held on February 26th, 2020.

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9:57 a.m.

CHAIRPERSON HILL: Mr. Moy, so we have our first hearing case when you get a chance.

MR. MOY: Thank you, Mr. Chairman. So this would be Case Application Number 20168 of 50 F Street LLC. For the record this is caption advertised for a special exception under the Capitol Security Sub-Area requirements, Subtitle I, Section 605.6, to construct a penthouse and a rooftop terrace addition to an existing mixed-use building, D-3 Zone at 50 F Street Northwest, Square 628, Lots 896, and 898.

As you are aware, Mr. Chairman, there is a request from the applicant for a postponement. And I believe the applicant is with us this morning, sir.

CHAIRPERSON HILL: Okay, great. Could you please come forward? Hi. Could you please introduce yourself for the record?

MR. KADLECEK: Hi, good morning. Cary Kadlecek from Goulston & Storrs on behalf of the applicant.

CHAIRPERSON HILL: Okay. So, Mr. Kadlecek, we saw everything that's in the record concerning the postponement. However, you have to be here because you guys missed the deadline in terms of being able for us to determine all of this without coming forward today.

Is there anyone here that's wishing to speak

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1 concerning this case? Okay. So, Mr. Kadlecek, why do you  
2 guys need the postponement?

3 MR. KADLECEK: Quite simply, we're still  
4 continuing to work with the Architect of the Capitol and the  
5 Capitol Police. We met with them this past Friday, which is  
6 why the postponement was late. We're continuing to try and  
7 work out their concerns that they have expressed, and we're  
8 hoping to get to a resolution fairly soon, which is why we've  
9 asked for a filing deadline of March 4th and then the hearing  
10 on March 11th.

11 CHAIRPERSON HILL: Do you know what their -- have  
12 you heard? Because, I mean, I remember the case. And it is  
13 your second postponement now. They didn't get you the letter  
14 that you needed -- I'm sorry. We didn't have the feedback  
15 that we needed at the time when we originally heard the  
16 hearing.

17 MR. KADLECEK: Right.

18 CHAIRPERSON HILL: So what's been going on?

19 MR. KADLECEK: It's hard to say exactly because  
20 they -- first of all they're just slow to respond. And then  
21 secondly, they're not very specific when they --

22 CHAIRPERSON HILL: You're trying to figure out  
23 what it is. Okay.

24 MR. KADLECEK: Yes, yes. You know, it's security  
25 issues. They don't give us a whole lot of detail.

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1 CHAIRPERSON HILL: No, that's probably -- good.  
2 Okay. All right. I would agree with the postponement. Does  
3 anybody have any questions of the applicant?

4 VICE CHAIRPERSON HART: And do you think the week  
5 is sufficient?

6 MR. KADLECEK: Well, we've already given them what  
7 our latest proposal is to address their concerns with the  
8 meeting we had on Friday. So we're hoping that it's  
9 sufficient, yes. I mean, at some point we know we have to  
10 kind of come to a resolution. But we're trying to push them  
11 along so that we can get some feedback and hopefully get this  
12 all to a close.

13 VICE CHAIRPERSON HART: I just didn't know if that  
14 week was enough, that's all.

15 MR. KADLECEK: Yes.

16 VICE CHAIRPERSON HART: If we should, you know,  
17 look at -- give them several weeks to be able to actually  
18 get, maybe if it's a month, you will be able to get all of  
19 this kind of done so we don't have to continue to kind of  
20 kick it down the road.

21 I'm not opposing, you know, moving into the --  
22 what day is it?

23 MR. KADLECEK: Well, we're asking for the fourth,  
24 which is next Wednesday to file something and then the  
25 hearing being on the 11th.

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1 VICE CHAIRPERSON HART: The 11th, I mean, I'm not  
2 opposed to the 11th. I just was, you know, just trying to  
3 keep it so that we weren't having to put it on there, have  
4 to review the stuff and then have to, you know, push it again  
5 so.

6 MR. KADLECEK: Yes, I appreciate that. You know,  
7 we're also trying to get them to move along so.

8 VICE CHAIRPERSON HART: I understand. I understand.  
9 It's not something that's necessarily within your control.  
10 But you're trying to, you know, address some concerns that  
11 are out there so. So that's it, Mr. Chairman.

12 MR. MOY: Mr. Chairman:

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: May I segue on Vice Chair Hart's  
15 comments and with respect to the timing? Given the docket  
16 sizes, actually staff would suggest rescheduling this two  
17 additional weeks, which would put it at March 18 and for the  
18 applicant to file any supplementals by March 11.

19 MR. KADLECEK: That's fine with us.

20 CHAIRPERSON HILL: Oh, because that's the same day  
21 as the commissioner who originally heard it. Okay. So can  
22 you tell me those dates again, Mr. Moy?

23 MR. MOY: March 18 and the applicant to file  
24 additional information by March 11th.

25 CHAIRPERSON HILL: Okay. Mr. Kadlecek, is that

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1 good?

2 MR. KADLECEK: Yes, that works for us.

3 CHAIRPERSON HILL: Okay. Thank you so much.

4 MR. KADLECEK: Thank you.

5 CHAIRPERSON HILL: Mr. Moy, do you vote on a  
6 postponement or it's just continued on consensus?

7 MR. MOY: You can do consensus or vote, either  
8 way.

9 CHAIRPERSON HILL: It seems like, does anybody  
10 have any issue with the dates that were proposed? I don't  
11 see anyone nodding yes, so therefore we will move on  
12 consensus with those proposed dates. Thank you.

13 All right, Mr. Moy. You can go ahead and call our  
14 next case when you get a chance.

15 MR. MOY: Thank you, Mr. Chairman. So that would  
16 be Application Number 20208 of NPM Developers LLC. And I'm  
17 going to read into the record as captioned and advertised for  
18 a special exception under the RF Use requirements of Subtitle  
19 U, Section 320.2, to convert a one family dwelling into a  
20 three unit apartment house, RF-1 Zone. This is at 1345  
21 Quincy Street Northwest, Square 2825 of Lot 106.

22 CHAIRPERSON HILL: Okay. All right. Good  
23 morning, again. If you could please introduce yourselves for  
24 the record?

25 MR. CROSS: Michael Cross, architect.

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1 MR. LEE: Matthew Lee, architect.

2 CHAIRPERSON HILL: Okay. So, Mr. Cross, we think  
3 that we're having a problem with this case. And so I don't  
4 know whether the Office of Planning -- and I don't know if  
5 anybody has kind of given you a heads-up. Like, we don't  
6 think that we are able to grant anything concerning the 900  
7 square feet requirement for the units.

8 I think you're probably going to have to be back  
9 here for a variance if you end up doing this. And it's  
10 unfortunate. I don't know how we're going to be able to kind  
11 of go back and forth because that 2 percent deviation that  
12 you're speaking to from the zoning administrator, you know,  
13 in 304.1, the deviations from the zoning regulations and  
14 modifications to approve plans permitted by this section  
15 shall not be applicable for any calculation or for  
16 determining compliance with Subtitle U, Section 301.2 or  
17 320.2, which is the 900 square feet.

18 So it clearly says that you're going to probably  
19 have to come back here for a variance. You can't be here for  
20 a special exception for that issue that you're having with  
21 the project. So you can go ahead and respond to that if  
22 you'd like.

23 MR. CROSS: I appreciate that. We were made aware  
24 of this just in the last 24 hours. Obviously, the PDRM on  
25 this occurred last July. And we got ultimately a signed

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1 determination letter in November from the zoning  
2 administrator. A lot of time and effort and money has gone  
3 into this project based on the PDRM feedback and this letter  
4 from the zoning administrator stating that he under his  
5 authority gives us that relief required.

6 But, yes, we see the code section that you're  
7 referencing. We do believe that we probably need to continue  
8 this case and determine how to proceed.

9 CHAIRPERSON HILL: Okay. I mean, I wish there was  
10 another way to do this. Because I understand how you got to  
11 this point and I understand how you got down to this route.

12 In terms of continuance, so I guess, does a  
13 continuance help them at all, Mr. Moy or how would that?  
14 Yes, I mean, if there's any way that we can help facilitate  
15 this, that would be something that I'm sure the board would  
16 like to do because you did go down this road already with the  
17 zoning administrator. But does OAG have a thought?

18 MR. RITTING: Here's the issue. I think they need  
19 to provide notice as if it were a new application. Now, you  
20 wouldn't treat it like a new application. You would continue  
21 the case so the number would be the same and the record would  
22 continue. However, for purposes of them giving notice, you  
23 would treat it like a new application.

24 In other words, they would have to submit either  
25 a new self-certification or a new ZA letter. That would be

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1 treated as what would sort of start things. And then it  
2 would be referred to the relevant District agencies and the  
3 ANC and then it would sort of proceed as if it were a new  
4 application even though it's a continued case.

5 CHAIRPERSON HILL: Alright, Mr. Cross, I'm sorry.  
6 So, you know, if you were going from a variance to a special  
7 exception, you know, that's what I'm saying. If you were  
8 going from a variance to a special exception, you know, then  
9 there might have been something we could have done. But  
10 since you're going from a special exception to a variance,  
11 perhaps, you know, that's where you're going to get, you  
12 know, stuck.

13 So I suppose actually I would just go ahead and  
14 talk with Mr. Moy and figure out, you know, when you might  
15 be able to get back with us once you figure out what you  
16 think your strategy is moving forward.

17 MR. CROSS: We'd agree to that.

18 CHAIRPERSON HILL: Okay. So we're just going to  
19 go ahead and continue this case, Mr. Moy, until we find a  
20 date for it. And that's it.

21 MR. CROSS: Thanks for your time.

22 CHAIRPERSON HILL: Sure. All right, Mr. Moy. You  
23 can call our next case when you get a chance.

24 MR. MOY: Thank you, Mr. Chairman. So that would  
25 be Case Application Number 20065 of Dilan Investments, LLC,

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1 as amended for special exceptions under Subtitle C, Section  
2 703.2, from the minimum parking requirements, Subtitle C,  
3 Section 701.5, and under Subtitle C, Section 807.2, from the  
4 long-term bicycle parking space requirements of Subtitle C,  
5 Section C, 802.1 to raze, R-A-Z-E, the existing detached  
6 principal dwelling unit and to construct a new eight unit  
7 residential apartment building, MU-4 Zone. This is at 1818  
8 Rhode Island Avenue Northeast, Square 4208, Lot 7.

9           CHAIRPERSON HILL: While the Commissioner is  
10 pulling up the slides, if there's anybody who needs to be  
11 sworn in, if you could please stand and take the oath  
12 administered by the Secretary to my left. If anybody missed  
13 it, please stand. Thank you so much. No, you can stay right  
14 there. Yes, yes. You're welcome.

15           MR. MOY: Do you solemnly swear or affirm that the  
16 testimony you're about to present in this proceeding is the  
17 truth, the whole truth and nothing but the truth? Thank you.  
18 You may be seated.

19           (Witnesses Sworn)

20           CHAIRPERSON HILL: Hi. If you guys could please  
21 introduce yourselves from my right to left.

22           MR. MEHMETOGLU: I'm Jehat Mehmetoglu with Dilan  
23 Investments.

24           CHAIRPERSON HILL: Can you spell your name for me,  
25 sir? You need to spell there.

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1 MR. MEHMETOGLU: J-E-H-A-T.

2 CHAIRPERSON HILL: Can you say that again?

3 MR. MEHMETOGLU: Jehat.

4 CHAIRPERSON HILL: Jehat, okay.

5 MR. SULLIVAN: Marty Sullivan on behalf of the  
6 applicant.

7 MR. MONTAGUE: Jeremiah Montague Jr. on behalf of  
8 ANC 5C.

9 CHAIRPERSON HILL: Good morning, Commissioner.

10 MR. MONTAGUE: Buenos dias.

11 CHAIRPERSON HILL: Welcome back. Oh, wow. All  
12 right. Buenos dias. Muy bien, muy bien. All right. So,  
13 let's see, Mr. Sullivan, we did not hear from you or your  
14 client the last time.

15 And so I guess you could go ahead and walk us  
16 through your presentation, and we'll hear what you have to  
17 say. I'm just trying to see if there's anything specific in  
18 there that -- yes, I guess just if you want to focus on the  
19 criteria that you need to meet in order for us to grant the  
20 application, speaking about the parking and the bike parking  
21 and, sure.

22 So I'll go ahead, and I see that you did drop down  
23 the number of units. But, Mr. Moy, if you could put 15  
24 minutes on the clock just so I know where we are.

25 And we'll start with you. And then as the

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1 Commissioner knows, he'll have an opportunity to present as  
2 well, ask questions as they are a party status or have party  
3 status. So, Mr. Sullivan, begin whenever you would like.

4 MR. SULLIVAN: Thank you, Mr. Chair, and members  
5 of the Board. This is Application 20065 for 1818 Rhode  
6 Island Avenue Northeast. I see I have a problem already.  
7 Let me -- hold on. Let me try one more thing here. Sorry.

8 CHAIRPERSON HILL: Yes. We scheduled this  
9 incorrectly. You can take all the time you want. There's  
10 plenty of time today, Mr. Sullivan. So if you want to have  
11 another tech issue, go right ahead.

12 MR. SULLIVAN: Okay. I'm ready. So 1818 Rhode  
13 Island Avenue Northeast, the subject property is currently  
14 a single family house. As you can see from the picture, it's  
15 in the MU-4 Zone.

16 The applicant is proposing to raise the existing  
17 building and construct a new eight unit building. So the  
18 parking requirement for an eight unit building in the MU-4  
19 Zone is one space. And the bicycle parking requirement is  
20 three bicycle parking spaces. And there's a bunch of  
21 requirements that go along with that bicycle parking. One,  
22 that it be in a separate room and that two of those three  
23 spaces be horizontal rather than vertical on a rack.

24 Effectively what we're proposing -- so there's two  
25 problems with those requirements. First of all, the parking

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1 requirement requires that we have 8 feet wide access all the  
2 way to the parking space. We have about, at its narrowest  
3 point it's about 7-1/2 feet. I don't know if I have a  
4 picture in the PowerPoint, but there's photos in the file  
5 showing there's a driveway between the two properties. And  
6 the driveway is usable, but it's not the required width. So  
7 there's no way to make that one parking space, which we are  
8 providing in the back, it's not legal because it doesn't have  
9 legal access.

10           Similarly, because of the work that we had to do  
11 to get an accessible building here with the public space and  
12 the retaining wall here, it impacted the ability to have the  
13 bicycle room. So we're asking for relief from having the  
14 bicycle requirement. In exchange for that, and as part of  
15 the TDM plan overall, we are providing six bicycle parking  
16 spaces rather than the three that are required. They're just  
17 not in the correct format or the appropriate format.

18           So three of them are vertical inside the building  
19 in an open space in a corridor and then there's three more  
20 storage lockers outside the building. We're proposing to  
21 have six total.

22           I'll get to the requirements shortly. If you see  
23 here, this shows where the bike spaces will be and that  
24 they're in a corridor just inside the building on the lowest  
25 level. The public space access requires -- yes? Where it

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1 says long-term bike.

2 VICE CHAIRPERSON HART: What's the size that you  
3 would have to do if you were trying to do them horizontally?

4 MR. SULLIVAN: We would have to have them in a  
5 separate room. They're the correct size to have vertical  
6 spaces, but we would have to have them in a separate room and  
7 two of them would have to be horizontal. I don't know the  
8 exact dimensions of that.

9 And then there's three provided outside. You see  
10 on the top left of this diagram, there will be three  
11 substantial storage lockers where the bicycle actually goes  
12 inside a locked locker and they can be used by the residents.  
13 So there will be a total of six spaces.

14 And here's where you can see there's a potential  
15 parking space as well. This is accessible. It's just six  
16 inches too narrow, the driveway.

17 VICE CHAIRPERSON HART: And the reason that you  
18 can't provide the horizontal -- you can't provide a room is  
19 because of -- can you just kind of talk about that a little  
20 bit more?

21 MR. SULLIVAN: Sure. We originally when we  
22 proposed the eight units, we were proposing an access that  
23 had a lift in public space. And that allowed the access to  
24 be on the main floor on the first floor rather than the  
25 lowest level.

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1           And in our discussions with DDOT, they did not  
2 want a lift in public space. And we came to a proposal that  
3 has an entranceway, you can see here on the right, where the  
4 earth in public space is dug out here on the right and then  
5 there is a straight in accessible path in that way. And that  
6 --

7           MEMBER SHAPIRO: I'm sorry. Yes, if you could  
8 please -- if you could -- what your pointing to. I'm sorry.  
9 Yes, if you could -- thank you.

10          MR. SULLIVAN: That area. So this, putting the  
11 main entrance on the lowest level then impacted the bicycle  
12 room, and we would have lost a unit. And so, instead, we're  
13 proposing this instead with the six spaces, the additional  
14 spaces out back and still including three spaces. They're  
15 just not in a separate room.

16          The general special exception requirements  
17 granting relief will be in harmony with the general purpose  
18 and intent of the regs. This is the MU-4 Mixed Use Zone.  
19 And the provision of an eight unit apartment building is  
20 consistent with the purposes of MU. And also even though,  
21 of course, we can't technically meet the requirements for  
22 either one of these, we are providing bike spaces and a  
23 parking space.

24          Regarding the criteria for approval of the special  
25 exception for parking, there are several different criteria,

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1 only one of which we have to meet. And we believe we meet  
2 several of them.

3 First, due to the physical constraints of the  
4 property, the required parking spaces cannot be provided  
5 either on the lot or within 600 feet. There is no alley  
6 access. The only access is through this 7-1/2 foot wide  
7 accessway.

8 Two, widening it would cause significant impact  
9 to an existing retaining wall that's in public space and the  
10 buildings themselves. So we are not able to widen that path  
11 beyond the 7-1/2 feet. That's one of the requirements.

12 Another, the use of the structure is particularly  
13 well-served by mass transit, shared vehicle, or bicycle  
14 facilities. The subject property is well served by mass  
15 transit. It's 371 feet from the Rhode Island and 18th bus  
16 stop, .1 miles from the Capital Bikeshare station, and less  
17 than a mile from a car rental location, and 1.2 miles from  
18 the Metro.

19 We don't believe that this proposal with just  
20 relief for one parking space would be likely to create  
21 additional traffic congestion in the neighborhood.

22 Any reduction in the required number of spaces  
23 shall only be for the amount that we're unable to provide.  
24 We're only asking for the one. And we have provided a  
25 transportation demand management plan that we think is fairly

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1 substantial, especially in relation to the bicycle parking  
2 spaces.

3           Regarding the bicycle spaces special exception  
4 specific criteria, again, similar tests due to the physical  
5 constraints of the property, the required bicycle parking  
6 spaces cannot be provided on the lot.

7           And the underlying thing here is we're going to  
8 lose a unit if we provide the bicycle storage room. If we  
9 go down to seven units, we're not required to provide any  
10 bicycle spaces. So we think that losing to seven, we don't  
11 even need the relief.

12           We think it's a benefit to have the eighth unit  
13 and have the building be accessible in the way that DDOT  
14 would like it to be and also to provide six bicycle parking  
15 spaces as opposed to zero, which would be required if we lost  
16 the unit.

17           MEMBER SHAPIRO: Mr. Chair? I just want to make  
18 sure I understand. If you drop from eight to seven units,  
19 then you're fine on the bicycle. You no longer need the  
20 bicycle requirements.

21           MR. SULLIVAN: Correct.

22           MEMBER SHAPIRO: Parking is still an issue though.

23           MR. SULLIVAN: Parking is an issue. You know, we  
24 would have to do five units. Parking is still a requirement.

25           MEMBER SHAPIRO: Okay. If you dropped down to

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1 five, you would --

2 MR. SULLIVAN: Starting with six units, I'm sorry.  
3 You're right, six, seven and eight units requires one space.

4 MEMBER SHAPIRO: So if you went down to five  
5 units, then you could be right --

6 MR. SULLIVAN: Correct.

7 MEMBER SHAPIRO: Okay. Thank you.

8 MR. SULLIVAN: And then --

9 CHAIRPERSON HILL: And just since he used the word  
10 by right, Mr. Sullivan, again, the height and the massing and  
11 everything is also by right. It's just the matter of the  
12 number of units triggering the parking and the bike parking.

13 MR. SULLIVAN: Correct. We're not asking for any  
14 relief for the building itself.

15 CHAIRPERSON HILL: Okay. In terms of the  
16 recommendations from DDOT in the TDM plan, so you and DDOT  
17 are on the same page with regards to your TDM plan, correct?

18 MR. SULLIVAN: Yes.

19 CHAIRPERSON HILL: And you're in agreement with  
20 their conditions?

21 MR. SULLIVAN: Yes.

22 CHAIRPERSON HILL: Okay.

23 MR. SULLIVAN: That's all I have. The owner is  
24 with us if you have any questions for him or for me. Thank  
25 you.

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1 CHAIRPERSON HILL: Does the Board have any  
2 questions of the applicant?

3 VICE CHAIRPERSON HART: Could you just talk about  
4 the conversations with the community? In particular, the  
5 next door neighbors, and I know that you brought this up  
6 earlier, and I'm not sure if I may have missed it, is there--  
7 there was a discussion about an easement with the -- the ANC  
8 seems to be talking a lot about the easement and the fact  
9 that there may not be the ability to have half of the, you  
10 know, that the owner, that Mr. Jehat has half of the driveway  
11 or not half the driveway. Could you just kind of describe  
12 some of that and the conversations with the next door  
13 neighbors and the ANC?

14 MR. SULLIVAN: Sure. And I can turn it over to  
15 the applicant as well to talk a little bit more about the  
16 interactions with the neighbor. But the easements-- But  
17 first of all, the reason we're asking for parking relief is  
18 we're not relying on the parking space. We're providing the  
19 parking space as a potential space.

20 And the residents of the building would be free  
21 to use it or not use it. We're not sure if they would. But  
22 because it's not a required space, we're just asking for  
23 relief from the space. And we believe we meet those  
24 requirements.

25 But there is an easement of record encumbering

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1 both properties, that 4-1/2 feet on each side, and actually  
2 the easement is wider than the actual amount of space that's  
3 available for use because it's contemplated to be 9 feet in  
4 total.

5           So the property line runs right down the middle  
6 of the driveway. So the property on the left is encumbered  
7 by the use of the property on the right and vice versa. So  
8 it's a typical shared driveway and it's of record.

9           VICE CHAIRPERSON HART: And you're noting that you  
10 can only provide -- I'm trying to think of how much 7-1/2 --  
11 so the driveway would only be 7-1/2 feet wide at its  
12 narrowest because of the retaining wall that's at the very  
13 end. And you're not changing that retaining wall that's, I  
14 guess, this retaining wall, the edge of it, not the face that  
15 we're seeing, but the part that's going up along the driveway  
16 itself. You're not changing that at all. You're not  
17 changing that, moving that or anything.

18           MR. SULLIVAN: Correct. Correct. And that's all  
19 public space up to where you see the front of the building  
20 now. So that whole raised area behind the retaining wall is  
21 public space and actually the telephone pole came into play  
22 in that discussion as well because we did investigate the  
23 possibility of gaining the 8 feet. But that was not feasible  
24 in light of the pole and in light of public space DDOT  
25 personnel concerns about how we actually access the building

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1 and how much of that area we disturb.

2 VICE CHAIRPERSON HART: Okay. And so the  
3 neighbor, could you just talk about the neighbor, their kind  
4 of reaction to the project or --

5 MR. MEHMETOGLU: I would love to talk about it,  
6 yes. Hello, again. I purchased the property last year. And  
7 when we first bought it, you know, my office is in the  
8 neighborhood. My office is two blocks away from this  
9 property. And I'm there, three, four hours a day at least  
10 in my office. My flooring store is there, 1600 Rhode Island  
11 Avenue.

12 And, you know, I had great relationships when I  
13 built the property right behind this on 1904 Irving Street.  
14 And I met with my neighbors. And during the construction,  
15 I attended all of their needs. And, thank you, they came for  
16 the ANC to support my -- you know, just to testify that I had  
17 been a good neighbor, and they had no complaints about me  
18 because I had a vested interest, I mean, with the  
19 neighborhood. I mean, we're just good people. But we also  
20 have other, you know, our store is there so we're actually  
21 a neighbor there.

22 And when I bought this, I knocked both doors. I  
23 haven't heard nothing. And I recently got an email from a  
24 neighbor about the property being vandalized, and there was  
25 trash in the front. And because I'm in the neighborhood, I

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1 took care of it the next morning and, you know, I replied to  
2 the email. I said, you know, I intend to build an eight unit  
3 apartment building. I would love to meet my neighbors. I  
4 can prove that I'm a good neighbor.

5 And I think I did my part. And as a developer  
6 also as a local business owner, I intend to build a good  
7 relationship with the community. They buy floors from me.  
8 I'm there four, five hours a day in my office at least. I  
9 think, I believe I will be a good neighbor.

10 CHAIRPERSON HILL: And when you had the meeting  
11 with the ANC, could you just describe that?

12 MR. MEHMETOGLU: Sure. I got up and I told ANC  
13 that my immediate neighbors that are at the present, you  
14 know, if they have any questions, how I've been, you know,  
15 they're happy to answer. I told them that, you know, I'm a  
16 part of the neighborhood as well. I've been in the  
17 neighborhood for five years. And I said behind this building  
18 on 1904 Irving Street, I'm sure everybody has been there.  
19 It's impeccable. You know, I take care of the presence of  
20 the building. And it's a 12 unit apartment building.

21 CHAIRPERSON HILL: Yes. What I was trying to  
22 understand was the neighbors have brought up some issues.  
23 And so if you could talk about some of the issues that  
24 they're raising with regard to transportation impacts.

25 MR. MEHMETOGLU: Oh, yes.

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1 CHAIRPERSON HILL: In regard to -- that's what I'm  
2 looking for for that. I assume that you're going to try to  
3 have good relations with the neighbors. I'm trying to  
4 understand from a planning sense the issues that they have  
5 raised.

6 MR. MEHMETOGLU: I understand. You know, the curb  
7 cut has been there for 50 years. And the easement has been  
8 there. And both properties have been parking in the back.  
9 We are required one parking. And I think DDOT or anybody  
10 doesn't have a problem for us to use the parking, which we  
11 are required to offer one.

12 It will still be parking for one car, but it won't  
13 be a conforming space. So I think our -- I tried to explain  
14 our impact will be minimal.

15 CHAIRPERSON HILL: Yes. But you've seen the ANC's  
16 --

17 MR. MEHMETOGLU: Yes.

18 CHAIRPERSON HILL: -- their issues.

19 MR. MEHMETOGLU: I've seen --

20 CHAIRPERSON HILL: But I don't know, Mr. Sullivan,  
21 if you could weigh in as well.

22 MR. SULLIVAN: Sure. I mean, we've got three single  
23 family houses in the MU-4 Zone. These are completely  
24 isolated from other residential uses. So it is not  
25 surprising that they would have some concerns about the

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1 overall -- about eliminating one single family house in the  
2 middle of two others and putting up an apartment building.

3           So I suspect that the concern is around that and  
4 because the relief itself is relatively minor and I don't  
5 think -- and I think we've shown that we're asking for relief  
6 for one space, and we're providing three more bicycle spaces  
7 than we need to.

8           So I think in light of what the -- and there is  
9 no limit to the number of units. But we did lower it to  
10 eight units as well. So we think that the potential impacts  
11 from the relief are not material. But I would suspect that  
12 some of the other concerns are just in the change, the  
13 significant change from taking a single family house to an  
14 apartment building.

15           CHAIRPERSON HILL: Mr. Sullivan, real quick, can  
16 you show me again on the plans the parking spaces or the  
17 parking space?

18           MR. SULLIVAN: It's on the bottom left here. It's  
19 an 8 by 16 parking space and underneath is the driveway on  
20 the bottom of this plan.

21           VICE CHAIRPERSON HART: So the driveway would be  
22 here?

23           MR. SULLIVAN: Yes.

24           VICE CHAIRPERSON HART: And then the parking space  
25 is over here to the left?

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1 MR. SULLIVAN: Correct.

2 MEMBER SHAPIRO: So when we were looking at that  
3 other picture, that front picture of the apron over there,  
4 that's what's in the bottom right of this plan you have in  
5 front of us?

6 MR. SULLIVAN: Correct.

7 CHAIRPERSON HILL: Can you show us the front of  
8 the building again? No, the proposed plan.

9 MEMBER SHAPIRO: Which is the front? What's going  
10 on here? Oh, the front elevation, I see.

11 MR. SULLIVAN: The front elevation is on the  
12 right.

13 MEMBER SHAPIRO: Got you.

14 CHAIRPERSON HILL: So you guys went down from 10  
15 to 8 units, is that right?

16 MR. SULLIVAN: Yes.

17 CHAIRPERSON HILL: So why did you go down from 10  
18 to 8?

19 MR. SULLIVAN: I believe it was the discussion  
20 with DDOT on the public space issue, accessing the building  
21 impacted the number of units.

22 CHAIRPERSON HILL: Okay. And then so that changed  
23 the massing of the design.

24 MR. SULLIVAN: Correct.

25 CHAIRPERSON HILL: Okay.

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1 MEMBER SHAPIRO: Two questions about this parking  
2 issue again. You have Exhibit 12, which lists proximity to  
3 mass transit. First of all, I'm a little confused about some  
4 of the information on that.

5 I mean, can you go through a bit, is there a bus  
6 line that's right in front of here? And is that not a factor  
7 or considered to the four because there's no reference to  
8 that here.

9 There's a reference to the proximity to the rail  
10 and every Metro station, which feels like it's 28 minutes  
11 away or whatever it is. So that's a long walk. So I'm  
12 trying to understand what case you're making around why this  
13 is -- it's not clear what you're saying that provides the  
14 data that this is proximate to mass transit, especially if  
15 you're not mentioning the bus routes.

16 MR. SULLIVAN: There is a bus route --

17 MEMBER SHAPIRO: Did I miss that?

18 MR. SULLIVAN: -- in the PowerPoint. It's 371  
19 feet from Rhode Island Avenue and 18th Street bus stop and  
20 a Capital Bikeshare station .1 mile away.

21 MEMBER SHAPIRO: I saw the Capital Bikeshare  
22 station, yes. The other thing is you mentioned that there  
23 was no way to find offsite parking.

24 MR. SULLIVAN: Correct.

25 MEMBER SHAPIRO: Can you talk that a bit with us

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1 and what kind of, you know, where's the evidence for that for  
2 us?

3 MR. MEHMETOGLU: There is no parking garage within  
4 600 feet that I'm aware of. And also we have-- the property  
5 is landlocked from the back. I mean, there's no way I can  
6 get an easement through the back, and there wasn't a parking  
7 for sale or there wasn't a parking lot that we could provide  
8 parking within the vicinity of the property.

9 MR. SULLIVAN: And we sort of -- I guess we based  
10 our amount of evidence on past cases in this that have been  
11 rather anecdotal about the 600 feet, and it's very rare to  
12 find spaces available that aren't already satisfying another  
13 parking requirement that you can't take away from somebody  
14 else because they're using that as one of their required  
15 spaces.

16 MEMBER SHAPIRO: Okay, Thank you Commissioner.

17 CHAIRPERSON HILL: Okay, Commissioner, do you have  
18 any questions before you make your presentation for the  
19 applicant?

20 MR. MONTAGUE: I do.

21 CHAIRPERSON HILL: Okay, sure. Go ahead.

22 MR. MONTAGUE: I'm working -- apparently the  
23 drawing has changed again since the ANC presentation. But  
24 I want to talk about the building as represented on the  
25 drawings in relationship to the rear parking space. Okay?

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1           So the current house that's to be razed is 19 feet  
2 from the granite wall, which is the beginning of the public  
3 space. The proposed building will be 22 feet. So it's  
4 actually setback three additional feet.

5           But when I get to my presentation, when I'm  
6 sitting there trying to rebuild from their drawings, I had  
7 an issue with the lot. The total lot left on the west side  
8 is 87 feet in length. But if you take the 22 feet from  
9 public space, the 50 feet from the building, you're already  
10 at 77 feet, right?

11           There is an additional -- I don't have my glasses  
12 -- 14 feet in the background, which brings that to, what, 88  
13 feet? So given it's 87, if you take that and you take the  
14 77 feet from it, it leaves you 10 feet for a parking space  
15 in the rear. Okay?

16           So all your bike lockers, this, that and any other  
17 has to fit within that from the rear of the building to the  
18 property line, the rear property line. So where it says here  
19 that there's a rear walk in this, that and any other,  
20 according from the applicant's drawings, not possible. Okay?

21           So I'm not trying to nitpick. I'm simply saying  
22 that if I do the math on these drawings, the math doesn't  
23 allow what the applicant is trying to do.

24           CHAIRPERSON HILL: Okay. That's good. So,  
25 Commissioner, I'm just trying to -- and I appreciate you

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1 going through this. So your question, you don't think the  
2 drawings are correct.

3 MR. MONTAGUE: Correct.

4 CHAIRPERSON HILL: So you're asking the applicant  
5 how -- you have a bunch of questions about the drawings.

6 MR. MONTAGUE: Because it goes into the ability  
7 to provide a parking space in the rear. Okay? And the  
8 amount of rear yard space that's there. Even if it's the MU-  
9 4.

10 VICE CHAIRPERSON HART: So I was looking at the  
11 plat to try to understand some of this because that's kind  
12 of where you should be looking to figure out what the kind  
13 of metes and bounds of the property are. And so you're  
14 trying to understand where all of these pieces fit within the  
15 entire lot. You think that there may be some discrepancy.  
16 What is the amount of discrepancy? Are you thinking that  
17 there are 5 feet that are -- or are you thinking more like --

18 MR. MONTAGUE: More like 10 to 15 feet. And I'm  
19 not 100 percent sure because if you go to the Atlas Plus and  
20 pull up the -- or you go to Surveyor and ask, the Surveyor  
21 says it's 187 by, I think, 34-1/2 feet along the face of  
22 Rhode Island Avenue.

23 VICE CHAIRPERSON HART: Yes, I mean, the plat  
24 itself is 35 feet it looks like. I can't tell you the length  
25 of it, and I'm not sure if Mr. Sullivan has that information

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1 for it, but the basic question is trying to understand the  
2 plat, just to understand what the pieces are that will  
3 actually fit within that and whether or not the property  
4 itself is wider, whether or not what is proposed is wider  
5 than what is actually -- it's just larger.

6 MR. MONTAGUE: Longer.

7 VICE CHAIRPERSON HART: I'm just saying larger  
8 than what is --

9 MR. MONTAGUE: Yes, right.

10 VICE CHAIRPERSON HART: You're right. It is  
11 longer if those dimensions are accurate. I mean, I don't  
12 know if Mr. Sullivan can just -- the plat that we have in  
13 Exhibit 44D, that's the most recent plat?

14 MR. SULLIVAN: It is. But it was showing two  
15 spaces, which we thought was being ambitious, and we didn't  
16 want to overpromise so we changed that to one space. But the  
17 area is -- I can't -- I mean, it's showing 15 feet there.  
18 It's showing 8 by 16. I don't know these measurements to be  
19 inaccurate, but I can't certify to them personally.

20 VICE CHAIRPERSON HART: And right now we can't go  
21 beyond what the -- I mean, they have a plat that actually  
22 describes what all this stuff is. I understand that you may  
23 not agree with that. But I think we have an answer to that.  
24 This is going to be checked once it goes, if it is approved,  
25 once it goes to the permitting aspect of it. So it's not

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1 like this is going to be-- this is the last whatever.

2 MR. MONTAGUE: The last hurrah.

3 VICE CHAIRPERSON HART: I mean, if there are other  
4 questions that you have with this, I think the dimensions are  
5 what they are, and I understand that you may not agree with  
6 them but right now I think that's what we have.

7 MR. MONTAGUE: Okay. I'll give you that. I'll  
8 save the rest for when I give my presentation. It won't be  
9 long. We won't drag this out.

10 CHAIRPERSON HILL: Okay. That's fine. All right.  
11 So, Commissioner, I'm going to go ahead and put 15 minutes  
12 on the clock there as well for you. And if you want to  
13 switch up there with Mr. Sullivan. You need to turn on the  
14 microphone, Commissioner.

15 MR. MONTAGUE: Sorry.

16 CHAIRPERSON HILL: That's all right.

17 MR. MONTAGUE: I've been here enough to have known  
18 that.

19 CHAIRPERSON HILL: You would think so.

20 MR. MONTAGUE: My apologies. Okay. These are  
21 drawings that I created based on my measurements of the  
22 proposed building, the existing buildings and doing this at  
23 10 degrees in the weather, you know. But it's my best effort  
24 to try just to depict what some of the community concerns  
25 are.

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1 CHAIRPERSON HILL: Sure. That's all right.

2 MR. MONTAGUE: So on Page 1, it basically shows  
3 that there are three buildings, three residential buildings  
4 in MU-4. Most of them are -- two are 1923 buildings, which  
5 are 1-1/2 stories. Those are the ones to the left, which is  
6 1816 and 1818, which is the middle. And 1820, which is a two  
7 story, which is on the east side of the proposed property.

8 In addition, it shows the, what do you call it,  
9 driveway to the west of the proposed property.

10 VICE CHAIRPERSON HART: Can you bend the mic down  
11 a bit?

12 MR. MONTAGUE: I'm sorry.

13 VICE CHAIRPERSON HART: There you go. That's  
14 better.

15 MR. MONTAGUE: Are we good?

16 VICE CHAIRPERSON HART: Thank you.

17 MEMBER SHAPIRO: That's the driveway you're  
18 talking about?

19 MR. MONTAGUE: Yes. It sits between 1816 and  
20 1818. And that's where the property line between the two  
21 runs dead center between the two properties. Okay. So I  
22 don't know about easements, this, that and the other, but  
23 there's a general holding of the community, either rightly  
24 or wrongly, is that if, unless the property at 1816, the  
25 bluish gray house, has somehow agreed to this new building

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1 put in beside it, getting to that parking space is not  
2 possible. It has to be a mutual agreement between the two  
3 parties, not simply that there was an easement that has pre-  
4 existed the building of this. So, yes, sir.

5 VICE CHAIRPERSON HART: I didn't have a question.  
6 But I guess we do have a question. So, and maybe this is a  
7 question for the applicant, Mr. Sullivan, the easement itself  
8 is running with the land?

9 MR. SULLIVAN: Yes.

10 VICE CHAIRPERSON HART: So there is an easement --  
11 I mean, I know on the plat it shows us an easement. But that  
12 agreement, do you have any additional information about the  
13 -- like when it was --

14 MR. SULLIVAN: I mean, we can submit that. I  
15 didn't think that was necessarily relevant because we're not  
16 -- we're asking for relief. But we can submit -- there is  
17 a written easement.

18 CHAIRPERSON HILL: I was just curious, and I'm  
19 talking to the Commissioner, I mean, that's the whole point  
20 of the easement, meaning they have to allow the people to use  
21 it. Like, it is there whether or not they didn't want to use  
22 it or not. That's the whole point of the easement.

23 MR. MONTAGUE: Okay.

24 CHAIRPERSON HILL: No, I'm just saying, like, even  
25 if the blue house didn't want to allow them to do it, there

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1 is an easement. And so they have to let them do it.

2 MR. MONTAGUE: Okay. All right. So Slide 2  
3 basically just shows the two properties at 1816 and 1818 and  
4 the property line in the middle of the driveway.

5 This is my attempt to depict the proposed building  
6 in relationship to the two existing buildings based on the  
7 drawings that the applicant put on record so.

8 VICE CHAIRPERSON HART: Not bad. I'm saying that  
9 we're all looking, like, wow, you did this yourself. Lots  
10 of free time for Commissioner Montague, eh?

11 MR. MONTAGUE: No. It was sandwiched in between,  
12 but it was, like, 96 hours' worth of work.

13 VICE CHAIRPERSON HART: I would see that as being  
14 that.

15 MR. MONTAGUE: But anyway, so the proposed  
16 building has windows to its west side. It has no windows to  
17 its east side. So east side is where the two story is. West  
18 side is where the blue-gray building is. So if built as  
19 proposed, then the people to the west have a clear view of  
20 the property that's next door. Okay?

21 So there would be a privacy issue increased over  
22 the existing one single family, one single family. So now  
23 you're going to have at least four units that are peeping  
24 over into whatever is next door.

25 So the point by the adjacent neighbors, the

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1 neighbors in the rear, which are on Irving Street, their  
2 thing is that they believe, as do I, that it is unrealistic  
3 to say that you are going to build eight units and then the  
4 majority of -- even though you provide six spaces for  
5 bicycles that six of those people are going to ride bicycles  
6 and not bring a car. That is unrealistic. Okay? I would  
7 say at a minimum half of the people are going to have a car.

8           Even though there are bus lines within a short  
9 walking distance, and so the neighbors are already -- the one  
10 that lives in -- Mr. King and his family who live in the two  
11 story, he already has to park across the street because there  
12 is restricted parking during the day on Rhode Island Avenue  
13 at this location. All right?

14           So their concern is not only, as you said, the MU  
15 kind of takes care of the height, this, that and the other,  
16 but the fact that there are three similar houses of similar  
17 design arising from roughly the same four, five year  
18 development period to the present and now you want to insert  
19 in between this rather substantially larger building compared  
20 to what was there before. Okay?

21           So I understand the easement is being asked for  
22 because you can't provide the parking space so therefore  
23 you're going to substitute bicycles for it in lieu of. Okay?

24           But it doesn't mitigate that people are going to  
25 bring additional cars into the neighborhood. That is a

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1 given. And anybody who thinks that's not going to happen is  
2 misled or misinformed. All right?

3           So beyond the other designs, and I have one more  
4 picture, so this shows the buildings looking west to east.  
5 And it just gives you a rough idea of the massing of the  
6 buildings and the windows and the detriment to the community  
7 that this building would -- I'm not saying that this could  
8 not occur in the future if the other two buildings weren't  
9 there. Okay?

10           But at this present time, it is -- the entire  
11 community and particularly -- I haven't talked to the person  
12 in the gray-blue house. Okay? I don't know who it is. And  
13 they have not voiced any opinion about it one way or the  
14 other that I know about.

15           VICE CHAIRPERSON HART: How about on the east  
16 side?

17           MR. MONTAGUE: The Kings, big. In fact when Jehat  
18 said that he had gotten an email from the neighbor, it was  
19 from Mr. King in the two-story house.

20           VICE CHAIRPERSON HART: And there are no windows  
21 on the east side of the building.

22           MR. MONTAGUE: On the proposed building. I just  
23 didn't put them in on here for lack of time to put them in  
24 on the King house. Because the King house has windows on  
25 both sides.

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1           MEMBER SHAPIRO: Right. I mean, I think part of,  
2 and first of all, you know, advocating for your community and  
3 the residents is your job and you're doing it admirably.

4           But what's before us, though, is a narrower issue  
5 than what you're presenting because the actual, and I think  
6 Mr. Sullivan had noted this that, you know, the building  
7 height is by right. So the only real issue before us is the  
8 relief that they're requesting around the bicycles and the  
9 parking.

10           And that goes away if they reduce the number of  
11 units down to five, I think, Mr. Sullivan said, six. So I  
12 hear you loud and clear that it's difficult for folks, for  
13 the neighbor to see a building of this size. And I don't  
14 know what to say is that the size of the building isn't  
15 what's before us.

16           MR. MONTAGUE: So the issue is if the easement  
17 didn't exist and it was just a plain driveway between the  
18 two, then the conversation would be different.

19           VICE CHAIRPERSON HART: Well, I think the issue  
20 that's before us is that even though they are required to  
21 have one parking space, they are providing one parking space.  
22 The access to that parking space is not sufficient.

23           So the width of that is less than the 8 feet that  
24 is required and that width is less than 8 feet because there  
25 are existing retaining walls that impede and encroach on that

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1 easement that's there.

2           Because they're not building to the property line,  
3 the windows that you're showing on here, they're not at-risk  
4 windows because they're not on the property line on the west  
5 side. So they are able to add those windows in.

6           On the east side of the building, and you can  
7 correct me if I'm wrong, Mr. Sullivan, but I didn't see any  
8 windows on the east side because they're on the property  
9 line. And so those are at-risk windows. So they would have  
10 to -- if somebody built next to them, they could build to the  
11 property line and then you would have, you know, the issue  
12 of those windows would have to go.

13           And so they don't have that issue on the west side  
14 because of it's not on the property line because of this  
15 easement that we've been talking about. You know, it makes  
16 a space for that driveway to be included in there. So some  
17 of this is -- and then the massing of the building is not  
18 something that's really before us.

19           If this were an R Zone then there would be a  
20 lesser, you know, height than some of those R Zones. It's  
21 an MU Zone that allows this height, this kind of massing.  
22 And so they are not seeking relief from that. They're within  
23 that.

24           They're looking at the relief that's associated  
25 with the amount of parking and the amount of vehicle parking

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1 and bike parking because those things are -- they have issues  
2 with trying to provide those in the building or on the lot.

3 MR. MONTAGUE: Okay.

4 VICE CHAIRPERSON HART: And so that's kind of  
5 where we are and we are -- I understand the points that  
6 you're raising with respect to the number of people that may  
7 be driving.

8 The zoning requires that there be one space in  
9 this instance for this particular -- that they are required  
10 to provide. And the hard part about all of that is where  
11 else do they park if they are not parking on that -- you  
12 know, if they are driving and they're not parking on that  
13 lot? And so that's kind of the question.

14 CHAIRPERSON HILL: Yes. So, Commissioner, I guess  
15 to echo again what Mr. Hart said, again, in terms of the  
16 parking, right, so they have to provide the one space. And  
17 they're providing a space, but they're not technically  
18 providing a space, so that's why they're here for that. And  
19 then there's the bike parking that -- they're providing the  
20 bike parking, but they're not technically providing it the  
21 way they're supposed to provide it.

22 So your opposition, or the opposition that has  
23 been from the community, has it been primarily, well, I guess  
24 the massing and the concern about the parking, correct?

25 So even if it were -- I mean, let's just say we

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1 were five units, right? You would have five units. This  
2 could be completely done as a matter of right at this size  
3 and you would have five units rather than eight, do you see,  
4 with no parking. But still the opposition from the residents  
5 that you guys have had has been primarily the massing and the  
6 possibility that the eight units will create more of a  
7 parking situation.

8 MR. MONTAGUE: True.

9 CHAIRPERSON HILL: And when you're in the ANC and  
10 when Mr. Sullivan came to deliver it and all these things,  
11 even at the eight units, the community understood that there  
12 was only one parking space that they had to provide, correct?

13 MR. MONTAGUE: Correct.

14 CHAIRPERSON HILL: Okay. Okay.

15 MR. MONTAGUE: I mean, in his presentation, he  
16 said we only -- we're limiting our -- we're seeking relief  
17 in this narrow issue. So it would --

18 CHAIRPERSON HILL: Well, they only have to seek  
19 the relief in that issue. I mean, that's the issue they have  
20 to seek the relief in. No, no. I'm just trying to  
21 understand -- what I'm trying to say is that, and I'm just  
22 clarifying what I was curious of from your ANC meeting.  
23 They're only required to provide one parking space, right?  
24 So your community might have wanted to have eight parking  
25 spaces because there's eight units, right?

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1 I'm just trying to understand what the community  
2 would have, you know, been happy about, right? And what I'm  
3 saying is they're only supposed to provide one, right? And  
4 so I'm trying to figure out when they would have been  
5 satisfied.

6 MR. MONTAGUE: They would have been satisfied if  
7 this house had been rehabilitated or another house built in  
8 its -- a single family residence built as opposed to an  
9 apartment building.

10 CHAIRPERSON HILL: Right.

11 MR. MONTAGUE: Everybody clearly understood that  
12 it was an MU-4. But it didn't change the single member  
13 district, the immediate neighbors or the full Commission's  
14 opinion about the appropriateness of this at this time.

15 CHAIRPERSON HILL: Right. And probably, and then  
16 I'll let the Commissioner speak. I guess what we tend to  
17 struggle with, Commissioner, is that there are things, again,  
18 when people are here before us for a special exception, that  
19 means that the Zoning Commission thought that these things  
20 were things that could be allowed.

21 They are within the Code if special criteria could  
22 be met and if they could meet the special exceptions. So  
23 that's what we're here to kind of determine. And if we think  
24 that the special exception criteria has been met, then we  
25 basically have to approve it, right?

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1           And so I guess what I'm trying to -- and I'm just  
2 because we have a little time here because the appeals don't  
3 start until 1 o'clock so I don't have a lot of cases here so  
4 we're going to have a little bit more time to kind of like  
5 talk this through a little bit is that, you know, you can't  
6 tell people what to do with their property, right?

7           And so, you know, they could build something this  
8 big but with five units rather than eight, right? And in  
9 terms of what you're saying that at this time, right, and I'm  
10 just kind of continuing to have this discussion with you,  
11 Commissioner, because you do come here often enough and  
12 you've seen us when we've had 15 cases and how we have to  
13 kind of work as quickly as we can because this is basically  
14 a volunteer job.

15           MR. MONTAGUE: And I appreciate it.

16           CHAIRPERSON HILL: Well, that's nice that you  
17 appreciate it. I don't know if everybody appreciates it.  
18 But it's nice of you to say so. But if you want to come to  
19 a different hearing, I can tell you when the date is and  
20 where to go at the City Council as opposed to who usually  
21 shows up to us that -- anyway, my point is this is the  
22 beginning of the change that you're speaking of, right?

23           And so that other building is probably going to  
24 go and there will be another apartment building and then the  
25 other building will go and there will be another apartment

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1 building. And whether or not -- and I'm just kind of  
2 continuing this discussion, this possibly makes that property  
3 more valuable now than it was before because now this  
4 opportunity presents itself.

5           However, I definitely understand that if I own  
6 that house next door and now this building is going to be  
7 built before me, I would not necessarily be happy about it,  
8 particularly if I had lived there for the past 30 years with  
9 a blank wall, I mean, just, you know, and enjoyed that.

10           I guess what I'm trying to say even us, you know,  
11 as members of the Washington D.C. community and I've lived  
12 here my whole life, which is, you know, not terribly long but  
13 still 40 plus, 50 years, whatever, longer than some have been  
14 before us arguing things here in terms of how long they've  
15 lived in DC.

16           Anyway, the long and short of it, and I'm going  
17 to let you finish your presentation, we're here for the bike  
18 parking and the one spot parking. And so outside of that,  
19 is there anything else you would like to add?

20           MR. MONTAGUE: No. I've represented the  
21 community's and ANC's concerns in the matter. So I guess  
22 it's just to hear from the Office of Planning. Oh -- not to  
23 tell your job.

24           CHAIRPERSON HILL: No, that's fine. That's fine.  
25 I mean, it's disappointing. I'm sorry that -- and I

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1 understand why. But I am sorry that your ANC was not able  
2 to embrace this project. And I don't know whether it's going  
3 to pass or not, but I can totally see why, if I lived next  
4 door to this, I wouldn't want it to be built next to me at  
5 this point in time.

6 All right. Is there any questions --  
7 Commissioner, you had a question? Mr. Sullivan, did you have  
8 any questions for the Commissioner?

9 MR. SULLIVAN: No, thank you.

10 CHAIRPERSON HILL: Okay. So I'm going to go ahead  
11 and turn it to the Office of Planning.

12 MR. COCHRAN: Thank you, Mr. Chair. OP  
13 understands why the ANC may wish that this had been a design  
14 review case or a 52.01, which would give the Office of  
15 Planning the opportunity to actually make comments on how the  
16 building looks.

17 But as the Board members have indicated, the  
18 building does fit within the dimensional limits that are  
19 allowed by the MU-4 Zone and within the uses that are allowed  
20 by the MU-4 Zone. So OP has had to focus just on the relief  
21 that is being requested for the vehicle parking and for the  
22 bicycle parking.

23 It may clear things up a little bit to go through  
24 a little bit of history. The applicant originally came in  
25 with a 10 unit building. OP then informed the applicant that

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1 there was, in fact, an easement on the property that was  
2 recorded in 1924 that provided for a 9 foot wide easement,  
3 4-1/2 feet on each side of the two properties that are  
4 adjacent. And it was specifically to give access to parking  
5 in the rear. So that was a given.

6 The applicant then realized it couldn't build in  
7 that easement and cut the building down from 10 units to 8  
8 units, which unfortunately meant that we lost an IZ unit.  
9 Nevertheless, we're now at eight units.

10 Looking at the request for the vehicle parking  
11 variance, excuse me, special exception, the applicant meets  
12 more than one of the criteria. The applicant needs to meet  
13 only one of the criteria in C 703.2. The applicant has  
14 demonstrated that it does have considerable access to public  
15 transportation.

16 But it also is really clear that it meets the  
17 criteria that says it can't provide a parking space. It  
18 doesn't have an alley. It doesn't have a driveway that is  
19 wide enough for it to provide legal parking, even though it  
20 may provide informal parking. So it meets those criteria.

21 And with respect to the bicycle parking spaces,  
22 DDOT has agreed that providing twice as many bicycle parking  
23 spaces as are required, even if they do require a special  
24 exception to get that number in, is sufficient for addressing  
25 their concerns.

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1           So all in all, between the applicant meeting the  
2 criteria for both of the special exceptions and the  
3 applicants having agreed to a transportation demand  
4 management plan that DDOT also agrees to, OP is comfortable  
5 supporting the application for the two special exceptions.  
6 The applicant will obviously have to go before Public Space  
7 and look at what it's doing in what is now the front yard,  
8 but that's down the pike.

9           That concludes our testimony, but we're obviously  
10 happy to answer any questions.

11           CHAIRPERSON HILL: Okay. Great. Thank you. Does  
12 the Board have any questions for the Office of Planning?

13           VICE CHAIRPERSON HART: Just a quick question.  
14 Good morning. So with regard to the issue of kind of parking  
15 in general in the neighborhood, it seems like the neighbors  
16 are concerned about, you know, even though there's one  
17 parking space that's kind of being proposed, it doesn't meet  
18 the access requirements so it really can't be counted as a  
19 parking space.

20           There are other issues about parking just on the  
21 street because of Rhode Island being limited parking and then  
22 some of the side streets, you know, that folks that are  
23 trying to go to this, while they can use mass transit, not  
24 everybody is going to use mass transit. So how do you see  
25 that with regard to trying to provide -- or trying to -- do

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1 you think that there's enough street parking or did that kind  
2 of figure into the --

3 MR. COCHRAN: I can't assess that. That wasn't  
4 something that the applicant presented. It's not something  
5 that DDOT is required to assess. It's not unusual for a  
6 neighborhood to feel that any development is going to impact  
7 parking negatively. There's been no demonstration that this  
8 one would, but it hasn't assessed whether there's enough  
9 street parking either.

10 VICE CHAIRPERSON HART: And I think that there may  
11 be some other questions about while this building may -- if  
12 this building is approved, what about the buildings that are  
13 next door to it that may also be allowed to be a higher  
14 density and --

15 MR. COCHRAN: Right.

16 VICE CHAIRPERSON HART: And I think that the ANC's  
17 questions --

18 MR. COCHRAN: It's understandable. It's an MU-4  
19 Zone and you will notice that two buildings away, there's  
20 already been an apartment building there since the 1930s that  
21 has more units than this one. So we have to work with the  
22 zone that we have, not necessarily the zone that we want.

23 VICE CHAIRPERSON HART: Thank you.

24 MEMBER SHAPIRO: Thank you, Mr. Chair. Maybe this  
25 is just because we have a little time, but I'm curious as to

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1 why, Mr. Cochran, why the rationale is for saying -- I don't  
2 quite get the reason behind the non-conforming bicycle space.  
3 I understand the vertical versus horizontal is the issue.  
4 But what's the rationale behind saying that these spaces  
5 would need to be configured in that way?

6 MR. COCHRAN: I cannot address that. There are  
7 even people in DDOT that --

8 MEMBER SHAPIRO: It's a little arbitrary.

9 MR. COCHRAN: -- have difficulty addressing that.

10 MEMBER SHAPIRO: Say again?

11 MR. COCHRAN: There are even some people that have  
12 come in since the ZR 2016 that would have a difficult time  
13 answering that question also.

14 MEMBER SHAPIRO: Right. It seems that to describe  
15 vertical parking spaces as less than doesn't seem to make a  
16 lot of sense given today's technology. I don't understand.  
17 Okay. All right. Thank you.

18 MR. COCHRAN: There are provisions that would  
19 allow for bicycle lockers to be -- for bicycles to be stored  
20 in lockers in a vertical position. But the applicant doesn't  
21 even have room for the lockers because that would probably  
22 double the size of each of the bicycle parking spaces.

23 MEMBER SHAPIRO: All right. Thank you, Mr.  
24 Cochran.

25 CHAIRPERSON HILL: Okay. Mr. Cochran, I was just

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1 curious. In terms of if this was something that was with  
2 52.01 with light and air issues, do you have any -- I'm  
3 curious as to how the Office of Planning might look at this.

4 MR. COCHRAN: The Office of Planning would be  
5 consistent in not answering a question about a hypothetical.

6 CHAIRPERSON HILL: Okay. I thought I would try.  
7 I'll try every time. All right. Okay. Commissioner  
8 Montague, do you have any questions for the Office of  
9 Planning?

10 MR. MONTAGUE: No, sir.

11 CHAIRPERSON HILL: All right. Mr. Sullivan, do  
12 you have any questions for the Office of Planning?

13 MR. SULLIVAN: No, thank you.

14 CHAIRPERSON HILL: All right. Is there anyone  
15 here who would like to speak in support? Is there anyone  
16 here who would like to speak in opposition? All right. If  
17 you would please come forward? Did you get sworn in earlier?

18 MS. MENDOZA-ALVARENGA: I did.

19 CHAIRPERSON HILL: Okay, great. If you could  
20 please introduce yourself and your address for the record,  
21 please.

22 MS. MENDOZA-ALVARENGA: My name is Cindy Mendoza-  
23 Alvarenga. I live at 1816 Rhode Island Avenue Northeast.

24 CHAIRPERSON HILL: Could you spell your last name  
25 for me, please?

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1 MS. MENDOZA-ALVARENGA: M-E-N-D-O-Z-A hyphen A-L-  
2 V-A-R-E-N-G-A.

3 CHAIRPERSON HILL: R-E-N-G-A?

4 MS. MENDOZA-ALVARENGA: Yes.

5 CHAIRPERSON HILL: Okay, great. Okay, great. All  
6 right. And are you the adjacent property?

7 MS. MENDOZA-ALVARENGA: Yes.

8 CHAIRPERSON HILL: Okay. So you're the property  
9 to the east of the building?

10 MR. SULLIVAN: The one and a half story bungalow.

11 MR. MEHMETOGLU: The blue and gray building.

12 MS. MENDOZA-ALVARENGA: No, the blue and gray.

13 CHAIRPERSON HILL: The blue and gray one. Oh,  
14 okay, to the west.

15 MS. MENDOZA-ALVARENGA: Correct.

16 CHAIRPERSON HILL: Okay. All right. So as a  
17 member of the public, you're going to go ahead and have three  
18 minutes to testify. The clock is up here on the wall and  
19 right in front of you. And you can begin whenever you like.  
20 But also since you are right at the adjacent property, we  
21 might have some more questions for you, but please go ahead  
22 and start.

23 MS. MENDOZA-ALVARENGA: Sure. So I grew up in the  
24 whole neighborhood, and it's been quite, you know, an  
25 adventure and now hearing the proposal of an apartment

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1 complex taking part of the space and the driveway -- I  
2 currently have a car -- and because parking is an issue  
3 during the day, rush hour we have to park on the other side,  
4 like, heading towards Maryland and then in the afternoon we  
5 have to switch parking, I usually use the driveway to park  
6 my car to avoid the whole, you know, back and forth of  
7 driving and switching the car.

8           And we already have an issue with a night club  
9 that's right next to the liquor store. It can, on the top  
10 of my head I don't have the address, but sometimes they park  
11 in the driveway. And now with an apartment complex and the  
12 first thing that comes to mind are they going to even park  
13 in the driveway or just use our driveway? It brings me a lot  
14 of questions.

15           Also the whole construction itself, health-wise,  
16 I am currently studying medicine and, you know, I'm aware of  
17 buildings of the pollution and all of that. And I just don't  
18 agree with it. And there isn't -- basically, I just don't  
19 agree with it if that makes sense.

20           And it's a driveway that we shared with the  
21 previous owner of 1818, and we had no issues at all. But we  
22 do see the issue now with an apartment complex. You know,  
23 if there were, you know, people that brought their cars,  
24 logically, we're not thinking just one car, the possibility  
25 of other cars.

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1           Now there's some people that, okay, you know, we  
2 can share, but there's others that don't. They're feisty and  
3 I'd just rather not deal with that at all.

4           CHAIRPERSON HILL: Okay. So, it's Ms. Mendoza-  
5 Alvarez? No.

6           MS. MENDOZA-ALVARENGA: Alvarenga.

7           CHAIRPERSON HILL: Alvarenga, Alvarenga. So Ms.  
8 Mendoza-Alvarenga, so did you get a chance to talk to -- and  
9 I'm having a hard time with names today -- Mr. Jehat.

10          MR. MEHMETOGLU: Yes.

11          CHAIRPERSON HILL: Did you guys have a chance to  
12 speak?

13          MS. MENDOZA-ALVARENGA: No.

14          CHAIRPERSON HILL: No, okay. So have you guys  
15 ever met?

16          MS. MENDOZA-ALVARENGA: No.

17          CHAIRPERSON HILL: Okay. That's okay. I'm just  
18 asking those questions real quick. So I think that if you  
19 do have an opportunity -- well some of the questions that  
20 you're asking I think are some that you're going to be able  
21 to speak with Mr. Jehat about right now. Okay? I don't know  
22 what's going to happen here in terms of this case, but I'm  
23 just saying you still will be able to speak with him.

24                 What's before us, again, is whether or not they  
25 meet the criteria for the special exceptions concerning

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1 parking and bicycle parking, right? And, again, we've  
2 repeated this a few times, but the height and the massing of  
3 the building are things that they would be able to do by  
4 right. It's the number of units that they would not be able  
5 to do because they're not providing the -- the number of  
6 units is triggering the parking and the bike parking  
7 situation.

8 In terms of the driveway access, I mean, that  
9 shouldn't change anything in terms of what's going to happen  
10 moving forward. You would still have -- it's an easement,  
11 meaning you have access to that driveway as well as Mr. Jehat  
12 and his one parking space in the back.

13 Now I assume from what he's been -- and I'm going  
14 to let you ask, and any Board members that they have  
15 questions of you, from what has been said thus far, Mr.  
16 Jehat, I'm sure, would be happy to talk to you about  
17 construction management, things that are going on as the  
18 building is being built if it were to be built in one  
19 capacity or another. And then also how, I guess, and I will  
20 ask Mr. Jehat this question now, how do you plan on  
21 controlling in terms of parking? You know, you're going to  
22 have -- you could possibly have eight units if this happens,  
23 you know, everybody parking in that driveway and blocking the  
24 driveway of the neighbor.

25 MR. MEHMETOGLU: Thank you for giving me a chance

1 to respond. I plan on giving her -- we are working with all  
2 the neighbors. And I would love to introduce her to my  
3 current neighbors. And I want to give her my cell phone.  
4 You know, she won't have any issues. Oh, I see. Well, the  
5 way we --

6 CHAIRPERSON HILL: I heard Mr. Sullivan. I think  
7 everything that you said is very good, and I think that you  
8 should give your cell phone number to the woman who is here  
9 testifying. However, right, in terms of how are you going  
10 to keep people from parking in that driveway?

11 MR. MEHMETOGLU: By letting everybody know that  
12 the driveway is not their parking space and respecting her  
13 rights, respecting her driveway, her side of it.

14 CHAIRPERSON HILL: So it will be an apartment  
15 building. I mean, you're going to be in control of the  
16 tenants.

17 MR. MEHMETOGLU: Yes, sir.

18 CHAIRPERSON HILL: Right, so you're obviously --  
19 they're going to be able to let tenants know. You'll have  
20 a management company as to whether or not anybody is blocking  
21 that -- you know, you're having the one spot. One person can  
22 drive back there and park. And I apologize, I'm having a  
23 hard time with the name exactly, but you would still have  
24 access through the easement to your parking space there.

25 Okay. Does the Board have any questions of the

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1 witness?

2 VICE CHAIRPERSON HART: Ms. Mendoza-Alvarenga,  
3 when did you become aware of the project?

4 MS. MENDOZA-ALVARENGA: I became aware once I  
5 first knew about it -- I live with my parents actually. So  
6 once my dad told me about the potential of, you know, an  
7 apartment complex being built, it's something that I'm, like,  
8 okay -- the first thing that came to mind is the parking, the  
9 driveway.

10 VICE CHAIRPERSON HART: Were you aware of this,  
11 like, two months ago? Was it a letter that you got? How was  
12 it that you --

13 MS. MENDOZA-ALVARENGA: There was a letter, yes.  
14 I can't recall exactly when the date was.

15 VICE CHAIRPERSON HART: That's fine. I was just  
16 looking at kind of -- not the specific date but if it was  
17 about two months ago. It was six months ago. And I just  
18 wasn't sure.

19 MS. MENDOZA-ALVARENGA: Yes. I don't recall. But  
20 I did read the letter, the information about the potential  
21 of the apartment complex. We noticed a few signs about  
22 hearings and that's when I became, okay, it's something more  
23 serious than I thought and that's when I became more alert  
24 and aware of the whole situation.

25 VICE CHAIRPERSON HART: Okay. And had you tried

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1 to reach out to Mr. Jehat?

2 MS. MENDOZA-ALVARENGA: No.

3 VICE CHAIRPERSON HART: Okay. Do you know if your  
4 parents had tried to reach out to Mr. Jehat?

5 MS. MENDOZA-ALVARENGA: Not that I recall.

6 VICE CHAIRPERSON HART: Okay. And you're also  
7 saying that -- I'm assuming that nobody actually parks in the  
8 driveway itself, but you park in a parking space behind your  
9 house?

10 MS. MENDOZA-ALVARENGA: We park, yes, behind the  
11 driveway. It's an issue when during the evenings there's  
12 always events. There's people that park right in the  
13 driveway itself. There's a sign that says no parking, and  
14 they still do it.

15 CHAIRPERSON HILL: People in the club across the  
16 street.

17 MS. MENDOZA-ALVARENGA: Yes.

18 CHAIRPERSON HILL: Yes, I live across the street  
19 from a club, by the way. And so it's very difficult to keep  
20 people not parking in your driveway.

21 MS. MENDOZA-ALVARENGA: Correct. So what I had  
22 to do one night, I went to the club because there was someone  
23 just parking, and I had to do some errands. And it took me  
24 at least an hour for them to move.

25 CHAIRPERSON HILL: Well it is possible now that

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1 actually if there's an apartment building next door that the  
2 apartment building will be the people enforcing the fact that  
3 nobody is parking in that driveway.

4 I guess I'm just trying to say that that now  
5 actually could be something that will be more of a benefit  
6 for you with the more people there now putting up more of a  
7 problem about people parking in that driveway from the club  
8 across the street.

9 Okay. Anyone else have more questions? I have  
10 a quick question. Because as I'm looking at, well, I'm  
11 looking at the Commissioner's first slide of his  
12 presentation, the building to the west of your property,  
13 there's no windows on that wall. Is that right?

14 MS. MENDOZA-ALVARENGA: No, no, no.

15 CHAIRPERSON HILL: No, right? So, again, in terms  
16 of the anticipation of that lot getting built out and getting  
17 built up so that the density could be approved. Do you live  
18 in that property now?

19 MS. MENDOZA-ALVARENGA: Yes.

20 CHAIRPERSON HILL: Okay. Okay. Well, I'm just  
21 trying to point out that it seems as though -- you know, it's  
22 an interesting lot that you now might have ownership of.  
23 Okay. Yes, Mr. Montague, Commissioner?

24 MR. MONTAGUE: The building that you mentioned to  
25 the west, the four story apartment building, is vacant now.

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1 It's been vacant for, like, two years, maybe a little bit  
2 longer. But I'm just saying right now there's no people  
3 adding to the parking situation. But it also has parking  
4 access in the rear because it has access to the alleyway.

5 CHAIRPERSON HILL: All right, Commissioner.  
6 Sorry. Anything else? Okay. Commissioner, do you have  
7 anything you would like to add at the end?

8 MR. MONTAGUE: Very nice to meet you.

9 CHAIRPERSON HILL: Mr. Sullivan?

10 MR. SULLIVAN: You mean, is this a --

11 CHAIRPERSON HILL: Conclusion, yes.

12 MR. SULLIVAN: -- conclusion, yes. I would parrot  
13 what Mr. Cochran said. I think he summed up the tests really  
14 well. The only thing I would add is I think it should be  
15 looked at relief for one space. I know any time you build  
16 a number of units, there's a discussion about eight units  
17 will bring eight parking spaces. But I think the Zoning  
18 Commission has looked at that on a larger scale and decided  
19 that one space is appropriate for eight and that seems to be  
20 working.

21 And some of the elements of this that make it look  
22 like parking will be difficult also disincentivize purchasers  
23 or renters who own cars. And I think that was one of the  
24 intentions of the Zoning Commission and the Office of  
25 Planning, too, to devalue the benefit of owning a car. And

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1 that seems to have played out, somewhat, I think. So I think  
2 that speaks to the potential impact of the relief. Thank  
3 you.

4 CHAIRPERSON HILL: Commissioner, if you have  
5 something to say, which is fine, that means he'll get  
6 something to say again because he's the applicant at the end.  
7 Did you have something to say?

8 MR. MONTAGUE: No. I know we're beating a dead  
9 horse. But, you know, that same argument was used in here  
10 a month ago about Bladensburg, the development of Bladensburg  
11 Road. And it went round and round and round about the no  
12 parking in the front of the building.

13 There was no access to parking at the rear and  
14 this, that and the other thing. And you all were trying to  
15 figure out, well, could you do this? Could you do that?  
16 It's a similar situation. But in that place it was all  
17 commercial buildings around it. So when he said that, I was,  
18 like, okay. We heard that.

19 CHAIRPERSON HILL: Okay. Well, Commissioner, in  
20 terms of beating a dead horse, I mean, you know, I don't know  
21 exactly what horse we're beating. But to parrot the Office  
22 of Planning again, each case that we look at is based upon  
23 the merits of that particular case. And so they don't  
24 necessarily compare.

25 But I do hear everything that you've said

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1 concerning your community and the outreach that you've done  
2 for this particular project. Mr. Sullivan, again, do you  
3 have anything else?

4 MR. SULLIVAN: No, thank you.

5 CHAIRPERSON HILL: Okay. I'm going to close the  
6 hearing. Is the Board ready to deliberate?

7 VICE CHAIRPERSON HART: Yes, sir.

8 CHAIRPERSON HILL: Okay. I mean, I can  
9 deliberate. I think that, again, in terms of the relief  
10 that's being requested, I think that the applicant has made  
11 their argument as to why they are unable to meet the parking  
12 requirement and also the bike requirements.

13 I do think, however, I mean, it's kind of -- I  
14 don't know if odd is the right word. I mean, they still are  
15 meeting the requirements. I mean, they're providing what  
16 they need to provide. But they just technically aren't  
17 because of the criteria. But I do think they make the  
18 argument for the special exceptions.

19 I think that I would also agree with the  
20 conditions that DDOT had put in place in terms of the TDM  
21 plan. I do very much think that the property owner in terms  
22 of the development of Mr. Jehat being in the area, I mean,  
23 this is beyond even if he did or not, the fact that he is  
24 here in the area, has his office there, has been there, seems  
25 to be a community member that would want the community to do

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1 well and now has had an opportunity to meet the immediate  
2 next door neighbor.

3           And I will take him at his word that he will, you  
4 know, provide access to him, his cell phone, so that if there  
5 is any construction issues concerning the neighbor next door,  
6 they will have the ability to contact each other and also  
7 then in addition this might help in terms of the applicant's  
8 problem with people parking illegally in that driveway that  
9 they've had easement. You know, those are all besides the  
10 issues concerning the standard of review. But I feel more  
11 comfortable with the fact that at least the two parties are  
12 here at the table today.

13           So that being all said, I would agree with the  
14 analysis that the Office of Planning has also provided and  
15 the applicant and how they're meeting the criteria. And so  
16 I will be voting in support.

17           Is there anything else anyone would like to add?

18           VICE CHAIRPERSON HART: About the DDOT conditions?

19           CHAIRPERSON HILL: Yes. I'm sorry. I did mention  
20 that. But I did mention that implementing the TDM plan  
21 that's in Exhibit 56, I think, 56, from DDOT would be  
22 something, again, that I would be in favor of.

23           VICE CHAIRPERSON HART: Yes. I didn't have much  
24 to add to it. I would first, I guess, commend Commissioner  
25 Montague for your presentation, which was actually very well

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1 done. I understand that being you're not somebody that does  
2 this. But it is very helpful to actually --

3 MR. MONTAGUE: In another life.

4 VICE CHAIRPERSON HART: In another life, okay.  
5 Because something, like, wow, this is, like, difficult to do.  
6 But I think it was very helpful in trying to talk about some  
7 things about massing. And I understand that wasn't  
8 necessarily before us, but it was helpful to at least some  
9 of this in that form. So I do commend you for bringing that  
10 forward.

11 As the Chairman said, we are looking at the  
12 project, which in a very narrow part of the project which has  
13 to do with the parking for vehicles and for bicycles. I  
14 guess you could call it bicycle-vehicle, but we're separating  
15 those.

16 And I felt that the applicant had provided  
17 sufficient information for me to be able to accept that. I  
18 understand the Office of Planning is now in support of this  
19 application. And they provided their report on this as did  
20 DDOT.

21 And I don't know if the other Commissioners have  
22 any questions about this, but with regard to Ms. Mendoza-  
23 Alvarenga, she raised some issues that were something that  
24 I hadn't really thought about, and that is do we need to put  
25 in any condition here that says that, like, there's no

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1 parking on that easement on the driveway itself?

2           You know, because the parking space is what  
3 they're looking for. But it seems as though people may be  
4 parking on the part of the driveway because they, you know,  
5 may not find parking in the neighborhood. And if there's a  
6 way to, I don't know, to --

7           CHAIRPERSON HILL: I don't know. I mean --

8           VICE CHAIRPERSON HART: -- I'm not sure if that's  
9 enforceable or if that's something we can add to that. I was  
10 looking at OAG.

11           (Simultaneous speaking.)

12           CHAIRPERSON HILL: I guess, it's OAG, right? If  
13 OAG is there and if that's a condition that can be  
14 enforceable --

15           MEMBER SHAPIRO: It also may work against Ms.  
16 Mendoza-Alvarenga.

17           CHAIRPERSON HILL: Oh, in terms if she has family  
18 gatherings or something.

19           MEMBER SHAPIRO: If she needs to also park in the  
20 driveway, I think that it feels like it needs to be something  
21 that would be negotiated with the two parties rather than  
22 have some set order.

23           CHAIRPERSON HILL: I don't know. Now we're  
24 discussing OAG. Because I'm just curious as to whether or  
25 not that is something that we could put in as a condition and

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1 that would then be enforceable.

2 MR. BASSETT: Daniel Bassett, OAG. If it's a  
3 condition that you feel mitigates a potential adverse impact,  
4 then that would be relevant.

5 VICE CHAIRPERSON HART: I mean, and I understand,  
6 Member Shapiro, and I appreciate your comments on that in  
7 that it may be that it's a double edged sword in some ways.  
8 It would make everybody that are on both sides of that  
9 driveway, you know, susceptible to that. So maybe there's  
10 a conversation that is an owner and next door neighbor  
11 conversation as opposed to a BZA condition.

12 I was just thinking -- I was trying to see if that  
13 was actually a connection. But I don't have to push that.  
14 I just was curious that's all.

15 CHAIRPERSON HILL: Go ahead.

16 MEMBER SHAPIRO: Well, yes, I guess I did have a  
17 question for Ms. Mendoza-Alvarenga. I don't know, maybe --

18 (Simultaneous speaking.)

19 CHAIRPERSON HILL: Okay. Why not? So we're going  
20 to reopen the hearing. Everybody is here. So, please,  
21 Commissioner, you have a question?

22 MEMBER SHAPIRO: If I can, just a quick question  
23 for you. How many parking spaces are there behind your  
24 house?

25 MS. MENDOZA-ALVARENGA: One.

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1 MEMBER SHAPIRO: One. Okay. Is that, like, a  
2 real one? Is it like a half of one?

3 MS. MENDOZA-ALVARENGA: It's like --

4 MEMBER SHAPIRO: It's like a one and a half one?  
5 I mean, what practically -- forgetting about how many --

6 MS. MENDOZA-ALVARENGA: It's a real space. Kind  
7 of like --

8 MEMBER SHAPIRO: But you can't stick two cars back  
9 there, ever. It's too tight?

10 MS. MENDOZA-ALVARENGA: It would be parked in the  
11 middle in order to fit.

12 MEMBER SHAPIRO: Got you. Okay. Thank you.  
13 Thank you, Mr. Chair.

14 VICE CHAIRPERSON HART: And the idea of kind of  
15 keeping people from parking on there? Or do you think that  
16 it's more of a conversation that you could have with the --

17 MEMBER SHAPIRO: On the driveway.

18 VICE CHAIRPERSON HART: -- that your parents could  
19 have with -- yes, on the driveway. If that's a conversation  
20 that you and your parents could have with the owner?

21 MS. MENDOZA-ALVARENGA: I think so. It didn't  
22 cross my mind.

23 VICE CHAIRPERSON HART: No, that's fine. I can  
24 drop it. It was just more something that came up as I heard  
25 the conversation -- the testimony from earlier, I was

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1 thinking that maybe there's something that we could do about  
2 that. But I'm okay with not including it so.

3 CHAIRPERSON HILL: Okay. So --

4 VICE CHAIRPERSON HART: So I would be in support  
5 of the application.

6 CHAIRPERSON HILL: I'm going to close the hearing  
7 again because we're officially now -- they're officially  
8 gone, yes. Okay. So I'm going to close the hearing again.

9 And the thing that I, in terms of deliberating  
10 here, that I'm a little curious about what you brought up,  
11 Mr. Hart, is that I guess you don't know what's going to  
12 happen -- I was saying, I guess you don't know what's going  
13 to happen with the property next door again.

14 That's the part that then gets confusing, right?  
15 Because now there's a condition that nobody is going to park  
16 in that driveway. And then who knows what's going to happen  
17 to that property next door. And then they got to come back  
18 to us again about that particular condition. But I  
19 appreciate it. So, anyway, anybody got anything else?

20 MEMBER SHAPIRO: No, sir.

21 CHAIRPERSON HILL: Okay. All right. I make a  
22 motion to approve the application --

23 MEMBER SHAPIRO: Are you going to close the  
24 hearing again?

25 CHAIRPERSON HILL: No, I closed the hearing

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1 already. The hearing was already closed, but thank you. I'm  
2 going to make a motion to approve Application Number 20065  
3 as captioned and read by the Secretary, including the TDM  
4 plan from DDOT in Exhibit 56, and ask for a second?

5 VICE CHAIRPERSON HART: Second.

6 CHAIRPERSON HILL: Motion made and seconded. All  
7 those in favor say aye.

8 (Chorus of ayes.)

9 CHAIRPERSON HILL: All those opposed?

10 (No audible response.)

11 CHAIRPERSON HILL: The motion passes, Mr. Moy.

12 MR. MOY: Staff would record the vote as three to  
13 zero to two. And this is on the motion of Chairman Hill to  
14 approve the application for the relief requested along with  
15 the conditions cited in the TDM plan under the DDOT Exhibit  
16 56. Seconding the motion, Vice Chair Hart. Also in support  
17 Zoning Commissioner Peter Shapiro, and two other board  
18 members not present.

19 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.  
20 We're actually going to take a quick break. We're going to  
21 hear the next two cases and then we're going to take lunch.  
22 Thank you.

23 (Whereupon, the above-entitled matter went off the  
24 record at 11:33 a.m. and resumed at 11:55 a.m.)

25 MR. HILL: All right, Mr. Moy, whenever you're

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1 ready.

2 MR. MOY: Thank you, Mr. Chairman. The Board is  
3 back in session from their quick recess. And the time is at  
4 or about 11:55. If we can have parties to the table to case  
5 application 20202, DuVon Floyd, caption advertised for  
6 special exception relief under Subtitle D, Section 5201, Lot  
7 Occupancy Requirements, Subtitle D, Section 304.1, Rear Yard  
8 Alley Centerline Setback Requirements, Subtitle E, Section  
9 5004.1. This would permit the construction of a one-story  
10 garage in the R-2 Zone at 6223 8th Street NW, Square 3161 Lot  
11 58.

12 MR. HILL: Okay, great. If you could please  
13 introduce yourselves for the record.

14 MR. FLOYD: Sure. My name is DuVon Floyd. I live  
15 at 6223 8th Street NW, Washington, D.C., and I am the  
16 Applicant.

17 MR. HILL: Okay.

18 MR. JELEN: Hello. Good morning. Bill Jelen.  
19 I'm the architect and the agent for the Applicant.

20 MR. HILL: Could you spell your last name please,  
21 sir?

22 MR. JELEN: Jelen, J-E-L-E-N.

23 MR. HILL: Okay. And you guys, if you guys could  
24 just have one microphone on at a time down there because it  
25 kind of provides feedback. So Mr. Jelen, I assume you're

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1 going to be presenting to us.

2 MR. JELEN: I'll let Mr. Floyd start with just how  
3 he's reached out and the support he has, and then I can  
4 provide any details.

5 MR. HILL: Okay. Give me one second. All right.  
6 Mr. Floyd and/or Mr. Jelen, I got to let you know I don't  
7 have a lot of questions for this right now. I mean I think  
8 that you guys have a pretty -- there's a pretty full record  
9 in terms of what we have reviewed.

10 MR. FLOYD: Sure.

11 MR. HILL: So unless the Board has any specific  
12 questions right now, I'm just going to turn to the Office of  
13 Planning. Is there any specific questions you have for the  
14 Applicant?

15 MEMBER SHAPIRO: I do not.

16 MR. HILL: Okay. I'm going to turn to the Office  
17 of Planning.

18 MR. JESICK: Thank you, Mr. Chairman and members  
19 of the Board. My name is Matt Jesick. The Office of  
20 Planning is happy to rest on the record in support of the  
21 application. Thank you.

22 MR. HILL: Okay. Does the Board have any  
23 questions for the Office of Planning?

24 MEMBER SHAPIRO: No, sir.

25 MR. HILL: Does the Applicant have any questions

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1 for the Office of Planning?

2 MR. FLOYD: No, sir.

3 MR. HILL: Okay. Is there anyone here wishing to  
4 speak in support? Is there anyone here wishing to speak in  
5 opposition? Okay, Mr. Floyd, as I mentioned, it's fairly --  
6 it's relatively straightforward to me at this point. And so,  
7 do you have anything else you'd like to add at the end?

8 MR. FLOYD: I do not.

9 MR. HILL: Okay. All right. I'm going to close  
10 the hearing. Is the Board ready to deliberate?

11 MEMBER SHAPIRO: Yes.

12 MR. HILL: Okay. As you can tell, I didn't have  
13 any questions with it. I thought that the Applicant in both  
14 their application as well as the submission and analysis by  
15 the Office of Planning as well as that of ANC-4B, I would  
16 agree with the -- that the criteria has been met.

17 And so I'm going to be voting in favor of this  
18 application. Is there anything anyone else would like to  
19 add?

20 MEMBER SHAPIRO: No, sir.

21 MR. HILL: I'm going to go ahead and make a motion  
22 to approve Application Number 20202, as captioned read by the  
23 secretary, and ask for a second.

24 VICE CHAIRPERSON HART: Second.

25 MR. HILL: Motion made and seconded. All those

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1 in favor, say aye.

2 (Chorus of ayes)

3 MR. HILL: All those opposed? The motion passes.  
4 Mr. Moy?

5 MR. MOY: Staff would record the vote as 3-0-2,  
6 and this is on the motion of Chairman Hill to approve the  
7 application for the relief requested. Seconding the motion  
8 is Vice Chair Hart, also in support Zoning Commissioner Peter  
9 Shapiro, with two members not present today.

10 MR. HILL: Okay. Thank you. Thank you,  
11 gentlemen.

12 MR. FLOYD: Thank you very much.

13 MR. HILL: If we had more time to kind of like  
14 discuss it, I thought the design was very nice and so, you  
15 know, but we're going to move on with our day.

16 MR. MOY: Next up if we could have parties to the  
17 table to Application Number 20207 of Amanda J. Lepof. Did  
18 I pronounce that right, L-E-P-O-F? Lepof and Clint G.  
19 Burkholder. This is caption advertised for special exception  
20 under Subtitle D, Section 5201 from the Rear Addition  
21 Requirements of Subtitle D, Section 1206.3.

22 This would construct a two-story rear addition to  
23 an existing attached principal dwelling unit in an R-2 Zone  
24 at premises 3518 S Street NW, Square 1303, Lot 30. The only  
25 other thing I have, Mr. Chairman, I understand that there's

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1 someone in the audience who will be testifying.

2 MR. HILL: Okay. So the -- I'm just trying to  
3 look up here the case. Okay. If you could please introduce  
4 yourselves for the record?

5 MR. WILLIAMS: Hi. My name is Chris Williams.  
6 I'm the project designer.

7 MR. BURKHOLDER: My name is Clint Burkholder. I'm  
8 the owner at 3518 S.

9 MR. HILL: I'm sorry. Did you say Williams?

10 MR. WILLIAMS: Williams.

11 MR. HILL: Did you both get sworn in earlier?

12 MR. WILLIAMS: Yes.

13 MR. BURKHOLDER: Yes.

14 MR. HILL: Okay. Great. All right. So Mr.  
15 Williams, are you going to be presenting to us?

16 MR. WILLIAMS: I can, yes.

17 MR. HILL: Okay. All right. So if you could go  
18 ahead, Mr. Williams, and kind of speak to what your client  
19 is trying to do. I mean I understand in terms of the waiver  
20 there. They're going 12.3 feet back versus the 10.

21 And so, and we did get your posting and  
22 maintenance. And I don't see anything from ANC-2E, so you  
23 can kind of speak to that in terms of what happened at the  
24 ANC meeting and when you were there.

25 But why don't you go ahead and walk us through

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1 your project and how you believe you're meeting the criteria  
2 for us to grant the application? I'm going to put 15 minutes  
3 on the clock, Mr. Moy, just so I know where we are. And you  
4 can begin whenever you like.

5 MR. WILLIAMS: Sure. The existing property is a  
6 row house. It has an existing one-story addition on the rear  
7 that has a family room or small bin within that space. The  
8 client and project is to replace that existing addition with  
9 a two-story addition, which would have room for a larger  
10 kitchen.

11 And the family room is facing the first floor and  
12 a master suite on the second floor. The property on the East  
13 side will be -- the addition will be 10 foot back from it.

14 The property on the -- I'm sorry -- on the West side would  
15 be 10 foot back and on the East side, the new addition would  
16 be 12 foot 3 back.

17 This is to allow an interior space that's  
18 approximately 12 feet wide inside to allow our --

19 MR. HILL: Can you repeat that again? So on the  
20 West side of the property, it's going to be 10 feet. And on  
21 the East side --

22 MR. WILLIAMS: West side. It's 10 foot on the  
23 East side. It's 12 foot 3.

24 MR. HILL: 12-3, okay.

25 MR. WILLIAMS: We're staggering the units.

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1 MR. HILL: Okay, great. Please continue.

2 MR. WILLIAMS: Okay. So, it's in keeping with all  
3 of the additions on the -- existing additions are throughout  
4 the neighborhood. We have support letters from other  
5 residents in the neighborhood.

6 MR. HILL: What about the ANC meeting? What  
7 happened there?

8 MR. WILLIAMS: They chose not to issue support or  
9 opposed.

10 MR. HILL: Do you know why?

11 MR. WILLIAMS: We think that -- I'm sorry.

12 MR. BURKHOLDER: Sorry. The neighbor to the East  
13 of us wrote a letter in opposition, so that's why they chose  
14 not to make a decision.

15 MR. HILL: Okay. All right. Okay. I'm going to  
16 turn the Office of Planning. Does the Board have any  
17 questions for the Applicant?

18 MEMBER SHAPIRO: No, sir.

19 MR. HILL: All right. I'm going to turn to the  
20 Office of Planning.

21 MS. MYERS: Crystal Myers for the Office of  
22 Planning. The Office of Planning is recommending approval  
23 of this case and stands on the record as staff report.

24 MR. HILL: Does anybody have any questions for the  
25 Office of Planning?

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1 MEMBER SHAPIRO: No, sir.

2 MR. HILL: Okay. I do. Ms. Myers, could you kind  
3 of walk us through again your analysis, again? I mean I know  
4 it terms of what we have seen in terms of the special -- I'm  
5 sorry -- for the waivers for the 10 foot, I mean this is 2.3  
6 feet, which is extremely nominal in terms of what we've seen  
7 applied for. However, could you please walk us through your  
8 analysis?

9 MS. MYERS: That's correct. It's -- they're  
10 asking for an extension in the rear to go 12 feet 3 inches  
11 back from the adjacent neighbor. We looked at light and air.  
12 The application actually included a shadow study.

13 We thought that the shadow study supports the  
14 argument that light and air would not be impacted. The  
15 privacy of use and enjoyment, there's actually a fence, about  
16 a 6 foot tall fence. So we didn't think that privacy and use  
17 of enjoyment would be unduly impacted.

18 When it comes to how it appears in the rear along  
19 the alley, we didn't think that the design was significantly  
20 different than the rears of the other houses. It was  
21 generally a standard residential design.

22 And again, there is a fence. So we didn't think  
23 that this stood to the level of being an undue impact to  
24 either neighbor. So we recommended approval of the Special  
25 Exception relief.

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1 MR. HILL: Okay, great. Thank you very much.  
2 Does the Applicant have any questions of the Office of  
3 Planning?

4 MR. BURKHOLDER: No.

5 MR. HILL: All right. Is there anyone here who  
6 wishes to speak in support? Is there anyone here who wishes  
7 to speak in opposition, if you could please come forward?  
8 Did you get sworn in earlier?

9 MR. DOUB: Yeah.

10 MR. HILL: Okay, great. Just sit down there and  
11 introduce yourself please for the record.

12 MR. DOUB: Good afternoon. I'm John Doub,  
13 D-O-U-B, D like David, O-U-B, like boy. And I'm the next  
14 door neighbor in the adjacent house with the party wall at  
15 3516 S Street NW.

16 MR. HILL: Okay, great. Okay, Mr. Doub. So  
17 again, I don't know. If you sign up and you'll have as a  
18 member of the public three minutes to testify. And you can  
19 go ahead and give us your testimony.

20 And in addition to that, you're actually the  
21 adjacent neighbor. So if we have more questions for you or  
22 if we have, you know, kind of want to talk through some  
23 things we can go ahead and do that. But there's a clock I  
24 think on either ceiling or right in front of you, and you can  
25 begin whenever you like.

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1 MR. DOUB: Okay. My concern, and I've never been  
2 through this hearing process before so I don't know exactly  
3 how it works. But I had a conversation with Clint's wife,  
4 with Amanda, about the extension and the two-story addition.

5 Right now they have a small addition on the first  
6 level only, not on the second level. At the second level,  
7 it's a rooftop deck, a balcony off of their bedroom. So that  
8 would be built above the first floor.

9 So it'll be two stories rather than one story,  
10 which it is today. The first floor would be extended beyond  
11 where it is, so it's not the same footprint. I think it  
12 about doubles in size.

13 And then the entire second floor of course would  
14 be completely new. I've been in my house for 26 years, so  
15 I'm one of the, you know, older neighbors on the block. When  
16 I bought the house, the main reason that I bought this house  
17 is for the natural light.

18 It's southern exposed on the back of the house.  
19 It's a dead end alley, and we have pretty decent privacy in  
20 the back. With the dead end, not a whole lot of traffic.  
21 And we spend a lot of time living on the back of our houses.

22 It's kind of our sanctuaries from the hustle and  
23 bustle of the city. I have my kitchen and dining room with  
24 French doors that open onto a small deck, and then it kind  
25 of cascades with stairs down to a brick patio.

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1 All those areas along with my second floor, we  
2 have a bedroom and a home office, which I'm trying to use  
3 more and more often actually and more than my downtown  
4 office, are on the backside of the second floor.

5 All of this will be affected considerably, so I  
6 would actually disagree or at least debate that it doesn't  
7 take away light and space. It absolutely takes away light  
8 and space. It's a southwest exposure.

9 So as the sun tracks around the south side of the  
10 properties in the direction of where the Duke Ellington  
11 School is, if you know that on Reservoir Road. So that's  
12 south facing from the back of our houses.

13 And that's where we get our natural light. The  
14 front of our houses face north, so we don't get a whole lot  
15 of light. The back of our houses face south, and these, you  
16 know, these are small houses.

17 And with a small house, it's important to get  
18 natural light as much as possible. And like I said, that's  
19 the main reason I purchased that house 26 years ago was  
20 because it had a nice backyard, dead-end alley.

21 And it got a lot of southern exposure in the back  
22 of the house. I've kind of built things around the back of  
23 the house over the years. So with a two-story addition going  
24 in, I'm going to be looking up at a new two-story addition  
25 of, you know, brick wall or whatever the materials are on

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1 that facade.

2           It's going to take away part of Clint and Amanda's  
3 yard. They're going to take down a tree. They'll have to  
4 build, I assume, that they'll have to build on their back  
5 patio. And that takes away my view of the next two or three  
6 lots over, where there are some beautiful trees.

7           And that's where all of the natural light comes  
8 in the afternoon and the early evening. All that will be  
9 gone. That entire view will be gone. My three minutes are  
10 up.

11           MR. HILL: That's okay. Okay. So we might have  
12 some questions for you, Mr. Doub.

13           MR. DOUB: It's Doub.

14           MR. HILL: Doub. Well, I guess I'm overhearing  
15 a question over here. Are you the east neighbor or the west  
16 neighbor?

17           MR. DOUB: I'm the east.

18           MR. HILL: East neighbor, okay. So --

19           MR. DOUB: And I believe -- and on the west I  
20 believe the reason that Clint and Amanda were looking for,  
21 at least the way Amanda described it, was that neighbor has  
22 a chimney that I don't have.

23           And it had something to do with going 10 feet from  
24 their chimney. The house doesn't sit back any further than  
25 my house or than Clint and Amanda's house. It's that they

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1 had -- a chimney seems to be --

2 MR. HILL: Got it. I understand.

3 MR. DOUB: -- the cause of all this.

4 MR. HILL: Well, they're going back. I mean so  
5 just to clarify a couple of things. They're here for, and  
6 obviously, actually, this was a very short day for us. We  
7 normally have like 13 cases.

8 And we only have one big case after lunch, so  
9 that's why there's nobody here right now. And so we have a  
10 little time to kind of talk through some of these things.  
11 What I'm trying to clarify if you just said you -- I mean  
12 obviously why would you ever come down here unless you needed  
13 to.

14 But a special exception is something that -- this  
15 particular special exception that you're looking at, they're  
16 able to go 10 feet by right. So by right, they'd already be  
17 able to go 10 feet. They wouldn't be here at all with us.

18 The reason why they're here to speak to us is  
19 because they need to go -- they're going back another 2.3  
20 feet farther than what they'd be able to do.

21 So, and I completely understand as one who's also  
22 lived here for now 30-plus years, the changes that happen  
23 right around us and that what we actually are really just  
24 looking at is that 2.3 feet.

25 Right, like that's the difference that we're

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1 looking at. And so whether or not that 2.3 feet -- actually,  
2 that's not completely true. We're looking at the whole  
3 picture, but what I particularly am looking at, not saying  
4 the Board, is the 2.3 feet which like, you know, the  
5 difference between what you could do by right and what you  
6 are going to propose and whether that is actually undue,  
7 right.

8           And that's the word that gets kind of, you know,  
9 is difficult to sometimes put into context. But I'm just  
10 telling you all that because that's how kind of I'm going  
11 through this deliberation or at least in my head as I'm kind  
12 of thinking through this. Do you know how -- and I haven't  
13 looked with the Office of Planning, but how deep are those  
14 lots?

15           MS. MYERS: 125 feet it looks like.

16           MR. HILL: So they're not going up to lot  
17 occupancy anywhere near what they're able to do, right?

18           MS. MYERS: No, I think they're okay.

19           MR. HILL: And the reason why -- right. So Mr.  
20 Doub, and I'm just having trouble with the last name.

21           MR. DOUB: It's Doub. You're right.

22           MR. HILL: Is that, you know, what I find somewhat  
23 interesting is that the zoning regulations changed, not while  
24 I was here, not -- just before I got here they changed that  
25 people could have gone back as far as they wanted to as long

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1 as they didn't fill out their lot occupancy.

2           So in other words, that's how -- and if you've  
3 seen a lot of these, you know, there were these big  
4 discussions about the pop-ups and the pop-backs and  
5 everything like that. People were going back just as far as  
6 they could in terms of lot occupancy.

7           So the Zoning Commission, which Mr. Shapiro is  
8 currently a member of, that's how they came up with the 10  
9 foot rule. And then anything beyond that was special  
10 exception.

11           I guess what I'm just trying to kind of talk  
12 through is that while you have been there, somebody could  
13 have -- prior to the rules being changed -- built even  
14 farther back all the way up to fill up their lot. And so --

15           MR. DOUB: It's been the Wild Wild West for a long  
16 time.

17           MR. HILL: Well, I don't --

18           MR. DOUB: It's changing in the right way, I  
19 think, in a good way.

20           MR. HILL: Right. But zoning is very odd animal.

21           MR. DOUB: Burleith, not Georgetown proper, but  
22 Burleith has kind of been -- it's been pretty much the Wild  
23 Wild West for a long time.

24           MR. HILL: Yeah.

25           MR. DOUB: So I think the changes are good. I

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1 completely agree.

2 MR. HILL: Sure.

3 MR. DOUB: I don't debate that Clint and Amanda  
4 have the right within the zoning rules and regs that they can  
5 put the two-story addition up. Less is more for me.

6 MR. HILL: Sure.

7 MR. DOUB: And I had that conversation, not with  
8 Clint but with Amanda, and that's why I still would oppose.  
9 I mean and the other problem is, I mean just from your  
10 perspective because you have been in the District for so long  
11 is things have been changing and evolving is that now people  
12 are building not only new garages but they're putting  
13 apartments on the tops.

14 You know, they're enlarging those garages. It's  
15 taking away more and more of our natural light. It's taking  
16 away our open views, our air space and our sunlight.

17 MR. HILL: We can have a discussion about all this  
18 and also like the Zoning Commission has these discussions all  
19 the time in that the District also needs more housing. And  
20 so the more housing we get and then also the more housing we  
21 get, then you get, you know, more opportunity for lower  
22 prices on some of -- you know what I'm saying.

23 MR. DOUB: Yeah.

24 MR. HILL: It's just the more affordable housing  
25 comes in. It's more of bigger, longer discussion.

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1 MR. DOUB: That's right. It's another apartment.  
2 It is.

3 MR. HILL: But as a next door neighbor, as even  
4 the case that you were speaking to or if you saw before, I  
5 wouldn't necessarily want something being built next to me.

6 MR. DOUB: No, I was just thinking about reference  
7 to the lot depth. And in that depth, a lot of it's being  
8 taken away by the garages. And I don't know what Clint and  
9 Amanda have in mind because they have an old garage.

10 MR. HILL: Right.

11 MR. DOUB: And maybe they're going to do something  
12 there also, but the next neighbor over just built a huge  
13 garage with a big apartment on top. So if we've getting in  
14 the depth of our lots, it's encroaching now from the alley  
15 side.

16 And now with the addition that's going from the  
17 house side, it's kind of all coming together. There's no  
18 green space. There's no light. There's no circulation of  
19 air. And it's getting tight.

20 MR. HILL: Yeah.

21 MR. DOUB: Getting really tight.

22 MR. HILL: That one thankfully is more of a Zoning  
23 Commission issue than BZA, thankfully for me.

24 MR. DOUB: Yeah, and the 2.3 inches, I mean I know  
25 it sounds like it's not --

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1 MR. HILL: No, 2 feet, 3 inches.

2 MR. DOUB: I mean 2 foot 3, it sounds like it's  
3 nominal, but you know, just the addition itself is kind of  
4 hard to --

5 MR. HILL: I understand.

6 MR. DOUB: -- get my hands around eventually, but  
7 I have to accept that. So I just don't think a special  
8 exception is warranted though to go above and beyond what --

9 MR. HILL: I understand.

10 MR. DOUB: -- the zoning regs allow for.

11 MR. HILL: I understand. Does the Board have any  
12 questions for the witness? Okay. Does the Applicant have  
13 any questions for the witness?

14 MR. BURKHOLDER: No.

15 MR. HILL: Okay, great. All right. Thank you  
16 very much, sir. Okay. Let's see. So do you guys have  
17 anything that you'd like to add at the end?

18 MR. BURKHOLDER: I would just like to add that  
19 John is a semi-attached house.

20 MR. HILL: What's the last name, his last name  
21 again?

22 MR. BURKHOLDER: D-O-U-B.

23 MR. HILL: Doub.

24 MR. BURKHOLDER: Doub.

25 MR. HILL: If you could just call him Mr. Doub,

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1 please.

2 MR. BURKHOLDER: Sorry, Mr. Doub.

3 MR. HILL: That's all right. A semi-attached  
4 house. So on his east side he has nothing built on the lot  
5 next of his -- next to his will never be built on. It is,  
6 excuse me, it is owned by the Army Corps of Engineers. So  
7 his light and air are -- ultimately that side will never be,  
8 you know, infringed upon.

9 MR. HILL: Okay. All right. Thank you. Anything  
10 else? No, we're not -- it's okay. Thanks. All right.  
11 Anything else though? All right. I'm going to close the  
12 hearing. Is the Board ready to deliberate?

13 VICE CHAIRPERSON HART: Yes, sir.

14 MR. HILL: Okay. I can start. I mean again, I  
15 don't have any doubt that, you know, in terms of immediate  
16 next door neighbor that whether or not this will be some kind  
17 of an effect on their light and air.

18 Again, what this always comes down to in terms of  
19 the regulations is what is the undue impact, right. And for  
20 the neighbor who was in opposition, I completely again  
21 understand that it's not the 2.3 feet.

22 It's the 10 feet plus the 2.3 feet, which gives  
23 you to the 12.3 feet. But for me, as I was even going  
24 through the hearing again, it's really just that delta  
25 between what's the matter of right and what's the additional

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1 impact.

2           And I don't think that -- I think that the  
3 additional impact is undue. And I think that this would  
4 qualify as a special exception. And I would agree with your  
5 argument that the Applicant has made as well as in addition  
6 to the shadow studies as well as that with the Office of  
7 Planning.

8           And one last thing that I'll just kind of mention  
9 in terms of these applications, which is always pretty  
10 disappointing, is that -- I mean I don't think anybody would  
11 even want the 10 feet, you know.

12           I mean I keep saying that like, you know, you  
13 wouldn't want the 10 feet whether or not, you know, it  
14 happens to be matter of right. So therefore you can't argue  
15 against the 10 feet.

16           However, if the 10 feet were a special exception,  
17 everybody would be arguing about the 10 feet. So when the  
18 Zoning Commission kind of cut back on the depth of how far  
19 back you'd go in terms of the lot occupancy, I do think they  
20 were headed in the right direction.

21           So regardless of that, I do think that this  
22 Applicant has met the standard for us to grant this relief.  
23 And I will be voting in favor of the application. Is there  
24 anything else anyone would like to add?

25           All right. I'm going to go ahead and make a --

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1 I'm sorry, make a motion to approve Application Number 20207  
2 as captioned right by the secretary and ask for a second.

3 VICE CHAIRPERSON HART: Second.

4 MR. HILL: Motion made and seconded. All those  
5 in favor, say aye.

6 (Chorus of ayes)

7 MR. HILL: All those opposed? Motion passes. Mr.  
8 Moy?

9 MR. MOY: Staff would record the vote as 3-0-2.  
10 And this is on the motion of Chairman Hill to approve the  
11 application for the relief being requested. Seconding the  
12 motion is Vice Chair Hart. Also in support, Zoning  
13 Commissioner Peter Shapiro. No other members present today,  
14 sir.

15 MR. HILL: Okay. Thank you. Thank you very much.  
16 All right. So we're going to take a lunch break, and we're  
17 going to try to be back here by around 1:00, 1:10. Thank  
18 you.

19 (Whereupon, the above-entitled matter went off the  
20 record at 12:19 p.m. and resumed at 2:09 p.m.)

21 MR. HILL: All right, Mr. Moy, whenever you're  
22 ready to call us back.

23 MR. MOY: Thank you, Mr. Chairman. The Board is  
24 back in session from its lunch recess. And the time is at  
25 or about 2:00 p.m.

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1           And before the Board is a continued hearing for  
2 Appeal Number 20183 of The Residences of Columbia Heights,  
3 a condominium, as advertised caption as on appeal from the  
4 decision made on December 30, 2019 by the zoning  
5 administrator at the Department of Consumer and Regulatory  
6 Affairs to issue Building Permit number B1908601 to permit  
7 a new building with 50 residential apartments for the  
8 short-term family housing in the MU-5A Zone.

9           This is at 2500 14th Street, NW, Square 2662, Lot  
10 205. As the Board will recall, this was last heard on  
11 January 29, 2020. I believe there's some preliminary  
12 matters, Mr. Chairman.

13           MR. HILL: Okay. Great. Thank you. All right.  
14 So good afternoon everyone. Welcome back. I doubt you were  
15 here in the morning, so if you haven't been sworn in and you  
16 plan to possibly testify one way or other, if you wouldn't  
17 mind standing and taking the oath administered by the  
18 secretary to my left.

19           (Witnesses sworn in)

20           MR. MOY: Ladies and gentlemen, you may consider  
21 yourselves under oath.

22           MR. HILL: Okay, great. So just as for right now,  
23 can we just have the Appellant's attorney, DGS's attorney,  
24 and the ZA, whatever, the DCRA up to the table for a minute?  
25 Okay, great. Thank you. If you could please introduce

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1 yourselves for the record, from my right to left?

2 MR. GREEN: Good morning Chairman, members of the  
3 Board, or good afternoon. Hugh Green, attorney for the DCRA.

4 MR. LEGRANT: Good afternoon, Matthew LeGrant,  
5 Zoning Administrator, DCRA.

6 MS. MOLDENHAUER: Good afternoon, Meridith  
7 Moldenhauer from the Office of Cozen O'Connor on behalf of  
8 DGS.

9 MR. BROWN: Good afternoon Chairman Hill and  
10 members of the Board, Dave Brown on behalf of The Residences  
11 of Columbia Heights, the condominium.

12 MR. HILL: Okay, great. Well, thank you guys.  
13 Thank you for coming down here. We had tried to get you all  
14 here at 1:00, but apparently that wasn't going to happen.  
15 We had a longer break than I had anticipated, but that's  
16 okay.

17 So I guess why I wanted to kind of work with you  
18 all just real quick, and Mr. Brown, you know, you're the  
19 Appellant here and brought this before us. There's a couple  
20 of issues that have been brought before us.

21 And I'm going to open up also to my colleagues if  
22 they have any thoughts on any of those. There was a motion  
23 of strike some of the materials and issues I believe that  
24 came from DGS as well as a motion to exclude or grant -- a  
25 motion to exclude, I guess. And both of those are from DGS's

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1 attorney. Is that correct?

2 MS. MOLDENHAUER: Yes, that is correct.

3 MR. HILL: Could you kind of explain both of those  
4 to us, please?

5 MS. MOLDENHAUER: Sure. So we have a motion to  
6 strike and a motion in limine.

7 MR. HILL: Ms. Moldenhauer, can you just place  
8 that microphone down a little bit?

9 MS. MOLDENHAUER: Is that better?

10 MR. HILL: Yeah. Thank you.

11 MS. MOLDENHAUER: No problem. So we have a motion  
12 to strike and a motion in limine. There really are kind of  
13 four major points. I'll break them up into two different  
14 sections. The first two are issues that are not germane to  
15 the case under Section X, 1100.3, both relating to issues  
16 regarding either the snow drift or the carbon monoxide build  
17 up.

18 Both snow drift and carbon monoxide build up are  
19 issues that are overseen by DCRA under the building code.  
20 And under Section 1100.3, the Board has no jurisdiction to  
21 hear issues that are not relevant based on the zoning  
22 regulations.

23 The zoning regulations have no reference to snow  
24 drift or carbon monoxide build up, so those are issues that  
25 both have written submissions, should be stricken from the

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1 record as well as a motion in limine to instruct all  
2 witnesses and the Appellant to not raise them during their  
3 argument.

4 MR. HILL: Okay. Mr. Brown, do you have any  
5 thoughts on those?

6 MR. BROWN: I do not agree with the  
7 characterization of those as issues. What my clients would  
8 like to briefly articulate for you is the injury that they  
9 feel they are suffering as a result of the violations of the  
10 zoning regulations.

11 Injury, approximately caused or associated with  
12 the zoning violations that can be redressed by a favorable  
13 ruling is an essential element of standing, if not before  
14 this Board, certainly, and in any appeal of a Board decision,  
15 where my clients felt aggrieved.

16 So we're not saying that there's been a violation  
17 with respect to snow drift or CO2 or anything else that has  
18 been characterized as -- in the motion -- as an issue in this  
19 case. But it's simply testimony from my clients, because  
20 they are entitled to demonstrate before this Board how they  
21 feel injured by the zoning violations.

22 MR. HILL: Okay. So I think, and let's talk about  
23 this for a minute here with my colleagues. I guess, Mr.  
24 Brown, as I was speaking to you the last time you guys were  
25 here, what I was -- well, the Board I think what they were

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1 focused upon was again how has the zoning administrator erred  
2 in his decision.

3           And so what I was trying to focus upon, and I'll  
4 give you my opinion. I mean we've read the material that's  
5 in the record. I think that I just wanted to have an  
6 opportunity for you to kind of articulate this.

7           What I had spoken to as you guys left the last  
8 time was again looking at this in terms of how the zoning  
9 administrator erred as to whether or not this was or wasn't  
10 an apartment house.

11           So that was how I was kind of going to focus this  
12 argument or at least how I was kind of looking at it, as that  
13 was one the -- one of the errors that you all had put  
14 forward. And then, and to that, you can speak however you  
15 want to speak to in terms of that the zoning administrator  
16 made an error, that this is not an apartment house.

17           Then the other was the meaningful connection.  
18 That was another area that wanted to focus upon in terms of  
19 how the zoning administrator has erred in terms of there  
20 being a meaningful connection.

21           So I'm just kind of sharing with you my thoughts  
22 again in terms of what has been put forward in the record.  
23 I think that in terms of issues that might consequential  
24 injurious effects that might happen from the zoning  
25 administrator's error, first of all, I believe is actually

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1 I would agree with the property owner in that it's outside  
2 of our purview.

3 But in addition to even it being outside of our  
4 purview, it's really something that would happen -- it's not  
5 the zoning administrator's error. Like we're here as to  
6 whether or not, again, he made an error, whether or not this  
7 is or isn't an apartment building and whether the meaningful  
8 connection is or isn't accurate.

9 So that's what I'm going to be trying to delve  
10 down into as you're kind of going through your testimony.  
11 So, and I would appreciate again any further clarification  
12 from my colleagues.

13 In terms of the motion to strike, I think that the  
14 written material is kind of convoluted. So there's just too  
15 many things in there in terms of trying to strike different  
16 things. I don't know exactly.

17 And just from the filings it seemed that DCRA was  
18 in agreement with DGS's -- not DGS, the property owner's  
19 motions and that it's a little difficult to kind of try to  
20 figure out how to pull out all the written material.

21 I would be -- now I'm looking at my colleagues  
22 here. I would be in support of the motion to strike any  
23 testimony from potential witnesses that might be coming from  
24 the consequential, you know, effects of -- I mean in terms  
25 of snow drifts, monoxide, these type of issues, I mean I

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1 think that's beyond us.

2           And that's not what is before us. What's before  
3 us is, did the zoning administrator make an error in issuing  
4 this building permit? And that is what is before us. So I  
5 would be in favor of granting the motion to strike with  
6 respect to again potential witnesses speaking to the  
7 consequential effects of this supposed error.

8           I mean we're going to find out, you know, during  
9 this hearing whether or not we believe that there was or was  
10 not an error. In terms of the granting the motion to exclude  
11 or in limine, I think that's kind of being granted if we are  
12 saying that the testimony should just be again about what is  
13 or isn't the zoning administrator's error. So that's what  
14 I think. What do you guys think?

15           MEMBER SHAPIRO: Mr. Chairman, I would agree and,  
16 you know, just to reiterate a bit of what you're saying, I  
17 just don't see how you remove references to these issues from  
18 the written materials.

19           But it's not germane to our case, and we certainly  
20 don't want to hear witness testimony on these -- on those  
21 issues. So I agree with you.

22           VICE CHAIRPERSON HART: Yeah, I don't have a  
23 problem with the motion, but I'm a little bit trying to  
24 understand how we go about doing that if we are -- I  
25 understand that we can -- that we're not looking at things

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1 that are not germane to the actual, you know, issue before  
2 us, what the error was.

3 But I'm a little bit unclear as to how that  
4 translates into the record or -- do you see what I'm saying?  
5 It's like, are we just taking out those -- that testimony in  
6 total, or are we taking out a portion of that?

7 MEMBER SHAPIRO: I think this is the messiness  
8 around it.

9 VICE CHAIRPERSON HART: Yeah.

10 MEMBER SHAPIRO: There are references to it in the  
11 record in written submissions that are just going to be hard  
12 to pull out. I think it's more an issue of as we proceed,  
13 if we -- as we proceed, we just reiterate that these are  
14 pieces that are coming forward that are not germane to the  
15 case before us.

16 And I think it's more about managing the process  
17 and make it clear that we do not want to hear from witness  
18 testimony that is related to these issues that are not  
19 germane to the case.

20 MR. HILL: Right. So then again, and this is the  
21 whole thing, like consequential to the error. That's not  
22 what's before us. Was there or wasn't there an error?

23 MEMBER SHAPIRO: That's what's before us.

24 MR. HILL: So, and I'm going to turn to OAG,  
25 because I'm not really sure how to address Mr. Hart's

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1 question, which is -- again, I guess you would deny the  
2 motion to strike with respect to written material but grant  
3 the motion to strike with respect to potential witnesses  
4 concerning the consequential effects of the error.

5           And then in terms of the -- well, first of all,  
6 I mean is that -- and then in terms of the motion to exclude,  
7 it seems as though we are basically granting the motion to  
8 exclude if all we want to hear about is the actual error that  
9 is being brought before us.

10           MS. NAGELHOUT: That's correct. The written  
11 material is there. It's throughout the record. It's been  
12 there from the beginning, and it's not material to the issues  
13 in the appeal. So the Board can disregard it.

14           But you do not -- so to that extent you can grant  
15 the -- I mean you can deny the motion with respect to the  
16 written materials but grant the motion with respect to  
17 potential witness testimony, and then grant the other motion  
18 to exclude testimony.

19           I see those two as being essentially the same.  
20 And it would just mean that you would not take testimony from  
21 witnesses about the consequential effects. You want to hear  
22 testimony only relevant to whether, in fact, an error has  
23 occurred.

24           MR. HILL: Okay. So Mr. Brown, you've heard all  
25 the discussions here. I'm going to give you an opportunity

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1 just to respond. Do you have any response?

2 MR. BROWN: If I understand the ruling so far,  
3 it's about the complaint that we referenced, consequential  
4 effects of snow drift and CO2, contributions to CO2. We have  
5 not yet discussed, as I understand it, the other aspects of  
6 injury relating to the proximity of the building to the  
7 condominium, which is the other aspect of Ms. Moldenhauer's  
8 argument.

9 VICE CHAIRPERSON HART: I think just to clarify,  
10 we're actually looking at CO, carbon monoxide. So CO2 is --

11 MR. BROWN: I'm sorry.

12 VICE CHAIRPERSON HART: I just want to make sure  
13 we're clear on that.

14 MR. BROWN: All right.

15 VICE CHAIRPERSON HART: That's all.

16 MS. MOLDENHAUER: And I --

17 MR. BROWN: I have more to say about the other  
18 aspects.

19 MR. HILL: That's okay. We're just -- that's all  
20 right. So I'm just -- does anybody have any questions for  
21 the witnesses concerning anything that we just talked about?  
22 Okay.

23 So I guess, and what I want to do because this,  
24 I think, is -- I want to provide an opportunity, Mr. Brown,  
25 for you to kind of like process this a little bit. So we're

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1 going to take a little break after this.

2           Okay, which is to say again I'm going -- at least  
3 what the Board seems to be agreeing with is to grant the  
4 motion to strike the written material, but --

5           VICE CHAIRPERSON HART: I'm not sure --

6           MR. HILL: I'm sorry.

7           VICE CHAIRPERSON HART: I'm not sure if we're  
8 looking -- I think we're --

9           MR. HILL: I'm sorry. We can't grant -- I can't.  
10 We can't grant the motion to strike the written material,  
11 because it's too convoluted within the record. So it was  
12 deny the motion to strike the written material, and then  
13 grant the motion to strike with the testimony from potential  
14 witnesses concerning -- again, I'm going to just keep  
15 repeating this, the consequential injuries from the error.

16           We are here to determine whether or not, based  
17 upon this appeal, the zoning administrator has erred in this  
18 building permit, okay. So I'm going to go ahead and make a  
19 motion to deny the motion to strike the written material,  
20 however, grant the motion to strike the respect -- I'm sorry.

21           Grant the motion to strike potential witnesses  
22 with respect to consequential injuries from the effect of the  
23 error from the zoning administrator as well as grant the  
24 motion to exclude testimony about claims of adverse effect  
25 arising from the error from the zoning administrator.

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1 I mean we are here based -- we are here to  
2 determine whether or not the zoning administrator has erred  
3 in the building permit. So I've made this motion. I'm  
4 trying to be as judicious as possible.

5 Now the building -- the property owner's attorneys  
6 just raised their hand. And so I'm about to make a motion,  
7 and so I'm -- is there something you'd like to add?

8 MS. MOLDENHAUER: Just a point of clarification.  
9 Mr. Brown identified -- I was initially trying to bifurcate  
10 these two as two different issues. I referenced the snow  
11 drift and the carbon monoxide.

12 But there's also then issues of loss of light and  
13 enjoyment of fresh air, which I believe Mr. Brown was making  
14 reference to in our motion. And I just, I want to -- you  
15 seem to be kind of categorizing them all as consequential  
16 effects.

17 But I had not verbally identified the second two  
18 in my oral statement, because I was trying to separate out  
19 building code issues versus special exception type of review.  
20 So I just want to be clear to the Chair.

21 And I didn't want you to prematurely make a motion  
22 before I'd had a chance to kind of identify the second half  
23 of our motion. I apologize.

24 MR. HILL: That's all right. So I guess again,  
25 Mr. Brown, and this is what I was speaking to from the last

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1 time we were here together was again how the zoning  
2 administrator has erred, right.

3 And so anything that would be a consequential  
4 effect from that error is not germane to what we are here and  
5 now speaking to in terms of the error to the zoning code.  
6 So I'm going to just try to, as we go through the hearing,  
7 keep us focused on what the error is within the zoning code.

8 So if we start to talk about light and air, if we  
9 start to talk about other things that are a consequence of  
10 the error, that will not be within our purview at this time.  
11 What we're actually trying to determine is whether or not the  
12 zoning administrator has erred in the issuance of the  
13 building permit.

14 So I'm just trying to clarify, and I'm not -- so  
15 I've made my motion again. I don't think I have to remake  
16 the motion. I think it's the same clear motion. Does OAG  
17 understand my motion because -- okay. So it's clear. May  
18 I ask for a second?

19 VICE CHAIRPERSON HART: Second.

20 MR. HILL: The motion has been made and seconded.  
21 All those in favor, say aye.

22 (Chorus of ayes)

23 MR. HILL: All those opposed? All right. The  
24 motion passes. Okay. So that's that part. Now as I  
25 mentioned, I wanted to give an opportunity to Mr. Brown, the

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1 Appellant, to kind of think through this now, because this  
2 does probably change the way you might have started your  
3 hearing or going about your hearing.

4 And so I'm going to take just literally like  
5 three, five minutes. Is that all right, Mr. Brown?

6 MR. BROWN: I don't think that's necessary.

7 MR. HILL: Okay. All right. So then if that's the  
8 case, Mr. Brown, so I'm going to go ahead. And you can go  
9 ahead and start your argument as to again how the zoning  
10 administrator has erred in your application in terms of the  
11 appeal here.

12 I suppose I'm going to try to keep us on a little  
13 bit of a time, so I understand how this works one way or the  
14 other.

15 MS. MOLDENHAUER: We had a preliminary issue  
16 regarding an expert witness. I don't know if you want to  
17 take it up now or later.

18 MR. HILL: And other people are joining us at the  
19 table, so give me one second. The expert witness, again,  
20 was?

21 MS. MOLDENHAUER: Director Zeilinger.

22 MR. HILL: Director Zeilinger. I think Director  
23 Zeilinger has already been established as an expert witness  
24 before. Has she not?

25 MS. MOLDENHAUER: Yes, she has, but I just wanted

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1 in this case to confirm that we were requesting that. We  
2 requested it.

3 MR. HILL: Okay. We're familiar with Director  
4 Zeilinger. I don't have an issue with her being an expert  
5 in the area put forward. Does anybody have any objection to  
6 it on the Board?

7 MEMBER SHAPIRO: No, sir.

8 MR. HILL: No. All right. So there you go, Ms.  
9 Moldenhauer. Now okay, let's see. So Mr. -- all right, Mr.  
10 Brown. I'm going to -- I'm trying to figure out how I'm  
11 going to try to go through this. So I forget. Mr. Brown,  
12 have you done an appeal with us before?

13 MR. BROWN: Have I done an appeal with you before?

14 MR. HILL: Yeah. I know you've been before us,  
15 but I just can't remember if it was an appeal or not.

16 MR. BROWN: This is my third time with Ms.  
17 Moldenhauer on homeless shelters.

18 MR. HILL: Were they appeals?

19 MR. BROWN: No. They weren't appeals.

20 MR. HILL: They weren't appeals. Well, I was just  
21 trying to remember the format as for an appeal. The appeal  
22 takes a little bit longer in my head.

23 MR. BROWN: Yes.

24 MR. HILL: So that's what -- you guys were just  
25 party in opposition as I recall. So okay. So you'll go

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1 ahead and have an opportunity to present. I'm going to go  
2 ahead and give you 20 minutes for now. Okay.

3 And we'll see where we get. And because it's  
4 questions, answers, everybody's going to get 20 minutes.  
5 Again, we're trying to figure out how your client believes  
6 that the zoning administrator has erred. And so you can  
7 begin whenever you like.

8 MR. BROWN: All right. Thank you, Mr. Chairman.  
9 I want to understand --

10 MR. HILL: And I apologize. Before you start  
11 timing the time. So would you gentlemen please introduce  
12 yourselves for the record?

13 MR. GIRVIN: Sure. I'm Cammeron Girvin, and I'm  
14 on the Board of Residences of Columbia Heights.

15 MR. HILL: Could you spell your name again, Mr.  
16 Girvin?

17 MR. GIRVIN: Yeah. First name, Cammeron with two  
18 M's, C-A-M-M-E-R-O-N. And last name Girvin, G-I-R-V-I-N.

19 MR. HILL: Okay, great. Thanks.

20 MR. GAMBRELL: Alan Gambrell. Afternoon.

21 MR. HILL: Can you spell your last name, Mr.  
22 Gambrell?

23 MR. GAMBRELL: Sure. G-A-M-B-R-E-L-L.

24 MR. HILL: Welcome back, Mr. Gambrell.

25 MR. GAMBRELL: Thank you.

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1 MR. HILL: All right. Okay, Mr. Brown, whenever  
2 you'd like.

3 MR. BROWN: I just want to start by saying that  
4 my clients do not have unlimited deep pockets to present an  
5 expensive appeal. There's been a bit of a division of labor  
6 here in this presentation.

7 All three of us will be speaking. We've been  
8 careful to make sure that we don't overlap each other. And  
9 we'll go through it expeditiously.

10 MR. HILL: Okay. I appreciate that. Thank you.

11 MR. BROWN: I want to start by emphasizing again  
12 what's in red letters on our first slide. The residents do  
13 not oppose a Ward 1 shelter. From the very start, this has  
14 not been a case where, unlike my prior cases, my clients were  
15 opposed to the location of the Ward 1 shelter.

16 They are welcoming the Ward 1 shelter. They are  
17 just concerned about certain violations of the regulations  
18 associated with putting the shelter in the way that they've  
19 done so in this location.

20 There are two main issues on appeal, the failure  
21 to apply for and obtain a special exception before obtaining  
22 the building permit, my clients felt like other -- like the  
23 other emergency shelters that this case should have gone  
24 through the special exception process in which the Board  
25 could appropriately condition the grant of the special

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1 exception to make sure that it didn't have an adverse impact  
2 on immediately adjacent properties like the condominium.

3           The second issue is the failure to provide a  
4 meaningful connection between this building and the Rita  
5 Bright Community Center. And this ties directly into their  
6 concerns about light and air on the property because if they  
7 didn't have that meaningful connection, this building would  
8 be a standalone building.

9           And it would be required to be set back 15 feet  
10 from the condominium building rather than being built almost  
11 right up to the property line. And of course that makes a  
12 huge difference in the light and air available to the  
13 building.

14           MS. MOLDENHAUER: I would object. There's been  
15 two references to light and air. I'm going to try not to  
16 object, but I want to make sure that's on the record. Thank  
17 you.

18           MR. BROWN: The other two issues are a parking  
19 shortfall and loading shortfall, but those are entirely  
20 derivative of the decision not to go through in a special  
21 exception, which is based upon -- the DGS argument is based  
22 upon the notion that this is all one use, an apartment use,  
23 when we say no, it's not an apartment use.

24           It's a combination of two uses, partly an  
25 apartment house use and partly an emergency shelter. And of

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1 course we've already discussed previously the issue of  
2 whether or not this appeal was filed in a timely manner.

3 As for the zoning error, we feel that their  
4 failure to apply for a special exception was basically one  
5 way to avoid the process of review of the neighboring impact  
6 on our property.

7 Originally, the site was planned for 29 emergency  
8 shelter units. And that was increased when the original site  
9 was -- turned out to be unavailable. And they located the --  
10 they relocated the property to the Rita Bright Center and  
11 changed the allocation from 29 emergency shelter units to 35  
12 apartment style units and 15 permanent supportive housing  
13 units.

14 This is the definition of emergency shelter in the  
15 zoning regulations. It's a facility providing temporary  
16 housing, and I emphasize the word "temporary housing" because  
17 that's going to come up repeatedly in the statutes.

18 For individuals who are otherwise homeless, as  
19 that arrangement is defined in the Homeless Services Reform  
20 Act of 2005, and we're going to talk about that Act and the  
21 two successor Acts that implemented it -- the Homeless  
22 Shelter Replacement Act in 2016 and the amendment to that Act  
23 in 2018, which authorized the transition of the Ward 1  
24 shelter from its original location to its current location.

25 In all three of the Acts, they all talk about

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1 temporary shelter, and all of them talk about the possibility  
2 that those temporary shelters could be apartment style units.  
3 And I've highlighted here the actual text of the language in  
4 those three acts emphasizing the connection between temporary  
5 shelter units, and as at least one of the options available,  
6 apartment style units.

7           Now it's true that in the case of the Ward 3  
8 through Ward 8 shelters, the units that were authorized were  
9 one room units as replacements for facilities in D.C. General  
10 and that the units that were authorized for Ward 1 were  
11 apartment style units. But all of them were within the  
12 rubric of their being temporary shelters. And all of the  
13 D.C. General replacement units are considered emergency  
14 shelters or short-term family housing. And you can see this  
15 in the various orders and language used in the various  
16 documents that were before this Board for those special  
17 exceptions. And we've listed all of the actual Board orders  
18 for those six special exceptions.

19           Now we have to go back underneath the emergency  
20 shelter definition to look at what constitutes an apartment  
21 building. It's one or more habitable rooms with kitchen and  
22 bathroom facilities. And this particular building has what  
23 we regard as 15 apartment units and 35 apartment style  
24 emergency shelter units. There is no rental agreement or  
25 ownership on the part of the tenants or occupants of these

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1 emergency shelter units.

2           And our basic position is that when a building has  
3 two different uses that fall within different use categories  
4 under B 2002.1, each use is subject to only the regulations  
5 in that use category. And that's why, for example, we say  
6 that there is a parking and loading shortfall for this  
7 building because those requirements were geared to thinking  
8 of this building as simply a 50-unit apartment building  
9 rather than two separate uses.

10           Here again you see the statute and the language  
11 showing that the apartment style units are well within the  
12 general authorization for temporary shelters, both in the  
13 original 2005 Act and in the implementing legislation in 2016  
14 and 2018, temporary shelter, including apartment style units.

15           And we also noted in our presentation in a number  
16 of places where the city kept calling this unit an emergency  
17 shelter.

18           MR. GIRVIN: Let me take over now.

19           MR. BROWN: Okay.

20           MR. GIRVIN: Okay. Yeah, I want to highlight  
21 quite a bit of places where the city has referred to this as  
22 an emergency shelter. Government documents refer to it as  
23 such. Examples include the Mayor's press release, budget  
24 documents from the city council.

25           Even Ms. Moldenhauer referred to it in documents

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1 submitted for this hearing as a shelter. There was a good  
2 neighbor protocol that was circulated that basically just  
3 copied a text from the protocol for one of the shelters,  
4 applied it to this one. We could see it in the tracked  
5 changes in the D.C. government documents. Budgets refer to  
6 it as a shelter, and even the Mayor was under the impression  
7 that that's how this is treated.

8 MR. HILL: Yeah, that's okay. You don't -- okay.  
9 Mr. Girvin, we don't need to do this one. I understand  
10 there's a lot of, you know --

11 (Video played)

12 MR. HILL: Mr. Girvin, how long is this press  
13 conference?

14 MR. GIRVIN: Just one sentence.

15 (Video played)

16 MR. GIRVIN: So you'll see that the Mayor was  
17 under the impression -- she was led to believe that all of  
18 these facilities had been treated equally. And you might  
19 notice that she thanked Meridith Moldenhauer for bringing the  
20 Ward 1 shelter before the BZA.

21 So we just see that this is undeniably required.  
22 The legislation that authorized the building is for a  
23 shelter. And if DGS is not building a shelter, then they are  
24 misappropriating District funds.

25 City documents and city officials refer to the

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1 building as a shelter. Even our Mayor was led to believe  
2 that the Ward 1 shelter had received a special exception  
3 approval. Any denial of these facts is simply participating  
4 in the spreading of misinformation.

5 MR. BROWN: Is it back to me? Now our second  
6 error is a failure to provide the rear yard setback required  
7 under G 405.2 for the MU-5A zone, which I said is 15 feet.  
8 And the reason that there is no setback is because when --  
9 if the two buildings are considered one, there's already an  
10 existing setback from either Chapin Street or Clifton Street.

11 But right now, Clifton is the front of the  
12 building and the rear yard is on Chapin. And that's -- that  
13 would -- and so if you can merge the two buildings together,  
14 there's no need for a rear yard requirement abutting the  
15 condominium property.

16 Now DGS argued in the Ward 3 case that a  
17 meaningful connection would be practically difficult because  
18 they were connecting two structures devoted to two very  
19 different uses. One of them, you may recall, was the 2nd  
20 District Metropolitan Police Station, and the other was a  
21 homeless shelter. And this Board granted a variance because  
22 it recognized that those two very different uses, if they  
23 were connected with a meaningful connection, would create  
24 operational difficulties for both.

25 MR. HILL: Are you citing that case saying that

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1 it wasn't a meaningful connection?

2 MR. BROWN: They didn't try to justify it as a  
3 meaningful connection. They basically asked for permission  
4 for the variance to have two separate buildings on the same  
5 lot. That is a -- that was -- a variance requirement was  
6 necessary in that zone.

7 I believe it was the RA-1 zone. But a variance  
8 is not necessary in the MU-5A zone. Two buildings on one lot  
9 is permissible in the MU-5A zone. Here is the -- here is a  
10 diagram showing the actual effect of failure to provide a  
11 rear yard setback.

12 You see in the red circle the condominium building  
13 almost immediately up against the new shelter building. I  
14 won't go into the details of this or just I'll highlighting  
15 the rooms, the apartment rooms in the condominium that are  
16 most closest to the wall that will be up against the  
17 condominium building.

18 And I want to emphasize the sequence of events  
19 that took place here. When this site was selected and well  
20 after the city said that the short-term family house and the  
21 Rita Bright Center would be in separate buildings and still  
22 nine months after plans were first developed and permits were  
23 applied for, there was no meaningful connection in the  
24 drawings.

25 But after the residents pointed out in dialogue

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1 with city officials that putting a second separate building  
2 on this property would violate the rear setback requirement.  
3 The answer was a sort of strategic response to go to Section  
4 309.1 to try and justify bringing these two buildings  
5 together as a single building in order to avoid the setback  
6 requirement.

7           There really is no other reason for these two  
8 buildings to be connected. They have no functionality  
9 interchange whatsoever. And the only -- and that's -- and  
10 they didn't even need a variance in order to put the two  
11 buildings up in this particular zone.

12           In order to justify being a single building, the  
13 two buildings have to be under 309.1, fully above grade. The  
14 connection between the two buildings has to be fully above  
15 grade. It has to be enclosed.

16           It has to be heated and artificially lit, and one of  
17 two possible requirements has to be met. The common space  
18 shared by users of all portions of the building, the area  
19 that is the connection between the buildings has to be common  
20 space shared by users of all portions of the building, such  
21 as a lobby or a recreation room or a loading dock or service  
22 bay, or it has to be space that is designed and used to  
23 provide free and unrestricted passage between the separate  
24 portions of the building.

25           And I just want to briefly show how in at least

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1 two three instances this meaningful connection does not meet  
2 those requirements. First, we note that the definition of  
3 building is that you don't get to be considered a single  
4 building if there is a connection between the two buildings  
5 that's below the main floor. The structures have to be  
6 separated from the ground up to be considered a separate  
7 building.

8           And under -- and that definition of building  
9 separate is reflected in the newer B 309.1 definition. So  
10 just going over these characteristics under B 309.1, the  
11 fully above grade requirement is not met because the  
12 connection is at the -- is shown in the P1 plan as not fully  
13 above grade. And the zoning administrator's conclusion that  
14 this was essentially partly above and partly below grade  
15 doesn't give -- doesn't do proper service to the word  
16 "fully." The word "fully" in the zoning regulations means  
17 fully.

18           Here is a diagram of the P1 level showing where  
19 the grade is and showing that a considerable amount of the  
20 connection between the two buildings is not fully above the  
21 grade. And here's another diagram, a couple more diagrams  
22 showing essentially the same thing. Go ahead. Is this where  
23 Alan takes over?

24           MR. GIRVIN: Not yet.

25           MR. BROWN: Okay. So this is -- what I've said

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1 about the zoning code is also true with regard to the  
2 building code analysis.

3 MR. HILL: I'm sorry. We just have a question,  
4 Mr. Brown.

5 MEMBER SHAPIRO: Can you go back to your -- the  
6 drawings you had of the plans? What here are you considering  
7 -- just so I'm clear because I'm sure we're going to hear  
8 back and forth on this. What here are you considering the  
9 piece that is the meaningful connection?

10 MR. BROWN: Everything that establishes the  
11 pathway between the two buildings, including the entranceways  
12 to this connector.

13 MEMBER SHAPIRO: Draw it. And you can use your  
14 finger if you want. Draw -- what here are you considering  
15 the meaningful connection?

16 MR. GIRVIN: The areas with the boxes around them.

17 MEMBER SHAPIRO: Everything within that box?

18 MR. GIRVIN: It's focusing on the very small area  
19 where you see it being scribbled in.

20 MEMBER SHAPIRO: So this?

21 MR. GIRVIN: Yeah.

22 MEMBER SHAPIRO: Yikes. That was something.

23 MR. GIRVIN: Yeah, right here. The tip of that  
24 thing. I think you see it.

25 MEMBER SHAPIRO: Okay. Thank you. Thank you, Mr.

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1 Girvin.

2 VICE CHAIRPERSON HART: Could you back a slide?  
3 And could you explain this slide?

4 MR. GAMBRELL: Sure. This slide, actually there  
5 are a number of plans that show the elevation. And the  
6 dotted line is actually the grade for the building, which is  
7 a reference point for meaningful connection fully above  
8 grade.

9 MS. MOLDENHAUER: Sorry. Can I just -- I'm going  
10 to object in regards to the foundation of the document.  
11 They're referencing a grade, but I don't know if they have  
12 any architect that has identified the grade. I don't know  
13 where this line is being provided by.

14 VICE CHAIRPERSON HART: What I'm really trying to  
15 figure out is: what is this that I'm looking at? I know it's  
16 kind of an elevation kind of a section. But I'm not exactly  
17 sure where it is, so that's what I was trying to understand  
18 and what I'm supposed to be focusing on for it.

19 MR. GAMBRELL: Actually Cammeron, go back a few.  
20 It might be clearer. Keep going. One more. Okay. Go back  
21 forward. Okay. What we did is we wanted to show the P1  
22 level as not being fully above grade from each perspective  
23 from the site. And that would be from the north, looking  
24 west and looking south. And at all levels, the P1 is not  
25 fully above grade.

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1           VICE CHAIRPERSON HART: But the P1 is not what  
2 we're talking about. We're talking about that connection.  
3 So P1 is an aspect of what is -- of the building, but the  
4 part of it that you focused on was that kind of hallway  
5 connection that we're talking about. And I was trying to  
6 figure out where the hallway connection is with respect to  
7 this drawing.

8           MR. GAMBRELL: Correct. And I'm sorry for that.  
9 Yes, the connection is in the P1 level. That's the key  
10 point.

11           MEMBER SHAPIRO: I just want to -- where is the  
12 meaningful connection in the drawing that you just moved us  
13 from?

14           MR. GAMBRELL: I'm sorry. That's not right. I'm  
15 sorry. It's right here. And this was the exhibit that was  
16 provided by DGS on February 7th. In terms of the grade  
17 designation, by the way, that's on the drawing. It's the  
18 measurement point which is 174.1 I believe, which is the  
19 grade. And Mr. LeGrant certainly can verify that.

20           VICE CHAIRPERSON HART: Yeah, I mean the hard part  
21 about some of this is that when you make calculations for  
22 different things, you have to look at different aspects of  
23 the building. If you looked at the height of the building,  
24 you would take that from a particular point that may be  
25 different from what the front of the building is because the

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1 building is on -- has three sides. So there are different  
2 ways of kind of thinking about all this.

3 And I'm trying to understand -- while I understand  
4 that you've drawn a line that's there, I don't know what that  
5 line is representing. I understand what you say it's  
6 representing. I don't know if that is actually what it's  
7 representing, if that makes sense.

8 MR. GAMBRELL: Yes, it does.

9 VICE CHAIRPERSON HART: And so what I'm trying to  
10 understand is you're saying that because there is a part of  
11 ground that is over here that is at a certain level, that  
12 this is the grade that we should be looking at.

13 The owner is saying -- well actually the zoning  
14 administrator is saying, well actually you take something  
15 that is different than this. And we look at what this is,  
16 but we look at some way of having this line that kind of  
17 comes across and connects the two.

18 You know, so there are different ways of  
19 interpreting that. And what we're trying to understand is:  
20 why are you thinking that this is the way in which it is  
21 telling you that this has to be considered the grade? What  
22 is -- where is the zoning that's saying that this is required  
23 to do it this way?

24 MR. GAMBRELL: Yeah. It's one of the complexities  
25 of how, as you know, 309.1 came into play in 2016, I believe.

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1 Prior to that, what the foundation would be or this  
2 measurement would be, the building definition, which  
3 references the main level.

4 And then 309.1 references fully above grade. So  
5 those two definitions, as Mr. Brown explained, do sync up.  
6 But you -- what you have to understand is that there is a  
7 relationship between those two.

8 And so for example, in this one -- and there are  
9 two ways to look at this. On P1, P1 is not at the main  
10 level. It's below the main level, and that's looking at the  
11 building definition. It fails that test in terms of there  
12 cannot be a meaningful connection if it's below the main  
13 level. That's one way.

14 The second way to look at it would be in relation  
15 to 309.1 and the words fully above grade. And the fully  
16 above grade would be in relation to Mr. LeGrant's original  
17 GFA analysis where he referenced and actually has a guideline  
18 that shows the grade as a straight plane.

19 VICE CHAIRPERSON HART: I'm going to back to this.

20 MR. GAMBRELL: Sure.

21 VICE CHAIRPERSON HART: But we can continue with  
22 the conversation. I just -- there are a couple of questions  
23 that I have in my head, and I'll ask them later as we kind  
24 of get through this.

25 MR. HILL: Okay, Mr. Brown. Go ahead and continue

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1 please. Maybe you've gotten to Mr. Gambrell's part. I'm not  
2 sure.

3 MR. BROWN: I'm not sure. Let me check.

4 MR. GAMBRELL: No, I'm slide 40.

5 MR. HILL: And maybe what we can do is if the  
6 Board does feel they have an issue they want to address, go  
7 ahead and ask it. Otherwise, we'll kind of wait until the  
8 end to ask our questions.

9 MR. BROWN: This is the building code analysis  
10 that was done for this particular project. And this is  
11 included in their drawings as well. Under the comments with  
12 regard to compliance with the building code, what the  
13 comments say is that the ground level is 5 feet 10 inches  
14 above the grade plane at 173.46.

15 And the lowest finished ground level is 167.92.  
16 The ground level is 10 feet, 11.25 inches above that point.  
17 Therefore, P1 is not considered a story above grade plane and  
18 does not count toward the allowable stories of a building on  
19 -- for purposes of compliance with the zoning and building  
20 code requirements. And we think that simply reinforces our  
21 position that this particular connection is not fully above  
22 grade.

23 On the second requirement, is the meaningful  
24 connection fully enclosed? The answer is yes. So we don't  
25 have an issue there. On the third requirement, is it heated

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1 and artificially lit? We say no. Our understanding is that  
2 the parking garage will not be heated and will not --

3 VICE CHAIRPERSON HART: Can I just ask a question?  
4 I understand that you're focused on the parking garage, but  
5 it seems as though the ZA and the owner have said that  
6 they're looking at the hallway.

7 So the hallway is not the parking garage. So  
8 while the parking garages may not be heated, the hallway  
9 might be. And can you focus on the hallway, what the -- if  
10 the hallway is heated or not because like I'm just trying to  
11 figure out how -- I'm just trying to understand those things,  
12 the difference between them?

13 MR. GAMBRELL: Sure. I'm sorry we're using the  
14 terminology P1 or parking level, but again, the meaningful  
15 connection or the alleged meaningful connection is in fact  
16 in the parking level, P1. The issue about whether or not the  
17 hallway is heated has been raised because you get from the  
18 parking area into the building in the passageway. But to our  
19 understanding of the drawings, there's no doorway there to  
20 block the entrance.

21 There's an entryway from going from your car up  
22 to an area where you have to put a key pass in and get into  
23 the building, which of course raises other questions about  
24 free and open access.

25 VICE CHAIRPERSON HART: I mean when I saw the

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1 image of the hallway in the plan, there were doors on either  
2 side of it. So there's a door in the entrance and door on  
3 the exit, and I just don't know how -- you wouldn't put doors  
4 in unless you were having some sort of, you know, HVAC access  
5 to that.

6 MR. GAMBRELL: Okay. It's quite possible we're  
7 incorrect on that point.

8 MR. HILL: Okay. So you can continue through that  
9 list. I just was -- what I'm trying to kind of separate out  
10 is the parking garage is one thing. The hallway or whatever  
11 is something else. And I want to make those things separate  
12 so that we have a good understanding of what that is.

13 I understand the parking garage may not be heated,  
14 but the hallway may or may not be heated. It seems as though  
15 that maybe we can find out whether or not that is from the  
16 Applicant -- not the Applicant, from the owner and DCRA, how  
17 they see that as well. But that's it. Thanks.

18 MR. BROWN: Okay. Turning then to subparagraph  
19 D, that is an either/or requirement -- either one or two.  
20 The first requirement is common space shared by all users of  
21 the building. As far as we can understand, DGS did not try  
22 to defend the -- this connection under D1.

23 They instead sought to defend it under D2. I  
24 think it's pretty clear that the common -- it's not common  
25 space that's going to be accessible to all users of all

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1 portions of the building in part because it doesn't comply  
2 with D2, which is that there must be free and unrestricted  
3 passage between the separate portions of the building, such  
4 as an unrestricted doorway or walkway.

5           And I'm just -- we're quoting here from page 9 of  
6 Exhibit 48, the RFP for the design build project specifying  
7 all of the security requirements that are going to have to  
8 be imbued within the new project.

9           All of these things may a great deal of sense to  
10 us, and certainly they should be there. They're the kinds  
11 of things that justified not considering the homeless shelter  
12 in Ward 3 to be part of the police station building and  
13 because the two types of buildings are fundamentally  
14 different uses.

15           And the security that they feel is necessary for  
16 the shelter basically means there's not going to be free and  
17 unrestricted passage between the two buildings.

18           MR. HILL: Mr. Brown?

19           MR. BROWN: Yeah.

20           MR. HILL: I'm just going to -- I know we've been  
21 asking questions. I'm just trying to get an understanding  
22 of time here just a little bit. So we're going to have a  
23 bunch of questions afterwards as well. How much still is  
24 left of you and Mr. Gambrell?

25           MR. BROWN: I would say we're well over halfway

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1 through.

2 MR. GAMBRELL: 10 to 15.

3 MR. BROWN: About 5 or 10 more minutes.

4 MR. HILL: It's okay. I'm just trying to say is  
5 we've already gone to kind of like 30 minutes almost. And  
6 so --

7 MR. BROWN: All right.

8 MR. HILL: -- if we could try to expedite the  
9 presentation portion so that we can get to the questions.

10 MR. BROWN: Very good. We're moving on.

11 MR. GIRVIN: This is Alan now.

12 MR. GAMBRELL: Sure. And again, just apologies  
13 for some of the confusion about the issue of P1. I think  
14 it's understandable. We were trying to really give you the  
15 building from each angle because DCRA and DGS have presented  
16 you with two different drawings.

17 On the original zoning administrator email back  
18 in March, that was the great plane analysis that was done  
19 looking west. DGS submitted on February 7th an entirely  
20 different view, which seemed to almost abandon the GFA  
21 analysis and seemed to suggest that the Parking 1, P1 level  
22 was fully above grade because it shows a doorway that appears  
23 to be fully open to the elements.

24 However, we believe that's a misrepresentation of  
25 the fact that the P1 level and the meaningful connection is

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1 partially below grade. So I'll skip past that. Go back real  
2 quickly. Okay. Go ahead. All right.

3 So what I'm going to do fairly quickly is explain  
4 why the case DGS decided, which is 19550, in fact does not  
5 say what DGS claims, which they say it supports their  
6 position on 309.1 D. And then quickly review 10 projects  
7 that supports the Appellant's position on what represents a  
8 meaningful connection.

9 As for 19550, you no doubt recall this case.  
10 There's no decision at this point, so that forced us to go  
11 through the transcripts, and you have my sympathy. That was  
12 a rather long and detailed discussion about what was meant  
13 by fully above grade.

14 For example, Member Hart made such a comment and  
15 question in that case, which is represented on bullet 1 here  
16 on slide 41. Next slide. As -- go back for a minute. As  
17 bullet 2 states -- let me get myself together here.

18 On this case, on 19550, the stairs on an earlier  
19 plan were in fact modified to make them fully above grade,  
20 as the next slide shows. Let me clarify this. DGS's  
21 position about 19550 is they're claiming that the zoning  
22 administrator has recognized a partially below grade or below  
23 grade as part of a common passageway.

24 In fact, in 19550 anything that was below grade  
25 was eliminated in this scheme. That would be what's depicted

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1 on the lower part of slide 42. You can also see it in much  
2 more detail here where the grade, exterior existing grade.

3           There's nothing about this meaningful connection  
4 that's below grade. So what DGS is arguing in relation to  
5 what this case says is, in fact, not the case.

6           If you look at the transcripts, which we did, Mr.  
7 LeGrant says my analysis of this connection is that it  
8 functions as a common space used by all users of the  
9 building, all portions of the building. And that's in  
10 Exhibit 68. And he's referring to that in relation -- I'm  
11 going to skip on that one. Okay. So go back to this slide  
12 please, Cammeron, to 43.

13           So really just to reiterate, the zoning  
14 administrator specifically said he was referring to  
15 compliance with 309.1D, the common space, not the fully above  
16 grade requirement. This is what this connection looks like  
17 in 19550. And I've already read what Mr. LeGrant said in  
18 that case, so I just wanted to clarify because DGS's filing  
19 suggested that a common space could be partially below grade.  
20 But that was not even the issue before the Board in that  
21 case.

22           Slide 44, please. So in terms of 19550, the  
23 question would be: does it provide some parallel argument for  
24 you in this case? And no, it doesn't. In the current case,  
25 it is not common space shared by all users of all portions

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1 of the building as it is only accessible to those with  
2 parking privileges.

3 And it is not space that is designed and used to  
4 provide free and unrestricted passage between separate  
5 portions of the building. Given the clear security  
6 provisions for gaining entry to not only the shelter but also  
7 Rita Bright for that matter.

8 Slide 45. Finally what I want to do is I want to  
9 race through eight projects to show what the Board and the  
10 zoning administrator have previously determined what is meant  
11 by fully above grade. And I think this will help crystallize  
12 the issue and the confusion around the P1.

13 In this case 19229 from 2019, the pink shaded area  
14 is showing what's deemed fully above grade. As you can see,  
15 there's nothing below that. There's no common passageway  
16 that leads into this area.

17 Next. This is another example of it. In fact,  
18 on this particular case they even went through the pains to  
19 show the natural or preexisting grade, which is the pink  
20 dotted line.

21 2800 Columbia Road, this is the zoning  
22 determination letter, the meaningful connection again fully  
23 above grade. 727 Euclid, again, there's nothing about this  
24 to indicate that anything about this project has any below  
25 grade passage way.

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1           19524 from 2017, and there are a couple of slides  
2 on this one. As you'll note, there's a -- right in the  
3 middle where it says the connector. And you can see the  
4 stairs there. And that gives you a suggestion that there is  
5 some partially below grade passageway.

6           Go back one. However, the case records in this  
7 19524, there is no discussion of partially below grade by the  
8 Board, the Office of Planning or the zoning administrator.  
9 So I think this is a case where it kind of just got by  
10 everyone quite frankly. Keep going.

11           711 Irving Street. It's a 2016 zoning  
12 determination letter, and the connection once again is above  
13 natural grade and mostly above the first floor plane. Rock  
14 Creek Church, 2017, the connection was deemed fully above  
15 grade. Next.

16           And I'm going back to 2018 on 1311 R Street. I  
17 want to just dissect this one a little bit. When I first ran  
18 across this, I thought this suggested to me that a common  
19 passageway could be below the main floor. But in fact, if  
20 you look very carefully at the plans, that's not the case.  
21 The meaningful connection in this case is the upper level,  
22 that little -- I don't know what color that is. It's on the  
23 left side indicated.

24           The shaded part on the bottom has nothing to do  
25 with meaningful connection in this case. It's simply a below

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1 grade hallway to provide access to the rear unit. So that's  
2 nothing that the zoning determination considered.

3 So again, this is a case where the meaningful  
4 connection is at the main floor level. It is in no way,  
5 shape or form partially below grade. And that's just an  
6 example to show you what I meant by that.

7 And I'm getting close to the end here. This is  
8 back in 2013, the zoning determination letter. And this  
9 really kind of helps draw back in how this whole meaningful  
10 connection has evolved over time. And this gets back to the  
11 definition of building. And this is the zoning determination  
12 letter, that the existence of communication below the level  
13 of a main floor does not make a single building.

14 And then here are two zoning orders, both PUD  
15 cases, and both of them in the discussion and the final  
16 orders make very clear a meaningful connection needs to be  
17 at that main floor level. It cannot be partially below  
18 grade.

19 MR. BROWN: Very quickly on parking and loading,  
20 if the -- if you were to apply the rule that each of these  
21 separate uses on this property has to meet the parking and  
22 loading requirements for that use, the parking requirement  
23 is 14 spaces, including the 50 percent bus corridor  
24 reduction, but only eight spaces are provided.

25 And the plan does not provide the required minimum

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1 of one loading space and one delivery space for an emergency  
2 shelter whose gross floor area is as this one is. It's  
3 between 30,000 and 100,000 square feet.

4 MR. HILL: All right. Mr. Brown, I'm sorry. My  
5 colleagues are up here speaking. So again, so these are some  
6 of those ancillary things that we spoke about.

7 MR. BROWN: Yes.

8 MR. HILL: So is there anything left with your  
9 presentation?

10 MR. BROWN: I don't think so.

11 MR. HILL: Okay.

12 MR. BROWN: Let me see.

13 MR. GIRVIN: I have a little bit.

14 MR. BROWN: Oh, sorry.

15 MR. GIRVIN: Yeah. We also want to point out that  
16 our ANC has not endorsed these plans. They've endorsed the  
17 site but haven't endorsed the design.

18 MR. HILL: Okay.

19 MR. GIRVIN: We'll -- I'm going to skip through  
20 this stuff about the consequences. I know we don't talk  
21 about that stuff. I will mention loss of light and fresh air  
22 are referenced in the zoning regulations, so yeah.

23 It's already on width. I do want to point out  
24 that we -- this is where we've really felt that we have the  
25 chance to be heard. We've, you know, we didn't get to do a

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1 hearing for the shelter.

2 We tried to attend the advisory team meetings, and  
3 they said it was too late to us. The zoning matters, I want  
4 to be very clear. We have tried to bring them up in other  
5 forums, and Tania Jackson, Brianne Nadeau's chief of staff,  
6 said to us zoning is on another track.

7 We weren't allowed to address that in the meeting.  
8 We've sent emails to DGS and the zoning administrator that  
9 have been ignored. I filed a FOIA request in June that was  
10 due in July, hasn't been answered. And so we --

11 MS. MOLDENHAUER: I would object to all of this --

12 MR. GIRVIN: Okay. All right.

13 MR. HILL: That's okay. Hold on. Let's just --  
14 so I'm just trying to -- at some point I want to get to our  
15 questions. That's where I'm trying to get to. So --

16 (Simultaneous speaking.)

17 MR. GIRVIN: Sure. Sure. We feel this is kind  
18 of the --

19 MR. HILL: Okay. Please move forward, Mr. Girvin.  
20 I understand.

21 MR. GIRVIN: Okay, sure. And I will point out  
22 that there's a good precedent for when this process has  
23 worked as it should. You may recall case 19705.

24 MR. HILL: All right. Thanks again, Mr. Girvin.  
25 I'm going to move you forward because I want to get to where

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1 we're going to get to ask some question.

2 MR. GIRVIN: Okay.

3 MR. HILL: Again, how --

4 MR. GIRVIN: Sure.

5 MR. HILL: No, no. Just give me one second.

6 MR. GIRVIN: Sure.

7 MR. HILL: It's again we're focusing in how the  
8 zoning administrator erred in whether or not this building  
9 was issued a building permit correctly as an apartment house.  
10 So that's the one I'm trying to kind of figure out.

11 So I see your slides, and your slide presentation  
12 was I believe completely in there. I think I saw all of  
13 these. I don't know if these last ones are new or not. So  
14 please go ahead.

15 MR. GIRVIN: Sure. There shouldn't be anything  
16 new from me on that.

17 MR. HILL: Okay.

18 MR. GIRVIN: I do want to give the neighbors a  
19 chance to testify. They prepared things, and they do want  
20 to address zoning regulations.

21 MR. HILL: Okay. I don't know whether or not, and  
22 this is OAG, we don't have public testimony during appeals.  
23 Correct?

24 MS. NAGELHOUT: You do not.

25 MR. GIRVIN: These are --

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1 MR. HILL: I'm just asking a question.

2 MR. GIRVIN: Sure.

3 MS. NAGELHOUT: You do not. You could hear them  
4 if they are witnesses for the Appellant --

5 MR. HILL: Okay.

6 MS. NAGELHOUT: -- but only on the issues that  
7 you've --

8 MR. HILL: Right.

9 MS. NAGELHOUT: -- designated.

10 MR. HILL: So if you guys have people that want  
11 to provide testimony, which is fine, again about what we're  
12 here speaking to, then you're welcome to have them go ahead  
13 and come forward.

14 MR. GIRVIN: Sure. As far as I understand, they  
15 are. And they're all residents of the building.

16 MR. HILL: Again, it's -- again, before you guys  
17 get up, and I'll let your -- well okay. You guys come on  
18 forward. Let's have the witnesses come forward please. You  
19 can sit wherever you guys like. Okay, that's fine. So if  
20 anybody didn't get sworn in, if you go ahead and stand and  
21 go ahead and get sworn in by the secretary here to my left.

22 MR. MOY: Do you solemnly swear or affirm that the  
23 testimony you're about to present in this proceeding is the  
24 truth, the whole truth and nothing but the truth?

25 (Chorus of ayes.)

1 MR. MOY: Thank you.

2 MR. HILL: Okay, great. So if you could please  
3 quickly introduce yourselves for the record from my right to  
4 left? Okay.

5 MS. KIRBY: Hi. Amity Kirby.

6 MR. HILL: Okay. And where do you live?

7 MS. KIRBY: 1420 Clifton Street. I am a member  
8 of the Board as well.

9 MR. HILL: Okay.

10 MS. BRIDGES: Good afternoon. Barbara Bridges,  
11 1420 Clifton Street, N.W., resident since 2000.

12 MR. HILL: Okay. Ma'am?

13 MS. QAMRUDDIN: Jumana Qamruddin, same residence  
14 in the same building, and resident since 2003.

15 MR. HILL: Okay. Sir?

16 MR. JATHWELL: Good afternoon, Chairman and the  
17 Board. My name is Neland Jathwell. I'm here representing  
18 Jordan McKenzie.

19 CHAIRPERSON HILL: Yes, I don't think you can do  
20 that. You'd have to have a letter saying that you're here  
21 representing Jordan McKenzie. You know. So, that's -- I  
22 mean, you could speak on your own behalf, if you know  
23 anything about what we're about to talk about. So you can  
24 sit down and figure it out.

25 And so, but what I'm trying to clarify, and I want

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1 you guys to really understand what I'm talking about, is  
2 we're not here about all these other effects. We're not here  
3 about light and air and all these things, right. What you're  
4 supposed to be witnesses to, and this is where your, the  
5 attorneys, and the two gentlemen behind you with the  
6 Association should have tried to help clarify. We're just  
7 talking about the errors.

8           You're witnesses to how the Zoning Administrator  
9 made an error. And you're not experts -- I'm sorry. You  
10 haven't been here necessarily -- I don't know, you seem  
11 familiar. So, like some of you might have testified in  
12 different ways before, so I'm not going to try to stop you  
13 from giving your testimony.

14           I'm just saying the things we're trying to listen  
15 for is again how the Zoning Administrator erred in issuing  
16 a building permit that this was an apartment house, and then  
17 also how the Zoning Administrator erred in that there's not  
18 a meaningful connection, right, to the building.

19           And by the way, those are very technical issues.  
20 So, if you guys speak to them, I'll be pretty happy, I  
21 suppose. But I'm going to give you each a minute, okay.

22           And so, you can go ahead, Ms. Kirby, we'll start  
23 with you. And so, just go ahead and give us your testimony,  
24 if you can, on those specific issues.

25           And Ms. Moldenhauer, we don't need to object or

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1 anything like that, to anybody. We're just trying to, I'm  
2 trying to be as focused as possible. That's what we're doing  
3 here with our witnesses. Thank you.

4 MS. MOLDENHAUER: Our objections are already  
5 noted, so we will hold off.

6 MS. KIRBY: Thank you. I guess you'll probably  
7 let me know if I stray, I go astray, but --

8 CHAIRPERSON HILL: Ms. Kirby, I got to let you  
9 know, it'll be too hard to probably figure -- it'll take me  
10 20 -- it'll take me so much longer to try to stop you, as to  
11 when you go astray or not. Just go ahead and give your  
12 testimony, and I'll try to be as focused as possible. Okay?

13 MS. KIRBY: Okay.

14 CHAIRPERSON HILL: All right.

15 MS. KIRBY: I'll try to be succinct.

16 CHAIRPERSON HILL: Okay, thank you.

17 MS. KIRBY: I appreciate it. The City has told  
18 me that everyone loses their view. What the City has not  
19 told me, as a resident, is what made them think it was okay  
20 to completely wall our courtyard and our residence in.

21 When we raised this issue with the City, that they  
22 were completely walling in our courtyard, we were offered  
23 that we could choose some wall color, on the wall. My  
24 understanding of U-513.1 is this doesn't follow zoning rules  
25 and regulations for a setback from our building.

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1           Anecdotally, I look out my window every day, and  
2 I see Ms. Bridges out on her patio, her balcony, enjoying her  
3 home, enjoying her quality of life. And it makes me sad that  
4 I know that that's going to go away. We are being  
5 marginalized for another group of people.

6           The zoning regulations are here for neighbors, and  
7 neighbors for cities and -- the city and for its residents.  
8 But the zoning laws, as far as we're concerned, are not being  
9 followed. There is not a 15-foot setback. This building is  
10 being put completely up against our building.

11           Do you have a pen?

12           CHAIRPERSON HILL: Okay. That's okay, Ms. Kirby.  
13 I mean, you're -- I mean, is there -- that's okay. Go ahead.

14           MS. KIRBY: Okay. I just -- without a --

15           CHAIRPERSON HILL: You're just speaking to the  
16 meaningful connection and what it's, actually might do to --

17           MS. KIRBY: Yes.

18           CHAIRPERSON HILL: -- to you guys. So, but go  
19 ahead.

20           MS. KIRBY: So, as you saw in the drawings before,  
21 our building is shaped --

22           VICE CHAIRPERSON HART: The drawings are really  
23 difficult for us to see. We're, actually have these as being  
24 webcast. And so --

25           MS. KIRBY: Yes.

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1 VICE CHAIRPERSON HART: -- when you show something  
2 up, it's just seen by us, but we actually have --

3 MS. KIRBY: Okay.

4 VICE CHAIRPERSON HART: -- a camera and all this  
5 other stuff. So, if you could talk about it, it would be  
6 helpful.

7 MS. KIRBY: I will.

8 VICE CHAIRPERSON HART: Okay.

9 MS. KIRBY: So, I just drew a capital letter I  
10 here, which is basically the shape of our building. Both of  
11 --

12 CHAIRPERSON HILL: Okay. That's okay. So no, no,  
13 I'm just -- again, and I'm going to stop because it was only  
14 a minute, right, and now it's getting -- and again, for --

15 MS. KIRBY: Okay.

16 CHAIRPERSON HILL: -- the application -- that's  
17 okay. I'm just -- I mean, you guys came down here. You were  
18 here before. And so it got -- the process got changed on you  
19 a little bit, which is that it's more really about again the  
20 meaningful connection between these buildings and how the  
21 Zoning Administrator erred in making that decision, right.

22 And then, in the -- I'm not trying to -- and in  
23 the definition of an apartment building, how the Zoning  
24 Administrator erred that this is not an apartment building.  
25 So that's what we're trying to take witness testimony about.

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1 And so, unfortunately, if you don't have a lot of expert  
2 testimony on that, you're giving us what might happen if this  
3 does move forward, right, which is not that, how the Zoning  
4 Administrator erred, which is what the appeal is about.

5 The appeal is about that they did make an error.  
6 So, all of the things that you're speaking to seems like  
7 things that the Association has already spoken to, meaning  
8 in terms of the building being up against that courtyard  
9 there.

10 But, I'm just trying to -- I understand the time  
11 limit, Ms. Kirby, and keep you as focused as possible. And  
12 I know you don't come down here that much, or some of you  
13 did, as I recognize some of you.

14 MS. KIRBY: Yes, we were here all day, the last  
15 time.

16 CHAIRPERSON HILL: Okay. Well, then I apologize  
17 for that, unfortunately.

18 MS. KIRBY: No, it happens.

19 CHAIRPERSON HILL: So, I'll tell you what, why  
20 don't I just do this, okay? I'm going to start again, okay.  
21 So, normally we take three-minute public testimony, okay, and  
22 we just take the testimony of the witnesses. And I'm going  
23 to give you all three minutes each, okay.

24 So, Ms. Kirby, it's too hard to try to figure it  
25 out, as to whether or not you're an expert in this, that or

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1 the other. And so now you guys came down here. We'll go  
2 ahead and hear you. And until I get the last gentleman, I  
3 haven't figured out what he's going to be about in a minute,  
4 because I don't know what his testimony, because it's not  
5 really public testimony. You're technically witnesses, okay.

6 So go ahead and get your three minutes. And I  
7 think you've already taken up some of it. If you need more,  
8 let me know. But, go ahead.

9 MS. KIRBY: I'm fine. I think I got out what I  
10 needed to say, so.

11 CHAIRPERSON HILL: Okay. Ma'am, can you go next?

12 MS. BRIDGES: Yes. Like I say, my name is Barbara  
13 Bridges, and my biggest concern is safety. They are not  
14 leaving enough access for first responders to even get back  
15 in that area should there be a catastrophe. Should my front  
16 door be on fire, or the kitchen blow up, I would exit out of  
17 my window into a block courtyard. First off, responders  
18 can't get through. That's my concern. That's my concern,  
19 is it's a real thing for me. Okay.

20 CHAIRPERSON HILL: Okay. No, thank you very much.  
21 Thank you. I mean, you guys have been here -- you guys --  
22 okay. Okay. No, you're all right. You okay?

23 Oh, well that's -- well, you guys were down here  
24 all -- you guys were here all last time, right, for however  
25 many hours it was, and you came back out here again. So, you

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1 know, I hope it does work out. All right? Okay.

2 Ma'am.

3 MS. QAMRUDDIN: So, I first want to start by  
4 saying thank you for taking the time to hear us today. And  
5 I'm especially grateful, as a taxpaying almost native of this  
6 city. I've lived here in this address for 17 years. You  
7 have no idea what it means to us, after several months of  
8 being treated as second class citizens, at best, and enemies  
9 otherwise.

10 This ordeal has been taxing, both financially,  
11 emotionally and intellectually. And I hope some of us are,  
12 know this parable, but this is to me a real life case of  
13 David and Goliath, versus Goliath.

14 I want to start by saying, we have nothing against  
15 the shelter. We just want important regulations that are in  
16 place to ensure that we are all a thriving, happy, safe  
17 people and community, that these are adhered to as this  
18 shelter is being built.

19 The disregard for regulations, which my friends  
20 have already spoke about, are egregious. The quick fixes and  
21 manipulations are being -- that are being proposed are  
22 disingenuous, and frankly ridiculous.

23 For example, as you have stated, it's so  
24 disturbing that the City is manipulating the B-3019 Single  
25 or Separate Building Rule by coming up with a so-called

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1 meaningful connection. It's clear, this is not a meaningful  
2 connection and it's not fully above grade. It's below the  
3 main parking floor and into the parking garage. It does not  
4 provide common space or free and open passage.

5           And I want to just say that when all of this has  
6 been happening, another marginalized community has been the  
7 parents and educators that work at the Rita Bright Center,  
8 who raised issues around this building having any kind of  
9 open access to children that are working -- that are going  
10 there for after-school activities, and have been going there  
11 for 40 years.

12           But what has been worse about this entire  
13 situation, and pardon me because I think it's important to  
14 not strike community members' or try to strike community  
15 members' testimonies.

16           CHAIRPERSON HILL: Ms. --

17           MS. QAMRUDDIN: Qamruddin.

18           CHAIRPERSON HILL: Qamruddin, Ms. -- just look on  
19 up to us, okay, Ms. Qamruddin?

20           MS. QAMRUDDIN: Yes. Thank you.

21           CHAIRPERSON HILL: Yes.

22           MS. QAMRUDDIN: But what has been worse is being  
23 gaslighted as a community. I'm sorry. And made to feel as  
24 if we have somehow lost our minds any time we're raising an  
25 issue that bring -- that is a topic that people don't like

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1 or do not agree with. This is when we have the facts on our  
2 side.

3 In addition, on several occasions when we raised  
4 questions, the summary answer has been, well you just don't  
5 care about homeless people. This is insulting, not based in  
6 fact, and is not a valid response to the questions that we  
7 have been raising.

8 We are concerned about our safety, our public  
9 health, our physical safety and our investments. Following  
10 the regulations alleviates all of those issues.

11 CHAIRPERSON HILL: Okay, Ms. Qamruddin --

12 MS. QAMRUDDIN: Again, I thank you for hearing --  
13 you for hearing us today. And we really appreciate your time  
14 and careful consideration. Thank you.

15 CHAIRPERSON HILL: Thanks. And I'm sorry to keep  
16 interrupting you guys. And this is because it's not part of  
17 my -- it's not part of the appeal process, is -- that's why  
18 it always gets confusing to us. Like, normally when we have  
19 -- if you guys were here for an application, then we take  
20 public testimony. Since this is an appeal, they're witness,  
21 it's witness testimony.

22 So any of the testimony that you guys are giving  
23 us that isn't about the facts of the case, are things that  
24 have no pertinence to what we're supposed to be -- listen,  
25 I mean, I'm giving you guys an opportunity to talk just

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1 because I -- if I were you, I'd want to know how to parse out  
2 everything that I had come to speak to. So, I'm just trying  
3 to clarify how we're listening to it. That's what I'm just  
4 trying to clarify.

5 So sir, you came down here representing somebody  
6 supposedly. No, you can't read the person's statement.  
7 That's why I'm just trying to get it. Who are you?

8 MR. JATHWELL: I do live in the building as well.

9 CHAIRPERSON HILL: Okay.

10 MR. JATHWELL: Jordan McKenzie is my neighbor.

11 CHAIRPERSON HILL: Okay.

12 MR. JATHWELL: He asked me to speak on behalf for  
13 him as he's teaching right now.

14 CHAIRPERSON HILL: Okay. Yes. Unfortunately, you  
15 can't do it, because it has to be a letter. But anyway, but  
16 thank you so much. Okay. All right. Okay, thank you guys  
17 very much.

18 We'll just --

19 MR. GIRVIN: And --

20 CHAIRPERSON HILL: Okay, so -- I'm sorry.

21 MR. GIRVIN: I'm sorry.

22 CHAIRPERSON HILL: No, no, that's all right. Go  
23 on.

24 MR. GIRVIN: Yes. We just want to kind of end  
25 with a recap. We see that this is apartment-style temporary

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1 housing, which is nonetheless an emergency shelter. The rear  
2 yard setback should be required, because there's no  
3 meaningful connection. Parking and loading requirements have  
4 not been met. There is no ANC support for the permit, and  
5 the plan.

6 CHAIRPERSON HILL: Okay.

7 MR. GIRVIN: And -- yes.

8 CHAIRPERSON HILL: Okay. All right.

9 MR. GIRVIN: We also -- I assume at this point  
10 that timeliness is not being debated, but we want to  
11 reiterate that we are appealing the building permit.

12 CHAIRPERSON HILL: Okay. All right. Okay, thank  
13 you guys very much. All right.

14 MR. GIRVIN: Thank you.

15 CHAIRPERSON HILL: So, we got -- why don't you --  
16 do me a favor, can you throw up that first slide that has  
17 the, the drawing with the -- it's the very first thing that  
18 you guys started with.

19 MR. GIRVIN: I'm sorry. I know there's a faster  
20 way to do this. I don't want to -- yes.

21 CHAIRPERSON HILL: Okay, that's fine. Right,  
22 okay. So again, I'm going to continue sticking with this,  
23 and we'll see how the -- I mean, for me, and you guys can  
24 keep asking.

25 So, the meaningful connection issue, where it is

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1 of pertinence to, if I'm understanding this. Mr. Brown and  
2 everyone can correct me. It's the 15 feet right there,  
3 right? Is that correct? So if there was a meaningful  
4 connection, your rear yard setback would be within that  
5 circle, correct? So there would be a 15-foot corridor,  
6 basically giving you kind of access to that courtyard, right?

7 MR. GIRVIN: That's right.

8 CHAIRPERSON HILL: And so, I guess -- and I'm not  
9 trying to -- what is it? I definitely am not, I'm not here  
10 thinking that you guys are against shelters, or community  
11 shelters. I'm just trying to understand what the  
12 ramifications are for what you seem to be asking for, right.

13 And so basically what you'd be getting there is  
14 15 feet, right?

15 MR. GIRVIN: That's right. I will --

16 CHAIRPERSON HILL: It's not --

17 MR. GIRVIN: Oh, sorry.

18 CHAIRPERSON HILL: No, that's okay. I'm just --  
19 that's all I just -- I mean, it's -- I'm just clarifying for  
20 myself. That's not even a yes or no.

21 MR. GIRVIN: Yes. I will -- I'm sure they'll  
22 mention this.

23 CHAIRPERSON HILL: Right. And then -- and I'm  
24 sorry, and then the parking requirement. There would be the  
25 parking requirement.

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1 MR. GIRVIN: Yes.

2 CHAIRPERSON HILL: Okay. So, all right, that's  
3 all I needed to know. So, the --

4 MR. GIRVIN: One thing on that note, though. They  
5 actually did put in a little tunnel on the first floor so  
6 that people could get out if there were a fire, but there'd  
7 be no way for, you know, like any kind of life safety  
8 equipment to get in.

9 So that's part of the concern also, just, you  
10 know, movement of light and air.

11 CHAIRPERSON HILL: I'm just --

12 MR. GIRVIN: That's what we're on.

13 CHAIRPERSON HILL: Yes. And so I'm just trying  
14 to understand, for me, I mean, 15 feet's not very wide, you  
15 know. So, does anybody have any questions?

16 MEMBER SHAPIRO: No.

17 CHAIRPERSON HILL: No? Okay. So, okay. I was  
18 -- the order sometimes confuses me, so I politely stand up  
19 and walk over there. But I think, from now on, actually, I'm  
20 just going to like give a little wave to OAG, okay. And then  
21 you guys can get the exercise. Okay. All right.

22 So, DCRA, do you have any questions for the  
23 Appellant? You need to push the microphone, Mr. Green.

24 MR. GREEN: It would help. I'm sorry. Can we  
25 please go to Page 26 of your slides? Okay. I don't know who

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1 is going to answer this question, since it's the witnesses,  
2 but I'll ask it to the group. Subparagraph C, heated and  
3 artificially lit -- and this was brought up by the Board, but  
4 I have to ask. You have no independent information that the  
5 corridor is not heated and artificially lit isn't that  
6 correct?

7 MR. GAMBRELL: I'll go ahead and answer that. I  
8 think the earlier discussion, I made the comment that we may  
9 have been in error on that particular point. So it could,  
10 in fact, be heated.

11 MR. GIRVIN: We understand that the parking garage  
12 is not heated, which that area ostensibly connects to, but  
13 you're right, the little hallway may have heating.

14 MR. GREEN: So the -- that would be a yes, then,  
15 right? That's not a no anymore. It's now a yes.

16 MR. GAMBRELL: Yes, yes. We corrected --  
17 (Simultaneous speaking.)

18 MR. GAMBRELL: We corrected that previously.

19 MR. GREEN: Okay. I apologize if I missed it.  
20 That's really my question. Thank you.

21 CHAIRPERSON HILL: Okay. Because we are all up  
22 here focused again on apartment house definition and  
23 meaningful connection, and understanding what's going on with  
24 that. That's what we're here for.

25 Ms. Moldenhauer, do you have any questions?

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1 MS. MOLDENHAUER: I just have a -- since we have  
2 obviously two other individuals, I want to confirm that none  
3 of the witnesses or that Mr. Gambrell or Mr. Girvin are  
4 architects. Is that correct?

5 MR. GIRVIN: That's right.

6 MS. MOLDENHAUER: And --

7 MR. GAMBRELL: No, I'm not an architect, but I've  
8 been involved in some cases since 2015.

9 MS. MOLDENHAUER: Are you an architect?

10 MR. GAMBRELL: No. Thankfully not.

11 MR. GIRVIN: We have worked with an architect on  
12 this case, though. He's not here today.

13 MS. MOLDENHAUER: Yes, but he's not here today to  
14 testify, because I think one of the questions that I just  
15 have is, there are images of where grade is. There's no one  
16 here today that testified as an architect that identified the  
17 grade line that you've showed. Is that correct?

18 CHAIRPERSON HILL: You got the --

19 MR. GAMBRELL: An architect I consulted with did  
20 do so, but actually, the grades are depicted on all of these  
21 original drawings, so that the dashed red lines were actually  
22 just for the benefit of the Board so they could see more  
23 clearly. But those are marked on all of his drawings.

24 MS. MOLDENHAUER: But there's nobody here  
25 available for cross-examination that is an expert, or an

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1 architect, that is able to identify the red dotted line as  
2 grade?

3 MR. GAMBRELL: Well, Matt LeGrant could testify  
4 to that.

5 MS. MOLDENHAUER: As the Appellant, I'm ask -- I'm  
6 confirming that there's nobody here to confirm that the red  
7 dotted line is in fact grade?

8 MR. GAMBRELL: During cross-examination we could  
9 certainly ask Matt LeGrant this question from that  
10 standpoint.

11 MEMBER SHAPIRO: I think that you -- I think you  
12 can move on from that question, please. Because they're  
13 clearly not going to answer it, so we might as well just  
14 move.

15 MS. MOLDENHAUER: Making sure that the record is  
16 comprehensive. I appreciate your, the Board's time.

17 There were comments made regarding the term,  
18 shelter. Is it true that the HSRA is a separate legal act,  
19 than the zoning regulations?

20 MR. BROWN: Absolutely.

21 MS. MOLDENHAUER: Okay, thank you. And then,  
22 going -- since the -- Mr. Gambrell, right -- not Mr.  
23 Gambrell.

24 Mr. Gavin, you --

25 MR. GIRVIN: Girvin.

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1 MS. MOLDENHAUER: -- live in the condominium --

2 CHAIRPERSON HILL: It's Girvin, I think.

3 MS. MOLDENHAUER: Girvin, I apologize. I'm  
4 horrible with names.

5 MR. GIRVIN: It's okay. Mayor Bowser got yours  
6 right.

7 MS. MOLDENHAUER: So, you live -- you -- identify  
8 again the address for your building.

9 MR. GIRVIN: 1420 Clifton Street Northwest.

10 MS. MOLDENHAUER: All right. So, do you commonly  
11 walk past this location on a day to day basis?

12 MR. GIRVIN: Often, yes. I sometimes -- it  
13 depends on which direction I'm going. I don't always  
14 actually have to go around the site of the project.

15 MS. MOLDENHAUER: Maybe on a weekly basis?

16 MR. GIRVIN: I try to avoid it, but it happens.

17 MS. MOLDENHAUER: All right. Were you aware, and  
18 did you observe the groundbreaking that occurred at the site?

19 MR. GIRVIN: Yes.

20 MS. MOLDENHAUER: And were you under the  
21 impression that the groundbreaking occurred pursuant to  
22 permits?

23 MR. GIRVIN: Can you ask that in --

24 CHAIRPERSON HILL: Ms. Moldenhauer, what's your  
25 question? Are you talking about timeliness again?

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1 MS. MOLDENHAUER: It's still pending, is it not?

2 CHAIRPERSON HILL: It's not what we're talking  
3 about right now. They just -- we'd heard all this stuff  
4 about timeliness. We argued timeliness.

5 MS. MOLDENHAUER: But it was counting the bands.  
6 The motion hasn't been resolved. If the motion had been  
7 resolved, I would not be asking the questions. The motion  
8 hasn't been resolved. It's still pending. So I'd like to  
9 have an opportunity to cross-examine the witness on the  
10 pending motion.

11 CHAIRPERSON HILL: Okay. I'm just taking a deep  
12 breath, because I'm just trying to understand what we're here  
13 for right now. So we spoke to timeliness, I think, the last  
14 two hours, right? Didn't we speak to it the last time we  
15 were here? And so --

16 MS. MOLDENHAUER: But there was not witness  
17 testimony, and I was not able to cross-examine.

18 CHAIRPERSON HILL: There was no witness testimony.

19 MS. MOLDENHAUER: And I was not able to  
20 cross-examine the Appellant as to timeliness. We obviously  
21 -- and that motion was not resolved. It was not ruled on by  
22 the Board. So, I would assume that I would have the ability  
23 to question. I only have a few brief questions.

24 CHAIRPERSON HILL: I'm trying to do my best to  
25 process one thing at a time. And I apologize. I have no

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1 idea how many questions you have there. If I knew that you  
2 had two more, I'd probably shut my mouth. Okay. Right. But  
3 I don't know, right, so I'm trying to figure it out.

4 MR. GIRVIN: I can address that, regardless.

5 CHAIRPERSON HILL: That's not -- no, no, no.

6 MR. GIRVIN: Okay.

7 CHAIRPERSON HILL: No, no. Okay. By the way,  
8 just to let you all know, we have hours ahead of us, okay.  
9 So let's just kind of take ourselves slowly here.

10 Okay. Go ahead. So you have some more questions  
11 about timeliness, which was from the last hearing? No, I'm  
12 asking.

13 MS. MOLDENHAUER: It was from a motion made and  
14 argued at the last hearing.

15 CHAIRPERSON HILL: Okay. So you're asking whether  
16 or not the witness had -- okay, please go ahead. Did he see  
17 the groundbreaking ceremony, that's where you were.

18 MS. MOLDENHAUER: That was my question. I  
19 appreciate --

20 Did you see the groundbreaking ceremony?

21 MR. GIRVIN: I saw the groundbreaking, which was  
22 for the foundation of the building. But we're appealing the  
23 building permit, and the -- neither the emergency shelter  
24 issue nor the meaningful connection issue were addressed by  
25 the foundation permit.

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1 MS. MOLDENHAUER: Okay. And I appreciate that  
2 very kind of detailed comment, but so, you saw the  
3 groundbreaking, and you were aware that a foundation permit  
4 had been issued, when you saw the groundbreaking?

5 MR. GIRVIN: I believe that's correct. I would  
6 have to check the time on the foundation permit, but yes.

7 MS. MOLDENHAUER: And you had been following this  
8 process. And at one point there was an email, I think, that  
9 you wrote, that you had been following Permit Tracker?

10 MR. GIRVIN: Yes. I remember talking about this  
11 last time.

12 MS. MOLDENHAUER: Okay.

13 CHAIRPERSON HILL: Okay. I'm actually now  
14 curious. So, OAG -- so now, we had a hearing, and I want to  
15 know now, right, so we had a hearing last time, and talked  
16 about timeliness. And I can't remember, weren't you guys  
17 both here? So, didn't you ask your questions about  
18 timeliness the last time. I'm just trying to understand,  
19 right. So -- because now we've heard an hour and a half of  
20 testimony.

21 And, so to OAG, I'm just trying to -- I just want  
22 to make sure my process is correct. Is this a normal -- is  
23 this what we should be doing? Meaning that the property  
24 owner -- now I know, I'm not trying to stop people from  
25 having an opportunity to ask their questions. I just want

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1 to understand.

2 So, is this when now the property owner can ask  
3 questions about the timeliness issue?

4 MS. NAGELHOUT: It probably would have been better  
5 last time, when you heard the whole argument on the motion.  
6 I don't know why it didn't happen last time, but it's not  
7 improper now, because you haven't decided the motion yet.

8 CHAIRPERSON HILL: Okay. Okay. Now I love my --  
9 did we not take questions the last time? Now I'm asking over  
10 here. Did we not take questions the last time?

11 MS. MOLDENHAUER: Chairman Hill, no we did not  
12 take questions last time.

13 CHAIRPERSON HILL: We just heard testimony?

14 MS. MOLDENHAUER: We just heard oral argument on  
15 the motion.

16 CHAIRPERSON HILL: I appreciate the chairman part,  
17 by the way. That was nice.

18 So, okay. All right. So, okay. So then, please  
19 go ahead and -- I'm just trying to also understand for the  
20 next time this happens again for me, which is finishing one  
21 part of it and moving on to the next part. So, the -- so  
22 we're still here -- so these are timeliness issue questions.  
23 So do you have any more timeliness issue questions?

24 MS. MOLDENHAUER: I just have the pending question  
25 I was asking about Permit Tracker. And I was --

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1 CHAIRPERSON HILL: What was the question again?  
2 I'm sorry.

3 MS. MOLDENHAUER: The question was that there was  
4 an email on May 29th that was submitted by the Appellant,  
5 that identified that he was aware of Permit Tracker, of the  
6 system.

7 CHAIRPERSON HILL: Okay. And the question?

8 MR. GIRVIN: And --

9 CHAIRPERSON HILL: Hold on. And the question was,  
10 were you aware?

11 MS. MOLDENHAUER: Were you aware, and can you  
12 describe your understanding of Permit Tracker?

13 MR. GIRVIN: Sure. I -- describe my understanding  
14 of the Permit Tracker? Like the way the site works or?

15 MS. MOLDENHAUER: About your following of that.  
16 Did you follow that?

17 MR. GIRVIN: Yes. So we met with Mr. LeGrant, and  
18 we understood that the building permit is what is appealable.  
19 We saw the footnote in his email, saying that that's what's  
20 appealable. We saw that his email was not the final writing.  
21 We understood, based on all precedent and in conversation  
22 with Mr. LeGrant, that the building permit is what we needed  
23 to appeal.

24 MS. MOLDENHAUER: So, my question though is, were  
25 you following Permit Tracker at that time?

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1 MR. GIRVIN: Yes.

2 MS. MOLDENHAUER: And if you were following Permit  
3 Tracker, did you see that the foundation permit was issued?

4 MR. GIRVIN: I did, and I was following it every  
5 day, watching for the building permit, because that's what  
6 I wanted to appeal. We've been through this, but that -- I'm  
7 appealing the building permit.

8 MS. MOLDENHAUER: Thank you. No further  
9 questions.

10 CHAIRPERSON HILL: Okay. All right. Okay, so Mr.  
11 Green, I think you have an opportunity now to present. All  
12 right, Mr. Green, please go ahead and give your presentation.

13 MR. GREEN: Good afternoon Chairman and members  
14 of the Board. The Appellant, Residences of Columbia Heights,  
15 a Condominium, RCH claims that the Zoning Administrator erred  
16 in approving Building Permit B1908601, the permit for a  
17 building project at 2500 14th Street Northwest.

18 RCH in its revised prehearing statement claims the  
19 Zoning Administrator erred in three respects. The first is,  
20 the permit was issued absent the special exception under  
21 Subtitles U Section 513.1(b), as the construction constitutes  
22 an emergency shelter. The second is that the Ward 1 project  
23 fails to provide a rear yard setback, as we've been -- as has  
24 been stated under G-405.2. And the Ward 1 project's parking  
25 and loading requirements are not met, as it is an emergency

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1 shelter.

2           However, all of the Appellant's arguments fail.  
3 First, contrary to the RCH's assertions, the Ward 1 project  
4 is an apartment house. The Board had posed a direct question  
5 to the Appellants weeks ago, is this an apartment house? And  
6 after many documents and significant testimony, they have  
7 failed to answer that question. I'll happily answer that in  
8 that it is an apartment house.

9           Furthermore, an apartment house is permitted as  
10 a matter of right in the subject zone, and the project is a  
11 single building for zoning purposes, and it satisfies the  
12 rear yard setback requirements. And lastly, as an apartment  
13 house, the Ward 1 project has the appropriate number of  
14 parking spaces for the use requirements under the applicable  
15 regulations.

16           So, I'd like to walk everyone through the process  
17 of the apartment house, and I would ask that Mr. LeGrant  
18 introduce himself and say his name for the record.

19           MR. LEGRANT: Yes. Matthew LeGrant, Zoning  
20 Administrator, DCRA.

21           MR. GREEN: Mr. LeGrant, the Ward 1 Project has  
22 35 apartment style units, and in the plans they're identified  
23 as STFH units, and 15 permanent supportive housing units, for  
24 a total of 50 units. The Appellant claims that although the  
25 PSH units are permitted as a matter of right within the zone,

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1 the STFH units constitute emergency shelter, which require  
2 a special exception. Is that accurate?

3 MR. LEGRANT: No, it's -- no, that is not  
4 accurate.

5 MR. GREEN: And why is that not the case?

6 MR. LEGRANT: Right. The -- all the units in the  
7 proposed building constitute apartment. Apartments is a type  
8 of dwelling unit.

9 MR. GREEN: And Mr. LeGrant, the Appellant keeps  
10 repeating that the project is an emergency shelter. Are they  
11 accurate?

12 MR. LEGRANT: No.

13 MR. GREEN: And why not?

14 MR. LEGRANT: So, the zoning regulations set forth  
15 a definition of emergency shelter. And key aspects of this  
16 have to do with the duration of stays and the type of  
17 facility providing the service. Definition is, and I'll  
18 reiterate, in a facility providing temporary housing for one  
19 or more individuals who are otherwise homeless, is that  
20 arrangement is defined in -- defined in the Homeless Services  
21 Reform Act of 2005, and the effective date of October 22nd,  
22 2005 in the citation.

23 Emergency shelter may also provide ancillary  
24 services, such as counseling, vocational training or similar  
25 social or career assistance. And that's under the definition

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1 section of B-100.2.

2 MR. GREEN: And Mr. LeGrant, it's your  
3 understanding that this particular project is not an  
4 emergency shelter, correct?

5 MR. LEGRANT: Correct.

6 MR. GREEN: I don't know where the -- I can't --  
7 my --

8 CHAIRPERSON HILL: Mr. Green, I'm sorry. I can't  
9 hear you.

10 MR. GREEN: I can't project to the screen. I'm  
11 not sure why.

12 CHAIRPERSON HILL: Could IT come out, please?

13 (Pause.)

14 MR. GREEN: Mr. LeGrant, I want to draw your  
15 attention to 11(d), DCMR 101.2, the definition of apartment.  
16 Could you explain how this is relevant to the particular  
17 matter at hand?

18 MR. LEGRANT: Yes. So again, we're still in the  
19 definition sections of the zoning definition sections and  
20 regulations. Two of the terms that are defined in those  
21 regulations are apartment and apartment house.

22 Apartment is defined as one or more habitable  
23 rooms, a kitchen and bathroom facilities exclusively for the  
24 use and under the control of the occupants of those rooms.  
25 Control of the apartment may be by rental agreement or

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1 ownership.

2 And then apartment house is in any building or  
3 apartment building which there are three or more apartments  
4 providing accommodations on a monthly or longer basis.

5 MR. GREEN: Thank you, Mr. LeGrant. I want to  
6 draw your attention to BZA Exhibit --

7 CHAIRPERSON HILL: Sure, Mr. Shapiro. I'm sorry.  
8 You have a question?

9 MEMBER SHAPIRO: Thank you. I just want to hear  
10 this point again. I understand you describing why this is  
11 an apartment house. Can you describe again why this isn't  
12 an emergency shelter?

13 MR. LEGRANT: So, the emergency shelter has a  
14 component of a temporary housing component. My office has  
15 consistently distinguished what a residential use is, versus  
16 a transient or temporary use, residential use, by means of  
17 whether the tenure or the residency is 30 days or more. And  
18 the -- we'll get to, in a few moments, one of the key aspects  
19 of that, that distinction.

20 MEMBER SHAPIRO: Are you moving us to the use  
21 categories, or related to the 30 days or more? Or, under the  
22 definition of residential, under the use categories. Is that  
23 what you're talking about? I'm still --

24 MR. LEGRANT: Yes.

25 MEMBER SHAPIRO: I want to -- I'll just wait.

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1 Keep going.

2 MR. LEGRANT: Okay.

3 MR. GREEN: Okay. So Mr. LeGrant, I want to draw  
4 your attention to what has been identified as BZA Exhibit 30  
5 -- sorry, 30B, which is a PHS unit, which is part of the  
6 plans, with respect to this particular project. And I've --  
7 I bring it to your attention for the purpose of asking, how  
8 is this relevant to the respect of -- to the fact that this  
9 would be considered apartment under the zoning regulations?

10 MR. LEGRANT: So, the -- in the upper left-hand  
11 corner is the floor plan for a key PSH unit. And the  
12 finished plan, as it's labeled, shows the layout of said, of  
13 that unit. And there's a bedroom. It's labeled as  
14 one-bedroom. And then there's a -- the components include  
15 a kitchen, which the very top of the drawing has the kitchen  
16 components, including the stove, a sink and a counter, and  
17 then directly below that is a full bath, with a bathing  
18 facility. There's a shower, along with a toilet and a sink.

19 And because it's separated from any other spaces  
20 where somebody resides, it has all the necessary components  
21 of a dwelling unit and be a separate apartment.

22 MR. GREEN: Thanks, Mr. LeGrant. I want to also  
23 draw your attention to BZA Exhibit 38C, which is an example  
24 of what's styled as an apartment style unit, but under the  
25 plans, it's an STFH unit. And I'm going to blow that up.

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1 And I just have a question, in terms of how this unit would,  
2 this type of unit applies to the zoning regulations for an  
3 apartment.

4 MR. LEGRANT: Similar to the other unit, does it  
5 have its own cooking and bathing facilities? And again, the  
6 -- it has a kitchen, with a stove, a counter and a sink. So  
7 it has the components of a kitchen. It also has a full bath,  
8 with a bathing facility, and then rooms for, in this case,  
9 two bedrooms for the residents. And it is also within its  
10 own space, so it's not shared with other residents in the  
11 building. So it, similar to the first example, constitutes  
12 a separate apartment dwelling unit.

13 MR. GREEN: And Mr. LeGrant, are both the types  
14 of units which you've just spoken about, and you've  
15 testified, the PHS unit and the STFH unit, are they both  
16 apartments, for the purpose of the zoning definitions?

17 MR. LEGRANT: They are.

18 MR. GREEN: And going back to our zoning  
19 definitions, you touched on the apartment house, does this,  
20 which is Section 101.2, is this relevant with respect to the  
21 building project at issue?

22 MR. LEGRANT: Yes. So the -- on the apartment  
23 house definition, the latter portion of that definition gets  
24 to the tenure or the duration. And it's very clear, it's  
25 providing -- any building of three or more apartments

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1 providing accommodation on a monthly or longer basis. So  
2 that, where the duration aspect that I noted earlier comes  
3 into play.

4 The representation in the application was that the  
5 tenure of the applicant, of the residents will be on a  
6 monthly or longer basis, and therefore it falls into this  
7 apartment house category.

8 MR. GREEN: And just to clarify that the entire  
9 project, you believe is, under the zoning regulations, an  
10 apartment house, correct?

11 MR. LEGRANT: Yes.

12 MEMBER SHAPIRO: Mr. Chair, real quick.

13 So, Mr. LeGrant, on the screen, can a building be  
14 both an apartment house and an emergency shelter?

15 MR. LEGRANT: I believe there could be a situation  
16 and that that could occur, if it were distinguished in both  
17 of the design aspects and the tenure aspects.

18 MEMBER SHAPIRO: Okay, thank you.

19 MR. GREEN: And this goes to Mr. LeGrant, one of  
20 the questions that was raised and has been discussed, and it  
21 was in the Appellant's brief, is that when a building has two  
22 different use categories, it much comply with each use  
23 category. Is that an accurate interpretation of the zoning  
24 regulations?

25 MR. LEGRANT: Well, I would say, if it qualifies

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1 as a separate use, then yes, it would have to be subject to  
2 the provisions, the provisions applied to a separate distinct  
3 use.

4 MR. GREEN: But in this regard, with this  
5 particular project, is there only one use?

6 MR. LEGRANT: Right. And because the question at  
7 hand is, the Appellant has asserted that, well they agree  
8 that the 15, 15 of the units are apartments, but they assert  
9 that the balance, the 35 units are not. I simply disagree.  
10 I believe that they all qualify as apartments. Therefore  
11 it's an apartment house. It's a single use, that is a matter  
12 of right use in this zone.

13 MR. GREEN: Moving onto the second issue, which  
14 has to do with the rear setback, the Appellants argue that  
15 the project violates the rear setback as there are two  
16 buildings on this site. Is that correct?

17 MR. LEGRANT: It is not.

18 MR. GREEN: And why not?

19 MR. LEGRANT: Okay, because there's an -- the  
20 existing Rita Bright Center is having an addition constructed  
21 next to it, that is joined to the apartment house building  
22 by means of a meaningful connection.

23 MR. GREEN: And I refer you to the Section 309.1,  
24 which the Appellants have cited, as well as the DGS, and I  
25 want to kind of walk us through each one of these, and for

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1 the purposes of the record, can you read that first part up  
2 to (a), and then I want to talk about that.

3 MR. LEGRANT: Sure.

4 MR. GREEN: I want to pause there and ask you  
5 further questions.

6 MR. LEGRANT: Okay. So what we're looking at is  
7 in the zoning regulations, Subtitle B, Section 309.1, which  
8 we've already heard a little bit today about that, is the  
9 regulation that speaks to how a -- what constitutes a  
10 separate, or a single building.

11 And to read from 309.1, "For purposes of this  
12 chapter, structures that are separated from the ground up by  
13 common division walls or contain multiple sections, separated  
14 horizontally, such as wings or additions or separate  
15 buildings.

16 "Structures or sections shall be considered parts  
17 of a single building if they are enjoined by a connection  
18 that is" -- it stops with a semicolon.

19 MR. GREEN: So, the first aspect is (a), it's  
20 fully above grade. Is that correct?

21 MR. LEGRANT: Yes.

22 MR. GREEN: Okay. I'd like to draw your attention  
23 to an exhibit. So, and we'll spend some time on this one,  
24 it's BZA Exhibit 38F. It's DCRA's exhibit. I will blow it  
25 up here.

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1           So there's been a lot of talk, and I'll try to go  
2 back. And I don't know if we can draw on here. I think we  
3 can. I could use that. All right. I'll bring it over.

4           MEMBER SHAPIRO: What are you pointing to? Maybe  
5 we can draw on it.

6           CHAIRPERSON HILL: Okay --

7           VICE CHAIRPERSON HART: They circled it.

8           (Simultaneous speaking.)

9           CHAIRPERSON HILL: We all know where we're talking  
10 about.

11          MR. GREEN: So, a lot of -- so Mr. LeGrant, we're  
12 looking at -- and you can explain it, but can you walk us  
13 through this above grade issue? It seems to be --

14          MR. LEGRANT: Yes.

15          MR. GREEN: -- a great deal of concern.

16          MR. LEGRANT: Sure.

17          MR. GREEN: And I'd like -- if you can, direct  
18 where we're looking and how this --

19          MR. LEGRANT: Yes.

20          MR. GREEN: -- is interpreted.

21          MR. LEGRANT: Okay. So, I certainly am aware this  
22 is the -- the issue at hand is whether the portion of the  
23 single building constitutes the connection, that is one of  
24 the first prongs at issue, is it fully above grade and two,  
25 the left is the existing Rita Bright Center. And there's a

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1 plaza that's, it is in front of a portion of that building.

2           And then the new project to the right is the  
3 proposed apartment house use. It has been circled, is  
4 sectioned through the little rectangle, which we can see,  
5 that's a section. And in a moment, we'll see in plan of a  
6 common corridor or walkway that joins the two portions of the  
7 single building.

8           And there's a couple -- there's been reference to  
9 the red lines there. One was, the upper red line is a dashed  
10 red line that is perpendicular -- I mean parallel with the  
11 page format. And then, there's a -- if you could blow it  
12 back up a little bit. The sloping red line that fall -- that  
13 reflects the grade of the site.

14           The most crucial aspect here is that that  
15 rectangle conception view of the corridor is sitting on top  
16 of the red line, i.e. the grade. I would agree that the  
17 projection of the dotted red line is the grade that may be  
18 used for GFA calculation purposes coming off of the street  
19 to the right. But now if we look in the plan, if we scroll  
20 down to the plan view, the section view, we can see said  
21 walkway or corridor.

22           So, my review of the plans was oh, is this  
23 corridor fully above grade? It's not that the entire path  
24 of travel has to be above grade. Is the connection above  
25 grade? And my reading of the plans from the section view,

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1 the plan view and the other drawings associated with the plan  
2 set, that yes it was, it is and will be above grade.  
3 Therefore it passes that prong of being a connection that is  
4 above grade.

5 MEMBER SHAPIRO: Mr. Chair.

6 So how are you measuring grade? Just to help us  
7 to understand this. Because there's an angled line --

8 MR. LEGRANT: Yes.

9 MEMBER SHAPIRO: -- there's a straight line.

10 MR. LEGRANT: Yes.

11 MEMBER SHAPIRO: What definition are you using  
12 that helps us to understand that it's that midpoint between  
13 the solid line from the left up to the right, and when you  
14 get to the middle, this is still above that line? That's  
15 essentially what you're saying.

16 MR. LEGRANT: Sure. Well, okay.

17 VICE CHAIRPERSON HART: And to add onto that,  
18 you've looked at the midpoint of the north elevation, and the  
19 midpoint of the south elevation as the starting and ending  
20 point of that said, that solid line. And if you could talk  
21 to why you've chosen that and not another, you know, point  
22 along here? Because when you look at that section, when you  
23 look at the section, you're taking it at a particular point  
24 in, along the plan.

25 But I was trying to understand, if this -- you

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1 know, there -- you could take a section along different  
2 points of this, and I don't know if that meets the same --  
3 you know, if it actually is still below that line that you've  
4 drawn there.

5 MR. LEGRANT: Okay. So, I'll attempt to answer  
6 those questions. So, what's relevant is the solid red  
7 sloping line, because that shows the grade at the points.  
8 It's not the average grade. It's the grade that is present  
9 right as it goes -- excuse me, from the left to right, going  
10 up, the grade differential of the site.

11 The key is here at the point where the walkway is,  
12 is what is this relationship to grade at that point? I think  
13 which is also helpful is, Mr. Green, if you could scroll over  
14 to the photo, you see on the right, there is a blue box, that  
15 is a portion, again, of the existing Rita Bright building  
16 that has, coming out into this plaza. And that plaza is  
17 labeled into the -- labeled on the plan drawing.

18 So, my understanding, or the plans show, that  
19 there's a doorway from said hallway, opening to said plaza.  
20 So that's photographic evidence that that's the existing,  
21 that's the grade level, which is the referent applicable to  
22 the walkway corridor.

23 MEMBER SHAPIRO: Could I interrupt real quick?  
24 So I just drew a little circle. Are you saying that that's  
25 the doorway that's in that blue box?

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1 MR. LEGRANT: No, no, no.

2 MEMBER SHAPIRO: I'm confused.

3 MR. LEGRANT: No, no. The blue box is the portion  
4 of the Rita Bright Center that opens -- it is a portion of  
5 the Rita Bright Center that's adjacent to the plaza. My  
6 point here is that said plaza is the level that will be used  
7 as the doorway entrance to the future hallway corridor  
8 connection.

9 VICE CHAIRPERSON HART: And you're also saying that  
10 the edge of that blue, the corner of that, of the photograph,  
11 the blue section -- it's not a section. The blue building  
12 that's shown in the photograph, that corner is this corner  
13 right here. And so you're looking at it -- because the photo  
14 says that you're looking at it, I guess toward the -- I guess  
15 you're looking kind of southwest at the building, at the  
16 existing building.

17 MR. LEGRANT: Okay. Yes.

18 VICE CHAIRPERSON HART: So this connection  
19 actually already exists. So the building itself is, existing  
20 building is, you can see a portion of that, you're seeing  
21 that corner?

22 MR. LEGRANT: Right. I believe that the portion  
23 of what's -- obviously the photograph shows the existing  
24 building. And a portion of that will be used as part of the  
25 walkway corridor meaningful connection.

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1 MR. GREEN: Okay. Let me go back to the  
2 regulations. The Appellant has agreed that it's (b),  
3 satisfied, and you've -- is that also -- for the purposes of  
4 the record, that it is enclosed?

5 MR. LEGRANT: Right. I believe it meets Section  
6 (b), that it's enclosed.

7 MR. GREEN: And Section (c), is that satisfied?

8 MR. LEGRANT: Yes. The connection itself, based  
9 on my review of the drawings, are that the corridor will be  
10 heated and artificially lit.

11 MR. GREEN: And lastly, Section (d), can you  
12 articulate to the Board and to everyone how (d) is satisfied?

13 MR. LEGRANT: Okay. So as was brought up by the  
14 Appellant, and the Board is familiar with -- the last test  
15 of the meaningful connection is, it's either one, common  
16 space shared by users of all portions of the building, such  
17 as a lobby, recreation room, loading dock or service bay,  
18 semicolon, or (d)(2), spaces designed and used to provide  
19 free and unrestricted passage between separate portions of  
20 the building, comma, such as an unrestricted doorway or  
21 walkway.

22 In this instance, and I -- (d)(1) does not apply.  
23 This is not a common space used by shared users of the  
24 building. But it does qualify for (d)(2). It's a designed  
25 and to be used as a passage, unrestricted passage between

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1 separate portions of the building, such as a walkway. And  
2 this walkway, corridor, I'm saying is synonymous, as meeting  
3 that standard.

4 CHAIRPERSON HILL: Can you show us again number  
5 2, where it is? And if you go back to -- I'm sorry.

6 MR. LEGRANT: In the drawing?

7 CHAIRPERSON HILL: Yes. Yes, in the drawing. And  
8 unfortunately, I don't remember -- you guys can't draw. You  
9 got nothing you can draw on over there.

10 MR. GREEN: Sorry.

11 CHAIRPERSON HILL: That's okay. That's all right.  
12 I don't have anything I can draw on here either.

13 MR. LEGRANT: So -- well, okay. No, that's been  
14 circled now. Yes. It looks like the number 1, right. It's  
15 a hallway, and you can -- by drilling down into it, you can  
16 see that there's a -- at the top of that feature, there's a  
17 door that goes into the corridor, into the Rita Bright  
18 Center.

19 CHAIRPERSON HILL: Yes.

20 MR. LEGRANT: And then you go down --

21 CHAIRPERSON HILL: Yes. I see the next door.

22 MR. LEGRANT: There's another door.

23 CHAIRPERSON HILL: And then I see the other two  
24 doors. Okay.

25 MR. LEGRANT: Right. And there's a door that goes

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1 into --

2 CHAIRPERSON HILL: The parking garage --

3 MR. LEGRANT: -- the parking garage.

4 CHAIRPERSON HILL: -- and the plaza.

5 MR. LEGRANT: Plaza.

6 CHAIRPERSON HILL: Okay.

7 MEMBER SHAPIRO: So if -- so the Appellant brought  
8 in information around ways in which they've -- they were  
9 describing -- they brought in exhibits that described the way  
10 this would be restricted, or -- yes, restricted, broadly  
11 defined. Is that -- that's not relevant to you, or how do  
12 you factor that in?

13 MR. LEGRANT: Okay. So, I believe that, may be  
14 proper but I will speak a little bit to this, but in past  
15 cases, and that I ever ruled on, maybe before this Board, the  
16 question is, how unrestricted access. It's never been my  
17 understanding that the doorways would allow any person at any  
18 time to travel to and from.

19 The key here is that the operators of the  
20 facilities would have access to be able to go through, and  
21 whether that's keys, or door fobs or whatever, to go through  
22 those separate doors. And there has to be a -- let's take  
23 this, the aspect of key fobs. Is, are the rights of the  
24 persons who are allowed access to that corridor have the same  
25 rights on both sides, in this case, the Rita Bright Center,

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1 and then the apartment house use.

2           So, it's -- I've never taken the view that they  
3 have to be open and unlocked doors, that they have to have  
4 equal access for the authorities that are in control of those  
5 buildings.

6           MEMBER SHAPIRO: So your assessment is that the  
7 residents of the apartment house will have equal access to  
8 the community center and the residents, and the folks who are  
9 using the community center will have equal access to the  
10 apartment house?

11           MR. LEGRANT: I believe it's a programmatic  
12 decision of the operator of the Rita Bright Center and the  
13 apartment house as to the extent of those users and residents  
14 to be able to use that, those doors.

15           MEMBER SHAPIRO: But from your -- so from your  
16 decision, that's adequate?

17           MR. LEGRANT: Yes.

18           MEMBER SHAPIRO: Okay, thank you.

19           Thank you, Mr. Chair.

20           MR. GREEN: Okay. I want to just, to move along.  
21 So, to put some closure on this, it's your interpretation,  
22 Mr. LeGrant, that 309.1 has been satisfied. Is that correct?

23           MR. LEGRANT: Yes.

24           MR. GREEN: And does this project constitute a  
25 single building for the purpose of zoning?

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1 MR. LEGRANT: Yes, because of the meaningful  
2 connection test being made, then it is, qualifies as a single  
3 building, for the purposes of zoning.

4 MR. GREEN: So, I wanted to move on to a couple  
5 of other points raised. So, in terms of the rear yard  
6 setback, and I have cited the zoning regulations, or at least  
7 they're up on the screen right now, the Appellant has claimed  
8 that the rear yard setback has been violated in this regard.  
9 And can you help us under -- so, let me go to that. Is that  
10 accurate?

11 MR. GREEN: Well, the rear yard setback  
12 requirement has not been violated in this case. In the  
13 subject MU-5A zone, for a single building, the rear yard  
14 setback is 15 feet. And then the definitions that you put  
15 pulled up on the screen, Subtitle G, 405.2, talk about the  
16 15-foot rear yard standard.

17 In addition, there's a provision in Subtitle B,  
18 318.8 that states as follows, "In the case of a through or  
19 corner lot abutting three or more streets, the depth of the  
20 rear yard may be measured from the centerline of the street  
21 abutting the lot at the rear of the structure."

22 And then the last sentence --

23 CHAIRPERSON HILL: Hey you guys, I got to  
24 interrupt you all sort of just for a second. We can kind of  
25 move through this a little bit. Again, this is all if we

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1 don't think -- or if there wasn't a meaningful connection,  
2 then these things would come into play, right. You can  
3 scroll on down, because you start talking to parking and  
4 loading requirements, because you didn't know what we were  
5 going to rule on, in terms of at the beginning of this  
6 discussion, right.

7           So the -- again, you've argued -- or not argued,  
8 you've given your testimony in terms of the meaningful  
9 connection, and your testimony in terms of the apartment  
10 house. I guess, the only question I have for DCRA, I suppose  
11 again, you know, if as I understand it, as you were looking  
12 through your building permit, this is an apartment house,  
13 these are all just apartments, right, so then how is that at  
14 odds with if this were being used -- and this is the part  
15 that I'm struggling with, if this were being also used as an  
16 emergency shelter?

17           As far -- you don't see a conflict? Meaning that  
18 it -- you see plans in front of you. You look at the plans.  
19 You know, it looks like an apartment house. It's built as  
20 an apartment house. You approve the plans, because it's an  
21 apartment house.

22           If later on it gets used as something that's not  
23 what you think it's going to be used, does that turn into an  
24 enforcement issue, or -- can you just kind of talk about that  
25 little area there for me?

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1 MR. LEGRANT: Sure, sure. Right. I appreciate  
2 that. And I want to tell the Board, it's not that we just  
3 look at the plans. We have to look at the total application  
4 and representation by the applicant as to what the plans  
5 show, what the use is going to be represented. Okay.

6 So, in this case, not only were the plans that we  
7 discussed show the unit's layout, with the components that  
8 make apartments, then there's a provision that talks about  
9 the duration. So we have to ask the applicant, what is this,  
10 what's the duration? They make a representation. And --

11 CHAIRPERSON HILL: Right, meaning over the 30  
12 days?

13 MR. LEGRANT: Right. That's one --

14 CHAIRPERSON HILL: So that's when it kicks out of  
15 logic.

16 MR. LEGRANT: That's how it's no longer, in my  
17 estimation, an emergency shelter. Not only that, but what's  
18 the whole picture here? What is the intended use, and not  
19 only in the plans, but the other representations made to my  
20 office. And that is, well, the individuals, in addition to  
21 having their own units, and in addition to staying the 30  
22 days, are in a housing situation, living in dwelling units.

23 Yes, they're going to receive services to help  
24 them in the transition out of their previous homeless  
25 condition, but they are not doing the components, they're not

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1 operating as an emergency shelter under the zoning regulation  
2 definition.

3 CHAIRPERSON HILL: The reason why they're not  
4 operating as emergency shelter within the zoning regulation  
5 definition is why again?

6 MR. LEGRANT: I'd say three major things. They're  
7 living in individual apartment dwelling units. They have  
8 stays more than 30 days. And they're in a program, or a  
9 housing situation in which they are living as residents in  
10 a building, not -- they're not sharing common areas, common  
11 kitchens, common bathing facilities that are present in, I  
12 believe, an emergency shelter situation.

13 CHAIRPERSON HILL: Okay. All right. Does anyone  
14 have any more questions for the DCRA? Okay. Does the  
15 Applicant have any questions for DCRA?

16 MR. GIRVIN: We have a few.

17 CHAIRPERSON HILL: Sorry, Appellant. Sorry I said  
18 applicant, I guess. Please, please, go ahead.

19 MR. BROWN: Mr. LeGrant I want to understand your  
20 reasoning by stepping back a little bit to the way this  
21 project was originally envisioned to be in another location,  
22 with 29 units, apartment style units, is what the statute  
23 says. And there was no combination with permanent supportive  
24 housing units. It would be 29 stand-alone units.

25 Would your analysis of the situation regarding

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1 whether it is or is not an emergency shelter be any different  
2 under that scenario?

3 MS. MOLDENHAUER: Hang on a minute.

4 MR. GREEN: I'm sorry, I don't -- can you rephrase  
5 the question? I --

6 CHAIRPERSON HILL: That's okay. I'm just trying  
7 to understand. So clarify, so you -- and that's okay, Mr.  
8 Brown. I'm just trying to follow along.

9 MR. BROWN: The original plan, under this, under  
10 the Homeless Shelter Replacement Act, was a Ward 1 shelter  
11 with 29 apartment style units in a different location. There  
12 was no permanent supportive housing as part of the project.  
13 When the statute was amended to change the location, they  
14 added the 15 units of permanent supporting housing, and they  
15 changed the number of what I describe of as temporary shelter  
16 units from 29 to 35.

17 And I'm just asking him whether or not, if he had  
18 been asked about whether or not the original plan was or was  
19 not for an emergency shelter, since they were apartment style  
20 units.

21 CHAIRPERSON HILL: I'm sorry. I'm still trying  
22 to understand the question. So can you make the question  
23 shorter again? I'm sorry. What are you trying to ask? I'm  
24 just trying to understand.

25 MR. BROWN: I'm trying to understand the reasoning

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1 that he's using to conclude that this is not an emergency  
2 shelter. And the first question is whether or not the  
3 original plan was for an emergency shelter.

4 CHAIRPERSON HILL: Do you understand the question,  
5 Mr. LeGrant?

6 MR. GREEN: Actually, I'm going to object.  
7 Actually I'm going to object to the first part of saying  
8 well, what was the original plan? We're talking about the  
9 current plan. So, there's that. He's already talked about  
10 how it's not an emergency shelter. Nevertheless, the  
11 question is, how is it not an emergency shelter, Mr. LeGrant?  
12 That's how I'm interpreting the question.

13 CHAIRPERSON HILL: I'm just trying to -- it's  
14 okay. We're all just trying to -- so I'm sorry, Mr. Brown.  
15 I'm really not trying to be difficult. I'm just trying to  
16 understand the question. Your question is what again?

17 MR. BROWN: I'm just asking him to go back in time  
18 to where the original statute said that the Ward 1 shelter  
19 was going to be 29 units, without any --

20 CHAIRPERSON HILL: I guess, I'm trying to  
21 interrupt you a second.

22 MS. BRIDGES: -- permanent supporting houses.

23 CHAIRPERSON HILL: So what we're here doing is  
24 trying to see how the Zoning Administrator erred in approving  
25 these plans. And you're asking a question about -- I still

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1 don't even understand your question.

2 MEMBER SHAPIRO: Mr. Chair, I just don't see how  
3 this is relevant to this case and what's before --

4 MR. BROWN: All right. Let me ask --

5 CHAIRPERSON HILL: Well I don't even understand  
6 the question, so that's why when it's being --

7 MR. BROWN: No. Let me ask the question this way.  
8 Is your conclusion that this is an apartment building  
9 influenced by the fact that there are 15 permanent supportive  
10 housing units as part of it?

11 MR. LEGRANT: As I've noted, the -- all the 50  
12 units in the proposed building constitute apartments.  
13 Therefore, they met the apartment test. It does not fall in  
14 emergency shelter category.

15 CHAIRPERSON HILL: So the answer's no?

16 MR. LEGRANT: Correct. The answer's no.

17 MR. BROWN: All right. Mr. LeGrant, the  
18 definition of apartment requires there to be control, which  
19 is exhibited in the form of either a rental agreement or  
20 ownership of the property. Do the occupants of these units  
21 own -- will they own the properties?

22 MR. LEGRANT: They do not.

23 MR. BROWN: Will they have rental agreements?

24 MR. LEGRANT: I'm not aware that they will have  
25 a rental agreement.

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1 MS. MOLDENHAUER: I would object to the original  
2 question as it was a misstatement of the law.

3 MEMBER SHAPIRO: What's a misstatement of the law?

4 CHAIRPERSON HILL: Thanks a lot.

5 MEMBER SHAPIRO: Sorry.

6 MS. MOLDENHAUER: He said that it either must be  
7 a lease or a rental agreement, either ownership or lease.  
8 The terminology in the regulations is may be exhibited by  
9 that. And so he is making a legal statement in his question  
10 that is inaccurate.

11 CHAIRPERSON HILL: What was your question again,  
12 Mr. Brown?

13 MR. BROWN: The statute says -- Mr. LeGrant, the  
14 statute says, this is the definition of apartment. "Control  
15 of the apartment may be by rental agreement or ownership."

16 CHAIRPERSON HILL: And your question was, is there  
17 a rental agreement?

18 MR. BROWN: And the answer I heard was no.

19 CHAIRPERSON HILL: Yes. Okay.

20 MR. BROWN: And there -- and I also heard, is  
21 there ownership on the part of the occupants, and the answer  
22 there is no. All right. So, Mr. LeGrant --

23 CHAIRPERSON HILL: Hold on. Commissioner Shapiro  
24 has a question.

25 MEMBER SHAPIRO: So, Mr. Brown, you're saying that

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1 it has to be one or the other?

2 MR. BROWN: That's what we've said in our  
3 supplemental prehearing statement.

4 MEMBER SHAPIRO: Okay.

5 MR. BROWN: It can be one or the other. There's  
6 not simply --

7 MEMBER SHAPIRO: But it can't be -- you are  
8 saying, it can't be neither?

9 MR. BROWN: In this case, the evidence is that  
10 it's neither. And therefore it is not --

11 MEMBER SHAPIRO: I'm asking, are you -- you're  
12 saying, if it's neither, then it violates the --

13 MR. BROWN: That's correct.

14 MEMBER SHAPIRO: Okay. And --

15 MR. BROWN: That's correct.

16 MEMBER SHAPIRO: Ms. Moldenhauer?

17 MS. MOLDENHAUER: Our position is the regulation  
18 is clear, it says, may. It's providing examples. It's not  
19 saying it shall be by a rental agreement or an ownership.  
20 It is simply identifying the word may, and not shall.

21 CHAIRPERSON HILL: Right. And so, Mr. LeGrant,  
22 this -- is this the, all the information that we heard about,  
23 about UDC and the things in the record? Wasn't there some  
24 things about UDC there in the record? So how do you speak  
25 to this, you know, apartment, rental or ownership? I mean,

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1 I think it was like, there was the dormitories that I saw in  
2 the record.

3 MR. LEGRANT: Oh, okay. So, my view has been, in  
4 context of the appeal project and the definition of apartment  
5 house, the control -- that sentence, control of the apartment  
6 may be by rental agreement or ownership, as those are  
7 examples. They're not required to have a rental agreement  
8 or ownership. It's simply that the -- once that door is  
9 closed, the person, the resident gets, has control over those  
10 spaces, the bedroom, the bathroom, the kitchen, the  
11 components that constitute the apartment under that  
12 occupant's or that resident's control.

13 CHAIRPERSON HILL: Right. And an example again  
14 would be the dormitory situation?

15 MR. LEGRANT: Correct.

16 CHAIRPERSON HILL: Okay. All right, Mr. Brown?

17 MR. BROWN: Mr. LeGrant, the permanent supportive  
18 housing definition reads as follows, from DC Code 4751.0128.  
19 This is in our -- this was on Page 8 of Exhibit 78.  
20 "Permanent supportive housing means a program that provides  
21 rental assistance supportive services for an unrestricted  
22 period of time, to assist individuals and families  
23 experiencing chronic homelessness, or at risk of experiencing  
24 chronic homelessness, to obtain and maintain permanent  
25 housing, and to live as independently as possible."

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1           Do you know whether or not the 35 units that are  
2 not permanent supportive housing in this project provide  
3 rental assistance and supportive services for an unrestricted  
4 period of time?

5           MR. LEGRANT: No, no, I'm not aware of whether  
6 that is true or not in this case.

7           MR. BROWN: Are you aware of whether or not  
8 someone who moves into one of these 35 units is required to  
9 stay a minimum of 30 days?

10          MR. LEGRANT: Yes. A representation was made that  
11 the residents of the apartment building have a minimum tenure  
12 of 30 days.

13          MEMBER SHAPIRO: I'm sorry, that --

14          MR. LEGRANT: They have a minimum tenure, or  
15 minimum stay of 30 days.

16          MR. BROWN: So if someone who is temporarily  
17 experiencing homelessness actually finds a home within 15  
18 days and wants to move out, they will be in violation of  
19 their agreement with the City?

20          MR. LEGRANT: I would have to say the property  
21 owner would have to speak to that.

22          MR. BROWN: Is there anything in the definition  
23 of emergency shelter that limits the emergency shelter  
24 concept to structures that share common areas?

25          MR. LEGRANT: One moment. No.

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1 MR. BROWN: The definition of the individuals who  
2 are otherwise homeless as that arrangement is defined in the  
3 Homeless Shelter Reform Act references -- you've seen our  
4 reference to that particular 2005 act as referring to  
5 temporary shelters, correct?

6 MR. LEGRANT: You're asking if I've seen that?

7 MR. BROWN: Have you seen the language in the  
8 statute that refers to temporary shelters?

9 MR. LEGRANT: I believe it was in your filing.  
10 It was in your filing?

11 MR. BROWN: Yes.

12 MR. LEGRANT: Yes.

13 MR. BROWN: Okay.

14 CHAIRPERSON HILL: Mr. Brown, I'm sorry. I'm just  
15 trying to follow this line of questioning also again. You  
16 know, we have now heard from Mr. LeGrant as to how he  
17 believes he's defining this as an apartment house. And your  
18 line of questioning is about the Emergency Shelter Act. And  
19 I'm just trying to understand, he's already said, I guess,  
20 that it could be an apartment house and an -- I mean, we're  
21 trying to figure out how Mr. LeGrant made an error in giving  
22 this an apartment house building permit.

23 And none of your questions so far seem to be  
24 leading as to how he didn't see it as an apartment house.  
25 He said it could be an emergency -- I mean, well now --

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1 anyway, that's -- I'm just trying to understand your line of  
2 questioning.

3 MR. BROWN: All right. Board Member Shapiro asked  
4 him why he thought it was not an emergency shelter, and I'm  
5 trying to follow up on that, because I want to make the point  
6 that it meets the definition of emergency shelter.

7 CHAIRPERSON HILL: And I thought this was a -- Mr.  
8 LeGrant, it could be an apartment house and an emergency  
9 shelter?

10 MR. LEGRANT: The hypothetical that was given to  
11 me was, could there be a emergency shelter and apartment  
12 house in the same building? Not here, but elsewhere. And  
13 my answer was yes to that question.

14 CHAIRPERSON HILL: I see. And the reason why it's  
15 not here is because it doesn't meet the criteria for an  
16 emergency shelter, which you listed, in terms of 30 days, and  
17 the other --

18 MR. LEGRANT: Right.

19 CHAIRPERSON HILL: Individual units.

20 MR. LEGRANT: Right. Because instead of emergency  
21 shelter, it met the definition of apartments and apartment  
22 house.

23 CHAIRPERSON HILL: Okay. So I guess if you follow  
24 those line of questioning as to why you think he's wrong in  
25 that --

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1 MR. BROWN: Yes. And I'm --

2 CHAIRPERSON HILL: -- definition.

3 MR. BROWN: And I'm starting with the definition  
4 of emergency shelter in the zoning regulation. That's what  
5 I'm asking him about.

6 Mr. LeGrant, the definition of emergency shelter  
7 talks about a facility providing temporary housing, correct?

8 MR. LEGRANT: That's the first line of the  
9 definition, correct.

10 MR. BROWN: Yes. And it makes reference to the  
11 Homeless Services Reform Act, which talks about temporary  
12 shelter, correct?

13 MR. LEGRANT: Yes.

14 MR. BROWN: Do you draw a distinction between  
15 temporary housing and temporary shelter?

16 MR. LEGRANT: As I believe I've testified to, the  
17 distinction is that, after 30 days, it's no longer a  
18 transient or temporary housing. It becomes a residential  
19 dwelling unit use. And that was the criteria I used to  
20 distinguish this use as approved apartment house, instead of  
21 being a emergency shelter.

22 MR. BROWN: Even if it is over a 30-day period,  
23 it's still temporary housing, is it not?

24 MR. LEGRANT: It depends on your definition of  
25 temporary.

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1 CHAIRPERSON HILL: No, it's the 30 days. It's the  
2 30 days. We're all about the 30 days.

3 MR. BROWN: All right, Mr. LeGrant, I want to turn  
4 to the, to your analysis of the meaningful connection. Is  
5 it correct that when this, when the building permit plans  
6 were first submitted to DCRA, there was no connection drawn  
7 between the two buildings?

8 MR. GREEN: I'm going to object to that. I don't  
9 know what that means. And so, can you rephrase the question,  
10 please?

11 CHAIRPERSON HILL: He's saying when the first  
12 drawings you got, right, was there a meaningful connection.  
13 Is that what you're asking?

14 MR. BROWN: Was there any connection?

15 CHAIRPERSON HILL: Okay.

16 MR. LEGRANT: The project went through many  
17 iterations that were brought by the property owner to my  
18 office. Prior to building permit submission, there were  
19 different designs and configurations that were brought to me,  
20 at least two or three. Those -- my office gave feedback to  
21 the property owner as to the applicable zoning regulations,  
22 resulting in the building permit submission that was  
23 ultimately submitted and approved and subject of this appeal.

24 MR. BROWN: Did that feedback include advice that  
25 the building, if it were a separate building, would have to

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1 be set back from the property line shared with the  
2 condominium by 15 feet?

3 MR. LEGRANT: I don't, I do not recall.

4 MR. BROWN: Is it correct that if there -- if the  
5 building were a separate building, it would have to be set  
6 back from that property line by 15 feet?

7 MR. LEGRANT: It depends on the analysis that you  
8 would do as to what would constitute the front of the  
9 building, because the -- as we -- as I testified to, the  
10 configuration of the underlying lot is that it fronts on  
11 three streets, which allows the property owner first to  
12 choose the front, which I believe in this case was Clifton,  
13 and then follows, you can measure the rear yard to the  
14 centerline of the street at the rear of the building, which  
15 I believe is Chapin.

16 So, in that analysis, it'd conform. If it was not  
17 a separate -- if it was a separate distinct building, you'd  
18 have to figure out where's the front of the building, to  
19 drive the analysis as to what yards apply.

20 MR. BROWN: And the front and the --

21 CHAIRPERSON HILL: Mr. Brown, can I ask you, how  
22 many questions do you have?

23 MR. BROWN: I just --

24 MR. GIRVIN: We have a few.

25 MR. BROWN: I'm going to turn it over to Mr.

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1 Gambrell and Mr. Girvin.

2 CHAIRPERSON HILL: Okay, Mr. Gambrell and Mr.  
3 Girvin, how many questions you all got?

4 MR. GAMBRELL: I have about, I think there are  
5 about six to eight, and I think they will help the Board  
6 quite a bit.

7 This is to Mr. LeGrant. Mr. LeGrant, is there a  
8 definition in the zoning regulations for quote, "apartment  
9 style"?

10 MR. LEGRANT: No.

11 MR. GAMBRELL: This question's to DGS. Is DGS  
12 building an apartment style temporary shelter per Homeless  
13 Services Reform Act of 2005, the Homeless Shelter Replacement  
14 Act of 2016 and/or the Homeless Shelter Temporary Amendment  
15 Act of 2018?

16 MS. MOLDENHAUER: We haven't presented our  
17 testimony yet. We're happy to answer questions after we  
18 present our testimony.

19 CHAIRPERSON HILL: Mr. Gambrell --

20 MR. GAMBRELL: Yes.

21 CHAIRPERSON HILL: Just put an asterisk by that  
22 one. We'll have it answered at the end there.

23 MR. GAMBRELL: Okay. Then I'll skip this other  
24 one then. Actually, this -- I'll go ahead and ask, and may  
25 get an asterisk here as well. To DGS, is there currently an

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1 apartment style emergency --

2 CHAIRPERSON HILL: Okay. There -- DGS is putting  
3 up their hands, as in --

4 MR. GAMBRELL: Okay.

5 CHAIRPERSON HILL: -- you know, mercy. So --

6 MR. GAMBRELL: I'll get back to it, Mr. Chair.

7 CHAIRPERSON HILL: So we'll come back until the  
8 end.

9 MS. MOLDENHAUER: Well once we present our case,  
10 as our witness, then obviously questions can occur then, but  
11 we haven't presented anything yet.

12 CHAIRPERSON HILL: Sure. Sure, no problem. We're  
13 not going anywhere. I got nothing to do. There's a Wizards  
14 game at 7 that nobody cares about. So --

15 MR. GAMBRELL: I'll stay to the --

16 (Simultaneous speaking.)

17 CHAIRPERSON HILL: Sure, Mr. Gambrell, that's all  
18 right.

19 MR. GAMBRELL: These are all to Mr. LeGrant.

20 CHAIRPERSON HILL: I mean, they're not going make  
21 the playoffs anyway. They -- but, you know.

22 MR. GAMBRELL: Mr. LeGrant, is the meaningful  
23 connection below the main level of the building?

24 MR. LEGRANT: Which building? Oh, of the single  
25 building?

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1 MR. GAMBRELL: Well, not the Rita Bright Center.  
2 Is it below the, where the connection's located?

3 MR. LEGRANT: From the point at which the main  
4 level is, yes, I would say that the connection itself is  
5 below that level.

6 MR. GAMBRELL: Okay.

7 CHAIRPERSON HILL: Say that again, I'm sorry. Is  
8 the connection below --

9 MR. GAMBRELL: The main level of the building.

10 CHAIRPERSON HILL: Oh, okay. Of the new building,  
11 right.

12 MR. LEGRANT: Yes.

13 CHAIRPERSON HILL: Okay, okay.

14 MR. GAMBRELL: Okay. And I'm going to turn to  
15 Case 19550. And my apologies earlier, I got frankly quite  
16 confused in my review of that case, because it's confusing.

17 I'm going to kind of indent a little bit of a  
18 number here. 309.1(d), I'm going to call it Subsection A.  
19 In that case, Mr. LeGrant, you said it's a common space that  
20 all users of the building can use, to utilize this passageway  
21 with a connection to the door to the court, to meet the first  
22 standard of 309.1(d). Does that sound familiar?

23 MR. GREEN: Is there a question?

24 CHAIRPERSON HILL: Yeah, I don't -- actually, Mr.  
25 Gambrell, I'm getting a little lost because there's nothing

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1 I can actually look at, in front of. And so just, you're  
2 trying to now question something in the way that the Zoning  
3 Administrator made a meaningful connection in a prior case?

4 MR. GAMBRELL: Well, my question is, and so  
5 frankly it's an observation, because Mr. LeGrant, I believe  
6 -- and maybe it's a clarification. I believe you just said  
7 this passageway you talked about meets 309.1(d), the B. You  
8 said it is designed to provide free and unrestricted passage  
9 between separate portions of the building.

10 However, that seems in conflict with 19550, which  
11 is an important point, because this was brought forward as  
12 an important case, because Commissioner Turnbull said in that  
13 case, that that was not an unrestricted passageway in 19550  
14 because of the locked doors. And you said in response, of  
15 course you're noting the second point, and that's why I  
16 started with the first point, which is the passageway point.

17 It's a common space that all users of the building  
18 can use to utilize this passageway with the connection to the  
19 door of the court, to meet the first standard of 309.1(d).  
20 I know that's terribly confusing, but the point here is, Mr.  
21 LeGrant, it sounds to me like you're reversing direction in  
22 this case, versus 19550, in terms of what you, what standard  
23 you say is being met. And your testimony seems in conflict  
24 with 19550.

25 MR. GREEN: I want to object. I don't believe Mr.

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1 LeGrant testified with respect to -- is it 19550?

2 MR. LEGRANT: 19550?

3 MR. GAMBRELL: Yes.

4 CHAIRPERSON HILL: Okay. Your objection is --

5 MR. GAMBRELL: I'm going to move on.

6 CHAIRPERSON HILL: That's all right.

7 MR. GAMBRELL: Yes.

8 CHAIRPERSON HILL: I'm just trying to understand.

9 Also, I mean, again, there was a lot of things, Mr. Gambrell,  
10 that you put forward in terms of other meaningful  
11 connections.

12 MR. GAMBRELL: Yes.

13 CHAIRPERSON HILL: And so your conflict that you  
14 have with how Mr. LeGrant has judged this meaningful  
15 connection is what?

16 MR. GAMBRELL: I would like to go ahead and, like  
17 to go ahead and move on.

18 CHAIRPERSON HILL: Okay. All right.

19 MR. GAMBRELL: Yes.

20 CHAIRPERSON HILL: Okay.

21 MR. GAMBRELL: Yes. Mr. LeGrant, in the  
22 testimony, and I hope you can speak to this, it was stated  
23 by DGS that you have historically interpreted 309.1 to  
24 require that the connection itself, not the entire common  
25 space or passageway to be fully above grade. Can you cite

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1 any cases where you've held that? Because we've provided  
2 nearly a dozen cases that showed you made no such historical  
3 interpretations.

4 MR. LEGRANT: Well, I believe I have been  
5 consistent. I don't -- I cannot think of citing the cases  
6 off the top of my head. I believe that several of your cases  
7 actually supported that position, some of the images that  
8 flipped through, that the connection itself was fully above  
9 grade.

10 MR. GAMBRELL: That's -- there's no disagreement  
11 on that. But is there any of those cases where you said that  
12 the passageway could be partially below grade but still be  
13 compliant with the fully above grade criterion?

14 MR. LEGRANT: In other cases?

15 MR. GAMBRELL: Yes. Because that's the position  
16 that's being made in this case.

17 CHAIRPERSON HILL: No. Mr. LeGrant in this case  
18 is saying that they are -- that you're saying that this is  
19 an -- that this is fully above grade?

20 MR. LEGRANT: Yes.

21 CHAIRPERSON HILL: Yes. He's not saying that it's  
22 partially below grade.

23 MR. GAMBRELL: That's DGS' position then. I guess  
24 we'll get to that point.

25 CHAIRPERSON HILL: No, that was the Zoning

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1 Administrator. The Zoning Administrator said that this was  
2 fully above grade, and they made the diagonal line as to why  
3 it's fully above grade. So now you guys have to convince us,  
4 or under -- tell us why the Zoning Administrator is wrong,  
5 that it's not fully above grade.

6 And so, I realize, Mr. Gambrell, you're citing  
7 other cases. That does make it kind of confusing. But in  
8 terms of the testimony that he gave today, do you have any  
9 more questions for the Zoning Administrator?

10 MR. GAMBRELL: Yes. Yes.

11 CHAIRPERSON HILL: Okay.

12 MR. GAMBRELL: To that point, I have one more.

13 CHAIRPERSON HILL: Okay.

14 MR. GAMBRELL: Which is, and Mr. LeGrant, you  
15 discussed this, in terms of, you used the terminology, path  
16 of travel, in terms of being partially below grade, where you  
17 said it was acceptable for the path of travel to be partially  
18 below grade, in order to get to the connection. Is that  
19 correct?

20 MR. LEGRANT: Yes.

21 MR. GAMBRELL: Is path of travel a criterion in  
22 309.1?

23 MR. LEGRANT: No, but as I testified to --

24 MR. GAMBRELL: It's okay.

25 MR. LEGRANT: Now, that testified to -- it's

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1 important, that the connection itself be fully above grade.  
2 That's the point.

3 CHAIRPERSON HILL: I don't remember, we -- did we  
4 talk about passage, some passage being below grade, today?

5 MR. LEGRANT: Not today, I don't -- I don't think  
6 there's questions from the Board today about --

7 CHAIRPERSON HILL: No, I'm saying -- and there was  
8 no testimony -- I'm just trying to understand what we're  
9 looking at again. And there was nothing in this case that  
10 talked about the passage being partially below grade,  
11 correct?

12 MR. LEGRANT: Correct.

13 CHAIRPERSON HILL: Right.

14 MR. GAMBRELL: DGS' prehearing statement raises  
15 it as such, so I can raise it at that point.

16 CHAIRPERSON HILL: Okay. So as far as like again,  
17 what Mr. LeGrant had testified to was that this is fully  
18 above grade. All right. So Mr. Gambrell, do you have any  
19 more questions? Okay. All right.

20 MR. GIRVIN: I just have one brief one.

21 CHAIRPERSON HILL: Sure.

22 MR. GIRVIN: Mr. LeGrant, does the foundation  
23 permit authorize construction of a building?

24 MR. LEGRANT: It authorizes construction of a  
25 portion of a building, that support -- well I -- let me put

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1 it this way. The foundation permit, once issued, allow --  
2 you know, allows, literally the foundation of a building.

3 MR. GIRVIN: Did you tell us when we met with you  
4 that we would be appealing the building permit?

5 MR. LEGRANT: I believe there was discussion that  
6 you'd be appealing the building permit.

7 MR. GIRVIN: Right.

8 MR. LEGRANT: Okay.

9 CHAIRPERSON HILL: Oh, Mr. Girvin, I like you.  
10 Okay. All right. We're going to take a break. Okay. And  
11 then --

12 I'm sorry, Ms. Moldenhauer?

13 MS. MOLDENHAUER: Oh, I'm assuming as a party I  
14 would get questions.

15 CHAIRPERSON HILL: Oh yes, of course. I forgot.  
16 Never mind. Let's not take a break.

17 MS. MOLDENHAUER: After the break. After the  
18 break.

19 CHAIRPERSON HILL: No, no, no, no, no, no. Let's  
20 go ahead and have your questions too, because we're going to  
21 try to at least get your portion next. Okay. So, you have  
22 questions for the Zoning Administrator?

23 MS. MOLDENHAUER: Just some follow-up.

24 CHAIRPERSON HILL: Mr. Brown, I'm sorry, your  
25 microphone's on. If you don't mind turning it off because

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1 of the feedback, thank you.

2 MS. MOLDENHAUER: Sorry. Mr. Green, sorry, could  
3 you go to the image with the, the first image it started on?  
4 It might be the PowerPoint, the PowerPoint image. I don't  
5 know, I think if you just go to the bottom. See the bottom  
6 little section? If you hit on the P, the PowerPoint button.

7 So, sorry. We're looking at what's in the record  
8 as Exhibit 12. Mr. LeGrant, if -- the blue box is currently  
9 existing today, is that right?

10 MR. LEGRANT: Yes. That's a portion of the Rita  
11 Bright Center.

12 MS. MOLDENHAUER: Okay. And if there's -- appears  
13 to be somebody standing at a doorway. Is that right?

14 MR. LEGRANT: Yes.

15 MS. MOLDENHAUER: And if they walk out, are at the  
16 existing finished grade of the site, in that portion?

17 MR. LEGRANT: Yes. I believe they're in the,  
18 what's labeled the plaza.

19 MS. MOLDENHAUER: Okay. And so the plaza then is  
20 at the existing kind of finished grade at that portion of the  
21 site?

22 MR. LEGRANT: Yes.

23 MS. MOLDENHAUER: And so the connection is, as you  
24 said, the one, the image that looks like a number one, the  
25 hallway connection that is proposed. If you were to walk out

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1 that door, would you then -- where would you land, if you  
2 were to walk out that door, once that's built?

3 MR. LEGRANT: At the grade level of the plaza.

4 MEMBER SHAPIRO: Mr. Chair, this is the question  
5 I was trying to get answered before.

6 So, Ms. Moldenhauer, is that this?

7 MS. MOLDENHAUER: So, no. So the, this blue box  
8 here with this door here --

9 CHAIRPERSON HILL: Speak into the mic.

10 MS. MOLDENHAUER: Sorry. The blue box that I just  
11 circled in red, with the door, is part of the site here.  
12 We'll go through this in more detail with some additional  
13 exhibits. This wall here is part of the existing Rita Bright  
14 Center. And when we present our testimony after the brief  
15 break, I was just going to help walk through this with  
16 exhibits in the record, all of this is new construction.

17 So the connection will be new construction that  
18 will be attached to this portion of the wall here. But  
19 you're still going to be coming out onto the plaza that you  
20 see right here.

21 MEMBER SHAPIRO: Okay, thank you.

22 MS. MOLDENHAUER: So, Mr. LeGrant, there was a  
23 conversation and questions by the Appellant regarding the  
24 term, temporary shelter. The term, emergency shelter, is  
25 defined in the zoning regulations. Is that correct?

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1 MR. LEGRANT: yes.

2 MS. MOLDENHAUER: The term, apartment, is defined  
3 in the zoning regulations. Is that correct?

4 MR. LEGRANT: Yes.

5 MS. MOLDENHAUER: The term, temporary housing, is  
6 utilized in the zoning regulations?

7 MR. LEGRANT: Yes.

8 MS. MOLDENHAUER: Is the term, temporary shelter,  
9 found anywhere in the zoning regulations?

10 MR. LEGRANT: No.

11 MS. MOLDENHAUER: Thank you. We talked a little  
12 bit about the question of Subtitle 309.1, I think it's 3(b)  
13 as in the alternative between a control -- I'm sorry, not  
14 control, but the meaningful connection and access. You  
15 described the ability to provide access through key fobs, so  
16 long as the key fobs are utilized, or have access by both  
17 uses in the building. Is that correct?

18 MR. LEGRANT: Yes.

19 MS. MOLDENHAUER: Is that a decision that you have  
20 made in other meaningful connection cases prior to this case?

21 MR. LEGRANT: I have.

22 MS. MOLDENHAUER: And so you are consistent in  
23 that evaluation of how to evaluate fob use?

24 MR. LEGRANT: Yes.

25 MS. MOLDENHAUER: You also talked about how this

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1 project went through many iterations. Is that standard in  
2 the industry?

3 MR. LEGRANT: What industry?

4 MS. MOLDENHAUER: In the real estate development  
5 industry.

6 MR. LEGRANT: Yes, I would say so.

7 MS. MOLDENHAUER: Thank you. No other questions.

8 CHAIRPERSON HILL: Okay. We're going to take a  
9 quick break and -- yeah, thank you.

10 (Whereupon, the above named matter went off the  
11 record at 4:51 p.m. and resumed at 4:58 p.m.)

12 CHAIRPERSON HILL: Okay. We have someone new  
13 arriving with us. Could you please introduce yourself for  
14 the record.

15 MS. ZEILINGER: Hi. Good afternoon. I'm Laura  
16 Zeilinger, director, the Department of Human Services.

17 CHAIRPERSON HILL: Okay. Great. All right. So,  
18 welcome back. All right. Director, Zeilinger, if you could  
19 turn off your microphone because we get feedback if there's  
20 more than one on at a time down here. Okay.

21 So, this is what I'm going to propose, okay? I  
22 didn't realize this exactly. I'm leaving at 6:00, so if it  
23 doesn't happen we're continuing, okay? Right? And so --  
24 let's see. So, that's the first start. So, now what happens  
25 is, I just -- well, I -- and you guys at the Board here can

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1 easily let me know.

2           Again, apartment house, meaningful connection,  
3 right? That's all I know about it, okay? How did the zoning  
4 administrator err, or what have you, okay, in those areas,  
5 okay?

6           Then the Appellant is going to have an opportunity  
7 for rebuttal, right? And, Mr. Brown, again -- I guess I'm  
8 just trying to say -- I mean, we did two hours before on  
9 timeliness. Anyway, I'm just trying to say, we have till  
10 6:00, okay? Then after that, we're going to be back here  
11 again if we don't get this done by 6:00.

12           So, we have rebuttal and then there's going to be  
13 questions to rebuttal, okay? And then everybody's going to  
14 get to have a conclusion, okay? So, the conclusion usually  
15 can either be done -- I guess it can be done, actually, on  
16 the record -- I mean, sorry. It could be in a written  
17 conclusion, but I'd rather it be a verbal conclusion so that  
18 it's fresh and then nobody has to pay for attorneys anymore,  
19 so --

20           MR. GIRVIN: Can we time all of these things to  
21 make sure we all get to fit in in time?

22           CHAIRPERSON HILL: Sure. That's what I'm trying  
23 to talk about right now out loud, which is that, you know,  
24 you all are responsible for your rebuttal. Well, okay. Now  
25 you're going to make me take another 30 seconds just real

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1 quick.

2           You had about 45 minutes. Everybody's supposed  
3 to get 45 minutes. So, they're the ones who are going to get  
4 shorted, okay? So, I'm trying to get them to do it quicker  
5 so we can get all it in an hour; otherwise, you're paying for  
6 your attorney again the next time we're here.

7           Okay. So, Ms. Moldenhauer, the two items that I  
8 wanted to hear about, again -- I'm sorry. Apartment house --  
9 I'm sorry. Apartment and meaningful connection. And please  
10 start whenever you like.

11           MS MOLDENHAUER: Yes. We are here and believe  
12 that the conclusion of the evidence you will find that  
13 Building Permit B198601 was approved properly, that it was  
14 not an error, and that the zoning administrator's finding of  
15 it to be an apartment is correct.

16           I will start off by noting that, during the  
17 argument of the Appellant, we heard no discussion about the  
18 physical conditions of the apartment. This case is different  
19 from most of the zoning appeals where we talk about where are  
20 the walls, where are some of the physical aspects.

21           Here, we want to take a moment and talk a little  
22 bit about the specific layout of the building. The zoning  
23 regulations do not care about the type of person in the unit  
24 for an apartment. It cares about whether there is a kitchen,  
25 a bathroom that is private to the unit, and under the control

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1 of the occupant. We believe all of those factors are evident  
2 in this building.

3           Specifically, there have been references to short-  
4 term family housing program. That is a program under a  
5 different agency. Not one that is specifically overseen or  
6 reviewed by zoning regulations. There are two different  
7 types of short-term family housing programs: one, an  
8 emergency shelter that has sought relief on other cases and,  
9 two, an apartment-style unit.

10           We will hear testimony soon from Director  
11 Zeilinger, providing more explanation of the two different  
12 types and how this project is an apartment unit and is an  
13 apartment under zoning, specifically. This is not an  
14 emergency shelter.

15           As we heard testimony from the zoning  
16 administrator, the emergency shelters that sought relief on  
17 other cases had shared kitchens where there was one large  
18 kitchen that cooked food for everybody. Everyone had to go  
19 down to a lower level and eat, or they also had units that  
20 did not have their own bathroom. Every single unit in this  
21 project has its own kitchen and its own bathroom,  
22 distinguishing it physically from an emergency shelter under  
23 the regulations.

24           In addition to that, we will also hear testimony  
25 regarding the timing period of this as well. We would also

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1 just say in regards to the final issue of whether it is an  
2 apartment has to do with control. Opposing counsel wants to  
3 disregard the word, may, and say that the only way to prove  
4 control is through either a lease agreement or ownership.

5 That is not the case. There are -- even though  
6 the UDC case was decided before the zoning regulations added  
7 that one sentence, that does not change the overall  
8 interpretation. It simple provides to provide an example,  
9 as the zoning administrator said: for opportunities or ways  
10 in which control could be shown.

11 It does not require -- it's not a shall be by one  
12 or the other in regards to requirements; however, as is  
13 stated in our submission and as Director Zeilinger will  
14 testify to, there are program rules that the residents will  
15 engage with at this site.

16 In addition, I'll finally just talk and kind of  
17 walk through a little bit of the images of how the meaningful  
18 connection complies. And so, I think one of the important  
19 things that we were talking about before -- and I'm looking  
20 at Exhibit 13 in the record. The solid dotted line here  
21 shows that the site -- and my lines are not very even here.  
22 But that the site is not level.

23 This is very important and this is distinguishable  
24 from a lot of the examples that the Appellant provided as  
25 other zoning determination letters. In Euclid and a lot of

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1 the other ones, the sites were relatively flat. Here we have  
2 a graded slope. And as I asked the zoning administrator, if  
3 you walk out of this door right here, currently, you actually  
4 walk out to the existing, finished grade.

5           The language in the regulation talk about at-  
6 grade. Here we have multiple grades, and that is just the  
7 case with this site. It is -- and so, here, the specific  
8 meaningful connection is located on this, as zoning  
9 administrator described, this shape that looks like a number  
10 one.

11           This number one is a corridor that provides access  
12 between both the apartment building and the Rita Bright  
13 Center. It provides access for -- it will be built so the  
14 existing structure is here. This is part of the existing  
15 structure I'm trying to highlight here, which is existing.  
16 This existing line that you see here.

17           This will be new construction, part of the entire  
18 apartment building that will be created and built as this  
19 apartment -- as this new, meaningful connection. It  
20 complies -- and I just point out in the mechanical plans  
21 here, you can see the connection located here. Again, this  
22 is the new construction on the plan. This is the existing  
23 Rita Bright facility at the bottom here.

24           Hold on. I thought I was able to click the  
25 highlighter. Down here -- it's not working. But you can see

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1 this line here, which is showing the heating, mechanical, and  
2 plumbing line that goes into this space, showing that, based  
3 on the permitting plans, there is no evidence that this space  
4 is not heated and compliant pursuant to zoning regulations.

5 At that point in time, I'm going to -- what I'm  
6 going to do, since the -- Chairman Hill identified there  
7 would be closing remarks, I'm not going to provide any  
8 additional, kind of, statements, but I'm going to turn over  
9 to my witnesses, Ms. Zeilinger, who is the director of DHRS.  
10 And so, provide your testimony. Thank you.

11 MS. ZEILINGER: Thanks. Good afternoon. I'm  
12 Laura Zeilinger, as I stated, director of the D.C. Department  
13 of Human Services. The Department of Human Services develops  
14 and administers programming for short-term family housing  
15 buildings, including the Ward 1 Building at 2500 14th Street  
16 Northwest.

17 If you recall, I spoke on behalf of the Department  
18 in support of zoning applications for short-term family  
19 housing shelters in Wards 3, 5, and 6. During the hearings  
20 on those applications, I was qualified as an expert on issues  
21 of homelessness and shelter programming for families with  
22 minor children.

23 In 2016 and '17, you also previously approved  
24 applications for short-term family housing shelters in Wards  
25 4, 7, and 8. Thanks in part to your approval of the zoning

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1 applications, I'm proud to say that we have opened short-term  
2 family housing buildings in Wards 4, 5, 7, and 8, and are  
3 nearing completion in Wards 3 and 6.

4 I'm here today to explain the policy and  
5 programming basis behind the Ward 1 short-term family housing  
6 building and why the building qualifies as an apartment  
7 instead of the emergency shelter uses in Wards 3 through 8.  
8 I will not go into as much detail, but I do want to highlight  
9 some of the legislative history that's relevant and how  
10 that's driven by our programming.

11 The Ward 1 Building is part of Mayor Bowser's  
12 eight-ward Homeward D.C. initiative to close D.C. General and  
13 make homelessness in the District rare, brief, and  
14 non-recurring. Over the last 15 years, the Mayor's office  
15 has worked closely with the counsel to -- of the District to  
16 enact legislation that will help achieve this goal.

17 In 2005, the council enacted the Homeless Services  
18 Reform Act, establishing the District's interagency council  
19 on homelessness to assist in defining the standard known as  
20 the continuum of care for individuals and families  
21 experiencing homelessness in the District. We work closely  
22 with interagency council to incorporate best practices for  
23 our shelter buildings and programs.

24 The council also established minimum standards for  
25 apartment-style units in the district. The term, apartment-

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1 style, was defined as a housing unit with separate cooking  
2 facilities and other basic necessities to enable families to  
3 prepare and consume their own meals. Also, a separate  
4 bathroom facility for the exclusive use of the family. And  
5 separate sleeping quarters for adults and minor children in  
6 accordance with the occupancy standards of Title 14 of our  
7 municipal regulations.

8           Unfortunately, from 2005 to 2015, the population  
9 of District residents who experience homelessness increased.  
10 This increase is well documented and something I spoke about  
11 in my testimony on the other zoning cases. To help meet the  
12 needs of our residents experiencing homelessness, Mayor  
13 Bowser's administration worked with council to change the  
14 minimum standard for shelter units in the District. Such a  
15 change in standards would allow for the District to provide  
16 access to shelter year round and continue the transformation  
17 of our homeless services system for families.

18           In September 2015, at the request of the Mayor,  
19 Chairman Mendelson introduced the Interim Eligibility and  
20 Minimum Shelter Standards Act of 2015. During council review  
21 of this legislation, many advocates for people experiencing  
22 homelessness, including myself, testified regarding the  
23 apartment-style standard for shelters in the District. The  
24 following is an excerpt of my testimony to council.

25           Basically, I can summarize it, since we're short

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1 on time. But basically, it -- what we said that is  
2 particularly relevant here is, what would jeopardize the  
3 progress is to prescribe in law, as some of you suggested,  
4 specific design attributes, like a private bathroom and  
5 cooking facilities, in each unit without regard for the  
6 necessary cost and square footage implications that would  
7 impact our ability to develop the number of units we need to  
8 replace D.C. General.

9 Further, adding a private bathroom and kitchen in  
10 each unit makes the unit an apartment and we would not need  
11 a legislative fix to develop more apartments. So, from a  
12 cost perspective, it was vital to change the standard for our  
13 shelter units so that we could achieve the goal of building  
14 the short-term family housing units.

15 And while the District could always build  
16 apartment-style units, which we've done with the Ward 1  
17 Building -- or, which we're attempting to do with the Ward 1  
18 Building, the Minimum Standards Act allowed us the  
19 flexibility to build a different type of unit that would have  
20 less onerous requirements from a construction perspective and  
21 still meet the needs for our program.

22 Accordingly, the Minimum Standards Act enacted a  
23 new definition for shelter called, a D.C. General family  
24 shelter replacement unit. In contrast to apartment-style  
25 units, this type of unit is only a private room that includes

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1 space to store and refrigerate food, and is constructed by  
2 or at the request of the District for the purposes of  
3 sheltering a homeless family. And that's a quote from the --  
4 from law.

5           The Minimum Standard Act requires the Mayor to  
6 maintain no less than 121 apartment-style units, but at least  
7 270 D.C. General replacement shelter units. So, those -- and  
8 the attributes of those are an important distinction. So,  
9 in June 2016, the Council enacted on the Homeless Shelter  
10 Replacement Act, authorizing the Mayor to designate funds for  
11 the construction of D.C. General family replacement units in  
12 Ward 3 through 8 and apartment-style units in Ward 1.

13           The Council later passed the Homeless Shelter  
14 Replacement Amendment Act with the location of the Ward 1  
15 Building changing to the 2500 14th Street Northwest, but the  
16 legislation kept the requirement that apartment-style units  
17 be constructed in Ward 1. The extensive legislative history  
18 establishes the different standards for apartment-style units  
19 and D.C. General family shelter replacement units.

20           The distinction has governed our programming and  
21 design for all of the short-term family housing buildings.  
22 To achieve the apartment-style standard in Ward 1, we had to  
23 design units, as we've talked about, that have their own  
24 cooking, their own sleeping, their own private bathroom in  
25 each apartment unit that has exclusive access and control for

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1 the individual family who stays there; is not shared among  
2 families. We cannot put multiple families in one of those  
3 apartments. One family per apartment.

4 While we will provide wraparound services for our  
5 residents, unlike the D.C. General replacement units, we  
6 don't provide meals there. They have their own kitchens, they  
7 prepare their own meals, and they buy their own food.  
8 Importantly, we will require all of the residences in the  
9 Ward 1 Building to sign a residency agreement, which are  
10 basically program rules, before occupying a unit.

11 This outlines the requirements for occupancy and  
12 agreement between the program, the District, and the person  
13 who's receiving the service there. The agreement also gives  
14 residents exclusive use and control of their unit with  
15 limited intervention from staff for safety measures, room  
16 inspections in the event of emergency. These standards are  
17 very much akin to apartment living. Only that the units in  
18 Ward 1 serve families who are experiencing homelessness and  
19 the services are on-site designed to support their specific  
20 needs.

21 In terms of length of stay, based on historical  
22 data, we expect that apartment-style units, including in  
23 Ward 1, will have a longer length of stay than even our D.C.  
24 General replacement short-term family housing programs in  
25 Wards 3 through 8. This is something I testified about in

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1 front of council in 2015, advocating for a different standard  
2 for how we provide shelter.

3           And in that testimony, I said, our data shows a  
4 significant correlation between apartment-style units and  
5 longer lengths of stay. Season shelter shorter and private  
6 rooms, that correlation is not unique to us. It's true in  
7 other cities. That correlation doesn't change when you look  
8 at lengths of stay based on destination at exit. Regardless  
9 of if a family exited shelter, Department supportive housing,  
10 rapid rehousing, or any other permanent housing situation,  
11 the longest lengths of stay in our continuum by far are in  
12 apartment-style shelters.

13           Based on our research, we anticipate families to  
14 stay in the Ward 1 apartment units for at least 90 days. And  
15 that actually would major improvement over what we see in our  
16 other apartment-style shelters. This is not our first one  
17 by any stretch. It's what we've been doing for years and  
18 years due to our law.

19           The emergency shelter zoning designations in  
20 Wards 3 through 8 allows us to provide temporary housing for  
21 a period of less than 30 days. Further, the standards for  
22 the D.C. General family replacement units in Wards 3 through  
23 8 do not require us to build apartments. They are -- like  
24 we are in Ward 1. Those are, again -- they have one main  
25 kitchen with a central dining area, prepared meals that are

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1 served during meal times. There are family bathrooms that  
2 may be shared among the ten families who live on a floor with  
3 only a limited number of rooms having their own private in-  
4 suite bathrooms.

5 Rooms do not have separate living and sleeping  
6 quarters in our short-term family housing D.C. General  
7 replacement sites, but they have a common living, play,  
8 and spaces for life activities that are outside of the  
9 individual rooms that are shared. These design features and  
10 the length of stay do not qualify the buildings in Ward 3  
11 through 8 as apartment-style under the council's legislation  
12 or as an apartment under zoning, which is why we filed for  
13 special exception relief for emergency shelter at those  
14 sites; however, we do not need such a zoning designation for  
15 Ward 1 because it's an apartment building.

16 In closing, the legislative and policy history  
17 dictates that the Mayor must construct an apartment building  
18 at the Ward 1 2500 14th Street Northwest site. The fact that  
19 this apartment building will serve families who are  
20 experiencing homelessness does not change the fact that it's  
21 designed and to be used as an apartment building.

22 And as such, we encourage the Board to uphold the  
23 zoning administrator's decision to issue a building permit  
24 for the Ward 1 short-term family housing building and deny  
25 this appeal. Thank you for your attention today and I'm

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1 available for questions.

2 CHAIRPERSON HILL: Okay. Thank you.  
3 Ms. Moldenhauer, is that it?

4 MS. MOLDENHAUER: Yes. I just wanted to respond  
5 to a couple questions I heard before. There was comments  
6 made by the Appellant that the two separate buildings in the  
7 Ward 3 case, 19450, created some sort of precedent here for  
8 meaningful connection. It's a completely different project  
9 with two completely different uses that has no specific  
10 relevance.

11 He also stated that no functional interchange was  
12 provided here. The zoning regulations don't require a  
13 functional interchange. They simply require a physical,  
14 structural connection that meets certain requirements.

15 Under those requirements for meaningful  
16 connection, there is no requirement that the two uses must  
17 coexist harmoniously. It's just simply that you have to have  
18 these specific requirements. That is true, as you've seen  
19 on some of the determination letters, such as the Almas  
20 Temple, and the apartment building reference in one of the  
21 zoning determination letters provided in the record.

22 The comments regarding that, you know, there could  
23 be two separate buildings built here. Yes. You know, there  
24 are multiple ways that buildings can be built. The  
25 requirement here that was -- the Board has to evaluate: is

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1 this building built to compliance with the zoning  
2 regulations? And we say, yes, it is, and the zoning  
3 administrator did not err. There was one other point.

4 UNIDENTIFIED SPEAKER: Was it the parking  
5 privileges?

6 MS. MOLDENHAUER: No. And I think we've had  
7 testimony that there would be access between the meaningful  
8 connection between both the Rita Bright Center and the center  
9 as stated by the zoning administrator in that compliant  
10 requirement and -- hold on. Equal access.

11 CHAIRPERSON HILL: Okay. All right. Okay.

12 MS. MOLDENHAUER: I think that was it. Thank you  
13 very much.

14 CHAIRPERSON HILL: So, does the Board have any  
15 questions for the property owner? I'll go really fast. So,  
16 Ms. Zeilinger, when -- or, Director Zeilinger, sorry. Again,  
17 it's one family per apartment, correct?

18 MS. ZEILINGER: Correct.

19 CHAIRPERSON HILL: And it's over the 30 days  
20 because you guys think it's kind of around 90 days, correct?

21 MS. ZEILINGER: Our current data in apartment-  
22 style shelters has some families staying as long as five  
23 years --

24 CHAIRPERSON HILL: Right. When you got the  
25 other -- and I'm sorry to keep cutting you off. When you get

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1 the other -- when you say, apartment styles, there's other  
2 apartment styles?

3 MS. ZEILINGER: Yes.

4 CHAIRPERSON HILL: Where?

5 MS. ZEILINGER: So, we have them in several  
6 places.

7 CHAIRPERSON HILL: In the city.

8 MS. ZEILINGER: We have one on Naylor Rd, 2601  
9 and 2603, 1701 to 1711 V Street Southeast --

10 CHAIRPERSON HILL: May I interrupt just -

11 MS. ZEILINGER: Yes.

12 CHAIRPERSON HILL: So, those are all apartment-  
13 style, meaning they're apartment buildings.

14 MS. ZEILINGER: They're apartment buildings.

15 CHAIRPERSON HILL: They were done matter-of-right  
16 apartment buildings.

17 MS. ZEILINGER: Correct.

18 CHAIRPERSON HILL: And then -- oh, and the  
19 residency agreement. Again, that's the residency agreement  
20 that you are using when people come in. That's how you're  
21 processing people --

22 MS. ZEILINGER: Yes --

23 CHAIRPERSON HILL: -- getting everybody on the  
24 same page as to how they're doing -- and I -- how many are  
25 there in the city, roughly?

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1 MS. ZEILINGER: How many apartment-style --

2 CHAIRPERSON HILL: Apartment-style.

3 MS. ZEILINGER: -- shelters? We have one, two,  
4 three, four, five that are currently in operation. Two that  
5 are under renovation, so that would make it seven in addition  
6 to -- so, we have -- about eight.

7 CHAIRPERSON HILL: That has apartments.

8 MS. ZEILINGER: Around eight apartment buildings  
9 are used for --

10 CHAIRPERSON HILL: As apartments.

11 MS. ZEILINGER: -- apartment-style shelter in this  
12 way.

13 CHAIRPERSON HILL: Got it. Okay. Anybody got any  
14 questions?

15 MS. ZEILINGER: All zoned as apartments.

16 MEMBER SHAPIRO: Just to -- I just -- I can't  
17 remember which side talked about this. That you -- Director  
18 Zeilinger, you keep mentioning apartment-style. That's just  
19 a way of helping us to understand what you're -- it's an  
20 easier way to refer to it than -- I mean, we're just talking  
21 about apartments in an apartment house.

22 MS. ZEILINGER: Correct.

23 MEMBER SHAPIRO: Okay.

24 MS. ZEILINGER: But I think there's an --

25 MEMBER SHAPIRO: There's nothing --

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1 MS. ZEILINGER: -- indication that the because  
2 those apartments are being used for particular residents that  
3 that somehow changes the designation of the building. And  
4 for us -- because that is -- we are required to provide the  
5 same service we might provide in one place that is not an  
6 apartment, in another place that is an apartment we have  
7 certain requirements that we must provide that service in an  
8 apartment.

9 And so, we distinguish that because we have, in  
10 the Homeless Services Reform Act, that zoning. But in the  
11 law that governs most of how we do our business, that is a  
12 very important requirement on us.

13 MEMBER SHAPIRO: I'm with you. And your testimony  
14 was quite clear on that. I just want to make sure there's  
15 no distinction in your mind between an apartment and an  
16 apartment-style unit.

17 MS. ZEILINGER: No, not at all.

18 MEMBER SHAPIRO: Okay. Thank you. Thank you, Mr.  
19 Chair.

20 MS. MOLDENHAUER: For the Board, we have  
21 certificates of occupancy for two of the buildings. We were  
22 trying not to be overly paper word, but we have two C of Os  
23 if the Board would like to see those, that show apartment-  
24 style units for two of the sites that are provided in  
25 Ms. Zeilinger's testimony.

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1 CHAIRPERSON HILL: Okay. Thank you for mentioning  
2 that. I guess we -- if the Board wants it, we can ask  
3 later --

4 (Simultaneous speaking.)

5 MR. GAMBRELL: I'm sorry. I have an objection.  
6 Has that been entered into the record?

7 CHAIRPERSON HILL: No. She's asking right now.  
8 If the Board would like to see it, then we would put it in  
9 the record, or we can see it. And right now we haven't  
10 decided whether or not we want to see it. But if we did want  
11 to see it, you'd get an opportunity to take a look at that  
12 as well.

13 Mr. Shapiro?

14 MEMBER SHAPIRO: Thank you, Mr. Chair. Director  
15 Zeilinger, you said something about a -- some kind of a  
16 written agreement you have with the residents.

17 MS. ZEILINGER: Right.

18 MEMBER SHAPIRO: I forgot the term you used for  
19 that.

20 MS. ZEILINGER: We generally refer to it as  
21 program rules, so this governs the expectations among the  
22 residents who are staying in the building and are in our  
23 program and also allows them to know their rights under the  
24 Homeless Services Reform Act to remain. And what the  
25 expectations are of them as well as of the provider and the

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1 Government in that relationship.

2 MEMBER SHAPIRO: Okay. And I'm suggesting that  
3 this should be the equivalent of a rental agreement. I'm  
4 just trying to get -- put this in perspective because I don't  
5 even know if rental agreement is a term that is defined.

6 MS. ZEILINGER: Yeah. But there is a signed  
7 document that governs the terms of the stay between the  
8 person staying in the apartment or any of our short-term  
9 family housing sites and the operator --

10 MEMBER SHAPIRO: Thank you.

11 MS. ZEILINGER: -- of that on behalf of the  
12 District.

13 MEMBER SHAPIRO: Thank you very much. Thank you,  
14 Mr. Chair.

15 VICE CHAIRPERSON HART: Just one quick question,  
16 Director Zeilinger. You were -- are there any programs in  
17 this building?

18 MS. ZEILINGER: No.

19 VICE CHAIRPERSON HART: Any sort of -- this is  
20 apartments and then you have a lobby and that's --

21 MS. ZEILINGER: Yes.

22 VICE CHAIRPERSON HART: Okay. Because in the --

23 MS. ZEILINGER: I mean, we do have case managers  
24 who have offices, just the same as in our permanent  
25 supportive housing.

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1 VICE CHAIRPERSON HART: Okay.

2 MS. ZEILINGER: Yeah.

3 VICE CHAIRPERSON HART: Okay. Thank you.

4 CHAIRPERSON HILL: Okay. And just one last  
5 question for me again, just in terms of the apartment-style  
6 thing. What it seemed to be was it's for -- kind of for the  
7 legislation or, you know, to help understand what an  
8 apartment-style looks -- I mean, just to get some kind of  
9 wording around it, right? That's why it's called apartment-  
10 style.

11 I mean, it's -- it was in the legislation to help  
12 the legislators understand that these are going to be single-  
13 family unit apartments that people are going to be living in  
14 versus the other kinds of shelter, which is less than  
15 90 days, which is, you know, the --

16 MS. ZEILINGER: Yeah.

17 CHAIRPERSON HILL: You might not have a different  
18 kind of -- you know, you're sharing a bathroom or that kind  
19 of thing. I mean, that --

20 MS. ZEILINGER: Correct.

21 CHAIRPERSON HILL: That's what I'm just clarifying  
22 with Mr. Shapiro. That's the language that was probably  
23 introduced to help the legislation just kind of clarify --

24 MS. ZEILINGER: Yeah.

25 CHAIRPERSON HILL: -- the difference.

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1 MS. ZEILINGER: Yeah. There was robust community  
2 debate about whether it would be appropriate to serve  
3 families in any condition other than having their own  
4 apartment. And we argued for the authority to serve families  
5 safely where there were some -- without having it be their  
6 own apartment and in apartment building in this manner.

7 And so, we needed -- and there was much testimony  
8 about some families for -- who needed reasonable  
9 accommodations, where having their own apartment was  
10 essential for this provision of this service. And that's  
11 really why that distinction exists.

12 CHAIRPERSON HILL: Yeah. And just -- I'm cutting  
13 you off here just because I'm trying to --

14 MS. ZEILINGER: Yeah.

15 CHAIRPERSON HILL: We got a clock here running.  
16 Again, apartment-style is just -- it's not exactly --

17 (Simultaneous speaking.)

18 MS. ZEILINGER: It's not a designation.

19 CHAIRPERSON HILL: -- it's something that was  
20 there so that it was helping to clarify the issue.

21 MS. ZEILINGER: Yes.

22 CHAIRPERSON HILL: Okay. So, now does the -- have  
23 some questions for the Applicant, please.

24 MR. GIRVIN: Three brief yes-or-no on my end.

25 Ms. Zeilinger, do occupants pay rent?

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1 MS. ZEILINGER: No.

2 MR. GIRVIN: Okay. Thanks. Will there be any  
3 restrictions in place to prevent residents of the short-term  
4 family housing facility from accessing the children's center  
5 or vice versa? Will there be any restrictions in place or  
6 can people move freely between the two uses of the building?

7 MS. ZEILINGER: They will not -- there will --

8 MS. MOLDENHAUER: Sorry, can you clarify your  
9 question?

10 MR. GIRVIN: Sure. Will there be an restrictions  
11 in place, anything to prevent people wandering freely from  
12 the two parts of the supposed one building?

13 MS. MOLDENHAUER: I'm just going to object. I  
14 think we did testify that there were going to be fobs to  
15 utilize the corridor, so I believe that's been answered --

16 (Simultaneous speaking.)

17 CHAIRPERSON HILL: It's okay. I think what he's  
18 trying to ask is, I mean, who -- what are you trying to ask?  
19 Who's going to have access? Is that what you're asking?  
20 Between the two buildings?

21 MR. GIRVIN: Yeah. I understand that there was  
22 objection from --

23 (Simultaneous speaking.)

24 CHAIRPERSON HILL: And who are you asking it to?

25 MR. GIRVIN: I'm asking Ms. Zeilinger.

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1 CHAIRPERSON HILL: Okay.

2 MR. GIRVIN: I understand there was objection from  
3 the original staff of the Rita Bright Center before they were  
4 all fired because they were concerned about restricted access  
5 and --

6 (Simultaneous speaking.)

7 MS. MOLDENHAUER: Objection.

8 CHAIRPERSON HILL: Wait, wait. First of all, slow  
9 down. Slow down. You got to slow down for me.

10 MR. GIRVIN: Sorry.

11 CHAIRPERSON HILL: You totally introduced  
12 something that was completely all over the map.

13 MR. GIRVIN: Yeah.

14 CHAIRPERSON HILL: And so, first of all, I'm going  
15 to rescind whatever the fired thing was that you --

16 MR. GIRVIN: Okay.

17 CHAIRPERSON HILL: -- just said and whatever you  
18 just entered into your discussion.

19 MR. GIRVIN: Sure.

20 CHAIRPERSON HILL: What I'm clarifying is, you  
21 told me you had three questions --

22 MR. GIRVIN: Yeah.

23 CHAIRPERSON HILL: -- and they were very simple.

24 MR. GIRVIN: Okay.

25 (Simultaneous speaking.)

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1 CHAIRPERSON HILL: I'm going to clarify the  
2 question.

3 MR. GIRVIN: Okay.

4 CHAIRPERSON HILL: So, what I understood --  
5 because you're talking about the meaningful connection.  
6 That's the discussion that we're having.

7 MR. GIRVIN: Yes. That's right.

8 CHAIRPERSON HILL: And whether or not there's  
9 access between one building to the other. So, the question  
10 is, who will have access -- I suppose is the question --  
11 between one building -- the meaningful connection. Who will  
12 be able to use the meaningful connection? That's the  
13 question.

14 MS. ZEILINGER: So, occupants of both sites  
15 will -- who have the key fob access will be able to use the  
16 meaningful connections.

17 CHAIRPERSON HILL: Okay.

18 MR. GIRVIN: So, not all users.

19 CHAIRPERSON HILL: Okay.

20 MR. GIRVIN: And then --

21 CHAIRPERSON HILL: I would -- I'm just going to  
22 clarify. I would imagine they're going to get to decide --  
23 I don't know which occupants it is, but somebody will have --  
24 be able to use the meaningful connection both at the center  
25 and at the -- you know, whatever we're going to call it. A

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1 shelter, apartment house, we don't know yet. But that's what  
2 your question is and there's been an answer.

3 MR. GIRVIN: Yeah.

4 CHAIRPERSON HILL: Okay. Next question.

5 MR. GIRVIN: Will occupants have access?  
6 Residents of the shelter have access to that free and  
7 unrestricted passage?

8 MS. ZEILINGER: Same answer --

9 MR. GIRVIN: Okay.

10 MS. ZEILINGER: -- as I just gave.

11 MR. GIRVIN: Okay. All right. And are there  
12 conditions under which operators of the short-term family  
13 housing facility have the right to access the units?

14 MS. ZEILINGER: Yes, there are. And those are  
15 spelled out in the terms of the program rules, under -- and  
16 in my testimony that there are specific -- so, they don't  
17 have free, unfettered access, nor do program participants  
18 have free and unfettered access to each other's units, just  
19 like in any other apartment building.

20 But they do agree that there are certain  
21 situations and that they -- as part of their stay there,  
22 that -- where their unit may be accessed, and that is  
23 according to the terms.

24 MR. GIRVIN: Got it. Thank you.

25 CHAIRPERSON HILL: Okay.

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1 MR. GAMBRELL: And I have a few and I --

2 CHAIRPERSON HILL: Sure. Go ahead.

3 MR. GAMBRELL: -- absolutely swear mine are easy.

4 CHAIRPERSON HILL: Sure.

5 MS. ZEILINGER: I just -- could I add on  
6 clarifying point that it think might matter? That is also  
7 true with our permanent supportive housing and I don't think  
8 there's the same question about that. But we also have PSH  
9 units that I don't think anyone is contesting qualify as  
10 apartments. And the same -- those are -- those same  
11 agreements are true in both cases.

12 MR. GIRVIN: Okay.

13 MS. MOLDENHAUER: So, I want to just clarify. So,  
14 the -- this project has both apartments that are part of the  
15 short-term family housing program and permanent supportive  
16 housing units. And so, Director Zeilinger is saying that the  
17 control element, the ability to potentially, as an operator,  
18 access a unit in certain limited cases, is the same --

19 MS. ZEILINGER: Consistent.

20 MS. MOLDENHAUER: -- and consistent between the  
21 permanent supportive housing and the apartment --

22 (Simultaneous speaking.)

23 MS. ZEILINGER: Right.

24 MEMBER SHAPIRO: But now I'm hearing something --  
25 I'm hearing you say something a little different. So, you're

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1 saying that permanent supportive housing units you do not  
2 consider apartments?

3 MS. ZEILINGER: No, I do. But I think -- and I  
4 think that -- and I heard they're -- that that was not an  
5 issue that was being contested.

6 MEMBER SHAPIRO: I was just responding to Ms.  
7 Moldenhauer, so --

8 MS. ZEILINGER: Oh, no, no, no.

9 MS. MOLDENHAUER: No. They are both apartments.  
10 What I think Director Zeilinger was trying to say is that the  
11 ability to access those units in certain emergency situations  
12 or pursuant to the rules are the same between the permanent  
13 supportive housing and --

14 (Simultaneous speaking.)

15 MEMBER SHAPIRO: Yeah. That's a programming  
16 decisions that you'd have to figure out.

17 MS. ZEILINGER: Right. It's a programming  
18 decision. It has --

19 MEMBER SHAPIRO: That's fine.

20 MS. ZEILINGER: Right. I just didn't -- wanted  
21 to be clear that it --

22 (Simultaneous speaking.)

23 MEMBER SHAPIRO: I appreciate it.

24 CHAIRPERSON HILL: Okay. Can you all do me a  
25 favor? Could you all turn off your microphones and let's

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1 just do one at a time. Thanks. I'm sorry. And then I am  
2 going to ask a question. So, the 15 PSHs, right? Okay. And  
3 then there's the 35 STFH, right? So, there is no difference  
4 in what you're saying in terms of how they're treated.

5 MS. ZEILINGER: Theirs is a different in the  
6 program type.

7 CHAIRPERSON HILL: Right.

8 MS. ZEILINGER: But the issue specifically around,  
9 can somebody come into that unit who is not the person who  
10 is the family occupant of that unit, that is common in our  
11 programs. And I just want to be clear about that because -

12 CHAIRPERSON HILL: Okay.

13 MS. ZEILINGER: -- I didn't want that factor to,  
14 in some way, get confused as to this question of exclusive  
15 access.

16 CHAIRPERSON HILL: Okay.

17 MS. ZEILINGER: Or that folks have exclusive  
18 access and there are defining terms --

19 CHAIRPERSON HILL: Okay.

20 MS. ZEILINGER: -- when someone else may enter.

21 CHAIRPERSON HILL: Okay.

22 MS. ZEILINGER: That is true for housing programs  
23 that are not under question as well.

24 CHAIRPERSON HILL: Okay. Mr. Gambrell?

25 MR. GAMBRELL: Yes. Is DGS building an apartment-

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1 style temporary shelter per the Homeless Services Reform Act  
2 of 2005 and the 2016 and 2018 Acts? I can repeat that. Is  
3 DGS -

4 MS. ZEILINGER: I heard the question.

5 MR. GAMBRELL: Sure.

6 MS. ZEILINGER: I heard the question, I just  
7 don't --

8 MR. GAMBRELL: You looked confused.

9 MS. ZEILINGER: -- there is a -- we had -- well,  
10 because it's not the Act itself that is what causes us to  
11 build that building. It is budgetary authority and other --  
12 so, I don't understand what you're actually asking.

13 MR. GAMBRELL: Okay. So, budgetary authorities  
14 based upon legislation, correct?

15 MS. ZEILINGER: Yeah. It's our capital budget  
16 and -- yeah.

17 MR. GAMBRELL: Okay.

18 MS. ZEILINGER: The way that public dollars get  
19 allocated for construction.

20 MR. GAMBRELL: Okay. Is DGS building an apartment  
21 building per the Homeless Services Reform Act of 2005 and the  
22 2016 and 2018 Acts?

23 MS. ZEILINGER: I'm not sure what you're actually  
24 asking me --

25 (Simultaneous speaking.)

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1 CHAIRPERSON HILL: I guess so -- Mr. Gambrell, I  
2 continue to kind of get confused by your questions in that  
3 what continues to be around the center of this is whether or  
4 not the zoning administrator -- I mean, that's the whole  
5 appeal, right? And I know I keep saying this. Again, how  
6 did the zoning administrator determine this -- these are  
7 apartment buildings.

8 So, that's what I'm still trying to understand.  
9 That's your whole case. And so, we can keep asking your  
10 question.

11 MR. GAMBRELL: Yeah.

12 CHAIRPERSON HILL: But I'm saying, they're not  
13 connected at all in my mind --

14 MR. GAMBRELL: Yeah.

15 CHAIRPERSON HILL: -- as to whether or not this  
16 is an apartment building or not, right?

17 MR. GAMBRELL: This might help. The reason I ask  
18 that is the question about distinguishing between is this an  
19 apartment-style temporary shelter or an apartment building  
20 ties into the emergency shelter definition in the zoning  
21 regulations, which is very clear and does not use the term,  
22 apartment-style, in an off-handed manner. It's very critical  
23 to defining what is meant by an emergency shelter.

24 So, my question would be, is DGS building an  
25 apartment building per the above-referenced facts?

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1 MS. ZEILINGER: So, I think there's things that  
2 are being conflated here that are really important to  
3 clarify, okay? That the homeless services reform act  
4 provides standards for the -- a whole host of things that  
5 protect people's rights, the whole delivery of the continuum  
6 of services that people need while they're experiencing  
7 homelessness is.

8 And as part of those minimum standards, there's  
9 some pretty clear parameters around what are the conditions  
10 that we must provide when we provide emergency shelter,  
11 temporary housing. There are different definitions that  
12 define apartment buildings and emergency shelter in zoning.

13 The only reference that exists in zoning to the  
14 Homeless Services Reform Act is who is experiencing  
15 homelessness. What is the homeless definition. This is an  
16 apartment building, is an apartment building, is an apartment  
17 building. It's clear that we have to have apartment  
18 buildings in our Homeless Services Reform Act and it's also  
19 clear that some -- when you talk about emergency shelter, who  
20 meets the definition of homeless.

21 But we -- I would just like to state that it would  
22 be a very dangerous precedent to define a building based on  
23 who goes in it as opposed to things in zoning. That's how  
24 discriminatory practices become institutionalized in cities.  
25 So, the note to who is experiencing homelessness that's

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1 referenced is not -- doesn't change that this is still an  
2 apartment.

3 MR. GAMBRELL: Okay. I'm going to let this go.  
4 But I just want to clarify, that was not my question nor did  
5 I get that answer. But I would reference to the Board that  
6 the Homeless Services Reform Act of 2005, which is --

7 CHAIRPERSON HILL: Are you asking a question,  
8 Mr. Gambrell?

9 MR. GAMBRELL: No, I'm making a statement --  
10 (Simultaneous speaking.)

11 CHAIRPERSON HILL: And by the way -- no, you're  
12 not -- no, we're not -- you will get an opportunity to do  
13 rebuttal and I guess it's going to get wherever it was. And  
14 by the way, your question's not particularly clear, right?  
15 And I'm trying to be as clear as possible.

16 Is this an apartment building, right? Are you  
17 guys making a case that this is an apartment building? And  
18 I got to tell you, I don't think you're making a very good  
19 case that it's not an apartment building. What is the  
20 definition of apartment? We've looked at what the definition  
21 of apartment is.

22 And when you all left here the last time, it was  
23 all about that, right? And so, you can look and see what the  
24 zoning administrator has to look at as to whether or not it's  
25 an apartment. And so, that's what all we're doing up here,

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1 okay? What other questions do you have?

2 MR. GAMBRELL: Yeah. I'll hold my other thing  
3 because it's actually a statement about what we have made a  
4 case for.

5 CHAIRPERSON HILL: Okay. Fine. All right.

6 Mr. Brown?

7 MR. BROWN: Just a couple of things.

8 CHAIRPERSON HILL: Sure.

9 MR. BROWN: All right. Ms. Zeilinger, the  
10 definition of emergency shelter in the zoning regulations  
11 makes references to the Homeless Services Reform Act of 2005,  
12 so I'm inferring that this definition was added to the zoning  
13 regulations some time after that. Do you know when I was  
14 added?

15 MS. ZEILINGER: No, I don't know when it was  
16 added.

17 CHAIRPERSON HILL: Why does it matter?

18 MR. BROWN: Could I get -- could you just let me  
19 finishing my line of questioning, please?

20 CHAIRPERSON HILL: Your line of questioning? I'm  
21 trying to -- sure. Go ahead, Mr. Brown.

22 MR. BROWN: All right. With respect to the other  
23 apartment-style homeless shelters that you mentioned, do you  
24 know whether or not any of them began operation before or --  
25 before the definition of emergency shelter went into the

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1 zoning regulations?

2 MS. ZEILINGER: I don't know when the definition  
3 went into the zoning regulations. I could tell you -- if you  
4 know, I could tell you when we opened many of the apartment-  
5 style buildings that we operate, but --

6 MR. BROWN: Well, do any of them -- do most of  
7 them predate 2005?

8 MS. ZEILINGER: Some do. Many don't, actually.

9 MR. BROWN: With regard to those that don't  
10 predate 2005, was there any -- was there ever any challenge  
11 to whether or not those structures did or did not meet the  
12 definition of emergency shelter in the zoning regulations?

13 MS. MOLDENHAUER: Sorry. Can I just make a  
14 clarification? Mr. Brown, are you stating that the emergency  
15 shelter language was put into place in 2005?

16 MR. BROWN: I'm trying -- I'm just asking --

17 MS. MOLDENHAUER: Do you know the answer to the  
18 question?

19 MR. BROWN: I don't know the answer to the  
20 question.

21 MS. ZEILINGER: So, two of our sites were, in 2012  
22 and 2014, where happen to have the certificate of  
23 occupancy --

24 (Simultaneous speaking.)

25 CHAIRPERSON HILL: I just don't understand the

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1 question. I understand the line of questioning. I don't  
2 understand the questions, okay? Again, this is going to be  
3 used as a shelter, right? I don't think anybody's having an  
4 argument that this is going to be used -- well, I'm sorry.  
5 That this isn't going to be used for people who are  
6 experiencing homelessness. The definition is whether it's  
7 over 30 days. And so, what are -- what are you asking about?

8 MR. BROWN: I'm getting to the point that -- we  
9 are trying to make the point that this is temporary housing.

10 CHAIRPERSON HILL: So, how are you trying to make  
11 the point that it's temporary housing?

12 MR. BROWN: Let me ask -- I'll ask her one more  
13 question.

14 CHAIRPERSON HILL: Sure.

15 MR. BROWN: All right. You are aware that in both  
16 the 2016 Act and the 2018 Act, which talked about  
17 implementing the Mayor's program for replacing homeless  
18 shelters in Wards 1 and 3 through 8, that in all of those  
19 acts, the Acts referred to both D.C. replacement units and  
20 apartment-style units, right?

21 MS. ZEILINGER: Yes.

22 MR. BROWN: And all of those were under the  
23 umbrella of temporary shelter. That language was used in  
24 those three statutes, right?

25 MS. ZEILINGER: I would have to look at the

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1 statute to know which -- exactly what language was used to  
2 describe it. But it was -- certainly would have been in  
3 accordance with the Homeless Services Reform Act, which is  
4 not this place that we go to for a zoning definition.

5 MR. BROWN: Well, this is from our Slide 5 with  
6 a quote from the statute. Assuming that we've quoted the  
7 statute correctly, is it not the case that all three  
8 enactments refer to temporary shelters?

9 MS. ZEILINGER: They do.

10 MR. BROWN: Is it not the case that the emergency  
11 shelter language refers to a facility providing temporary  
12 housing?

13 MS. ZEILINGER: What is your question?

14 (Simultaneous speaking.)

15 CHAIRPERSON HILL: Hey, you guys. Hey, you guys.  
16 Hey, you guys. We're up here, okay? And so, you're going  
17 to have to be more specific in your questions, Mr. Brown,  
18 okay? I mean, you guys seem to be having, like, a discussion  
19 and legislation's being talked about. And you're showing,  
20 like, items down there that we don't even have an opportunity  
21 to see.

22 And so, you know, we can go ahead and, you know --  
23 again, I'm trying to understand what you're trying to get --  
24 you know, it would help us to understand what it is you're  
25 trying to get out of the property owner in terms of what they

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1 haven't answered for you.

2 MR. BROWN: The question is whether or not the  
3 property owner is drawing the distinction between the phrase,  
4 temporary shelter, in this legislation in all of these acts  
5 and the phrase, temporary housing, in the emergency shelter  
6 definition.

7 CHAIRPERSON HILL: And how does that relate to  
8 whether to not the zoning administrator erred in making this  
9 an apartment building.

10 MR. BROWN: Because the zoning administrator is  
11 not free to substitute apartment building when there's a more  
12 specific requirement in the zoning ordinance for compliance  
13 with emergency shelter. Just because it might theoretically  
14 meet the definition of apartment building doesn't mean that  
15 he's not erred in failing to apply the emergency shelter  
16 special exception requirement.

17 MEMBER SHAPIRO: We may agree or disagree with  
18 that but, Mr. Brown, I hear what you're saying.

19 MR. BROWN: That's my point. It's not simply  
20 whether it meets the apartment house definition --

21 MEMBER SHAPIRO: You have made the point. They  
22 may or may not have something to respond to around that,  
23 but --

24 MR. BROWN: All right.

25 MEMBER SHAPIRO: -- I hear you.

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1 MR. BROWN: I have nothing further.

2 CHAIRPERSON HILL: Okay. The Appellant will have  
3 rebuttal and I suppose, Mr. Brown, as long as you want to go  
4 ahead, you can go ahead and give your rebuttal.

5 MR. BROWN: Let me talk to my client. Is there  
6 anything further --

7 (Simultaneous speaking.)

8 CHAIRPERSON HILL: You might want to turn off your  
9 microphone right there, if you wouldn't mind. Thank you.

10 MR. GIRVIN: I think we're ready whenever.

11 CHAIRPERSON HILL: Okay. Please go ahead.

12 MR. GIRVIN: So, this is not a rebuttal, it's a  
13 summation. Are we at that point?

14 CHAIRPERSON HILL: No. So, we're rebuttal. So,  
15 rebuttal is you get to refute any of the testimony that  
16 might've -- since it's your appeal, refute the testimony that  
17 was given. Then they will have an opportunity to question  
18 your rebuttal. So, this is not new information. There  
19 should be no new testimony. No new information.

20 And then at the end, there will be a conclusion.  
21 And the conclusion will be, like, five minutes just to wrap  
22 up, you know, whatever, you know, you would like us to try  
23 to remember as we start to think about whether or not, again,  
24 the zoning administrator erred.

25 MR. GIRVIN: No, because I think it's clear

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1 Mr. Brown has adequately covered the issue of what the  
2 definition is of an emergency shelter. And we've previously  
3 covered the meaningful connection, so we have no rebuttal at  
4 this time.

5 CHAIRPERSON HILL: Okay. All right. So, DGS -  
6 I'm sorry, DGS. What's the order -- OAG, what's the order  
7 in conclusion? I always for when we go back.

8 MS. NAGELHOUT: B through G, so it would be the  
9 Appellant, DCRA, and then DGS for a closing statement.

10 CHAIRPERSON HILL: So, Appellant --

11 MS. NAGELHOUT: DCRA and -

12 CHAIRPERSON HILL: -- DCRA --

13 MS. NAGELHOUT: -- then DGS.

14 CHAIRPERSON HILL: -- and then DGS.

15 MS. NAGELHOUT: Yes.

16 CHAIRPERSON HILL: So, the building owner gets the  
17 last word.

18 MS. NAGELHOUT: In this case, yes.

19 CHAIRPERSON HILL: Okay. All right. Okay. So,  
20 you guys go ahead and make a conclusion there.

21 MR. BROWN: I'll start. They may want to  
22 supplement my remarks. Let's just talk first about the --

23 CHAIRPERSON HILL: Give me one second. You said,  
24 you may want to supplement your remarks?

25 MR. BROWN: I mean, they might have something to

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1 add to what I --

2 CHAIRPERSON HILL: Oh, okay. All right.

3 MR. BROWN: That's all.

4 CHAIRPERSON HILL: Sure. That's all right.

5 MR. BROWN: We believe that this case is  
6 controlled by the definition of emergency shelter in the  
7 zoning regulations and that the zoning administrator is not  
8 free to substitute apartment for that definition in this  
9 particular case. The definition of apartment requires that  
10 there be ownership or control --

11 UNIDENTIFIED SPEAKER: The rental agreement.

12 MR. BROWN: And a rental agreement. None of the  
13 typical indicia of an apartment are associated with these  
14 units. They are -- they're still called temporary shelter.  
15 And the whole goal of the homeless shelter program is not to  
16 keep people in these places for fixed periods of time, but  
17 to move them out as quickly as possible when they find  
18 permanent shelter.

19 And indeed, that frees up these units for the next  
20 person experiencing homeless on the list of -- the unending  
21 list where the supply does not keep up with the demand. So,  
22 these are -- whether they stay there 30 days or less than  
23 30 days or 60 days or 90 days, these -- this is a transient  
24 use of the property and not properly thought of as an  
25 apartment use of the property.

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1           Therefore, the emergency shelter definition is  
2 controlling and this Board should exercise its authority to  
3 scrutinize how the property's going to be used to make sure  
4 that it's used in a way that is accommodating to the  
5 residential community nearby. Where an apartment is a by  
6 right use, there's a legislative judgment in the zoning  
7 regulations that renters of apartment units who basically  
8 make a rental commitment to stay in an apartment are  
9 compatible use without necessarily going through the special  
10 exception process.

11           There is nothing in the subsequent enactments  
12 after the emergency shelter definition was enacted to suggest  
13 that these are -- whether they are anything but -- whether  
14 they are D.C. General replacement units or apartment-style  
15 unit, they are still temporary shelter. That's what these --  
16 all of these acts say. And temporary shelter -- to draw a  
17 distinction between the phrase, temporary shelter, in these  
18 statutes and the word, temporary housing, in the emergency  
19 shelter definition is a distinction without a difference.

20           Housing is shelter. Shelter is housing. That is  
21 what we're dealing with here and they should -- regardless  
22 of whether or not you could make an argument that somehow  
23 these agreements that the tenants enter into make them look  
24 more like apartments because they might stay longer than  
25 30 days doesn't change the fact that the zoning regulations

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1 look at this particular use as a transient, temporary use  
2 that is -- that requires a special exception.

3           If they wanted to change the definition of  
4 emergency shelter to exclude apartment-style units after they  
5 decided to do the D.C. General replacement units in a  
6 different way, they could've asked the zoning commission to  
7 change the regulation. But it hasn't changed. Therefore,  
8 what we have here is a violation of the requirement to go for  
9 a special exception as an emergency shelter because that  
10 definition has to look -- has to take precedence over what  
11 I regard as a rather stylistically contracted effort to make  
12 it look like an apartment when it's not an apartment.

13           And when the statute says, control may be  
14 established by rental agreement or ownership, I'm kind of  
15 reminded of going to a restaurant where it's prominently  
16 displayed on the menu that you can pay for your meal by cash  
17 or credit card. That's not an invitation to pay by check.  
18 It may not say, shall be required by check or credit card,  
19 but the context of the words are clear that that's what was  
20 intended. That you either have a rental agreement or you own  
21 the property.

22           That certainly -- it's unreasonable to start  
23 looking for some kind of replacements it's -- that are simply  
24 not provide for in the zoning regulations. And I'll let  
25 Mr. Gambrell sum up on the --

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1 UNIDENTIFIED SPEAKER: The other stuff.

2 MR. BROWN: -- issue of whether or not there is  
3 a meaningful connection at grade.

4 MR. GAMBRELL: And I'm just going to recap a  
5 little bit here. And these are succinct. I'm going to  
6 phrase this in relation to the zoning administrator's errors.

7 The zoning administrator has erred in equating the  
8 definition of apartment with apartment-style, the latter of  
9 which is not a defined term in the zoning regulations.

10 Two, the zoning administrator has also erred in  
11 not complying with the definition of emergency shelter, which  
12 references temporary shelter including, quote, a 24-hour  
13 apartment-style housing accommodation.

14 Three, the zoning administrator erred in that the  
15 meaningful connection is not fully above grade as DGS has  
16 stated in its pre-hearing statement with reference to the  
17 passageway in which the ZA, the zoning administrator, has not  
18 disputed.

19 Furthermore, the meaningful connection is below  
20 the main level of the building and is thus in conflict with  
21 the definition of building, which states, in part, the  
22 existence of communication between separate portions of a  
23 structure below the main floor shall not be construed as  
24 making the structure one building.

25 CHAIRPERSON HILL: Okay. Thank you. Mr. Green?

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1 MR. GREEN: I'll be a couple of minutes. Two  
2 minutes, hopefully. It's very clear at the close of this  
3 evidence and testimony that the Appellant has not met its  
4 burden to demonstrate that the zoning administrator has erred  
5 in approving Building Permit B1908601.

6 The evidence is abundantly clear that the units  
7 in this Ward 1 project are clearly apartments. The evidence  
8 supports that as well as the testimony of the parties. It's  
9 also very clear that this satisfies an apartment house under  
10 the zoning regulations. The Appellants have not put forth  
11 outside of terms and generic labels any contradictory  
12 evidence.

13 As for the meaningful connection, the zoning  
14 administrator had identified how it -- the meaningful  
15 connection of 309.1 has been satisfied in every element.  
16 Therefore, the building itself is one building, not two,  
17 contrary to the Appellant's statements. As it's one  
18 building, all of the other challenges -- both parking,  
19 loading, and rear setback -- fail. It's very clear.

20 So, it's evident that this is a by-right project  
21 in conformity with the zoning regulations and we respectfully  
22 request that the appeal be denied. Thank you very much.

23 MS. MOLDENHAUER: Chairman Hill and board members,  
24 I, too, assert the fact on behalf of DGS that this appeal  
25 should fail and that the zoning administrator property issued

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1 the building permit in this application. We state that the  
2 building permit was properly issued pursuant to the zoning  
3 regulation definition of an apartment.

4 The term, temporary shelter, that is being  
5 referenced by Appellants is the term in the HSRA. The zoning  
6 regulations which are at issue today define and state terms  
7 not defined in the zoning regulations should look to  
8 Webster's Dictionary. They don't say, go and look to the  
9 HSRA or something else that somehow, you know, tangentially  
10 referenced in another portion of the regulations.

11 They say, if a term is not defined in the zoning  
12 regulations, you look to Webster's. Yes, there are many  
13 other codes and acts that govern many other factors in the  
14 District of Columbia; however, here we are having issues of  
15 conflating the different terms.

16 The zoning definition defined apartment, they  
17 define emergency shelter. This site does not comply with the  
18 definition of an emergency shelter. We have heard testimony  
19 from the zoning administrator that, to be an emergency  
20 shelter, one, you have to qualify for -- as a facility for  
21 temporary housing. The term, temporary housing, is not  
22 defined in the zoning regulations, so we do not, as  
23 Appellate's counsel may argue, look to the HSRA. We look to  
24 Webster's or a common understanding of what that is.

25 And under the zoning regulations that means a stay

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1 of 30 days or less. We have heard testimony for Director  
2 Zeilinger that this is not a transient use. She has --  
3 you've heard testimony that there's -- over 75 percent of the  
4 individuals stay more than 120 and most individuals will stay  
5 anywhere from 252 to 428 days, and sometimes as many as five  
6 years.

7           There is evidence that there are other buildings  
8 in the District of Columbia governed by DGS and DHS such as  
9 107 Wayne Street, which has a C of O issued in 2012 that  
10 says, apartment building. There's additional evidence for  
11 Irving Street that has a 2014 Certificate of Occupancy for  
12 an apartment building.

13           There was no testimony provided by any expert of  
14 the Appellant that asserted why this definitional use should  
15 be any different or how the physical construction of these  
16 units somehow differentiates from an apartment building. We  
17 did hear, however, clear testimony from the zoning  
18 administrator that this definition is met under apartment in  
19 regards to separate kitchens, a separate bathroom, and its  
20 own individual living style.

21           In addition to that, the program here from a  
22 temporal perspective is to get these individuals to  
23 permanency, which takes longer than 30 days. The goal is to  
24 provide them these services. These services require, as we  
25 said, mostly longer than 90 days. Typically, anywhere to,

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1 you know, over 400 days. But the goal is to provide the  
2 permanent needs to get them to that long-term goal.

3 I just want to say that this is not an emergency  
4 shelter because it is not a temporary house. We have clearly  
5 provided evidence explaining the difference between the  
6 emergency shelters that pursued BZA relief and the fact that  
7 those pursued BZA relief because not of who was living in  
8 them.

9 Not because of the fact that individuals are  
10 experiencing homelessness were living in them but rather  
11 because of the physical condition of the site. The fact that  
12 they didn't have their own bathroom in most instances and  
13 that they had a shared kitchen and that they had shared  
14 common areas. Those are the physical characteristics as to  
15 why those applications sought emergency shelter.

16 I'll end with a quick statement that the zoning  
17 administrator properly issued the decision based on the  
18 meaningful connection given the fact that the definition  
19 under 309.1, the first sentence -- the second sentence says,  
20 structures or sections shall be considered part of a single  
21 building if they are joined by a connection that is,  
22 semicolon.

23 The term that is then defined is a connection.  
24 It's not the entire building. It's not the passage. It's  
25 only the connection. And then that connection has to meet

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1 A, B, C, and D. Here, it is. It's fully above grade. There  
2 was testimony from the zoning administrator that the grade  
3 is angled. It was the solid red line, not the dotted red  
4 line, that the Appellants were referencing.

5           There was testimony that you walked literally out  
6 of the door onto a plaza at the finished grade. It is  
7 enclosed, which is not in question. It is heated as was  
8 relinquish or kind of a step back from the Appellant, and is  
9 evidenced by the mechanical plans.

10           And then the last point, I think, just kind of the  
11 biggest issue that was discussed was D. And it can be one  
12 or the other. Here, we are saying it is not common space,  
13 but rather it is two, space that is designed and used for  
14 free and unrestricted access. There was no testimony by the  
15 Appellant to prove or show any legal standard or any zoning  
16 decision that is different here.

17           The zoning administrator stated that, in many  
18 other cases, he has found that fob access, so long as both  
19 portions of the structure have use to freely use it, is  
20 sufficient under his interpretation. That interpretation  
21 should still be given deference today and should be found to  
22 satisfy 309.1(d)(2) in finding that it is a meaningful  
23 connection.

24           Based on that, we appreciate the Board's time and  
25 believe that they should affirm -- and I also say that there

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1 is the pending motion for timeliness and that there is  
2 evidence given that the Appellant did have knowledge of the  
3 foundation permit. And the Board can make their decision.  
4 But we think if they make the decision on the merits that the  
5 merits also show that the case should be denied. Thank you.

6 CHAIRPERSON HILL: Okay. Does the Board have  
7 anything else?

8 UNIDENTIFIED SPEAKER: No.

9 CHAIRPERSON HILL: Okay. Mr. Moy, when can we --  
10 I think we're going to have to go back, look at the files,  
11 and even the testimony. And so, I'm not going to be able to  
12 do anything, obviously, today.

13 MR. GAMBRELL: Chairman Hill, quickly.

14 CHAIRPERSON HILL: Sure.

15 MR. GAMBRELL: I'm sorry to interrupt.

16 CHAIRPERSON HILL: Sure.

17 MR. GAMBRELL: I know you have to go.

18 CHAIRPERSON HILL: Sure.

19 MR. GAMBRELL: Ms. Moldenhauer referenced some C  
20 of Os that we had not seen before. Would we have an  
21 opportunity -- one, get an opportunity to look at those and,  
22 two, to review them and analyze them and give the Board  
23 information about what they communicate to the Board in  
24 relation to emergency shelter or apartment use?

25 CHAIRPERSON HILL: I don't think they were part

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1 of the record before, actually. You're speaking of it in  
2 your conclusion. You mentioned some C of Os that you had  
3 spoken to, to the -- during your testimony as Certificate of  
4 Occupancies that were shelters, but they were being -- but  
5 they were apartment buildings, right?

6 And so, I think that we had tabled that in terms  
7 of whether we wanted them or not in the record. And so, I  
8 guess I'm asking the Board now, is that something that they  
9 or we want in the record?

10 VICE CHAIRPERSON HART: Yeah. I don't -- when you  
11 brought it up -- I'm trying to look at this as a -- as this  
12 case, which has a -- which has quite a number of documents  
13 in it currently. I'm not sure that the C of Os would be  
14 helpful for us, so I would not want to have them in the  
15 record. So, that's where I am.

16 CHAIRPERSON HILL: Okay. I don't think you need  
17 them -- we don't need them in the record and so we'll just  
18 strike the whole discussion about the C of Os, okay? And  
19 we're just going to go ahead and look at what we have in the  
20 record currently, Mr. Gambrell, okay?

21 All right. So, let's see -- all right. So,  
22 Mr. Moy, in terms of when we can deliberate on this, when is  
23 Commissioner Shapiro back with us again?

24 MR. MOY: Mr. Shapiro returns on March the 25th,  
25 sir.

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1 CHAIRPERSON HILL: Commissioner Shapiro's just  
2 sharing his schedule with me and I'm trying to figure out --

3 All right. So, March 25th, we can do  
4 deliberations.

5 MR. MOY: Yeah. So, I'm assuming this is for  
6 decision making, Mr. Chairman?

7 CHAIRPERSON HILL: Yeah. You close the record?  
8 We're going to -- do you guys need anything?

9 MR. MOY: You're not asking for any supplemental  
10 information?

11 CHAIRPERSON HILL: I don't think we need anything,  
12 no.

13 MR. MOY: I just wanted to check.

14 CHAIRPERSON HILL: Yeah. I think there's a lot  
15 there to chew on.

16 MR. MOY: Okay. Yeah.

17 CHAIRPERSON HILL: Okay. All right. Okay. All  
18 right, everyone. It's obviously been a very long time for  
19 all of you and we appreciate it. And if we seem short at  
20 times, I apologize. It's also just a long day for us up  
21 here. So, I hope you guys have a nice evening and we're  
22 going to be deliberating on the 26th.

23 It is something that we don't take testimony and  
24 so, you know, you can either watch --

25 (Simultaneous speaking.)

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1                   CHAIRPERSON HILL:    I'm sorry, I'm sorry, I'm  
2 sorry.    March 25th.    March 25th.    And we don't take  
3 testimony.    So, you know, if people want to come, they can  
4 come, but you can also watch it online.    Okay?    All right.  
5 Everybody have a nice evening.    Thank you.    Mr. Moy, is there  
6 anything else before the Board at this time?

7                   MR. MOY:    Nothing from the staff, sir.

8                   CHAIRPERSON HILL:    Okay.    Thank you.    We're  
9 adjourned.

10                   (Whereupon, the above-entitled matter went off the  
11 record at 6:03 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 02-26-20

Place: Washington, DC

was duly recorded and accurately transcribed under  
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