

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

JUNE 10, 2020

+ + + + +

The Regular Public Hearing convened via videoconference, pursuant to notice at 11:00 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA JOHN, Board Member  
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER[S] PRESENT:

MICHAEL TURNBULL, FAIA, Architect of the Capitol

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.  
MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Hearing held on June 10, 2020.

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P-R-O-C-E-E-D-I-N-G-S

11:08 a.m.

1  
2  
3 CHAIRPERSON HILL: So, the hearing will please  
4 come to order. Good morning, ladies and gentlemen. We're  
5 convened and broadcasting this public hearing by video  
6 conference. This is the June 10, 2020 public hearing of the  
7 Board of Zoning Adjustment in the District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me  
9 today is Carlton Hart, Vice Chair, Lorna John, Board Member,  
10 and representing the Zoning Commission is Michael Turnbull.

11 Today's hearing is available to you on the Office  
12 of Zoning website. Please be advised that this proceeding  
13 is being recorded by a court reporter and is also webcast  
14 live via Webex and YouTube Live.

15 This video will be available on the Office of  
16 Zoning's website after the hearing session. Accordingly,  
17 anyone who is listening on Webex or by telephone will be  
18 muted during the hearing and only persons who have signed up  
19 to participate or testify will be unmuted at the appropriate  
20 time.

21 Please state your name and home address before  
22 providing oral testimony or your presentation. Oral  
23 presentations should be limited to a summary of your most  
24 important points. When you are finished speaking, please  
25 mute your audio so that your microphone is no longer picking

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1 up sound or background noise.

2           If you're experiencing technical difficulties  
3 accessing Webex or your telephone call, and/or if you have  
4 forgotten to sign up 24 hours prior to this hearing, then  
5 please call the Office of Zoning help hotline. I'll repeat  
6 the number twice. The number is 202-727-5471. Once again,  
7 the number is 202-727-5471 to sign up to testify or to  
8 receive Webex or call information.

9           All persons planning to testify either in favor  
10 or in opposition must sign in in advance and will be called  
11 by name. At the time of sign up, all participants complete  
12 an oath of affirmation as required by Subtitle Y 408.7.

13           If you wish to file written testimony or  
14 additional supporting documents at the time of your hearing,  
15 please be prepared to do so to describe or discuss it at the  
16 time of your testimony. The order of procedures for special  
17 exceptions, variances, and appeals are also listed in the  
18 regulations.

19           At the conclusion of each case, an individual who  
20 is unable to testify because of technical issues may file a  
21 request for leave to file a written version of the planned  
22 testimony to the record within 24 hours.

23           If additional written testimony is accepted, then  
24 parties will be allowed a reasonable time to respond. The  
25 Board will then make its decision at its next meeting, but

1 no earlier than 48 hours after the hearing.

2           Moreover, the Board may request additional  
3 specific information to complete the record. The Board and  
4 the staff will specify at the time of the hearing or at the  
5 end of the hearing exactly what is expected, and the date  
6 when persons must submit the evidence to the Office of  
7 Zoning. No other information will be accepted by the Board.

8           The Board's agenda may include a previous case set  
9 for decision. After the Board adjourns the hearing, the  
10 Office of Zoning in consultation with myself will determine  
11 whether a full or summary order may be issued.

12           A full order is required when the decision it  
13 contains is adverse to a party, including an affected ANC.  
14 A full order may also be needed if the Board's decision  
15 differs from the Office of Planning's recommendation.

16           Although the Board favors the use of summary  
17 orders whenever possible, an applicant may not request the  
18 Board to issue such an order.

19           The District of Columbia Administrative Procedures  
20 Act requires that public hearings on each case be held in the  
21 open before the public pursuant to Section 405(b) and 406 of  
22 the Act.

23           The Board may, consistent with its rules and  
24 procedures and the Act, enter into a closed meeting on  
25 occasion for purposes of seeking legal counsel on the case

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1 pursuant to D.C. Official Code Section A-575(b)(4) and/or  
2 deliberate on a case pursuant to D.C. Official Code Section  
3 2-575(b)(13), but only after providing the necessary public  
4 notice, and in the case of an emergency closed meeting after  
5 taking a roll call vote.

6 Preliminary matters and those which relate to  
7 whether a case will and should be heard today such as  
8 requests for postponement, continuance, or withdrawal, or  
9 whether proper and adequate notice of the hearing has been  
10 given.

11 If you're not prepared to go forward with the case  
12 today or believe that the Board should not proceed, now is  
13 the time to raise such a matter.

14 Mr. Secretary, do we have any preliminary matters  
15 for our hearing session?

16 MR. MOY: Nothing of note for this hearing  
17 session, Mr. Chair.

18 CHAIRPERSON HILL: Okay, great, then if you want  
19 to go ahead, Mr. Moy, and give me -- actually give me one  
20 second. Let me pull up the records. All right, if you want  
21 to call our first case, I guess, and then, I guess, Paul, if  
22 you want to let in the participants?

23 All right, so let's see, Ms. John, if you, since  
24 your mic is unmuted, can you see everybody or people are just  
25 kind of popping in? I see Mr. Green and Mr. Bello. I don't

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1 see anyone else yet. Does everyone see everyone else?

2 MEMBER JOHN: Mr. Chairman, I can see only eight  
3 people at a time, so I can only --

4 CHAIRPERSON HILL: Oh, okay.

5 MEMBER JOHN: So, whoever is speaking.

6 CHAIRPERSON HILL: Okay, I see Mr. DeBear. I see  
7 Mr. Brown.

8 VICE CHAIR HART: Mr. Chairman, only some of the  
9 folks are on the screen. The videos are on.

10 CHAIRPERSON HILL: Okay, we're slowly coming in  
11 here it looks like.

12 VICE CHAIR HART: Yeah.

13 CHAIRPERSON HILL: I have -- I'm waiting for --  
14 I don't think -- I still don't see Mr. LeGrant.

15 VICE CHAIR HART: He's in. Yeah, don't I see him,  
16 but I see that he is --

17 CHAIRPERSON HILL: Got it, okay.

18 VICE CHAIR HART: -- connected in.

19 CHAIRPERSON HILL: I see Ms. Moldenhauer and I  
20 don't see anyone else yet. I don't think Ms. Nagelhout is  
21 going to be on video with us, so I'm --

22 MS. NAGELHOUT: I'm listening though.

23 CHAIRPERSON HILL: Okay, great. Thank you.  
24 There's Mr. LeGrant. I guess, well, now who else are we  
25 waiting on there? I don't see Mr. Watson, Ms. Levie, I

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1 guess, and maybe Mr. Mlakar? Who is the applicant today?

2 PARTICIPANT: You mean the appellant.

3 CHAIRPERSON HILL: The appellant, I'm sorry.

4 MR. BROWN: Chairman Hill? This is Patrick Brown.  
5 The appellant is the Chain Bridge Road University Terrace  
6 Preservation Committee.

7 CHAIRPERSON HILL: No, I got that, Mr. Brown.  
8 Thank you. I was just trying to understand who was  
9 representing. So, you're representing the appellant?

10 MR. BROWN: I am representing the appellant, and  
11 Mr. Watson, Ms. Levie, and Mr. Barnard are co-chairs of the  
12 Preservation Committee.

13 CHAIRPERSON HILL: Got it. I don't see Mr.  
14 Barnard.

15 MR. BROWN: William Barnard, Bill Barnard.

16 CHAIRPERSON HILL: No, I see, well, I see Ms.  
17 Levie's name. I don't see Mr. Mlakar.

18 MR. YOUNG: I don't see him joined in Webex.

19 MR. MLAKAR: Mr. Mark Mlakar is here.

20 CHAIRPERSON HILL: Okay, all right, well --

21 MR. GREEN: Mr. Chairman? Mr. Chairman?

22 CHAIRPERSON HILL: Yes?

23 MR. GREEN: Sir, really quickly, Mr. Mlakar is for  
24 the next hearing, our next appeal, so to clarify it.

25 CHAIRPERSON HILL: Oh, okay. Mr. Mlakar, I guess

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1 we'll put you on -- right, so you had just gotten kicked out  
2 there, I guess. Then Ms. Levie I saw for a moment.

3 MS. MOLDENHAUER: Chairman Hill, I'm still waiting  
4 on my client. This is Meridith Moldenhauer.

5 CHAIRPERSON HILL: Okay, well, let's see where we  
6 get. Let's see, I'm trying to see.

7 MS. MOLDENHAUER: The property owner is able to  
8 join.

9 CHAIRPERSON HILL: Pardon me? I'm sorry?

10 MS. MOLDENHAUER: Chairman Hill, this is Ms.  
11 Moldenhauer. The property owner is my client. They have not  
12 yet been added, I don't believe, to the Webex or the web in  
13 the Webex.

14 MR. YOUNG: Is that Mr. Bender?

15 MS. MOLDENHAUER: Yes, correct.

16 MR. YOUNG: I don't see him joined in Webex. I  
17 don't see his name.

18 VICE CHAIR HART: There's a Grace Bender.

19 MS. MOLDENHAUER: Correct, Grace Bender then.

20 MR. YOUNG: Got you.

21 MS. MOLDENHAUER: Thank you. Thank you. I  
22 appreciate it.

23 VICE CHAIR HART: So, I think, Mr. Chairman, that  
24 we're all -- I think everyone is -- I don't think -- yeah,  
25 it looks like everyone is here.

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1 MS. BENDER: Let's see, Meridith? Let's see, I  
2 see her. We're down here.

3 VICE CHAIR HART: And we can hear Ms. Bender. We  
4 can hear you.

5 MS. BENDER: Okay, and I see --

6 VICE CHAIR HART: This is Vice Chair Hart that's  
7 talking.

8 MS. BENDER: Okay, I'm Grace Bender. This is  
9 Morty Bender, and I see us in a square. Am I bigger on your  
10 screen so you can --

11 VICE CHAIR HART: It depends on each of our  
12 screens, but the screens usually have a highlight to  
13 determine who is actually speaking at the time.

14 MS. BENDER: Oh.

15 VICE CHAIR HART: This is Vice Chair Hart.

16 (Simultaneous speaking.)

17 VICE CHAIR HART: The Chairman will begin the  
18 hearing. We just wanted to make sure that we had everybody  
19 that was supposed to be on here, on here, and Ms. Moldenhauer  
20 let us understand that you all needed to be included in the  
21 hearing, so I think we --

22 CHAIRPERSON HILL: Mr. Hart, this is Fred. I'm  
23 just having a couple of technical issues. I'm trying to call  
24 tech support, so just give me one second.

25 VICE CHAIR HART: Sure.

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1 MR. BENDER: Don't feel bad. I got so used to  
2 dial tone.

3 VICE CHAIR HART: And I just want to make sure  
4 that we have everyone. Ms. Moldenhauer, there's no one else  
5 that you're expecting?

6 MS. MOLDENHAUER: I have Stan ---  
7 (Simultaneous speaking.)

8 MS. MOLDENHAUER: --and also Mark Brodsky.

9 VICE CHAIR HART: And are they going to provide  
10 comments later or are they -- you want them in the hearing  
11 now?

12 MS. MOLDENHAUER: Later, so as long as they can  
13 listen in and if they need to be called in, they will -- as  
14 long as they identify that. Thank you.

15 VICE CHAIR HART: That's fine. Mr. Brown, do you  
16 have everyone here that you need?

17 MR. BROWN: Has Mr. Barnard chimed in, William  
18 Barnard?

19 VICE CHAIR HART: Is there another name that  
20 they'd be logging in as?

21 MR. BROWN: I don't believe so.

22 VICE CHAIR HART: Let me check. I don't see him  
23 in here.

24 MR. YOUNG: Yeah, I don't see him either.

25 VICE CHAIR HART: There's a call-in user, but I

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1 don't know who exactly that might be.

2 MR. YOUNG: I have Mr. Barnard's phone number and  
3 I don't see it.

4 VICE CHAIR HART: Oh, okay. Thank you, Mr. Young.  
5 And Mr. Brown, are there any other, besides Mr. Barnard, that  
6 you're waiting on?

7 MR. BROWN: I do not believe so.

8 VICE CHAIR HART: Okay, thank you. And Mr. Green,  
9 I think it's just you and Mr. LeGrant?

10 MR. GREEN: Yes, sir.

11 VICE CHAIR HART: Okay, I'm just double checking  
12 everybody to make sure everybody is here so that we all know  
13 that, and if everyone can mute your mics, that would be  
14 helpful just because it's a lot of folks and it's hard to  
15 hear folks. It looks like Chairman Hill is back, so I'll  
16 hand it back.

17 CHAIRPERSON HILL: All right, thanks, Mr. Hart.  
18 Yes, I have tech support on right now because on my laptop  
19 I am unable to see any photographs, I'm sorry, any video  
20 other than you, Mr. Hart. But I do have another computer  
21 going on next to me and I can see everyone.

22 So, welcome, everybody. Let's see, if we could  
23 go ahead, and I'm just going to call by name, and if you  
24 could please just introduce yourself and state your address,  
25 home address or your address. I just -- can you hear me?

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1 MR. MOY: Yes.

2 CHAIRPERSON HILL: Okay, because now -- okay, and  
3 Mr. Hart, you can still see me?

4 VICE CHAIR HART: Yes.

5 CHAIRPERSON HILL: Okay, all right.

6 MR. MOY: Mr. Chairman, I'm sorry to interrupt,  
7 but I haven't called the case yet.

8 CHAIRPERSON HILL: Oh, sorry, okay, Mr. Moy. Go  
9 ahead and do that, then.

10 MR. MOY: So, for the record, this is Appeal  
11 Number 20221 of Chain Bridge Road/University Terrace  
12 Preservation Committee.

13 (Simultaneous speaking.)

14 VICE CHAIR HART: Mr. Chair, we can -- oh, thanks.

15 MR. MOY: Here, let me start over here. So, this  
16 is Appeal Number 20221 of Chain Bridge Road/University  
17 Terrace Preservation Committee. Caption advertised as an  
18 appeal from the determination made on November 13, 2018 by  
19 the Office of the Zoning Administrator, Department of  
20 Consumer and Regulatory Affairs, that the creation of seven  
21 A&T lots created by the Office of Tax and Revenue, the  
22 proposed subdivision to create seven lots of record on the  
23 existing A&T lots for the purposes of obtaining building  
24 permits to construct seven detached principal dwelling units,  
25 did not violate the Zoning Regulations for the R-21 Zone at

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1 the 2700 block of Chain Bridge Road, Northwest, Square 1425,  
2 Lots 841 through 847.

3 And now, Mr. Chairman, just a note that the  
4 appellant, represented by the attorney Mr. Patrick Brown,  
5 submitted, I believe, another filing either late last night  
6 or early this morning, so you may want to ask that the  
7 appellant describe that filing for the record.

8 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
9 Moy. Okay, so let's see if I can do this. Let's start. Mr.  
10 Brown, would you please introduce yourself for the record?  
11 You're on mute, Mr. Brown. There you go.

12 MR. BROWN: All right, can you hear me now? Good  
13 morning, Chairman Hill, and everyone. It's good to see  
14 everyone this morning. Patrick Brown from Greenstein,  
15 DeLorme, and Luchs on behalf of the Chain Bridge  
16 Road/University Terrace Preservation Committee.

17 CHAIRPERSON HILL: Okay, great. And then, Mr.  
18 Brown, could you tell me who is here with you?

19 MR. BROWN: Yes, on behalf of the preservation  
20 committee, the three co-chairs, Mr. Arthur Watson, Ms. Sally  
21 Levie, and if he's arrived, Bill Barnard. All three are co-  
22 chairs of the preservation committee. Also, I have Mr.  
23 Olutoye Bello who I plan to introduce as an expert witness  
24 in zoning.

25 CHAIRPERSON HILL: Okay, great. Mr. Watson, could

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1 you please introduce yourself? I don't see a photograph, but  
2 I do see that you're on, and perhaps you could unmute your  
3 microphone if you could please introduce yourself?

4 MR. WATSON: Yes, good morning, Mr. Chairman.  
5 This is Arthur Watson. I'm on audio only because I don't  
6 know how to do otherwise.

7 CHAIRPERSON HILL: Hey, that's all right. I've  
8 called tech support three times and they don't know how to  
9 help me out. So, well, welcome, Mr. Watson. Ms. Levie, may  
10 I go to you next?

11 MS. LEVIE: Yes, I'm Sally Levie and I live at  
12 2809 University Terrace, Northwest.

13 CHAIRPERSON HILL: Okay, great. And is it Ms.  
14 Bender? You need to unmute your microphone there.

15 MS. BENDER: Is that okay?

16 CHAIRPERSON HILL: Yes, it is. Thank you. If you  
17 could please introduce yourself?

18 MS. BENDER: I'm Grace Bender and this is Morty  
19 Bender, and we reside at 2838 McGill Terrace, Northwest.

20 CHAIRPERSON HILL: Okay, great. Thank you. Ms.  
21 Moldenhauer, could you please introduce yourself?

22 MS. MOLDENHAUER: Good morning, Chairman Hill and  
23 members of the Board, Meridith Moldenhauer on behalf of  
24 Dorchester Associates, the property owner. Mr. Bender is the  
25 representative of Dorchester Associates, the property owner.

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1 I am joined with Eric DeBear from Cozen O'Connor as well.

2 CHAIRPERSON HILL: Okay, but Mr. Bender, I guess,  
3 is not with us yet, correct?

4 MS. MOLDENHAUER: Yes, he is with Grace Bender who  
5 just spoke a moment ago.

6 CHAIRPERSON HILL: Oh, okay, that's your client?

7 MS. MOLDENHAUER: Correct, that's the property  
8 owner.

9 CHAIRPERSON HILL: Okay, wonderful. Thank you.  
10 Mr. DeBear, could you introduce yourself, please?

11 MR. DeBEAR: Eric DeBear, counsel for Dorchester  
12 Associates, the property owner. I'm from Cozen O'Connor.

13 CHAIRPERSON HILL: Okay, great. Mr. Green, could  
14 you introduce yourself, please?

15 MR. GREEN: Good morning, Mr. Chairman and members  
16 of the Board. My name is Hugh Green, G-R-E-E-N, attorney for  
17 the D.C. Department of Consumer and Regulatory Affairs.

18 CHAIRPERSON HILL: Okay, Mr. LeGrant, could you  
19 please introduce yourself?

20 MR. LeGRANT: Zoning Administrator, DCRA.

21 CHAIRPERSON HILL: Great, and Mr. Bello, could you  
22 please introduce yourself?

23 MR. BELLO: Good morning. Toye Bello.

24 CHAIRPERSON HILL: All right, Mr. Bello, I think  
25 you might have muted yourself. There you go.

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1 MR. BELLO: Can you hear me now?

2 CHAIRPERSON HILL: I can.

3 MR. BELLO: Okay, good morning, Mr. Chair. Toye  
4 Bello. Bello, Bello & Associates.

5 CHAIRPERSON HILL: Okay, great. Can everyone see  
6 Mr. Bello? Mr. Bello, do you have your camera on?

7 Mr. Brodsky, are you on with us as well?

8 MR. BRODSKY: Yes, I'm here. Mark Brodsky.

9 (Simultaneous speaking.)

10 MR. BRODSKY: Do you want me to identify myself  
11 and give you my address?

12 CHAIRPERSON HILL: Yes, please.

13 MR. BRODSKY: Okay. Mark Brodsky. My office  
14 address is 1746 N Street, Northwest, and I'm Mr. Bender's  
15 longtime transactional real estate counselor.

16 CHAIRPERSON HILL: Okay, all right, thanks. Okay,  
17 well, this is very -- well, honestly, I really mean it,  
18 welcome. It's so nice to see everybody. I mean, you know,  
19 it's just nice to see the faces I can see, and so many of you  
20 have been before us before. The applicant, obviously -- I  
21 mean, the appellant, this is your first time.

22 I'm kind of losing people or things are kind of  
23 moving around, so just if anyone does want to speak up, if  
24 I don't hear you, please just speak up and I'll go ahead and  
25 recognize you. If you just want to go ahead and mute your

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1 line unless you're spoken to.

2 So, I believe there are a few preliminary matters  
3 before us, and I would really like to kind of address those  
4 first. There was, I think, a motion by the property owner  
5 to dismiss something concerning the tree protection, as that  
6 was something that was in -- one of the things being appealed  
7 in terms of violations, but the appellant has gone ahead and  
8 pulled that tree protection from there, so I no longer think  
9 it's an issue. I think it's moot. Mr. Brown,  
10 that's correct? They did pull that, correct? You're on  
11 mute, Mr. Brown.

12 MR. BROWN: Yes, we did pull that single provision  
13 having to do with tree and slope protection.

14 CHAIRPERSON HILL: Okay, so, unless the Board has  
15 any issues -- and I'm going to look at Mr. Hart and Ms. John,  
16 and you can just nod -- you know, that's just a moot point  
17 now. Would you nod in agreement, Mr. Hart and Ms. John?

18 Okay, all right. So then the next issue is that  
19 DCRA has before it a motion to dismiss. And I guess that we  
20 could go ahead and hear that motion. Mr. Green, could you  
21 go ahead and please explain DCRA's position?

22 MR. GREEN: Yes, good afternoon, or good morning  
23 again, everyone. This is Hugh Green, attorney for the D.C.  
24 Department of Consumer and Regulatory Affairs.

25 The basis for our motion to dismiss has to do with

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1 the appellant's appeal of the tax plat by the Office of Tax  
2 and Revenue, the A&T tax plat. The basis for our motion is  
3 really that I think by using this as a basis for an appeal,  
4 it would expand the first writing rule in attributing error  
5 to the Zoning Administrator, as all parties agree -- at least  
6 all of the parties -- no one can demonstrate that the Zoning  
7 Administrator drafted or recorded the tax plat at issue.

8 I think there's also a question for the appeal of  
9 jurisdictional basis in terms of we're asking that the appeal  
10 of the A&T tax plats by the Office of Tax and Revenue -- and  
11 the Office of Tax and Revenue was not given any notification  
12 of this, and they're not here before the Board to explain  
13 whether or not any zoning issues are -- they took in any  
14 concerns of the zoning issues that are raised in the  
15 appellant's filing.

16 So, I think the question that -- and that's really  
17 it. As we take a look at this A&T tax plat, it was not  
18 drafted by the Zoning Administrator. It was not recorded by  
19 the Zoning Administrator. Nevertheless, we're attributing  
20 error to the Zoning Administrator by virtue of this document.  
21 And that's really a fundamental question.

22 And I think the question also is, if the Board,  
23 because the allegations as it touches and concerns zoning  
24 regulations, if the Board somehow decides that, yes, indeed,  
25 this zoning plat or -- excuse me, this tax plat is in error

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1 and should be, for lack of a better term, what the appellant  
2 asks, be stricken, does the Board have jurisdiction to weigh  
3 in on another agency, in this case, the taxing agency of the  
4 District, with respect to this tax plat? It's an open  
5 question that I think, by and large, it warrants a dismissal.

6           The two other pieces I'd like to bring up with  
7 respect to our motion is that neither the property owner nor  
8 the appellant provided any relevant case law or BZA opinion  
9 which holds that a tax plat is an appealable final decision  
10 by the Zoning Administrator.

11           So, I understand that the property owner has cited  
12 and makes reference to the BZA Appeal 19023 which they refer  
13 to as the River Run. That is distinct from this matter here  
14 because it was, for reasons stated in our motion, it did not  
15 appeal an A&T tax plat appeal. It had to do with the appeal  
16 of the zoning determination letter by the Zoning  
17 Administrator.

18           And I think there are jurisdictional -- and so  
19 River Run is distinct from this particular matter. But if  
20 we adopt essentially the property owner's position that any  
21 agency decision which may touch and concern zoning is  
22 appealable to the Board because it may have zoning  
23 implications, I think that opens it up to a wider avenue of  
24 appeals that the Zoning Administrator may face.

25           In other words, in this instance, we're talking

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1 about an A&T tax plat that was not drafted by the Zoning  
2 Administrator. The Board is well familiar with the zoning  
3 determination letters that get appealed, as well as building  
4 permits. However, I think if we were to expand the possible,  
5 I guess, documents that can be appealed, I think it would  
6 open both the DCRA, and especially the Zoning Administrator,  
7 to potential frivolous appeals.

8 Further agency documents, for instance, the Office  
9 of the Zoning Administrator does interface with many other  
10 agencies, and would their documentation somehow be a basis  
11 to attribute error to the Zoning Administrator?

12 So, that really is the sum and substance of our  
13 motion, and I think there are implications that are broader  
14 than this particular case, that I would ask the Board to  
15 actually dismiss this appeal because it is not a final  
16 unambiguous writing by the Zoning Administrator in which it  
17 can be appealed.

18 So, I will stop there and we'll happily entertain  
19 questions from the Board or anything further. So let we stop  
20 there.

21 CHAIRPERSON HILL: Okay, thank you. I am going  
22 to go to the Board members while the testimony is fresh in  
23 everybody's mind. Mr. Hart, do you have any questions for  
24 Mr. Green?

25 VICE CHAIR HART: Sorry, I needed to unmute first.

1 I'm still getting used to that process.

2 I didn't have any other questions for right now.  
3 I'd like to hear from the other parties on this, as well, so  
4 I'll wait to see if I have any questions at that point.

5 CHAIRPERSON HILL: Ms. John, do you have any  
6 questions for Mr. Green?

7 MEMBER JOHN: I have no questions at this time.  
8 I might have questions later, but, like Mr. Hart, I'd like  
9 to hear from the other parties.

10 CHAIRPERSON HILL: I'm going to start with the  
11 appellant and then follow up with the --

12 COMMISSIONER TURNBULL: Mr. Chairman, could I say  
13 something?

14 CHAIRPERSON HILL: Who is -- oh, Mr. Turnbull, I'm  
15 sorry.

16 COMMISSIONER TURNBULL: I'll let you go this time.  
17 (Simultaneous speaking.)

18 CHAIRPERSON HILL: Mr. Turnbull, do you have any  
19 questions?

20 COMMISSIONER TURNBULL: I just had one question  
21 for Mr. Green. The ZA letter was not a final determination  
22 or anything.

23 MR. GREEN: I'm sorry, Mr. Turnbull. Could you  
24 repeat the question? I had trouble hearing you.

25 COMMISSIONER TURNBULL: The ZA letter was not a

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1 final determination on anything yet. Is that what --

2 MR. GREEN: In other words, yes. It was not a  
3 final determination based on the disclaimer in the letter  
4 itself. So, no.

5 COMMISSIONER TURNBULL: Okay, thank you. That's  
6 it, Mr. Chair.

7 CHAIRPERSON HILL: Okay, thank you, Mr. Turnbull.  
8 Mr. Brown, do you have anything you'd like to comment upon  
9 for this motion, as well as do you have any questions for Mr.  
10 Green?

11 MR. BROWN: Chairman Hill, can you hear me?

12 CHAIRPERSON HILL: I can.

13 MR. BROWN: Very good. No questions for Mr.  
14 Green, but I'd like to pick up on the point that Commissioner  
15 Turnbull focused in on, that the zoning determination letter  
16 was not a final decision. The zoning determination letter  
17 contemplated or required the property owner to submit a  
18 subdivision, record lot subdivision plat. As the property  
19 owner's counsel has acknowledged, and I agree with, this  
20 property is subject to the highway plan, and based on the  
21 Zoning Regulations -- well, the highway plan prohibits the  
22 subdivision, record lot subdivision of the property.

23 The Zoning Regulations specifically provide that,  
24 in that case, that you proceed without a record lot  
25 subdivision, but you have to do the assessment and taxation

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1 lots, which is, in fact, what occurred, and that's what we're  
2 appealing.

3           The creation of the A&T plats was done by the  
4 Office of Maps and Titles in the Office of Tax and Revenue.  
5 That was strictly an administrative function. They drew a  
6 picture based on what was provided in the application. The  
7 key points are it was based on the zoning determination  
8 letter, and, two, that drawing created by OTR was then  
9 submitted in the official records of the D.C. Surveyor, which  
10 is within the Department of Consumer and Regulatory Affairs.

11           For zoning purposes, the A&T plat indicates the  
12 functional and practical equivalent of a subdivision plat,  
13 which would be an appealable event. And, in fact, as the  
14 property owner's counsel has referenced, and so have I, based  
15 on the A&T plat, the property owner can now apply for  
16 building permits for those seven lots without regard to  
17 review of the issues that we've raised, lot width and lot  
18 frontage, that those are in effect zoning approved lots.  
19 They can be subject to building permits.

20           As far as OTR not participating -- and I put this  
21 in my brief, but it's not worth spending a lot of time on --  
22 if OTR was thought to be a required party, that was the  
23 Office of Zoning required to give them notice. And I think  
24 the Office of Zoning correctly determined that notice should  
25 go to DCRA and the Zoning Administrator, which occurred. So

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1 I think that point is without merit.

2 I'm happy to answer any of the Board members'  
3 questions.

4 CHAIRPERSON HILL: Okay, Mr. Hart, do you have any  
5 questions for Mr. Brown?

6 VICE CHAIR HART: Only the last point. So, you're  
7 saying that OTR, because the Office of Zoning didn't send a  
8 letter to them, which you think is the correct -- this is for  
9 Mr. Brown. Because OTR didn't send a letter to -- sorry,  
10 because OZ didn't send a letter to OTR, then that was an  
11 appropriate -- or maybe that proves that they shouldn't be  
12 a party to this? But it just seems like the big issue is  
13 with DCRA and really not OTR. I don't understand that last  
14 comment that you made. So if you could just expound on that.

15 MR. BROWN: Can you hear me? I was just  
16 responding to the point that Mr. Green was making. Other  
17 than their administrative function, OTR is irrelevant to this  
18 proceeding. The real function and substance is with the  
19 Zoning Administrator, as embodied in the A&T plat, which is  
20 now official record of DCRA.

21 VICE CHAIR HART: Okay. So, the other point that  
22 you brought up, which was that the zoning determination  
23 letter required a record lot -- to have a record lot, and  
24 that the OTR created that, and that the -- or I guess the --  
25 yeah, the OTR created that, and -- or they created an A&T

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1 plan. And you said that A&T plan is basically a subdivision  
2 plan. Is it or is it not?

3 MR. BROWN: Can you hear me?

4 VICE CHAIR HART: Yes.

5 MR. BROWN: I'm sorry, my apologies.

6 VICE CHAIR HART: That's okay.

7 MR. BROWN: The A&T plat is not a subdivision  
8 plat. The subdivision plat is a creation of the Office of  
9 Surveyor. In this specific case where the property is  
10 encumbered by the highway plan, no subdivision plat or record  
11 lot subdivision is permitted. But the Zoning Regulations  
12 provide an alternative in this case, which is the creation  
13 of the A&T plat, which serves as the -- it is not a  
14 subdivision plat, but it is the functional equivalent of a  
15 subdivision.

16 VICE CHAIR HART: Understood. Thank you. And the  
17 final question that I had was -- is, really, do you think  
18 that the -- you noted that there was the -- if this were a  
19 subdivision -- or since we have an A&T plan, that they could  
20 bring this to the DCRA to get permits, building permits, and  
21 that DCRA would determine whether or not this needed any  
22 further -- needed any relief from zoning, and that it might  
23 come to us if it does, or if it didn't, then it would, you  
24 know, they could, I guess, build that as a matter of right.  
25 But there could be a point in which you could have appealed

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1 the building permits themselves as opposed to this point.

2 So, the question is, why is this point a  
3 determination that is -- that, I guess, the Zoning  
4 Administrator would have made, as opposed to the building  
5 permit, which is a little further down in the future? I know  
6 it's kind of a circuitous question, but it's really around  
7 just the timing of all of this. It seems as though the  
8 building permit would have been a more appropriate location  
9 or time to make the appeal, and I'm just curious as to why.

10 MR. BROWN: A very good question. Several points.  
11 First, once I became aware of the A&T plat and its entry into  
12 the records, again, my position is -- and I think the  
13 property owner's counsel has made this point -- is that, for  
14 zoning purposes, at least the issues we've raised, lot width  
15 and lot frontage, that no further scrutiny would occur. So,  
16 I was in the position where I had to file my appeal or lose  
17 my right to file an appeal on those issues.

18 Now, when the building permit's filed, there will  
19 be other issues, front yard, side yard, that will be  
20 considered that are all ripe for consideration then, but as  
21 to the issues we've raised, lot width and lot frontage, the  
22 final decision first writing, in my view, most conservatively  
23 occurred with the creation and adoption of A&T plat by the  
24 D.C. Surveyor.

25 VICE CHAIR HART: Okay, thank you. No further

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1 questions.

2 CHAIRPERSON HILL: Okay, thank you, Mr. Hart. Ms.  
3 John, do you have any questions?

4 MEMBER JOHN: So, this question is for Mr. Brown.  
5 So, how do you interpret the disclaimer on the ZA's letter  
6 that says it's not a final decision as to anything in that  
7 letter? Because I think what you're saying is that you would  
8 be foreclosed from -- or the Board or the ZA would be  
9 foreclosed from addressing issues related to lot frontage and  
10 so on.

11 So, it seems to me inconsistent, because the ZA  
12 has expressly said that the ZA reserves the right to revisit  
13 those issues. So I'm not sure how you explain that emphasis.

14 MR. BROWN: Yes, Ms. John, and I think it's  
15 important to consider the zoning determination letter -- and  
16 the disclaimer is very clear what it is and what it isn't.  
17 It's an advisory statement, not a final decision, not a first  
18 writing, but it also specifically called for the submission  
19 of a subdivision record lot application that would, in fact,  
20 then be reviewed by the Zoning Administrator.

21 Here, we don't have a subdivision application, but  
22 we have the A&T plat in existence. And if the subdivision  
23 plat had occurred, I would have appealed that. Since it  
24 didn't occur and will not occur, my view is I had to, at the  
25 time I became aware of the plat, appeal that. I think both

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1 -- and Mr. LeGrant can certainly testify to this, but  
2 certainly the property owner has indicated that, once the  
3 plat exists, that the Zoning Administrator would not make  
4 further inquiry or review of the lot width and lot frontage  
5 issues which I've raised. And so it's "use it or lose it"  
6 time for me.

7 MEMBER JOHN: And my next question is that, as to  
8 the zoning decision, then, you're saying that the ZA's  
9 determination which is relied on the A&T plat was itself the  
10 determination.

11 I think I may have asked that a little awkwardly,  
12 but basically you're saying that was the ZA decision. That  
13 reliance on the tax plat was the decision by the ZA, because  
14 there has to be a zoning decision. So the zoning decision,  
15 then, is the reliance on that plat?

16 MR. BROWN: The property owner relied on the  
17 zoning determination letter, the advisory statement given  
18 there, to then go about the process of creating the A&T plat,  
19 which is the embodiment of the zoning determination letter.  
20 So I think that's where the zoning event occurred, because  
21 it now exists and can be used for zoning purposes.

22 MEMBER JOHN: Okay, thank you.

23 CHAIRPERSON HILL: Mr. Turnbull, do you have any  
24 questions?

25 COMMISSIONER TURNBULL: I don't really know if

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1 it's a question, but I'm just, as far as agreeing with my  
2 colleagues at this point, I'm concerned about the  
3 jurisdiction of the Board at this point in time to do any  
4 kind of a ruling.

5           If the owner had submitted for building permits,  
6 I think that the appellants have a valid right to go -- I'm  
7 just concerned at this point in time that the creation of the  
8 A&T plat is enough, is weighted enough for us to actually  
9 weigh in on this. I'm just a little bit concerned that this  
10 might be a little bit premature.

11           CHAIRPERSON HILL: Okay.

12           COMMISSIONER TURNBULL: No questions, just  
13 comments.

14           CHAIRPERSON HILL: Okay, Mr. Green, do you have  
15 any questions for Mr. Brown?

16           MR. GREEN: No, no questions, but I guess --  
17 actually, I have one question. Mr. Brown repeatedly say how  
18 the A&T tax plan is the functional equivalent, I think that's  
19 your terminology, is that correct, sir, of a -- could you  
20 repeat that? It was in your brief, I just wanted to get a  
21 clarification.

22           MR. BROWN: When you file for a building permit,  
23 you have to file for a building permit based on a record lot,  
24 which is the creation of the subdivision. In this case, the  
25 A&T plat, because of the encumbrance of the highway plan,

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1 serves as the same function for applying for a building  
2 permit, so that the property owner can go down, based on  
3 these A&T plats, without having to claim the subdivision  
4 because of the circumstances, and file for a building permit;  
5 whereas, under normal circumstances, that would not occur.

6 MR. GREEN: But it's fair to say, Mr. Brown, you  
7 have no statutory authority claiming that. It wasn't cited  
8 in your brief and this is your --

9 MR. BROWN: I think it was, but certainly it's  
10 been cited. The Zoning Regulations --

11 MR. GREEN: Mr. Brown, the question -- I'm sorry,  
12 just real quickly and then I'll shut up, because I know it's  
13 tough to do over Webex, but you have not cited any particular  
14 -- at least not in your brief; there is no citation to any  
15 regulation or appellate decision or BZA order that this is  
16 a functional equivalent, correct?

17 MR. BROWN: Well, I think you have to go to the  
18 Zoning Regulations. Both I and the property owner's counsel  
19 have cited to the provision that provides -- and it's, I  
20 think, C301.3, which provides for highway plan encumbered  
21 properties to not be required to have a subdivision plat.  
22 So it's in the regulations.

23 MR. GREEN: All right.

24 MR. BROWN: I'm not making it up.

25 CHAIRPERSON HILL: Okay.

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1 MR. GREEN: I don't have any further questions for  
2 Mr. Brown.

3 CHAIRPERSON HILL: Okay, thank you, Mr. Green.  
4 Ms. Moldenhauer, I assume you're representing your client.  
5 Do you have any questions for Mr. Brown?

6 MS. MOLDENHAUER: No, I do not.

7 CHAIRPERSON HILL: Okay, so, Ms. Moldenhauer, do  
8 you have any comments that you'd like to share with the Board  
9 concerning this motion?

10 MS. MOLDENHAUER: Yes, I do. If Mr. Young could  
11 bring up my PowerPoint presentation?

12 CHAIRPERSON HILL: And, Ms. Moldenhauer, we're  
13 just talking about the motion right now, okay?

14 MS. MOLDENHAUER: Correct. I think it will help  
15 walk through the issue of this preliminary motion. So, we  
16 can go to slide three, please.

17 So, for the following reasons, the Board should  
18 move forward on this case and has jurisdiction. One, all of  
19 the necessary parties are here. As Mr. Brown indicated,  
20 notice was provided and we are all present, virtually, of  
21 course, but here: the property owner, the preservation  
22 committee, and also the D.C. government, DCRA.

23 There is a clear written decision by the ZA. The  
24 ZA's interpretation was then codified in the final action  
25 here -- not a final writing, but potentially more of a final

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1 action, which was the approval of the A&T lots.

2 As Mr. Brown has clarified, and Mr. Green has not  
3 countered, I think he agrees with it in his merit-based  
4 briefings, that the Zoning Regulations restrict a record lot  
5 in this instance.

6 The owner here has gone through extensive review  
7 and back and forth, as I'll walk through in the timeline in  
8 a moment, with the Zoning Administrator to confirm this by-  
9 right project. And to kick this down the road to a building  
10 permit, we believe, is against the Zoning Regulations and  
11 also against public policy. Next slide, please.

12 Mr. Green keeps on questioning where is it that,  
13 you know, there is a specific regulatory requirement for the  
14 Board to hear this case? It is clear and it is in writing  
15 in the Zoning Regulations under Subtitle X, 1100.2. It  
16 states, "The Board shall hear and decide zoning appeals when  
17 it is alleged by an appellant that there is an error in an  
18 order or requirement decision by the Zoning Administrator or"  
19 -- so, here, it doesn't have to just be the Zoning  
20 Administrator. Mr. Green wrongly required that it has to be  
21 by the Zoning Administrator. " Or any administrative officer  
22 or body if they are administering, or enforcing, or  
23 interpreting a zoning regulation."

24 All of the parties agree that we are discussing  
25 zoning issues which have to do with the lot width and the lot

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1 frontage that are shown on a plat of computation. That plat  
2 of computation shows those two zoning issues. And it does  
3 not need to be a question of an error, but it's a question  
4 of interpretation in which an action occurred that is  
5 codifying something. And I'll go to the next slide, please.

6           The question of standing and whether or not the  
7 Board has the jurisdiction, under Section Y 302.1, again, the  
8 Board has the legal ability to make a decision when any  
9 administrative official applying the Zoning Regulations.  
10 Here, we have the Zoning Administrator issuing a  
11 determination letter on how the property owner, my client,  
12 could subdivide the property. We then have an administrative  
13 official that applied that and issued a plat. That is, we're  
14 now in a situation in which (audio interference) this is not  
15 a slippery slope argument that Mr. Green referenced because  
16 this is a fact by fact basis.

17           Furthermore, looking at case law, specifically  
18 Baskins, which is Baskins v. BZA at 946A.2d, which was  
19 decided in 2008, said the Court of Appeals directed this  
20 Board any appealable decision is not tied, quote, "to the  
21 issuance of a specific type of notice." They found that a  
22 case can be recognized as bringing forward zoning issues,  
23 whether it's a letter from the DCRA or whether it's the ZA  
24 conveying a decision. Here it is clear that the plat of  
25 computation, because everyone is interpreting it, we have the

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1 preservation committee questioning it, we have the DCRA  
2 defending it, the property owner asserting it, that there is  
3 a question for interpretation that is before the Board.

4 In addition to that, this Board -- Mr. Green was  
5 referencing it as River Run. It's the River Inn case, which  
6 was BZA 1902.3, where they find that there is sometimes this  
7 overlapping jurisdiction. And so the comment was that this  
8 is going to potentially to open the door. For each case, the  
9 Board has the ability to decide on a case by case basis when  
10 potentially there is clear understanding of an issue. And  
11 if community members disagree and the property owner  
12 disagrees, then it comes to the Board to evaluate the proper  
13 interpretation. Next slide. Sorry, next slide, please.

14 So, the plat of computation reflects a zoning  
15 decision or a zoning interpretation specifically about lot  
16 width and lot frontage. Next slide.

17 So, I think this is going to some of the  
18 questions. The zoning determination letter confirmed an  
19 interpretation by the Zoning Administrator of how to measure  
20 lot width and lot frontage. That interpretation was  
21 specifically used then to create the A&T lots. Those A&T  
22 lots were then issued.

23 In a normal situation, you would have a record  
24 lot, but because of the highway plan, the ZA does not sign  
25 off on an A&T lot where they would typically be signing off

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1 on a record lot. Therefore, we now have the A&T lots which  
2 reflect the interpretation in the zoning determination  
3 letter.

4 If we were to move forward for a building permit,  
5 it would go to zoning review and a zoning staffer would look  
6 at the A&T lot computation and the determination letter and  
7 say, "This decision has already been made by the Zoning  
8 Administrator in that determination letter. I am going to  
9 move forward for a building permit."

10 So, to question the ability to push this down the  
11 road to a building permit, the question would then be, it's  
12 not right, it's time barred, because the issues are clear.  
13 The parties had notice, they had knowledge of what occurred,  
14 and this is the time to decide this case. Next slide.

15 This is, again, not the unique instance in which  
16 this is not going to open the door to many other agencies  
17 being evaluated, because this is a unique instance in which  
18 Zoning Regulations, under Section 301.3, make this little,  
19 tiny exception to say in every other instance you have to  
20 have a record lot, but here we can have A&T lots because we  
21 have the highway plan.

22 The A&T lots clearly and unambiguously show this  
23 Board, and I think all of the members and all of the parties  
24 here today, because we're all, you know, interpreting it, and  
25 duking it out, and doing all of these different measurements,

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1 it's clear that the A&T lots show the lot width and the lot  
2 frontage. Therefore, it is clear that the Board has  
3 jurisdiction and the ability to hear this on its merits.  
4 Next slide.

5 This is a picture of the plat of computation that  
6 has all of the dimensions, all of the numbers for the Board  
7 to make the decision. Next slide.

8 The question of the disclaimer, the disclaimer,  
9 there has been back and forth for over 30 years, you know.  
10 The Board, probably longer than that has been, and even in  
11 Baskin in 2008, indicated that many different documents  
12 reflect a zoning determination letter. But for this  
13 disclaimer, the appellants would have had to probably file  
14 this appeal, and they probably should have filed this appeal,  
15 when they had notice. The disclaimer creates the confusion,  
16 but the Board, you have the authority to say the facts are  
17 clearly before us; we have to, despite a disclaimer, despite  
18 anything to the contrary, make this decision. Because if you  
19 don't, as I just showed before in the other image, if it  
20 comes back around, the decision would have already been  
21 relied upon from information that was known many, many, many  
22 months ago. Next slide. And many years ago.

23 The timeline shows that, you know, we met with the  
24 Zoning Administrator in November of 2018, we're now in 2020,  
25 and obtained a determination letter. The preservation

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1 committee knew of this. No one questions that they knew of  
2 it. They admit in January in 2019. The preservation  
3 committee then met with the Zoning Administrator. The Zoning  
4 Administrator did not change his interpretation. The  
5 committee then sent a letter to the property owner and the  
6 Zoning Administrator challenging the exact same issues that  
7 are here before us today. They have not changed. The Zoning  
8 Administrator has not relinquished his interpretation. He  
9 had not indicated -- and nor has he even in his merit briefs  
10 in his prehearing statements. The plat of computation was  
11 approved and this appeal occurred. Next slide.

12           So, from a public policy perspective, you know,  
13 my client has been looking at developing this site for over  
14 15 years. To say this has to get pushed down the road until  
15 potentially a building permit, when they have done everything  
16 correct and would like to get the Board, who has the legal  
17 requirement to interpret the regulations if there is a  
18 question, to confirm or to evaluate, and we would confirm the  
19 Zoning Administrator's interpretation that this is a by right  
20 decision for lot width and lot occupancy.

21           I would also say that, you know, it's the Mayor's  
22 goal to create 36,000 housing units, that this is at the  
23 smallest area in the city, Ward 3, where this property is  
24 located, is encouraging development, that to delay any  
25 further and to create any further encumbrance on this, would

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1 be a disadvantage to the property owner and we would ask the  
2 Board to move forward.

3 At this time, I'm going to ask my client to make  
4 a brief statement. Mr. Bender?

5 CHAIRPERSON HILL: Mr. Bender, you're on mute.  
6 You're -- yeah.

7 MR. BENDER: Okay, I'll start over again. I'm  
8 Morton Bender. I live at the same address my wife does on  
9 McGill Terrace in the District. I've lived in Washington  
10 since 1938. I've seen a lot of things change, run a lot of  
11 businesses. I've seen objections. I've seen changes. This  
12 one really got me, the ruling for an issuance of A&T lots.  
13 If there's no A&T lots, give me all of the tax money these  
14 guys have been billing me for the last 10, 15 years. I could  
15 use it.

16 But what is it? In Shakespeare, it said the  
17 question is -- I look at this screen and I look around the  
18 room I'm in. What he said, first we kill all of the lawyers.  
19 You know, I don't think there's any argument. And the people  
20 that appealed this didn't do it in a timely fashion, even  
21 though they were tracking, we found out, right behind us.  
22 Every time we do something, they'd be right behind us, and  
23 they didn't do anything within the time that was required of  
24 them.

25 I bought this property 20 years ago. I don't

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1 think I'll live long enough to see it come to fruition and  
2 it makes me sad. End of my story.

3 CHAIRPERSON HILL: Okay. All right, Mr. Bender,  
4 thank you. Let's see, Mr. Hart, I'll start with you. Do you  
5 have any questions for Ms. Moldenhauer? And Mr. Bender, if  
6 you wouldn't mind muting your microphone also there, that  
7 would be great. Thank you.

8 MR. BENDER: Okay.

9 VICE CHAIR HART: I am still formulating one.  
10 Come back to me. I need to think about it for a minute.

11 CHAIRPERSON HILL: Okay, Ms. John, do you have any  
12 questions for Ms. Moldenhauer?

13 MEMBER JOHN: Just a couple. So, if we go back  
14 to that slide where you reference the Board's authority to  
15 review any decision by any administrator, could you go back  
16 to that slide, the first one on jurisdiction? Any my  
17 question, while you search for it, my question is how --

18 CHAIRPERSON HILL: Hold on, Ms. John. Paul, I  
19 think it's number three. Sorry, Ms. John.

20 MS. MOLDENHAUER: It's number four.

21 CHAIRPERSON HILL: Number four.

22 MEMBER JOHN: So, I know you addressed that, but  
23 where would you put a limit on the Board's jurisdiction in  
24 terms of reviewing a decision by any administrative officer  
25 or body? And I guess that also includes, you know, the HPRB

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1 or DDOT or any of the other agencies that make  
2 recommendations to the Board.

3 And as a rule, we usually defer to decisions by,  
4 say, DDOT on public space issues, and HPRB on determinations  
5 as to whether or not a particular building, you know, is a  
6 historic building. So, how do you propose that the Board  
7 should limit that particular provision if we were to agree  
8 that the A&T plat is appealable to the BZA?

9 MS. MOLDENHAUER: So it's very clear. You have  
10 to limit it only based on issues that are in the Zoning  
11 Regulations. Zoning regulations don't have language about  
12 where a curb cut can be. They don't have language about  
13 whether a building is historic or not. They do have specific  
14 sections about lot width and lot frontage.

15 So, you're the only body in the entire District  
16 of Columbia that can interpret and evaluate the Zoning  
17 Regulations. So if there is another body that takes an  
18 action that is counter or somebody believes is counter to  
19 what the Zoning Regulations and only what's in the Zoning  
20 Regulations, you are the body that they go to.

21 Now, you're right, 99 percent of the time that is  
22 a building permit or a document from the zoning office, or  
23 potentially a record lot which has the Zoning Administrator  
24 sign off on it. This is a really unique situation in which  
25 we can't get a record lot and a zoning sign off on a record

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1 lot because we have the highway plan. But that doesn't mean  
2 that there aren't zoning questions that another body's  
3 action, here the A&T approval, puts into your lap.

4 MEMBER JOHN: So to follow up, and I will ask this  
5 question of the ZA as well. So you're saying that the ZA  
6 would have to sign off on this A&T plat before issuing the  
7 permit?

8 MS. MOLDENHAUER: No.

9 MEMBER JOHN: Okay.

10 MS. MOLDENHAUER: The --

11 MEMBER JOHN: Because --

12 MS. MOLDENHAUER: -- A&T plat is final, and  
13 there's --

14 MEMBER JOHN: You're saying the ZA would have to  
15 adopt it or stamp it before issuing the permit, right?

16 MS. MOLDENHAUER: No.

17 MEMBER JOHN: In the normal course of business?

18 MS. MOLDENHAUER: Only if it was a record lot.

19 MEMBER JOHN: Right. And why would not that same  
20 process apply before issuance of the permit?

21 MS. MOLDENHAUER: Because here we have the highway  
22 plan which provides an exception where we can't get a record  
23 lot.

24 MEMBER JOHN: I understand it is in place of a  
25 record lot. So it would seem to me that the ZA should take

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1 the same action at the point of issuing the permit. But we  
2 can defer the answer to when we speak with the ZA later on --  
3 when we hear from the ZA later on.

4 CHAIRPERSON HILL: Ms. John, you said you had a  
5 question for the ZA?

6 MEMBER JOHN: I thought I would reserve that for  
7 after we hear from the ZA because we have not heard from him  
8 yet.

9 CHAIRPERSON HILL: I don't think we're going to  
10 hear from the ZA.

11 MEMBER JOHN: Oh, so we can't assume that we will  
12 hear -- so I guess I'll ask it now then.

13 CHAIRPERSON HILL: Yeah, go ahead and ask the ZA.

14 MEMBER JOHN: What is the process -- what is the  
15 normal process in issuing a permit? And then how would that  
16 process be changed in this particular situation? And the  
17 third question would be, why is the letter of determination  
18 not a final decision?

19 CHAIRPERSON HILL: Mr. LeGrant?

20 MR. LeGRANT: Good afternoon, everyone. So I'll  
21 try to get to the three points by Member John. The typical  
22 process which involves a record lot is that at the time of  
23 an application for a building permit, a plat is submitted.  
24 And that plat, we would look at that and say, oh, is this a  
25 record lot? If not, was it a record lot subdivision that was

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1 previously reviewed and approved by my office?

2           That plat would then have a record lot number, and  
3 we would then say, okay, here is the geography of the lot  
4 which we would conduct the zoning analysis or the building  
5 siting on that lot setbacks, lot occupancies. In the case  
6 of an A&T lot, such as what is before us here, the typical  
7 process is, oh, well, where's the record lot? Oh, we cannot  
8 get a record lot here because of the covenants of the highway  
9 plan.

10           So as a substitute, the A&T lot would be sent to  
11 us on the plat. There'd be seven lots here. It'd be each  
12 individual. And we would conduct the same analysis based on  
13 an A&T lot. So let me stop there. I think you had another  
14 question.

15           MEMBER JOHN:     And so why is the letter of  
16 determination -- or is it the final decision? What would be  
17 your answer to that discussion?

18           MR. LeGRANT:    As my counsel noted, it wasn't the  
19 final decision given that I don't have a building permit  
20 application before me. At that point, I would look at that  
21 and say, well, what is the -- what representation was being  
22 made here about the lot? And I think that's the point where  
23 I can say well that lot is acceptable for zoning purposes or  
24 not.

25           MEMBER JOHN:    And then another question is, would

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1 you anticipate that the lot frontage and all of those  
2 measurements could change at the time of the application,  
3 even if there's an A&T plat already issued? What changes to  
4 those measurements could occur before issuance of a permit?

5 MR. LeGRANT: Okay. The representation an  
6 applicant has to make for the plat, if they say, oh, I'm  
7 basing this plat on an A&T lot configuration, that is  
8 representation that my office would rely on as, oh, this is  
9 -- what's the size of the lot? What is the frontage or the  
10 width? Are you making a representation on the plat based on  
11 an A&T lot configuration?

12 Then if we were to approve that building permit,  
13 which building permit approval includes approval of the  
14 representations made in terms of the drawings, attachments  
15 to that building permit, then that would be the -- the  
16 property owner would be bound or held to that. Later if they  
17 say, well wait a second. We're going to do something  
18 different either with the geography of where that building  
19 is sited or the building itself. They would have to come  
20 back and seek a revision on that building permit.

21 MEMBER JOHN: And so you would rely -- at the time  
22 of issuance of the permit, you would rely on the version of  
23 the building plat that's available to you at that time?

24 MR. LeGRANT: Yes. So the one that was  
25 represented at the time of the building permit, we stamp

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1 those and they're put into the record as part of the overall  
2 building permit approval. It's an approval of a building  
3 permit with associated plans and a plat.

4 MEMBER JOHN: Okay. Thank you.

5 CHAIRPERSON HILL: Mr. Turnbull, do you have any  
6 questions for Ms. Moldenhauer or anyone?

7 COMMISSIONER TURNBULL: Yes, Mr. Chair. Thank  
8 you. Ms. Moldenhauer, did you try to obtain an amendment to  
9 the highway plan?

10 MS. MOLDENHAUER: No, we -- the purpose here was  
11 to do a mission for a subdivision and a by-right project.  
12 We did not foresee that.

13 COMMISSIONER TURNBULL: Okay. So you did not try  
14 to get an amendment to get record lots for the highway plan?

15 MS. MOLDENHAUER: No.

16 COMMISSIONER TURNBULL: Okay. I'm just -- I'm  
17 still confused -- or not confused. But the A&T plat was  
18 issued by OTR, and it does not constitute a first writing or  
19 a final determination by the ZA, correct?

20 MS. MOLDENHAUER: Nor does it have to pursuant to  
21 Subtitle X-1100.2.

22 (Simultaneous speaking.)

23 COMMISSIONER TURNBULL: -- revocation of the A&T  
24 plan. That is not mandated by any zoning regulation,  
25 correct?

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1 MS. MOLDENHAUER: The tax lot plat shows lot width  
2 and lot frontages. And that is what the appellants -- not  
3 the property owner, the appellants are challenging.

4 (Simultaneous speaking.)

5 COMMISSIONER TURNBULL: But the revocation of the  
6 A&T plat --

7 MS. MOLDENHAUER: And the owner would want to have  
8 it confirmed.

9 COMMISSIONER TURNBULL: The revocation of the A&T  
10 plat is not under the purview -- is not in the Zoning  
11 Regulations, correct?

12 MS. MOLDENHAUER: Nor would -- I mean as the  
13 property owner, we would not be looking, and I don't believe  
14 that you have the authority to revoke the A&T -- the tax  
15 plat. You're correct. You don't have the authority to  
16 revoke it.

17 What you do clearly have the authority to do  
18 though is to tell the Zoning Administrator your  
19 interpretation of lot width and lot frontage and say we  
20 disagree with your -- whether you want to call it  
21 preliminary, advisory. The Zoning Administrator has put in  
22 writing in clear and unambiguous language his interpretation  
23 of lot width and lot frontage. What is being asked of you,  
24 the Board, is to evaluate, do you agree with his advisory  
25 analysis, because it is now before you, because a body issued

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1 a tax plat that shows those dimensions consistent with his  
2 advisory opinion?

3 COMMISSIONER TURNBULL: Well my feeling is that  
4 the A&T plat right now is an ambiguous plan for us to look  
5 at. And again, it does not fall under the category of a  
6 first writing under Y-305.1. So right now, I'm hesitant to  
7 jump into this and say that we can weigh in on this right  
8 now. I don't know how --

9 MS. MOLDENHAUER: I mean I guess my point is --

10 COMMISSIONER TURNBULL: -- the rest of the Board  
11 feels, but I will relinquish my time. And Mr. Hart, you can  
12 weigh in.

13 MS. MOLDENHAUER: Sir, Mr. Turnbull, can I ask a  
14 question though, or make a point to that comment? The plat  
15 does show the dimensions, and thus there's knowledge.  
16 Everyone on this call has the knowledge of knowing what those  
17 dimensions are. And therefore, the question of the law is  
18 whether there's a clear and unambiguous understanding. That  
19 plat clearly shows it.

20 COMMISSIONER TURNBULL: I've already made my  
21 comments.

22 CHAIRPERSON HILL: Okay. Mr. Hart, did you have  
23 a question?

24 VICE CHAIR HART: Yeah, I guess it was -- I mean  
25 I appreciate the responses and the questions so far. It's

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1 helped me kind of understand this better. And I was going  
2 to ask a question about kind of some hypothetical situations,  
3 but I'm not going to.

4 I think that the conversation that Mr. Turnbull  
5 had with Ms. Moldenhauer helped to clarify some things for  
6 me. And I don't have any further questions, I guess, or any  
7 questions for Ms. Moldenhauer. I think I'm understanding  
8 this fuller, so I can turn it back to you.

9 CHAIRPERSON HILL: Okay. I just have one question  
10 for Mr. LeGrant. Mr. LeGrant, the determination letter, I  
11 know the determination letters and what they say at the end  
12 of it in terms if it's not a final decision. The other --  
13 but what do you have to do with the A&T plat? What did your  
14 office have to do with the A&T plat?

15 MR. LeGRANT: Chairman Hill, Matt LeGrant. So the  
16 short answer is we have really nothing to do with the A&T  
17 plat. It's any person can go over to the Office of Tax and  
18 Revenue and request an A&T plat. It is reviewed purely by  
19 OTR and without the input of my office or the Office of  
20 Surveyors.

21 CHAIRPERSON HILL: Okay. And then this might be  
22 even a question now for Ms. Nagelhout for OAG because I'm  
23 just curious. If we were to hear this appeal and let's just  
24 say we ruled against the appeal, then when the building  
25 permit is issued, would someone be able to also again come

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1 forward then and appeal the building permit? I'm just  
2 curious.

3 MS. NAGELHOUT: I think the short answer is no if  
4 I'm understanding your question correctly. We can talk about  
5 it later.

6 CHAIRPERSON HILL: Okay. That's fine. I see Ms.  
7 Moldenhauer is nodding in agreement, so I've got two lawyers.  
8 And Mr. Brown, you can nod as well. I don't know. But okay,  
9 let's see. All the lawyers are apparently going to get  
10 killed on this call later. So okay --

11 (Simultaneous speaking.)

12 CHAIRPERSON HILL: Sure, Mr. Brown.

13 MR. BROWN: I want to pick up and clarify a point  
14 Mr. LeGrant made. He seemed to indicate that based on the  
15 A&T plat that exists now and a permit application was filed  
16 at some point in the future that his office would review the  
17 permit application and review specifically at that time the  
18 question of lot width and street frontage. Did I understand  
19 his response correctly?

20 CHAIRPERSON HILL: Mr. LeGrant, I guess that's a  
21 question for you.

22 MEMBER JOHN: He's muted.

23 MR. LeGRANT: I'm -- hello. Will you rephrase  
24 that again, Mr. Brown? I'm sorry.

25 MR. BROWN: In your statement, you indicated that

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1 the ZA's office didn't have any role in the creation of the  
2 A&T plat, but that when that A&T plat is used or those A&T  
3 lots are used to submit for a building permit, that your  
4 office would, in fact, review that building, that lot, and  
5 the building permit application at that time and in this  
6 case, specifically determine compliance with lot width and  
7 street frontage. Is that what --

8 MR. LeGRANT: Yes, that is correct. And just to  
9 clarify, we don't look at the -- there's two things here.  
10 There's an A&T plat that Ms. Moldenhauer already put up. I  
11 know it's in the record of the configuration of the seven  
12 lots.

13 A building permit application is lot by lot. So  
14 they'll take one of those lots and submit it as a plat of  
15 different things and a plat that is associated with that  
16 building permit application. And then we would look at that  
17 and narrow down and look at that particular lot for  
18 compliance with the standards applicable to lot dimensions.

19 MR. BROWN: And Chairman Hill, why it went back  
20 to that point because I think it's important, my first duty  
21 in this case was to file a timely appeal. And my worst case  
22 scenario was -- or my worst case scenario with timing was the  
23 A&T plat was an appealable decision that started my 60 day  
24 clock to run. I think though what Mr. LeGrant has said, that  
25 may not be the case, in which case, one, I haven't been

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1 untimely in my appeal and I may be premature, which is  
2 acceptable to our clients. But the primary duty was to make  
3 sure that we were timely.

4 CHAIRPERSON HILL: Okay. I saw your hand, Ms.  
5 Moldenhauer. Just give me a second. Mr. Brown, I'm just  
6 trying to go in order. Do you have any questions for Ms.  
7 Moldenhauer?

8 MR. BROWN: No.

9 CHAIRPERSON HILL: Okay. Mr. Green, do you have  
10 any questions for Ms. Moldenhauer?

11 MR. GREEN: No, sir. No, sir.

12 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, you had  
13 your hand up a minute ago.

14 MS. MOLDENHAUER: Sorry, I had to unmute my line.  
15 Thank you, Chairman Hill. I just -- I had a few questions  
16 for Mr. LeGrant since he testified. Mr. LeGrant, your office  
17 would sign off typically on a record lot plat subdivision?

18 MR. LeGRANT: If the record lot subdivision  
19 represented compliance with applicable standards.

20 MS. MOLDENHAUER: And here, the only reason why  
21 you didn't sign off on a record lot is because you couldn't  
22 get one?

23 MR. LeGRANT: No -- no record lot -- A, no record  
24 lot subdivision was presented to me. And B, as we already  
25 discussed, there's been no individual building permit

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1 applications with a plat showing an individual lot's  
2 characteristic.

3 MS. MOLDENHAUER: Maybe I have to refresh your  
4 recollection. Didn't the property owner submit a record lot  
5 subdivision and then I came and met with you and we had a  
6 discussion that, oh, a record lot could not be obtained and  
7 we had to file for an A&T lot because of the specific section  
8 of the highway plan?

9 MR. LeGRANT: Yes, yes. I believe that we had  
10 that. First, we had the -- leading up to the determination  
11 letter, there was an assumption of record lot subdivision  
12 could be made. It was only after the issuance of that letter  
13 that it was discovered. I believe it was related to me that,  
14 oh, there's a highway plan encumbrance and the record lot  
15 subdivision could not proceed.

16 MS. MOLDENHAUER: And there have been theoretical  
17 conversations about if down the road a permit application was  
18 filed. Your office and your counsel submitted documentation  
19 defending the interpretation. Do you still defend the  
20 interpretation of lot width and lot frontage as identified  
21 in your advisory letter?

22 MR. GREEN: Actually I've got to raise an issue.  
23 We haven't even gotten to the case in chief. We're still  
24 reviewing the motion to dismiss. So I mean --

25 VICE CHAIR HART: If we could -- excuse me for a

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1 second. If we could just continue to identify yourselves.  
2 And if you have a question or comment that you'd like to  
3 make, please let the Chair --

4 (Simultaneous speaking.)

5 VICE CHAIR HART: Thank you.

6 MR. GREEN: I apologize. Hugh Green has an  
7 objection, attorney for the DCRA.

8 CHAIRPERSON HILL: Give me one second. Ms.  
9 Moldenhauer, give me a minute. Mr. Green, I heard what you  
10 were saying, and I actually disagree with you. I mean Ms.  
11 Moldenhauer, the questions that you're asking I think are  
12 more in line with if we got more to the appeal. All I asked  
13 from Mr. LeGrant and all he testified to was one question.  
14 And so do you have any further questions for Mr. LeGrant  
15 concerning the issue as to whether or not we're actually  
16 going to hear this appeal?

17 MS. MOLDENHAUER: Well Mr. Hill, I believe it's  
18 a question of whether or not the advisory interpretation  
19 would change, and that's a question that I think is relevant.  
20 If the advisory interpretation is not potentially going to  
21 change down the road, then the issue is ripe now.

22 CHAIRPERSON HILL: That's okay. I mean you're  
23 continuing to make your case. That's fine. But do you have  
24 anymore questions for Mr. LeGrant?

25 MS. MOLDENHAUER: So Mr. LeGrant, if a reviewer

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1 in your office were to look at a plat as you noted in a  
2 building permit application and it was -- mirrored a  
3 determination you have made already, would your staff rely  
4 on that determination or that advisory note?

5 MR. LeGRANT: If the information presented to me  
6 at the time of the permit application matched information in  
7 what was already put out in an advisory, then the decision  
8 before us, the building permit application, yes. As the  
9 advisory letter noted, oh, it's consistent with the zoning  
10 regulation.

11 CHAIRPERSON HILL: Okay. All right. So -- I'm  
12 sorry?

13 MS. MOLDENHAUER: Oh, I was just going to note  
14 that if the Board were to evaluate this now and the property  
15 owner would maintain, as Mr. LeGrant indicated, the same  
16 design, this decision would not change. And so if it were  
17 to wait for a building permit, the facts, the knowledge of  
18 the issues would not change so long as the property owner did  
19 not change the design.

20 CHAIRPERSON HILL: Okay.

21 MS. MOLDENHAUER: And it's the property owner's  
22 intent to change the design.

23 CHAIRPERSON HILL: Okay.

24 (Simultaneous speaking.)

25 CHAIRPERSON HILL: I'm sorry. Was there a

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1 question in there?

2 MS. MOLDENHAUER: No.

3 MR. BROWN: Mr. Hill?

4 CHAIRPERSON HILL: I got you. I got you, Mr.  
5 Brown.

6 MR. BROWN: I mean I think what Mr. LeGrant is  
7 saying is relevant. He's saying that at the time of the  
8 building permit, that's when his office would make their  
9 final decision.

10 MS. MOLDENHAUER: I would object to an improper  
11 characterization of the record.

12 CHAIRPERSON HILL: Do you guys have any -- Mr.  
13 Brown, do you have a question?

14 MR. BROWN: No.

15 CHAIRPERSON HILL: Okay. All right. Mr. Hart or  
16 Ms. John or Mr. Turnbull, do any of you have any more  
17 questions?

18 VICE CHAIR HART: I don't have any questions.

19 COMMISSIONER TURNBULL: I don't have any either.

20 MEMBER JOHN: No questions. Just to clarify, Mr.  
21 LeGrant, did you say that you would --- I believe that's what  
22 you said in one of my questions to you, that you would look  
23 at the time you reviewed the building permit application.

24 MR. LeGRANT: This is Matt LeGrant. We would look  
25 at the individual lot's plat at the time of the building

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1 permit application.

2 MEMBER JOHN: Okay. Thank you.

3 CHAIRPERSON HILL: Okay. Well this is my proposal  
4 actually. I don't know what you guys want to do in terms of  
5 the Board members. I'm looking at the Board members. I  
6 actually think that I would like to kind of think about this  
7 a little bit, this one issue concerning the dismissal from  
8 DCRA. And then maybe we can decide that -- and you guys can  
9 think about any questions you have right now before we lose  
10 everybody.

11 And then next week, we can have a discussion as  
12 to whether or not we think this should be dismissed. And  
13 then if we do decide that this should not be dismissed, then  
14 we can schedule to have this appeal and I'm going to look at  
15 Mr. Moy. Maybe -- I don't know what the calendar has for us.  
16 But maybe on the 24th of June or the 1st of July, I mean the  
17 parties were ready or are ready to have the appeal now or  
18 hear the appeal now. So you guys will also be ready two  
19 weeks after that. Do my fellow Board members have any  
20 comments on my thoughts? Ms. John, I'll start with you.

21 MEMBER JOHN: I could use additional time to  
22 review the testimony and the documentation. So I am fine  
23 with postponing the full hearing until -- for two weeks.

24 CHAIRPERSON HILL: Okay. Well I mean we're going  
25 to determine whether we have the -- I mean I'm just being

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1 clear.

2 MEMBER JOHN: I'm sorry. Yes, I agree that we can  
3 postpone the decision. And if we decide to have a full  
4 hearing on the merits, then I would be fine to delay the  
5 case.

6 CHAIRPERSON HILL: Okay. Mr. Hart?

7 VICE CHAIR HART: I don't have any other comments.  
8 I'm fine with your proposal.

9 CHAIRPERSON HILL: Mr. Turnbull?

10 COMMISSIONER TURNBULL: I think I'm on mute.  
11 Yeah, so I'm fine with it. Ms. Moldenhauer, your PowerPoint  
12 is in the records?

13 MS. MOLDENHAUER: Yes, our PowerPoint is in the  
14 records.

15 COMMISSIONER TURNBULL: Thank you.

16 CHAIRPERSON HILL: Okay. Mr. Moy, can you tell  
17 me what the 24th of June looks like?

18 MR. MOY: Mr. Chairman, the 24th of June, you have  
19 something in the neighborhood of nine applications. I think  
20 my suggestion if the Board moves forward to hear the merits  
21 of the appeal, it's more accommodating for the Board if we  
22 hold that on July 1st.

23 CHAIRPERSON HILL: Okay.

24 MR. MOY: The merits of the appeal, July 1st would  
25 be better, and then of course to decide on a motion to

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1 dismiss next week, which would be June the 17th.

2 CHAIRPERSON HILL: Okay. All right, Mr. Turnbull,  
3 I guess maybe you're not with us next week. But if you could  
4 -- I mean if you can join us, that'd be great for a  
5 discussion. Otherwise, I guess you can submit something, an  
6 absentee ballot.

7 COMMISSIONER TURNBULL: No, I can be here.

8 CHAIRPERSON HILL: Okay. All right. Okay. Then  
9 that's that, Mr. Moy. Let's go ahead and do that. And in  
10 terms of a break now because now we have one more appeal  
11 after this. And then that will go on for some time, I would  
12 assume. So do the Board members want to break for lunch now?  
13 Okay. I see nodding. It is 12:45. Do you want to say 1:30?

14 COMMISSIONER TURNBULL: That's fine.

15 CHAIRPERSON HILL: Okay. All right. Everyone,  
16 we'll see you back at 1:30. I mean everyone who was here on  
17 the call, again, it was a pleasure to see everyone. Stay  
18 safe, and we'll be having the meeting on the 1st -- I'm  
19 sorry. We'll be discussing the official issue next week.  
20 We will be taking public testimony for the meeting portion.  
21 That's just where the public can watch, so you're free to  
22 call in and then watch at that time. So with that being the  
23 case, I'll see everyone back here for our second appeal at  
24 1:30.

25 MR. BROWN: Chairman Hill, can I interject?

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1 CHAIRPERSON HILL: Wait. Give me one second. A  
2 few people have their hand up. Mr. Hart, you had your hand  
3 up?

4 VICE CHAIR HART: I was saying goodbye.

5 CHAIRPERSON HILL: Okay. Mr. Brown, you had  
6 something you wanted to say?

7 MR. BROWN: Would it please the Board to allow any  
8 submissions from the parties on this issue, or have you --

9 CHAIRPERSON HILL: I don't need anything. Mr.  
10 Hart, Mr. Turnbull, or Ms. John, do you guys need anything  
11 from anyone?

12 MEMBER JOHN: I don't need anything, Mr. Chairman.

13 CHAIRPERSON HILL: Okay.

14 MS. MOLDENHAUER: Would the Board like anything  
15 from the owner regarding the prejudice of further delay?

16 CHAIRPERSON HILL: I don't need anything more for  
17 the record in terms of the ability to make this choice. Does  
18 anyone else need anything?

19 COMMISSIONER TURNBULL: I don't need anything.

20 CHAIRPERSON HILL: Okay. All right. Okay. Well  
21 in that case, again, I'll see everybody at 1:30 or at least  
22 I'll see the next people at 1:30. Okay? Bye-bye. Thank  
23 you.

24 (Whereupon, the above-entitled matter went off the  
25 record at 12:42 p.m. and resumed at 1:40 p.m.)

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1 CHAIRPERSON HILL: All right. Then Mr. Moy, if  
2 you want to go ahead and I guess -- or if you want to let  
3 everybody in. It looks like everybody is here. If you'd  
4 like to call the case, Mr. Moy.

5 MR. MOY: Yes. Thank you, Mr. Chairman. The  
6 Board is resuming its hearing session back from lunch recess,  
7 and the time is at or about 1:40 p.m. So before the Board  
8 is Appeal No. 20226 of Michael Yates.

9 This is captioned and advertised as an appeal from  
10 the decision made on November 6, 2019 by the Zoning  
11 Administrator, Department of Consumer and Regulatory Affairs,  
12 to issue building permit No. B1804458, to permit the  
13 alteration and addition to an existing two-story principal  
14 dwelling unit for conversion into an eight-unit apartment  
15 house in the RA-1 Zone. This is at 1214 Madison Street,  
16 Northwest, Square 2934, Lot 35.

17 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
18 Moy. All right. Well, welcome, everyone, again. Let me  
19 see. I can see Mr. Yates. I don't see -- and I see Mr.  
20 Cross. I thought I saw -- I see Mr. Brown's name. I don't  
21 know, Mr. Brown, if you are there.

22 MR. BROWN: I'm here, Mr. Chairman. I have my  
23 camera on. If you can't see me, I don't really know why.

24 CHAIRPERSON HILL: Okay. That's fine. I can hear  
25 you. Can anyone else see Mr. Brown? No? Okay. Nobody sees

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1 -- Mr. Brown, you currently are not being seen. So I don't  
2 know if that's necessary, but I suppose you can maybe work  
3 on -- well, first, let's see. Is Mr. Mlakar there?

4 MR. MlakAR: Yes, I'm here.

5 CHAIRPERSON HILL: Okay. Mr. Mlakar, we can't see  
6 you either. Is your camera on?

7 MR. MlakAR: There we go. Can you see me?

8 CHAIRPERSON HILL: I can see you, yes. And then  
9 can everyone -- Mr. Yates, your camera, at least for me, is  
10 going in and out. Oh, there you are again. Okay. And then  
11 Mr. Brown, I don't know if you want to try anything, or --

12 MR. BROWN: I'm not sure what I could do. But I'm  
13 happy to speak. As long as I can see the PowerPoint  
14 presentation, I can talk from that.

15 CHAIRPERSON HILL: Okay. All right. Well let's  
16 go ahead and -- I mean the only thing I can suggest, I guess  
17 I don't know if you take your cursor and roll over the screen  
18 and left click. I don't know whether your little camera  
19 comes on at the bottom or not. Oh, there we go.

20 MR. BROWN: Okay. I clicked the right button that  
21 time.

22 CHAIRPERSON HILL: Okay, perfect. Good to see  
23 you, Mr. Brown.

24 MR. BROWN: How are you?

25 CHAIRPERSON HILL: I'm doing well. Thank you.

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1 How are you?

2 MR. BROWN: Very interesting discussion this  
3 morning raised by Mr. Green's motion. I applaud your  
4 decision to take a little time to think about it.

5 CHAIRPERSON HILL: Well I'm so glad that we can  
6 get feedback from other attorneys on previous cases. But  
7 thank you so much.

8 MR. BROWN: Well, I was stuck listening, so it was  
9 very interesting.

10 CHAIRPERSON HILL: Well, you're probably the only  
11 one that was interested. I got to tell you, Mr. Brown. All  
12 right. So let's see. Let's go ahead and introduce ourselves  
13 if we could. Mr. Brown, why don't we start with you.

14 MR. BROWN: Yes, sir. Good afternoon, Mr.  
15 Chairman and members of the Board. David Brown of Knopf &  
16 Brown in Rockville for the appellant, Michael Yates.

17 CHAIRPERSON HILL: Okay, great, wonderful. Mr.  
18 Yates, would you like to introduce yourself?

19 MR. YATES: Can you hear me?

20 CHAIRPERSON HILL: Yes.

21 MR. YATES: Okay. So I am Michael Yates, property  
22 owner at 1216 Madison Street, Northwest, and my property is  
23 next to the development at 1214 Madison.

24 CHAIRPERSON HILL: Okay. Thank you, Mr. Yates.  
25 Mr. Yates, your microphone was kind of going in and out. So

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1 if you don't hear me, just let me know or wave your hand or  
2 something. Okay?

3 MR. YATES: Got it.

4 CHAIRPERSON HILL: Okay. Let's see. Mr. Mlakar,  
5 if I'm pronouncing that right, do you want to introduce  
6 yourself?

7 MR. MLAKAR: Sure. I'm Mark Mlakar, and I'm the  
8 owner of Madison Heights, LLC, which owns 1214 Madison  
9 Street, Northwest. And my office address is at 1407 T  
10 Street, Northwest.

11 CHAIRPERSON HILL: Okay, great. Thank you. And  
12 Mr. Mlakar and then Mr. Yates, if you don't mind just muting  
13 your microphones when you're not talking. And actually,  
14 everybody. Mr. Brown, you'll want to do that as well because  
15 of just kind of the feedback issues and things. Let's see.  
16 Mr. Cross, do you want to introduce yourself?

17 MR. CROSS: Sure. Michael Cross. I am the  
18 architect responsible for building permit B1804458 there at  
19 1214 Madison Street, Northwest.

20 CHAIRPERSON HILL: Okay. Well Mr. Cross, good to  
21 see you as well --

22 MR. CROSS: Likewise.

23 CHAIRPERSON HILL: -- the regulars here, right?  
24 And so there's more people that we get to see. Mr. Green,  
25 do you want to introduce yourself?

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1 MR. GREEN: Yes, sir. Good afternoon, Chairman  
2 and members of the Board. My name is Hugh Green, attorney  
3 for the D.C. Department of Consumer and Regulatory Affairs.

4 CHAIRPERSON HILL: Okay. And Mr. LeGrant?

5 MR. LeGRANT: Good afternoon. Matthew LeGrant,  
6 Zoning Administrator at DCRA.

7 CHAIRPERSON HILL: Okay, great. All right. So  
8 let's see. Just so everybody knows what I'm doing is -- well  
9 first of all I guess if again everyone can just mute their  
10 microphones unless they're speaking. And secondly, if for  
11 some reason you want to speak and I don't recognize you,  
12 maybe just try to wave your hand.

13 And then if I don't -- still am not acknowledging  
14 you, you can go ahead and speak up because sometimes the  
15 camera goes off, and I can't necessarily see the person  
16 waving their hand but I can hear people. So please speak up  
17 as we go through this process if you're not being recognized.

18 So what I planned on doing in terms of the order  
19 was beginning with the appellant and Mr. Brown, and letting  
20 you, Mr. Brown, go ahead and present your case. And we would  
21 go ahead and have questions from the other party in terms of  
22 Mr. Green or the property owner. And then we can go ahead  
23 and then have the DCRA go next and then have questions and  
24 answers again.

25 Then the property owner will have an opportunity

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1 to give a presentation, questions and answers again. And  
2 then Mr. Brown, we'll come back to you as the appellant for  
3 -- and this is where I don't remember if there's rebuttal or  
4 not. But that's I suppose rebuttal.

5 And then there will be a conclusion, which will  
6 be -- in the regulations I mentioned before, as everybody  
7 knows, in terms of if they've been at the BZA before, the  
8 conclusion is usually just who is given the case. But I like  
9 to hear from everybody just like a brief conclusion. So  
10 we'll go to DCRA, property owner, and then Mr. Brown. So  
11 that's -- oh, Mr. Hart?

12 VICE CHAIR HART: Yeah, just a quick question.  
13 And I'm sorry if I missed this. Did Mr. Moy read in the  
14 caption already?

15 CHAIRPERSON HILL: I believe so, yes.

16 VICE CHAIR HART: Okay. I'm sorry. I missed  
17 that. Sorry.

18 CHAIRPERSON HILL: Mr. Moy, you did read it in,  
19 correct?

20 MR. MOY: Yes, yes, I did.

21 VICE CHAIR HART: Thanks.

22 CHAIRPERSON HILL: No problem. And so that's the  
23 plan. And I do have -- and I don't think we're going to go  
24 this long. It's not my first choice. But I have an  
25 appointment at 6:00 that I have to -- I have another thing.

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1 So if it goes that late, Mr. Hart will take over for me and  
2 then I can just view the rest of the record. So that being  
3 the case, Mr. Brown, are you ready to begin? You're on mute,  
4 Mr. Brown.

5 MR. BROWN: I'm ready to begin if you would bring  
6 up our slide presentation.

7 CHAIRPERSON HILL: Okay, great. And Mr. Brown,  
8 just so you know. I'm not -- there's not a particular time  
9 here. I'm just keeping tract so everybody gets the same  
10 amount of time. But you can begin when you like.

11 MR. BROWN: Thank you. We are appealing building  
12 permit B1804458 in this case. Go to the next slide please.  
13 The building permit is for 1214 Madison Street, and this is  
14 a photo of what the single family house looked like prior to  
15 the issuance of the permit. Next slide please.

16 This is a photo -- recent photo of the 1200 block  
17 of Madison Street on the south side, taken I think from close  
18 to 12th Street looking down toward 13th Street. And Mr.  
19 Yates' house which is next to -- is on the corner at 13th  
20 Street is next to the subject property. You can't see it  
21 here, but I wanted you to see in context what the rest of the  
22 block looked like along there, single family homes. Next  
23 slide please.

24 This is a very recent picture, photograph of the  
25 construction going on, on the apartment house. And Mr.

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1 Yates' house is just off to the right. Next slide please.  
2 This again shows the pre-permitting condition of 1214 Madison  
3 Street, both the front view from Madison and the rear view  
4 from the alley. Next slide please.

5           This is a drawing from the permit set of drawings,  
6 and I just wanted to briefly illustrate for you what's on  
7 here. What you see outlined in green is the house on the  
8 other side of the apartment house. What you see outlined in  
9 yellow is Mr. Yates' house. And in between, you see the new  
10 apartment house, which is going to be going up and extending  
11 much further back into the yard than any of the other two  
12 houses.

13           And you can see in perspective drawing what this  
14 is going to look like. The lower perspective drawing on the  
15 left is basically looking at that apartment building from the  
16 alley. The upper one is looking at the apartment building  
17 from Madison. And you can see Mr. Yates' house there off to  
18 the right. It's a corner lot that fronts on both Madison and  
19 13th. Next slide please.

20           This is the guidance document issued by the Zoning  
21 Administrator that is ostensibly at issue in this case. It's  
22 called Guidance Document 2019-001. And I point out to you --  
23 I don't know that you can see it took clearly or not, but  
24 it's in the record. In the upper right-hand corner, you see  
25 that it has an effective date of January 1, 2019. I'll get

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1 to discussion of this in a just a moment, but let's go first  
2 to the next slide.

3           The discussion in that document is about this  
4 provision in the zoning code, Section 421, which says in the  
5 RA-1 and RA-6 zones, all new residential developments except  
6 those comprising one family detached and semidetached  
7 dwellings shall be reviewed by the Board as special  
8 exceptions under Subtitle 10 in accordance -- or Subtitle X  
9 in accordance with the standards in this section. Now  
10 turning to the next slide and looking at the DCRA guidance  
11 document, that document says in essence that a detached  
12 single family home in the RA-1 zone can be converted into an  
13 apartment house without a special exception if less than --  
14 there's less than 100 percent increase in the existing FAR  
15 and the number of units is not 100 percent increase or at  
16 least nine or fewer.

17           We have no quarrel with the application of these  
18 requirements to this particular building permit. There is  
19 less than 100 percent increase in the FAR, and I think  
20 there's going to be seven units, not eight units. And so the  
21 number of units also meets the guidance.

22           But the question if you see on the next slide is,  
23 does that guidance document apply to this particular building  
24 permit? We have submitted to you Exhibit 33, which is an  
25 email that Mr. Yates received from a Mr. Mamadou Ndaw at DCRA

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1 in which he said that the subject property is not affected  
2 by the new guidance as the building application was accepted  
3 as complete on March 22, 2018. So I don't see how,  
4 notwithstanding claims made by DCRA, this guidance document  
5 has any applicability here. Next slide.

6 I then ask a question, well what was the policy  
7 before the guidance document? Would it apply here anyway?  
8 DCRA in their presentation doesn't really answer that  
9 question. But we say that it would not apply. And the  
10 reason is that the guidance document is only applicable to  
11 expansion of existing uses, not the conversion of one use to  
12 another which in this case is from a single family dwelling  
13 to an apartment house.

14 So looking at the next slide, we ask, well is it  
15 a conversion or is it an expansion? I'm going to show you  
16 two more slides that say -- the first slide I'm going to show  
17 you says that the permit is a change in use group. And the  
18 next slide says it's a conversion.

19 If you look at this -- I'm sorry. I don't have  
20 the technical competence to blow this up. But if you look  
21 on the left-hand side, there is -- one of the topic headings  
22 is called use group. And it says the existing use group is  
23 R-3 single family, and the proposed use group of R-2 is  
24 multifamily. So clearly there is a change in use.

25 Now is it an expansion or is it a conversion? The

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1 next slide I believe pretty much answers that question. This  
2 is from the building permit, and I will read to you the fine  
3 print in the middle of the left-hand side of this document.  
4 It says approve to construct an addition to existing SFD,  
5 that is single family dwelling structure, and convert --  
6 convert into a seven unit three story-plus cellar and  
7 penthouse apartment building.

8           And indeed, the word conversion was read by Mr.  
9 Moy when he introduced this docket item, a conversion. So  
10 we don't think that whether the policy was or was not  
11 applicable in 2018 to permits supplied for in 2018, it simply  
12 doesn't apply when you're talking about a change in use. An  
13 expansion of a use is one thing. A change in use is  
14 something quite different, even if it involves an expansion.

15           So where do we look to see whether or not this is  
16 a by-right use or a special exception use? We say -- and  
17 this is the next slide -- that allowing a conversion under  
18 this policy, written or unwritten, would be contrary to the  
19 regulations that limit conversion of existing residence to  
20 apartment houses. And we find that limitation in Section U-  
21 320.2, which is made applicable to the RA zone by U-420.1(a).

22           So I'm quoting here from 420.1(a). The following  
23 uses shall be permitted as a special exception if approved  
24 by the Board of Zoning Adjustment under Subtitle X, subject  
25 to any applicable provisions of each section. And the very

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1 first one in the list of special exception uses allowed in  
2 the RA zone is any use or structure permitted under Subtitle  
3 U-320, except as modified here.

4           And I'm sure the Board is familiar with the way  
5 in which the Zoning Regulations -- in order to prevent them  
6 from being unduly long and overly wordy, simply teleport from  
7 one zone to another what was allowed in the prior zone and  
8 makes them available in the next less restrictive zone  
9 subject to particular modifications that might be made. This  
10 happens all the time in the zoning ordinance.

11           So Subtitle U-320 is about the RF zone. And you  
12 look at the submission made by DCRA in this case, they say  
13 no, we are trying to use RF standards in the RA-1 zone. And  
14 I say no, we're not. We're using the RA-1 zone because it  
15 made the RF zone standards applicable to the RA-1 zone by  
16 virtue of 420.1(a).

17           So let's look at what's required in the way of a  
18 special exception in U-320. We see in U-320.2, this is the  
19 next slide please, conversion of an existing residential  
20 building existing on the lot prior to May 12th, 1958 to an  
21 apartment house shall be permitted as a special exception if  
22 approved by the Board of Zoning Adjustment.

23           Now obviously you have to change RF-1 and RF-2 and  
24 RF-3 to RA-1 because this has been imported into the RA-1  
25 zone. And the permit cover sheet shows that this house at

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1 1214 Madison Street was built in 1910. So it certainly was  
2 an existing residential building on the lot prior to May  
3 12th, 1958. And what is being proposed here is conversion  
4 to an apartment house. In other words, what is being  
5 proposed here exactly fits the requirements of Section U-  
6 320.2. Next slide please.

7           Now despite this importation device in U-420.1(a),  
8 is there still a basis to conclude that an apartment house  
9 is a matter-of-right use in the RA-1 zone? DCRA says yes  
10 because F-300.2 says the RA-1 zone provides for areas  
11 predominantly developed with low and moderate density  
12 development including low rise apartments. We say no because  
13 F-300.2 does not specify what is by-right and what requires  
14 special exceptions.

15           Use permissions are not in Subtitle F. They're  
16 in Subtitle U. So if you'll go to the next slide, I'm  
17 showing you what Subtitle F says. It says that the purpose  
18 and intent of the RA-1 zone, this is Section F-300.2, is to  
19 provide for areas predominately developed with low to  
20 moderate density development, including detached dwellings,  
21 row houses, and low rise apartments.

22           There's no inconsistency here. U-420.1(a) says  
23 apartment house is a special exception, not a by-right use.  
24 And Subtitle F does not specify use permissions. The Zoning  
25 Administrator erroneously claims that F-300.2 establishes

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1 apartment houses as a by-right use in the RA-1 zone. No, F-  
2 300.2 is descriptive of what one finds in the zone, not a  
3 prescription of whether the uses found in the zone got there  
4 by-right or by special exception.

5 So there is no conflict -- going to the next  
6 slide. Can you go to the next slide? There's no conflict  
7 here between U-420.1(a) and U-421.1. They are consistent as  
8 to apartment houses. They both provide for an apartment  
9 house to be special exceptions in the RA-1 zone.

10 DCRA cannot allow a different outcome under U-  
11 421.1 whether in a guidance policy or otherwise than one gets  
12 under U-420.1(a) by ignoring that the resulting structure is  
13 a different use than apartment house use. Therefore, the  
14 special exception conditions in U-320.2 must be met as  
15 approved by the BZA. But I'll go yet a step further in the  
16 next slide and say, would there still be an improper conflict  
17 if U-420.1 were read not to require new apartment houses to  
18 get a special exception and you just ignored U-420.1(a)?

19 DCRA did not address this question, but I am  
20 addressing it here. A special exception would still be  
21 required. And this would be under 401.1(d)(1), multiple  
22 dwellings. And if you'll go to the next slide. I'm sorry.  
23 On this slide, I haven't quoted the exact language. But what  
24 U-401.1 says is the following uses shall be permitted as a  
25 matter of right. And Subparagraph D says multiple dwellings.

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1 But before it says multiple dwellings, it says except for the  
2 RA-1 and RA-6 zones.

3 So once again, we see that there's a consistency  
4 among three different provisions in the zoning ordinance  
5 under use provisions, all of which point to the fact that an  
6 apartment house in the RA-1 zone has to go through the  
7 special exception process. And that process includes meeting  
8 the requirements for the special exception in U-320.2 that  
9 are effectively incorporated into the RA-1 zone.

10 So that essentially -- if you would go to the next  
11 slide. That essentially -- no, the slide prior to that. I'm  
12 sorry. That essentially is the basis of our statutory  
13 argument. And we can stop there, but I want the Board to  
14 understand that we are not whistling in the dark by insisting  
15 that this building permit go through a special exception  
16 process before it's allowed to continue.

17 Compliance with a number of the subparagraphs of  
18 U-320.2 may be a problem. This Board does not have to decide  
19 whether or not those problems are or are not solvable in this  
20 hearing. But I just wanted to point out to you that there  
21 are real problems that we will be bringing to the Board's  
22 attention if this Board does as I believe it should and order  
23 that the applicant basically stop work and apply for a  
24 special exception in order to validate their permit.

25 So I just want to briefly go through those issues

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1 that we would be presenting if this case comes back to you  
2 as a special exception case. The first issue, and this is  
3 the next slide, is the requirement in 320.2(b) that the  
4 fourth dwelling unit and every additional even numbered  
5 dwelling unit thereafter shall be subject to the requirements  
6 of Chapter 10, inclusionary zoning. There are no IZ units,  
7 so Condition B is not met.

8 Now the next slide please, and there's a typo  
9 there. It says 12 units. It's supposed to say IZ units.  
10 Can there be an IZ unit requirement when there are fewer than  
11 10 units? The position of DCRA is, is that IZ is  
12 inapplicable here because there aren't 10 or more units and  
13 they cite to C-100.2(b) and (c).

14 We say, yes, there can be a requirement because  
15 that requirement that they're citing has to be reconciled not  
16 only with 320.2(b), but also with C-1003.6 which triggers the  
17 IZ requirement at four units when the BZA approves the  
18 conversion from a single family home to an apartment house.  
19 Again, this Board does not have to decide this question now.  
20 This is an issue for the special exception hearing.

21 The second issue on the next slide for special  
22 exception criteria is U-320.2(d). The land area requirement  
23 for the special exception is 900 square feet per unit. Here  
24 the land area is 5,712 square feet, which works out to 6.34  
25 units.

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1           To my way of thinking, although I don't have a  
2 particular regulatory provision to point to you, but I would  
3 think the Board's experience and the Zoning Administrator's  
4 experience would tell you 6.34 units does not round up to  
5 seven. It rounds down to six. So Condition D is not met.  
6 Next slide please.

7           The next criteria that will come up in the hearing  
8 is that an addition shall not extend farther than 10 feet  
9 past the farthest rear wall of any adjoining principle  
10 residential building on any adjacent property. Now I showed  
11 you a diagram earlier that shows that the rear of the  
12 apartment building extends well more than 10 feet beyond the  
13 deepest of the two adjacent houses. In fact, I believe the  
14 plans show more than 20 feet beyond Mr. Yates' house which  
15 is the deepest of the two adjacent houses.

16           The next diagram shows the original -- the next  
17 slide, please. That shows the original location of the house  
18 at 1214 in relation to the yellow outline of Mr. Yates'  
19 house. And if you'll recall the diagram from an earlier  
20 slide, this is going -- this house is going to be extend much  
21 further back. So there is a problem with Condition E as  
22 well. Next slide, please.

23           Next, in Subparagraph H of 320.2 says that a  
24 rooftop architectural element original to the house such as  
25 sconces, porch roofs, turrets, towers, or dormers shall not

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1 be removed or significantly altered, including shifting its  
2 location, changing its shape, or increasing its height  
3 elevation or size. If you look at the next slide, you'll see  
4 -- and this is another version of the earlier slide. You see  
5 that the 1214 Madison Street had a dormer above the second  
6 floor and obviously that is gone now. So Condition H is not  
7 met.

8           Next, Condition I. Next slide. Any addition  
9 shall not have substantially adverse effect on the use or  
10 enjoyment of any abutting or adjacent dwelling or property.  
11 And in particular, the light and air available to neighboring  
12 properties shall not be unduly affected. The privacy of use  
13 and enjoyment of neighboring properties shall not be unduly  
14 compromised. And the conversion and any associated additions  
15 as viewed from the street alley and other public way shall  
16 not substantially visually intrude upon the character, scale,  
17 and pattern of houses along the subject street or alley.

18           And just a few illustrations of why this is going  
19 to be a problem in the next slides. First, you see how much  
20 further back the house is going to be compared to the other  
21 houses. Next slide, please. Next, this is a rearview of the  
22 apartment building going up in relation to Mr. Yates' house.  
23 And you can see what kind of an impact it's going to have on  
24 the privacy that Mr. Yates is going to have in his rear yard.

25           And next slide shows that again from a slightly

1 different angle. And the next slide, please, shows the real  
2 close proximity because the two buildings as it's being  
3 erected right there. All of these features of the  
4 construction implicate questions with regard to Subparagraph  
5 I.

6           There's also the question of the fact that the  
7 existing building at 1214 Madison was nonconforming as to the  
8 side yard. The RA-1 zone requirement for a single family  
9 dwelling is eight feet. This is the next slide, please, and  
10 my last slide. And the actual side yard provided is 2.8  
11 feet.

12           The nonconformity extends to the rear of the new  
13 structure. In other words, the 2.8 foot side yard is  
14 extended all the way back to the back end of the side wall  
15 of the apartment house. But Section C-202.2 says that an  
16 addition or enlargement must not increase or extend a  
17 nonconforming side yard.

18           This requirement is not met. I don't see how  
19 anyone could say that extending a new structure to much  
20 further deeper on the lot at the existing nonconforming side  
21 yard does not increase or extend the nonconforming side yard.  
22 The conversion will worsen the nonconformity and adversely  
23 impact the protection that he should be afforded in the  
24 special exception process under 320.2(i).

25           And I would like to turn the presentation over to

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1 Mr. Yates to just briefly review for you from his personal  
2 perspective what he sees as the injury that will be -- that  
3 he will be suffering if this project is allowed to go through  
4 under the claim by-right that DCRA says is applicable here  
5 and not have to go through the special exception process.

6 Mr. Yates?

7 MR. YATES: Can you hear me?

8 VICE CHAIR HART: Mr. Chairman, you're muted.

9 MR. YATES: Can you hear me?

10 VICE CHAIR HART: We can hear you, Mr. Yates. Mr.  
11 Chairman, you're muted.

12 MR. YATES: Okay, perfect.

13 CHAIRPERSON HILL: Thank you. Thank you. We can  
14 hear you, Mr. Yates.

15 MR. YATES: Okay. Firstly, good afternoon,  
16 Commissioners. I am Michael Yates as Mr. Brown stated. I'm  
17 the property owner over at 1216 Madison Street which is  
18 adjacent to the property under construction. I'd first like  
19 to say, I'm very happy to come before the BZA today to hear  
20 this case so I can participate and present in case.

21 Last June, I requested and was granted party  
22 status in response to this planned development. And I was  
23 never heard for the same reason the hearing was postponed on  
24 three separate occasions. Finally, in January of 2020, I  
25 file an appeal contesting DCRA decision to grant a permit to

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1 build as a matter of right.

2 My position is like it was a year ago, that this  
3 development is not a matter of right. It requires special  
4 exception and by BZA to weigh the community concern of the  
5 proposal made and assist and alleviate the detrimental impact  
6 this development will have on me as well as my neighbors.  
7 For starters, the 1200 block of Madison Street is a  
8 noticeable short block with ten houses. Again, ten houses.

9 A building this size, mass, and proximity to the  
10 abutting structure will negatively impact me as well as my  
11 neighbors. For example, access to my roof is impaired.  
12 Light, air, and privacy are compromised. Utility of my deck  
13 is diminished. My side yard will be in a perpetual shadow.  
14 My green space, my grass, my garden is jeopardized. This  
15 will adversely impact property values and more importantly  
16 the nonconforming side yard as Mr. Brown mentioned has been  
17 extended over 20 feet. This is definitely the problem.

18 I have lived on this block for the past 18 years.  
19 Some of my neighbors, close to 50 years. Our backyards,  
20 decks, green space are an escape from the noise, density, and  
21 concrete structures of D.C. I believe a developer should not  
22 be allowed to turn our block upside down.

23 Disenfranchised neighbors displace us off our  
24 decks, kill our green space by claiming a matter of right  
25 privilege. Pages 25 and 32 of the briefing show 1214 Madison

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1 prior to permitting and after. This development is not a  
2 mere expansion of a single family house. This is a large  
3 scale conversion to an apartment building without any  
4 community input or relief to neighbors who are injured by  
5 this development.

6           Lastly, accepting this proposed development as a  
7 matter of right will open the floodgates to construct all ten  
8 houses on the block to apartment buildings without any input  
9 from neighbors that are most impacted by this development,  
10 or even those who have lived -- even though most of these  
11 neighbors have lived on this block for decades.

12           Again, in summary, we have been on this block for  
13 a very long, long, long time. And if there's supposed to be  
14 development, at the minimum, we should be heard. And in this  
15 particular case, it was granted as a matter of right. And  
16 so our voice has been silenced. I don't think that is  
17 correct. Thank you.

18           CHAIRPERSON HILL: Thank you, Mr. Yates. Mr.  
19 Brown, is there anything else for your portion at this point?

20           MR. BROWN: No, just -- I'll just make a sort of  
21 summary argument -- summary of closing argument. That would  
22 be it.

23           CHAIRPERSON HILL: Sure. Oh, you're saying later.  
24 Okay, right, okay. All right. So Mr. Green -- well, first,  
25 actually, does the Board have any questions for Mr. Brown?

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1 Mr. Hart?

2 VICE CHAIR HART: Yeah, so thank you, Mr. Brown,  
3 and welcome, Mr. Yates. Or welcome, both of you. So just  
4 a couple of questions. Are you -- Mr. Brown, this is  
5 directed towards you. Are you saying that you think the  
6 existing house was demolished and that it is being -- that  
7 this is, like, new development? Or this is -- the building  
8 is -- or are you not opining on that, that aspect of the  
9 project?

10 MR. BROWN: I'm calling it a conversion. In the  
11 earlier version of our PowerPoint presentation, we included  
12 a couple of photographs of a couple of walls of the old  
13 building that were retained. And presumably, those walls  
14 have been integrated into the new apartment building. But  
15 they are, as far as I can tell, all that was left of the old  
16 structure. Whether this -- whether one calls this a  
17 renovation or an addition or an entirely new construction,  
18 in our view, there is no question that the word, conversion  
19 of use applies as that term is used in Section U-320.2.

20 CHAIRPERSON HILL: Mr. Hart, you're muted.

21 VICE CHAIR HART: Sorry. The second question that  
22 I had was -- thank you -- was also to Mr. Brown. You bring  
23 up both U-421 and U-320.2. Do you think that they are  
24 mutually exclusive to each other, or do you think that they  
25 can actually -- they could both be in effect?

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1 MR. BROWN: Well, in the statement of issues on  
2 appeal that I supplied when we first filed a permit, I cited  
3 a case from the Court of Appeals called Lewis v. Washington  
4 Hospital Center which includes the following language.  
5 Whenever possible, a statute should be interpreted as a  
6 harmonious whole and one must discern an interpretation that  
7 will harmonize in accord full force and effect to all of its  
8 provisions without rendering any part meaningless.

9 To answer your question, applying that principle,  
10 I would say that these provisions can be read as harmonious  
11 with each other and the most harmonious way in which to read  
12 them is to say that a special exception for an apartment  
13 house that's a conversion from a single family dwelling in  
14 the RA-1 zone must not only go through the special exception  
15 process, but it must comply with the requirements for a  
16 special exception that are incorporated from the RF zone  
17 through 420.1(a) unless modified in the RA zone. And of  
18 course, they were not modified in the RA-1 zone.

19 VICE CHAIR HART: Thank you very much. No more  
20 questions.

21 CHAIRPERSON HILL: Ms. John, do you have any  
22 questions?

23 MEMBER JOHN: Yes, maybe a couple. So Mr. Brown,  
24 can you take a look at the table? It's at 301.1(c). I  
25 believe that's the section. No, 0.12. So that's the section

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1 that says residential flat with a maximum number of principle  
2 dwelling units as follows. And then it goes down to the  
3 chart.

4 And in the RF-1 zone, only two principle dwelling  
5 units are allowed. And then the RF-5 zone, four principle  
6 dwelling units are allowed. So if these provisions are  
7 carried over into the RA-1 zone, by virtue of the section  
8 that allows -- in the RA zone, whatever is allowed in the RF  
9 zone can be carried over under that provision you cited.

10 So would not the number of principle dwelling  
11 units that could be built be at least -- at most four in the  
12 RF zone and three in the RF-4 zone? In other words, if the  
13 applicant is -- if the appellant is saying that this building  
14 is allowed by right, wouldn't it have to be limited to a  
15 maximum of five units? Or is that provision not applicable?  
16 In other words, what's the effect of this chart that limits  
17 the number of principle dwelling units in the RF zone?

18 MR. BROWN: Could you -- you know, this issue did  
19 not come up in the papers that were filed. But it's an  
20 interesting question. Could you please cite to me again the  
21 section that you're referring to?

22 MEMBER JOHN: It's the matter of right uses in the  
23 RF zone, and that's in 301.1. And I know it wasn't brief,  
24 but it occurred to me as I was reading the record that even  
25 if there is the argument that this seven-unit building could

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1 be developed as a matter of right in the RA-1 zone. In the  
2 RF-1 zone, you could never have a seven-unit building as a  
3 matter of right -- a seven-unit conversion as a matter of  
4 right. So that's something to think about, and I guess I'll  
5 ask that same question to DCRA as well.

6 MR. BROWN: While they're -- I'd like to defer my  
7 answer on that until I have a chance to read the regulation  
8 and get back to you as we move along if I might.

9 MEMBER JOHN: Sure.

10 CHAIRPERSON HILL: Ms. John, is there anything  
11 else, or is that your only question?

12 MEMBER JOHN: I had another question about  
13 401(c)(1). But I believe that Mr. Brown has addressed that  
14 provision. In the testimony, it was not discussed a lot in  
15 the record. And that's a section that says, except for the  
16 RA-1 and RA-6 zones, multiple dwellings are allowed provided  
17 that in an apartment house, accommodations may be provided  
18 only to residents who stay at the premises for a month.

19 That part is not really relevant. It's the  
20 section that says that multiple dwellings are not included  
21 in that provision. That was the carryover. In other words,  
22 any use permitted in the RF zone under Subtitle 301 except,  
23 and the next thing in four is except for RA-1 and RA-6 zones.  
24 So it's not really a question because I'm commenting on the  
25 fact that it was addressed in testimony. But I'd also like

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1 to have DCRA address that question as well.

2 CHAIRPERSON HILL: Okay. Then maybe we can get  
3 clarity on that position from DCRA in a moment. Do you have  
4 anymore questions for --

5 MEMBER JOHN: No.

6 CHAIRPERSON HILL: -- for Mr. Brown?

7 MEMBER JOHN: That's it for me now. Thanks.

8 MR. BROWN: Ms. John, could I get back to you  
9 right now? I've had a chance to look at U-301.1(d). That's  
10 the one you referred to?

11 MEMBER JOHN: Yes.

12 MR. BROWN: I would say that whether or not that  
13 is applicable or not would depend upon whether or not the use  
14 that was being proposed was a residential flat. I don't  
15 think that the definition of residential flat and apartment  
16 house are quite the same. So it's not obvious to me that  
17 this would limit the number of apartment units in an  
18 apartment building, even though it would limit the number of  
19 dwelling units in a flat. I'm not real -- this is new to me.  
20 I'm just giving you sort of a gut level reaction.

21 MEMBER JOHN: Yeah.

22 MR. BROWN: But that's kind of where I am at the  
23 moment.

24 MEMBER JOHN: Okay. Thank you.

25 CHAIRPERSON HILL: Okay. Mr. Turnbull?

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1 COMMISSIONER TURNBULL: Thank you, Mr. Chair. Mr.  
2 Brown, thank you for your presentation in trying to simplify  
3 and clarify all the issues. I don't want to say I'm trying  
4 to simplify. But are you basically saying that even --  
5 whether it was classified as an all new development or a  
6 conversion, it would still have to go before the BZA for a  
7 special exception?

8 MR. BROWN: Yes, yes.

9 COMMISSIONER TURNBULL: So no matter how you  
10 classify it, it still should've gone before the BZA?

11 MR. BROWN: Yes, because it's a conversion to a  
12 different use.

13 COMMISSIONER TURNBULL: Okay.

14 MR. BROWN: One that requires a special exception.

15 COMMISSIONER TURNBULL: Thank you, sir.

16 CHAIRPERSON HILL: Okay, great. Thank you. Let's  
17 see. Mr. Green, do you have any questions for Mr. Brown?

18 MR. GREEN: No, no, I don't.

19 CHAIRPERSON HILL: Okay. Mr. Mlakar, are you not  
20 represented by anybody? Are you just representing yourself?

21 MR. MLAKAR: I'm just here representing myself,  
22 and I'm with the position of DCRA.

23 CHAIRPERSON HILL: Okay. So you don't have any  
24 -- or do you have any questions for Mr. Brown?

25 MR. MLAKAR: I'm very confused with how he's

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1 conflating the RF-1 zone with RA-1. But we'll get there.

2 CHAIRPERSON HILL: Okay. All right. Okay. Mr.  
3 Green, then I'll go ahead and allow you time to present. It  
4 looks as though Mr. Brown went about 40 minutes or 35  
5 minutes, and you'll have the same amount of time.

6 MR. GREEN: Okay. Thanks so much. Good  
7 afternoon, Chairman and members of the Board. I'm Hugh  
8 Green, Attorney for the D.C. Department of Consumer and  
9 Regulatory Affairs. And the appellant in this case believes  
10 that the permit violates the Zoning Regulations in full  
11 respects.

12 That the multifamily apartment house is not a  
13 by-right construction in an RA-1 zone. That the project  
14 violates the side yard regulations as it's a nonconforming  
15 structure. The proposed construction is an inappropriate  
16 conversion, that the inclusionary zoning was not complied  
17 with. And what wasn't touched on in the case in chief but  
18 was also raised in our appeal was that there are certain  
19 covenants, private covenants recorded on the property which  
20 somehow impacts the zoning interpretations or zoning  
21 requirements.

22 However, all of the appellant's arguments fail  
23 because as stated in Mr. Brown's case in chief in his filing,  
24 the appellant uses the RF revisions to cover this particular  
25 R -- excuse me -- RA zone which is inappropriate. And this

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1 is a by-right project within the zoning interpretation. So  
2 with that, I'd like to introduce Mr. LeGrant to the  
3 discussion --

4 CHAIRPERSON HILL: I'm sorry to interrupt you, and  
5 I apologize for all this. I'm going to have to restart my  
6 computer real quick.

7 MR. GREEN: Okay.

8 CHAIRPERSON HILL: So if all would excuse me for  
9 one moment, I'm just going to restart this computer. So  
10 Paul, I know that you know that I have two systems running.  
11 I'm just going to restart the primary one right now. And I  
12 will be right back with you guys. I apologize.

13 (Whereupon, the above-entitled matter went off the  
14 record at 2:34 p.m. and resumed at 2:38 p.m.)

15 CHAIRPERSON HILL: Mr. Green, you were beginning  
16 -- actually, let's just start again if you wouldn't mind.  
17 My system was kind of knocked down. Just kind of go over  
18 that the little bit, then you're going to go into Mr.  
19 LeGrant, I believe.

20 MR. GREEN: Yes, sir. So just for an  
21 introduction, my name is Hugh Green. I'm the attorney for  
22 D.C. Department of Commerce and Regulatory Affairs. And the  
23 appellant claims that the building permit at issue in this  
24 case violates several regulations.

25 And the issues that were raised in his appeal are,

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1 one, that the multifamily apartment house is not a by-right  
2 construction in an RA-1 zone, that the project violates the  
3 side yard regulations, that the proposed construction is an  
4 inappropriate conversion from single family use to an  
5 apartment use, that the inclusionary zoning has been not  
6 complied with. And lastly, the private covenants on the  
7 property somehow impact the Zoning Regulations that are at  
8 issue.

9           However, all of the appellants' arguments fail  
10 because as appellants state in their case in chief and their  
11 filing, they're essentially relying on RF zone provisions to  
12 apply to this project which is not correct. And this is a  
13 by-right construction. And the permit was properly issued.  
14 So at this point, I would like to invite Mr. LeGrant to help  
15 us walk through some of these issues. And so with that, I'd  
16 like to introduce Mr. LeGrant. Can you please state your  
17 name for the record?

18           MR. LeGRANT: Yes, it's Matthew LeGrant, Zoning  
19 Administrator, DCRA.

20           MR. GREEN: And Mr. LeGrant, I'd like to draw your  
21 attention first off to -- we prepared a slide presentation,  
22 and I'd ask Mr. Young if he could pull that up and we'll  
23 start to walk through it. Okay. Thank you very, much, Mr.  
24 Young.

25           So Mr. LeGrant, this was raised in the brief and

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1 it was also raised by Board Member John. So one of the  
2 provisions that is at issue here is Subtitle U-401.1. And  
3 I'll read it for the purposes of trying to maybe understand  
4 it further. This is with respect to matter of right in an  
5 RA zone.

6 The following uses shall be permitted as a matter  
7 of right subject to any applicable conditions, 401.1(d),  
8 except for RA-1 and RA-6 zones, one, multiple dwellings  
9 provided that in an apartment house and the remainder of the  
10 section about accommodations. It appears to me, Mr. LeGrant,  
11 that multiple dwelling units are not permitted as a right.  
12 And so can you expound a little bit on this before we move  
13 into the case in chief?

14 MR. LeGRANT: Yes. Thank you, Mr. Green. So  
15 right, if you look at that language, it says, again, for  
16 matter of right uses in RA zones, it has a list in Subsection  
17 D. It talks about it in RA-1 and RA-6 zones, that multiple  
18 dwellings provided that in an apartment house, accommodations  
19 may be provided only to residents who stay at the premises  
20 a minimum of one month.

21 But you have to look at that section in context  
22 of the other sections of the Zoning Regulations. It's -- on  
23 its face, you would read it. You could possibly read it one  
24 way, but you have to look at it in context.

25 MR. GREEN: Sure enough. So if we were to -- just

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1 if Mr. Young could then scroll down. The other provision  
2 which really is -- not the next slide. I apologize. But if  
3 Mr. Young could zoom out to about maybe 100 percent. I  
4 apologize, or this first one. Oh, thank you. I'm trying to  
5 get to the bottom. Thank you, sir.

6 MR. LeGRANT: Yes.

7 MR. GREEN: And then the other provision is  
8 Subtitle U-320.2 which is really one of the main provisions  
9 which the appellant relies on. And I'm going to ask just  
10 directly, Mr. LeGrant. Is this really applicable here, and  
11 can you maybe talk about this provision in light of our  
12 exchange?

13 MR. LeGRANT: The answer is it is not applicable  
14 in the rights. And U-320.2 is the section of Subtitle U that  
15 talks about uses in RF zones. And it really does not apply  
16 here because although Mr. Brown talks about how provisions  
17 are subsumed is my word of calling what it is. You go to the  
18 RA section and then there's that notation of what's allowed,  
19 what's subject to a special exception in RF. Arguably, his  
20 argument is there's also a special exception in RA.

21 But that's not the case because the use that is  
22 addressed here which is a multiple dwelling or an apartment  
23 house use is addressed in the RA zone. So we can't say, oh,  
24 just because it's mentioned by this or a provision that's  
25 subsumed which when RF is carried over to RA. If the RA was

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1 silent, I would agree. But it's not silent. It talks about  
2 how permanent houses are treated in RA as well as other  
3 provisions that govern.

4 MR. GREEN: Thanks. I'd like to go to the next  
5 slide if I could. If Mr. Young could go to the next slide.  
6 Oh, thanks. So Mr. LeGrant, I'd like to draw your attention  
7 to Subtitle U, Section 421.1. If you could read it into the  
8 record, please. And then I'd like to ask you some follow-up  
9 questions.

10 MR. LeGRANT: So there's a specific provision in  
11 Subtitle U that's been talked about that I think would be  
12 helpful to hear and I'll agree to read it. Subtitle U,  
13 Section 421.1, in RA-1 and RA-6 zones, comma, all new  
14 residential developments, except those comprising all  
15 one-family detached, semi-detached dwellings shall be  
16 reviewed by the BZA as special exceptions under Subtitle X,  
17 in accordance with the standards and requirements in this  
18 section.

19 So right, that is the section. The key here is  
20 it's new residential development or new construction. And  
21 just for the Board's education, this is a section that has  
22 been in the Zoning Regulations since 1970 when researching  
23 previous cases. That language, pretty much intact, was put  
24 in 1970 and carried over in all subsequent zoning  
25 regulations.

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1 MR. GREEN: So Mr. LeGrant, can I ask? With  
2 respect to the term or phrase, all new residential  
3 developments, is that something that is defined in the Zoning  
4 Regulations specifically?

5 MR. LeGRANT: No, it is not.

6 MR. GREEN: Okay. So when we go to -- if Mr.  
7 Young could go to Slide No. 4, please. That's right. Thank  
8 you so much. So Mr. LeGrant, this is identified the  
9 appellant's case in chief and it's also one of our exhibits.  
10 And this is titled, The All New Residential Development in  
11 RA-1 and RA-6 zones. This is what it's referenced is to the  
12 Guidance Document 2019-001, correct, Mr. LeGrant?

13 MR. LeGRANT: Correct.

14 MR. GREEN: And Mr. LeGrant, for the benefit of  
15 the Board, can you give some sort of -- can you talk about  
16 the development of this particular guidance document in your  
17 office?

18 MR. LeGRANT: Yes. Thank you. So since -- as you  
19 asked me earlier, you mentioned developments defined in the  
20 regulations. That phrase is not defined. So the terms for  
21 my office is -- first of all, those cases were it was a  
22 vacant lot, brand-new construction. It's very clear. The  
23 construction of a multi-building unit building in an RA-1 or  
24 RA-6 zone would require a special exception for new  
25 construction.

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1           But the challenge is, hey, if you have an existing  
2 building that's being converted as a (audio interference)  
3 residence building expanding. Well, what is -- what happens  
4 -- when is something considered a new residence or  
5 development? My office has dealt with this for years. I  
6 filed an incumbent upon me to provide some guidance, and this  
7 was a result, this guidance document, effective January 1st,  
8 2019. As appellant's counsel, Mr. Brown, noted, it put some  
9 criteria on, again applicability for existing buildings that  
10 are being converted and/or expanded as to what constitutes  
11 residential development.

12           MR. GREEN: So if I could ask Mr. Young to scroll  
13 down just a little bit to a key provision in this document  
14 which is in the center of the page which is in the text box  
15 there. It says, when a building permit. Do you see that,  
16 Mr. LeGrant?

17           MR. LeGRANT: I do.

18           MR. GREEN: So can you kind of walk us through  
19 that particular text box and how it relates to zoning  
20 interpretation of a new residential building perspective?

21           MR. LeGRANT: Yes.

22           MR. GREEN: If you want to go ahead.

23           MR. LeGRANT: So the text box that's highlighted  
24 in blue, I'll read. A building permit application proposes  
25 either 100 percent or greater increase in both the number of

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1 dwelling units and the new gross floor area compared to the  
2 existing building, comma, or increases the number of  
3 dwellings by ten or more units. So this is the substance of  
4 this interpretation or this guidance document is to say,  
5 well, where is the threshold for what constitutes a new  
6 residential development in those cases of a conversion and/or  
7 expansion of this new building?

8           The criteria that was developed and offered by my  
9 office was this two-prong test. The third prong doesn't  
10 apply here, any project that increases ten or more units.  
11 That does not apply here. So we're left with whether it's  
12 100 percent increase in both the number of dwelling units and  
13 the gross floor area.

14           MR. GREEN: So Mr. LeGrant, based on your  
15 testimony, if a project meets both prongs, then does your  
16 office consider that -- do you consider that new -- sorry,  
17 let me get the term correct -- new residential development?

18           MR. LeGRANT: Yes, it does.

19           MR. GREEN: Okay. So with that, before we get  
20 into it, the front of the chase, does this -- did this  
21 project meet both of those prongs?

22           MR. LeGRANT: It did not.

23           MR. GREEN: Okay. So let me draw your attention,  
24 and I ask Mr. Young to go to the first -- Slide No. 6 if you  
25 could, Slide No. 6. And I apologize. We're going to jump

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1 around. If you could zoom out just a bit, there is -- in the  
2 zoning info section which is in the -- middle of the page.  
3 It basically provides GFA information. It's a little  
4 challenging to see it, but it shows in the corner, I guess.  
5 And I don't mean to drag it out for everyone but I'm  
6 basically trying to get -- my question is, how does the GFA  
7 calculate out, and then how does it related to your guidance  
8 document? That's basically the question.

9 MR. LeGRANT: Okay. So first, I think everyone  
10 would agree to the first prong. It's from one to seven  
11 units. Well, obviously, that's more than 100 percent  
12 increase number of units. The first prong is met. But the  
13 second prong was not met. That's because the gross floor  
14 area does not exceed 100 percent increase. Existing gross  
15 floor area, I know the figures are hard to see there, but  
16 3,314 square feet of gross floor area.

17 The proposed gross floor area is 5,140 square  
18 feet. This increase is an increase of 55 percent in gross  
19 floor area. Because it's not an increase of 100 percent of  
20 gross floor area, it fails the second prong and therefore  
21 it's not -- it does not qualify as a new residential  
22 development.

23 MR. GREEN: And so your position is that this  
24 would -- with respect to -- so I get it correctly, sorry --  
25 with respect to 421.1 which we just talked about and your

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1 guidance document, is the project considered a by-right  
2 project within the zone under your interpretation of the  
3 regulations?

4 MR. LeGRANT: Yes, yes, yes, it is.

5 MR. GREEN: Okay. So I want to touch base on  
6 something that was brought up in the appellant's case in  
7 chief and you mentioned it, and it's BZA Exhibit 33. It has  
8 to do with an email from a Mr. Mamadou Ndaw from the Office  
9 of Zoning Administrator.

10 MR. LeGRANT: Yes.

11 MR. GREEN: And I don't have it as a PowerPoint.  
12 But needless to say, it was brought up. But the question is  
13 -- let me walk you through this. So who is Mr. Mamadou Ndaw?

14 MR. LeGRANT: Yes, for everybody's edification,  
15 Mamadou Ndaw is the pronunciation. Mr. Ndaw is the  
16 supervising zoning technician who works in my office and  
17 reports to me.

18 MR. GREEN: And so in his -- I see that you -- at  
19 least from the exhibit, Exhibit 33, it appears to be an email  
20 to Mr. Yates, the appellant. Basically, the sum and  
21 substance is Mr. Ndaw had said, oh, by the way, the guidance  
22 document which we just referenced and walked through isn't  
23 applicable. So I want to just -- I just want to get your  
24 understanding of both that position and whether or not that's  
25 correct and maybe highlight it. What is your response to

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1 that allegation?

2 MR. LeGRANT: Sure, sure. So in all due respect  
3 to Mr. Ndaw, I think this one -- he called it -- it was  
4 called wrong. It was called incorrectly. He makes note in  
5 an email that, the question is asking when is a project  
6 vested? And he notes inside the email the application is  
7 determined complete, I believe, prior to the date of the  
8 issuance of the guidance document.

9 The date of the issuance of the guidance document  
10 was January 1st. The date of the building permit application  
11 completeness, I don't have that in front of me -- I believe  
12 it was several months before then. But unfortunately, that's  
13 not correct.

14 A project vests in the regulations and I would say  
15 in this case guidance upon a building permit issuance. And  
16 it's complete for acceptance to DCRA for review and  
17 processing with the general vesting guideline is, for the  
18 Zoning Regulations is it's vested on the date of the building  
19 permit issuance. Building permit issuance occurred after the  
20 date of the guidance document. So therefore -- and in all  
21 due respect to Mr. Ndaw who's very competent. But this one,  
22 I would have to disagree with him and say that the guidance  
23 document that we were talking about does apply.

24 MR. GREEN: Okay. Thank you. One of the other  
25 allegations that the appellant has raised about the side

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1 yard, basically, it doesn't conform to the side yard. So I'd  
2 like us to walk through both the code and the plat in order  
3 to get an understanding of that. So I would ask Mr. Young  
4 if he could move to my Slide 3 to the top which talks about  
5 side yard.

6 If Mr. Young can do that, Slide No. 3, and if he  
7 could just zoom in that upper portion, that's fine. So Mr.  
8 LeGrant, I have got two provisions here, Subtitle F-306.1 and  
9 Subtitle F-306.2, talking about the side yards. And would  
10 you be able to talk about the applicability of these  
11 provisions with respect to this project?

12 MR. LeGRANT: Right. So first of all, I found the  
13 side yard as compliant. The key here and I'm going to walk  
14 the Board though, the side yard provisions of the RA zone of  
15 306 are pretty complex. There are many sections. But the  
16 relevant section that I think really defines the setting here  
17 was what is the side yard, what was decided on under Subtitle  
18 F-306.2(a), it says, except as provided in 306.1, the --  
19 which is applies to detached or semi-detached.

20 In this case, an RA-1 zone, one side yard shall  
21 be provided unless the building is a multiple dwelling that  
22 contains three or more dwellings per floor, comma, in which  
23 case two side yards shall be provided, and then semicolon.  
24 In either case, such side yards shall have the minimum  
25 distance equal to three inches per foot of building height

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1 but not less than eight feet.

2           So what's happening here is there's a test of,  
3 like, oh, we need two side yards if you have a multiple  
4 dwelling, if you have three or more units per floor. That's  
5 not the case here. The building has a maximum of two units  
6 per floor.

7           So look at that provision. One side yard shall  
8 be provided unless, and then after the unless, there's a  
9 test. Oh, if there's three or more units per floor. If not  
10 -- so that means we're finished here. We only need one side  
11 yard which I believe if you have the plat, you can show that  
12 it does have the one side yard and the side yard does meet  
13 the dimensional minimum requirements.

14           MR. GREEN: So if I could ask Mr. Young to move  
15 to Slide No. 8 which is the plats, I believe. Oh, I  
16 apologize. It's 6. Oh, no, 7, 7. I apologize. Let's try  
17 that. There it is. Okay. If you could just zoom out just  
18 a little bit more, Mr. Young. And then if you could (audio  
19 interference) exit out everything else, I don't know if you  
20 can see it very clearly. Thank you so much.

21           So this is the plat which you referred to, Mr.  
22 LeGrant. And if at all possible, Mr. Young, could you scroll  
23 down just a little? Try to get the zoom (audio interference)  
24 so we can kind of see where we're at with it. Thank you.  
25 Okay. It's going to work. Thanks.

1           Mr. LeGrant, I can see on one side, it looks like  
2 it's 2.8 and for the main structure and then it's larger on  
3 the -- I guess we'd call it the east side for the purposes  
4 of this document -- purpose of the plat. And then it goes  
5 out to the newer construction. It looks like it's even  
6 further out. I guess, can you just talk about the side yard  
7 with respect to the provisions as best you can virtually  
8 here?

9           MR. LeGRANT: Sure. So right, on the right side  
10 of the drawing which is red on each side, it shows clearly  
11 the matching what I believe the figure is 11.4. The side  
12 yard, as I explained earlier, the requirement as per the  
13 applicable zoning regulation that dictates what the  
14 requirement is for this type of building and this use and  
15 this zone to have one side yard. Well, it does. It has an  
16 11-foot side yard on the street side. So therefore, the  
17 conclusion of my office is that side yard provisions and  
18 requirements are met in this instance.

19           MR. GREEN: Okay. Let me just look at it. I  
20 think that answers that, and there's two more pieces of the  
21 appeal I wanted. Based on the first was inclusionary zoning.  
22 And if Mr. Young, I think this will be my last jump to Slide  
23 No. 3. Slide No. 3 --

24           MR. LeGRANT: Mr. Green, let me just finish up on  
25 the side yard, I think because one other thing that was

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1 raised by the appellant that there's a nonconforming  
2 extension, nonconforming in C-202.2 that if there was a side  
3 yard on the left side that was required, then I believe that  
4 nonconforming provision could kick in. But there is no side  
5 yard required on the left side of the building shown on the  
6 plat. So that does not apply.

7           So I just want to make that clear that the  
8 extension of a nonconforming side yard doesn't apply when  
9 there's no side yard to extend or required. And the  
10 appellant -- the property owner did, more or less, extend  
11 that along the property line. Theoretically, he could've  
12 built right to the property line given the requirements --  
13 applicable side yard requirements.

14           MR. GREEN: Thanks for that clarification. I  
15 apologize for not bringing that to your attention sooner.  
16 But the one piece is inclusionary zoning, and can I leave  
17 this slide, Mr. LeGrant, to go to 3 -- Slide 3? So Mr.  
18 LeGrant, one of the issues is 1000.2, inclusionary zoning.  
19 Can you just speak to that in terms of whether or not the  
20 idea is relevant to this construction?

21           MR. LeGRANT: Right. It was decided by the  
22 appellant the general test for inclusionary zoning is a  
23 project of ten or more units which this is a seven-unit  
24 project. So there is mandatory inclusionary zoning  
25 applicable. As I stated earlier, the appellant's argument,

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1 is, well, you utilize what's required for a conversion in an  
2 RF zone, which referred to each even numbered units after  
3 four units have to be set aside for inclusionary zoning,  
4 which is not -- I believe I spoke to in terms of the  
5 applicable regulatory -- regulations of the use.

6 This is not an RF zone, so that does not apply.  
7 So neither approach is subject to general IZ rule. Neither  
8 was subject to the rules that apply to conversions in an RF  
9 zone. The answer is no. So I concluded that there was no  
10 inclusionary zoning units required for this development.

11 MR. GREEN: And thanks, Mr. LeGrant. Mr. LeGrant,  
12 one of the questions the appellant raised is about apparently  
13 recorded in land records is a private covenant. Does a  
14 private covenant have any bearing, in general -- it was not  
15 provided for, I don't believe, in the record. But to your  
16 understanding, in terms of private knowledge can you speak  
17 to that to the zoning regs?

18 MR. LeGRANT: Sure, yeah, yeah. My office does  
19 not get involved with enforcing private covenants. I would  
20 simply say it's a civil matter.

21 MR. GREEN: And lastly, Mr. LeGrant, based on your  
22 experience and role as Zoning Administrator having reviewed  
23 all the plan specifications in this matter, does Building  
24 Permit B-10804458 conform to the Zoning Regulations?

25 MR. LeGRANT: It does, yes.

1 MR. GREEN: And I have no further questions for  
2 Mr. LeGrant. We're certainly open and welcome to any  
3 questions the Board members might have at this time.

4 VICE CHAIR HART: Is the Chairman here?

5 CHAIRPERSON HILL: Oh, sorry.

6 VICE CHAIR HART: Okay.

7 CHAIRPERSON HILL: I was muted.

8 MEMBER JOHN: Do you want to start, Mr. Hill?

9 CHAIRPERSON HILL: Yeah, I got a bunch of  
10 questions. Let's see. Mr. LeGrant, you're a little garbled.  
11 When I'm hearing you, it's a little garbled. I was able to  
12 understand everything, but perhaps if you speak a little  
13 slowly. I don't know. That might help.

14 But I have a bunch of questions kind of like --  
15 and I'm going to jump around here a little bit. But this is  
16 why I'm not fully understanding. When you guys review stuff,  
17 like, you're just looking, does it meet the criteria? You  
18 don't necessarily look and go, wow, this is a real big  
19 building next to a small house or anything. I mean, I guess  
20 what I'm trying to understand, do you see the design  
21 necessarily on the property?

22 MR. LeGRANT: Thank you, Chairman Hill. The  
23 approach in my office is that when an application comes  
24 before us, what is the test or what we are looking at is  
25 conformance with the Zoning Regulations, plain and simple.

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1 I know and I can empathize and sympathize sometimes with  
2 property owners who may be adjacent to a building that  
3 arguably it has impacts on that.

4 But it's the Zoning Commission that decides what  
5 are the applicable rules, standards, and guidance from my  
6 office. So we look to the regulations in terms of what is  
7 permitted and phrased matter of right. If a project meets  
8 the matter of right requirements in terms of the use and  
9 development standards, I have no discretion --

10 (Simultaneous speaking.)

11 CHAIRPERSON HILL: No, I got it. I don't mean to  
12 interrupt Mr. LeGrant. I'm sorry. I'm just kind of -- I'm  
13 asking -- that wasn't necessarily pertinent to the zoning  
14 regs. I was just kind of curious how it worked in your  
15 office. And so --

16 MR. LeGRANT: Okay.

17 CHAIRPERSON HILL: -- under U-421, they talk about  
18 again a new residential development to the RA-1 and RA-6,  
19 right? And again, U-421.1, and this was what Mr. Brown read  
20 in, is that all new residential developments except those  
21 comprising all one family detached and semidetached dwellings  
22 shall be reviewed by the BZA as special exceptions under  
23 Subtitle X in accordance with the standards or requirements  
24 in that section. And what Mr. Brown, the appellant, was  
25 saying was he, Mr. Brown, started arguing the special

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1 exception criteria. And somebody's microphone is on. I  
2 don't know. Maybe that's me. Okay. So why is this -- can  
3 you tell me again why this isn't new residential development?

4 MR. LeGRANT: Right. I believe I mentioned in my  
5 testimony to distinguish a new residential development, A,  
6 that there was a vacant lot that is brand-new construction.  
7 That would be a clear case of triggering, let's say, a  
8 brand-new seven-unit building as new -- that would be new  
9 residential that would trigger a special exception  
10 requirement.

11 Here, however, the key is, I believe, the  
12 Commission distinguished new residential development. And  
13 I had further through my guidance document say what  
14 constitutes in those cases you start with an existing  
15 building which is the case here. What's the standard? And  
16 my office developed those standards that I reviewed for this  
17 case in light of the guidance that it had not met the  
18 threshold of a new residential development. Then if it  
19 doesn't meet the test then the special exception requirement  
20 from all the standards to apply to a special exception do not  
21 apply to this case or a similar case of a conversion that  
22 doesn't meet the standards for new residential development.

23 CHAIRPERSON HILL: And can you tell me again, Mr.  
24 LeGrant? I'm sorry. What was the standard that it's meeting  
25 why it's not new residential development?

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1 MR. LeGRANT: Correct. As per the zoning guidance  
2 document that was brought up and put in the record by Mr.  
3 Green, it's a two-prong test. The basic two-prong test is  
4 it's an expansion of both 100 percent increase in the number  
5 of dwelling units and 100 percent increase in the gross floor  
6 area.

7 And then also there was the other aspect as there  
8 was an increase of ten units regardless. The latter part  
9 does not apply here because we're going from one to seven  
10 units which the number of units is obviously more than 100  
11 percent increase in the percentage of dwelling units, one to  
12 seven, which is 100 percent increase. But the gross floor  
13 area as I testified to has not increased -- it's a 55 percent  
14 increase in gross floor area, not 100 percent increase in  
15 gross floor area. It fails the second prong. Therefore, it  
16 did not qualify as a new residential development.

17 CHAIRPERSON HILL: Okay. So then U-320, that has  
18 all of the RF conversion issues in there. And you're saying  
19 that U-420 -- U-320 doesn't apply? And can you tell me again  
20 why U-320 doesn't apply?

21 MR. LeGRANT: Right. So the appellant says --  
22 cites the provision -- I use the word subsume -- zoning  
23 district Skidmore, density increases and more permissive.  
24 But subsume says, hey, whatever is subject to a special  
25 exception in a lower zone. If it's not -- in my

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1 interpretation, if it's not distinguished or addressed in the  
2 more permissive zone, then a special exception would apply.

3 But that doesn't apply here, because the  
4 conversion to a building to a multifamily or apartment house  
5 use is addressed in the RA Zone. There's provisions that  
6 speak to that. So I have operated my entire career as a  
7 Zoning Administrator is, okay, I just can't hold up if it's  
8 addressed explicitly in this case the RA Zone how that use  
9 is treated and regulated, I cannot rely on what another  
10 zone's requirements may apply.

11 To extend it, if we go to MU Zone, it says  
12 anything that's allowed in the RA Zone. Arguably, an MU  
13 Zone, you'd have to start looking at RF. My office has never  
14 applied that jumping between zones for provisions when the  
15 use is addressed in the more permissive, in this case, RA  
16 Zone.

17 CHAIRPERSON HILL: Okay. Because I guess the  
18 thing -- and I'm just kind of -- I should say, what I'm  
19 struggling with. I mean, I'm just kind of looking at it  
20 again. Subtitle U-420, the special exception use RA, (a),  
21 any use or structure permitted under Subtitle U-320, except  
22 as modified by the section.

23 And so I guess I'm just trying to -- I mean, I'm  
24 listening to you and I'm understanding you. But I guess, to  
25 me, again, that would maybe say that you have to look to

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1 U-320, right, unless it's except as modified. And I'm just  
2 not really sure what the modification is that's precluding  
3 you from having to go to the U-320.

4 MR. LeGRANT: Well, to me, the modification is,  
5 is the use addressed, in this case, the RA Zone? And yes,  
6 it is. And so once the RA Zone speaks to it, then the  
7 carryover from RF no longer applies.

8 CHAIRPERSON HILL: Okay, right. That's what you  
9 have done previously. Okay. All right. Let's see. I can  
10 come back as well, and I'll kind of go around a little bit  
11 here with my fellow Board members. So Mr. Hart, do you want  
12 to go next?

13 VICE CHAIR HART: Sure. Thank you. So I guess  
14 this question is for Mr. LeGrant, and it's good to see you,  
15 Mr. LeGrant and Mr. Green. And I had a couple questions just  
16 to kind of get a little more clarity around some things. One  
17 had to do with the DCRA Guidance Document 29 -- excuse me,  
18 2019-001.

19 And I understand that you had to set up some  
20 criteria, but what I don't quite understand is how you got  
21 to the two-prong test that you talk about. And you said that  
22 the two-prong test is -- you either have to have one of two  
23 things.

24 One, either you have to have 100 percent of --  
25 excuse me, an increase of 100 percent of the number of

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1 dwelling units and 100 percent increase of the GFA. That's  
2 kind of one thing. Or, you'd have to have an increase of  
3 dwelling units of more than 10 dwelling units. So you said  
4 that the second part of that, the increase of more ten was  
5 not, kind of, applicable, which I understand too. They're  
6 looking at seven. That's less than 10.

7           But the part that I'm struggling with is, how did  
8 you get to the 100 percent of number of dwelling units and  
9 100 percent of GFA increase in that? And I'm trying to gauge  
10 what the -- how you get to that point, because that seems  
11 like it's a pretty big development that you're talking about,  
12 when you're looking at an RA Zone which is a residential,  
13 again, apartment zone. I get it, but it still seems like  
14 it's a fairly large structure that you'd be talking about  
15 with 100 percent, as opposed to a 50 percent or 25 percent  
16 increase. And talk a little bit about that --

17           MR. LeGRANT: Okay.

18           VICE CHAIR HART: And I don't know if it's you,  
19 Mr. LeGrant, or Mr. Green.

20           MR. LeGRANT: Well, I'll try to speak to it. I  
21 assure you that to come to that standard was a matter of long  
22 internal discussion with my staff. I also talked to the  
23 Office of Planning to see where do we draw the line.

24           Some of the initial thoughts were, like, let's say  
25 if there's an or situation, 100 percent increase in units or

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1 100 percent increase in GFA. It was pointed out to me that  
2 if somebody had a single family that turned it into a flat  
3 and stacked a building on top of one another of the same  
4 size, that would be a new residential development. And so  
5 as we struggled with it and we came up with this standard to  
6 try to be a middle ground.

7           One of the things I did, I made sure that when it  
8 was published that I provided to the Zoning Commission. So  
9 the Zoning Commission was aware of it. If they, in their  
10 capacity, felt that that was something that was either too  
11 restrictive or too permissive, they could certainly come in  
12 and provide some regulatory guidance. They did not. So I've  
13 offered it now -- it's been at least a year-and-a-half with  
14 that guidance.

15           VICE CHAIR HART: Okay. Thank you. And another  
16 question that is, I guess, somewhat related to it. This is  
17 applying to this particular building because you had to deal  
18 with the, quote-unquote, all new development. So what is the  
19 new development? And then you kind of -- you had to create  
20 this guidance document to be able to help to determine what  
21 you would consider all new, and what is an expansion onto an  
22 existing.

23           So that gets me to the other question that I have,  
24 and that is really around how do you -- can you talk a little  
25 bit about the determination of what is existing in that? It

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1 seems as though the photograph that we received, there was  
2 -- and this is my term, so pardon me if it's a little -- it  
3 seems like there was a substantial amount of the existing  
4 building that was demolished. And in other cases, we've had  
5 to deal with this particular issue and look at, you know, is  
6 it under a roof? Is the roof still there? How much of the  
7 walls -- could you talk a little bit about that in this  
8 particular case?

9           MR. LeGRANT: Okay. I will. The thing I will say  
10 the Appellant did not, in their appeal points, argue that  
11 this was -- I'll use the word raze. Raze is the complete  
12 removal of a building. Okay? So this is another area that  
13 my office has struggled with over the years, of what  
14 constitutes when you're doing a demolition, which is a  
15 partial removal of a building, versus a raze, which is a  
16 completely removal of a building.

17           Also distinguish DCRA's construction code has a  
18 particular permit called a raze permit, which is complete  
19 removal of a building. You have the foundation and you dig  
20 the up the line utilities and cap them off at the property  
21 line. That, of course, did not occur here. But I return to  
22 what is a zoning raze as to how much a building can be  
23 removed so as to constitute basically the elimination of that  
24 building.

25           Although we didn't put in the record, we could

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1 follow up, is I've issued an interpretation that's on DCRA's  
2 website, and there are up to 20 interpretations on DCRA's  
3 website of a variety of things. But the distinction between  
4 a raze -- I mean, a demolition and a raze. The standard here  
5 basically is they will remove more than 60 percent of the  
6 enclosing exterior walls.

7           This was not raised as an issue. When we did the  
8 plan review, we saw enough retention so as to not constitute  
9 it as a raze. And once that was established, it was deemed  
10 an existing building as being converted and expanded. But  
11 again, I don't know if my counsel wants to weigh in as well.

12           This was not raised as an issue in the appeal, but  
13 it is distinguishable overall that this -- contrarily, if the  
14 property owner had come in and scrapped the site, got rid of  
15 all the enclosing exterior walls and not retained less than  
16 40 percent of the enclosing exterior walls, we would've said,  
17 hey, that's a raze. Your existing building is gone. There  
18 would be a new residential development then, subject to a  
19 special exception under U-401.1.

20           VICE CHAIR HART: I appreciate that information,  
21 and I also understand your point about this not actually  
22 being raised by the Appellant. My question was really trying  
23 to understand, because you kind of -- because -- we get to  
24 the guidance document because this isn't a raze. This  
25 building has not been -- it's not a zoning raze. So I'm

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1 sorry. This is -- the guidance document helped to talk about  
2 whether or not it was a -- what was all new construction.  
3 So this --

4 MR. LeGRANT: Right.

5 VICE CHAIR HART: -- would kind of fall within --  
6 I guess it would pass the two-prong test that's in the  
7 guidance document, because it's not 100 percent increase in  
8 the number of dwelling units and it's not 100 percent  
9 increase in the GFA. So I appreciate that.

10 I think I understand the issue about -- and I  
11 appreciate the further information regarding U-320. You're  
12 saying it does not apply here, and I'm not going to ask any  
13 further questions on that. But it would be helpful to me to  
14 have the determination that you spoke of with respect to the  
15 raze -- the zoning raze --

16 MR. LeGRANT: Okay.

17 VICE CHAIR HART: -- if you could. Thank you, Mr.  
18 Chairman.

19 MEMBER JOHN: So Mr. Chairman, I would just like  
20 to make sure I understand what Mr. LeGrant is saying. So  
21 you're saying that the RF provisions do not apply in this  
22 case because Section 401 governs, right? That's why you  
23 don't go to the RF, as the Appellant is claiming.

24 MR. LeGRANT: That's correct.

25 MEMBER JOHN: So the first part of 401.1(a) would

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1 not apply, that by-right, anything permitted in the RF Zone  
2 under Subtitle U-301 is allowed in the RA-1 Zone.

3 MR. LeGRANT: That's correct.

4 MEMBER JOHN: Okay. So you're saying, then,  
5 everything has to be governed by 401, except I still go back  
6 to that 401.1(d) provision that excludes the RA-1 Zone  
7 because it specifically addresses multiple dwellings. And  
8 then in -- so I didn't understand why you didn't think that  
9 provision applied --

10 MR. LeGRANT: Okay.

11 MEMBER JOHN: -- because it clearly contemplates  
12 an apartment house.

13 MR. LeGRANT: All right. So I'll try to address  
14 that. So right, when the provision, when you read it, says  
15 multiple dwellings. But I interpret it to mean a new -- new  
16 construction, which is further addressed in the U-421, new  
17 residential development.

18 So I always had to read those together. It's,  
19 like, well, just by virtue of a conversion to multiple units,  
20 is that a permitted use? Well, we have the provision in  
21 U-421.1, it talks about new residential development. And I  
22 read those two sections together as meaning the new  
23 constructions of multiple dwellings or apartment houses, it  
24 constitutes an area that requires a special exception, not  
25 the expansion or conversion of an existing building with

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1 multiple units.

2           And I can tell you the number of projects that my  
3 office has approved is not dozens, more than dozens of these  
4 type of conversions in RA Zones. We never applied it to a  
5 -- we'll only apply it to new construction or new  
6 developments of apartment houses in RA-1 Zones.

7           MEMBER JOHN: So even though what's remaining on  
8 this building is just the foundation, the bare walls, and two  
9 partially demolished walls, this would be considered new  
10 construction?

11           I'm sorry, an existing building.

12           MR. LeGRANT: Yeah. So as I told Board Member  
13 Hart, the -- it's an existing building. It retained at least  
14 40 percent of the enclosing exterior walls. That is the test  
15 as per the interpretation. I believe my counsel will follow  
16 up with that, order that and provide it. And we're happy to  
17 do so. That provides you the line as to what's an existing  
18 building. Once you presume an existing building, then  
19 everything builds upon that.

20           MEMBER JOHN: Okay. I have nothing further at  
21 this point.

22           CHAIRPERSON HILL: All right. Mr. Turnbull?

23           COMMISSIONER TURNBULL: Thank you, Mr. Chair.  
24 Thank you, Mr. LeGrant and Mr. Green, for your presentation.  
25 Mr. LeGrant, I don't think -- I don't believe I've ever seen

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1 2019.001. I don't believe that was sent to the Zoning  
2 Commission. At least, I don't remember it being passed out  
3 at a hearing or submitted to us. Maybe you submitted it to  
4 the Office of Planning. I'm not sure, but I don't recall  
5 ever seeing this document.

6 MR. LeGRANT: Well, my understanding -- and I'll  
7 have to double check -- is that at the time of its issuance  
8 in January 2019, as a courtesy, we provided it to the  
9 Secretary to the Commission to place it as an information  
10 item on the Commission's agenda. Or at least they were made  
11 aware of it. I believe that occurred. I can't say 100  
12 percent. But that was my understanding.

13 COMMISSIONER TURNBULL: Okay.

14 VICE CHAIR HART: Mr. Turnbull?

15 COMMISSIONER TURNBULL: Yes?

16 VICE CHAIR HART: This is Vice Chair Hart. Last  
17 January -- if this came to us last January, we were on  
18 furlough. So, I don't know what the Zoning Commission was  
19 doing at that point, but I don't know if they were actually  
20 meeting without the federal representatives on there. And  
21 I don't know the schedule --

22 (Simultaneous speaking.)

23 VICE CHAIR HART: -- but it's a possibility. For  
24 the month of January, we were -- well, at least I was not in  
25 any of the BZA meetings, maybe one.

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1           COMMISSIONER TURNBULL:    Well, I guess, I'm a  
2 little troubled by this document. I'm troubled because it  
3 proposes to be Zoning Regulations. It's you writing new  
4 zoning regs somehow incorporated into the real zoning regs  
5 somehow, or aspects of this, to let everybody know what's  
6 going on. This is -- I get the feeling that this done at  
7 your office that's going to dictate development standards,  
8 and you're interpretation is removing the purview of the  
9 Board of Zoning Adjustment on cases like this.

10           And I think your two-prong test is a reserved item  
11 for the BZA. Going into the three-prong test, I think you're  
12 talking about a middle ground. I don't think it does that.  
13 I think the whole aspect of going to the BZA for a special  
14 exception get into these very same -- this whole example  
15 about what's the impact on the neighbor. You don't ask that.  
16 You looked at some very specific points in the Zoning  
17 Regulations and say, if it meets it, plus if it's following  
18 my guidance, I'm okay with that.

19           So in other words, there's no control in a  
20 neighborhood like this, or a development like this, to go on  
21 if your guidance is now taking -- is superseding the Zoning  
22 Regulations. You've added a corollary to it that says,  
23 you're okay with this. I don't know if the Zoning Commission  
24 is okay with it. Maybe they are. Maybe they're not. But I'm  
25 now in charge and I'm going to say this is what can be

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1 approved. As a member of the Zoning Commission, I am  
2 troubled by that. I think you've taken more responsibility  
3 on yourself than what is really delegated to you.

4 Raze versus demo, if I am seeing pictures of those  
5 walls, you look at the pictures of the building that was  
6 existing before, the new window openings in there cut out a  
7 significant amount of -- I don't know if there's 40 percent  
8 of those walls left. By the time you get demolishing all of  
9 those aspects of those walls and put in new windows, if  
10 you're left with 20 percent, you're lucky, I think.

11 I may be wrong, but my feeling is once you've cut  
12 open those walls that much and torn apart, plus you've got  
13 to now add more structure to it to support two more floors  
14 overhead. So I'm just concerned that that's really an  
15 interpretation that maybe went too far. And I think that  
16 this is really not a heck of a lot left of this building.

17 But I'm troubled by this. And as Mr. Chair talked  
18 about the criteria for a matter of right, I think there's a  
19 lot of things that are in there that just are troubling to  
20 me. And I looked at some of the comments that were made  
21 earlier by Mr. Brown. I think he had some validity on some  
22 of those points.

23 And although you countered -- your attorney  
24 countered on some of these points, I'm very troubled with  
25 that. I'm really going to have to look at this. And as I

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1 said, I'm really troubled by this document as to how it  
2 pertains to the zoning regs and how I review that. You've  
3 got your review, but I've got to review this and look at what  
4 authority you've given to yourself to be able to say what can  
5 be developed.

6 And I'm sorry, but I'm really troubled by it. And  
7 Mr. Chair, I think there are things that have come up in this  
8 that I'm going to go to the Office of Planning and I'm going  
9 to go to Chairman Hood and I'm going to talk about some of  
10 these things because this is very troubling. Mr. Chair,  
11 that's all I have.

12 CHAIRPERSON HILL: Mr. LeGrant, I don't think  
13 there was necessarily a question in there, but do you have  
14 anything you'd like to say or are you okay?

15 MR. LeGRANT: No, I don't think I have anything  
16 to say about that.

17 CHAIRPERSON HILL: Okay. All right. Let's see.  
18 So, Ms. John, yes?

19 MEMBER JOHN: Just a quick question. I don't know  
20 if I asked it, but I don't remember the answer. So this is  
21 an existing building, right, because we have the 20/40  
22 percent of the building remaining. And it was originally a  
23 single family dwelling. So if it still exists, why is it not  
24 a change in use?

25 MR. LeGRANT: Well, I would agree it's a change

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1 of use. It's a change of use from single family to  
2 multifamily.

3 MEMBER JOHN: And that change in use would not  
4 require permission of the BZA. That's basically what you're  
5 saying.

6 MR. LeGRANT: My position is that because it was  
7 not new construction, it was a change of use. It did not  
8 constitute any new residential development, therefore it's  
9 a matter of right use.

10 MEMBER JOHN: Okay. And then as for the example  
11 you gave, which is the existing dwelling unit being changed  
12 with a proposed expansion of, say, four dwelling units or  
13 three dwelling units, the example in the guidance document.  
14 To me, by giving an example of a four-dwelling unit, I am  
15 thinking that this would be something that's not appropriate  
16 for the RF-1 Zone. So in the RF-1 Zone, the maximum that  
17 could be approved with BZA with the approval, if I'm correct,  
18 is four dwelling units. Is that correct?

19 MR. LeGRANT: You're sticking to the RF --

20 MEMBER JOHN: Yes.

21 MR. LeGRANT: -- Zone?

22 MEMBER JOHN: Correct, to the RF. I'm troubled  
23 by that chart, because a change in use, a conversion from a  
24 single family to four units in the RF Zone could only be done  
25 through approval of the BZA, right?

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1 MR. LeGRANT: In the RF-1 Zone, yes.

2 MEMBER JOHN: In the RF-1 Zone. Okay. And so the  
3 maximum that could be approved would be four units in the  
4 RF-5 Zone. So anything over five units would have to come  
5 to the BZA in the RF Zone. There could never be a six-unit  
6 building in the RF Zone without approval of the BZA.

7 MR. LeGRANT: I would agree. In an RF Zone, yes,  
8 right. That's correct.

9 MEMBER JOHN: Okay. All right. Thanks.

10 CHAIRPERSON HILL: Okay. Let's see. Mr. Brown,  
11 do you have some questions for Mr. Green or Mr. LeGrant?

12 MR. BROWN: Just a few questions for Mr. LeGrant.  
13 Mr. LeGrant, would you look at -- Board Member John was  
14 talking about the examples at the end of your guidance  
15 document. Could you go to those for me, please?

16 MR. LeGRANT: Okay. Hold on. Give me a moment,  
17 please.

18 MR. BROWN: Do you have that handy? This was in  
19 the --

20 MR. LeGRANT: I just need a minute to get to it.

21 MR. BROWN: Yeah.

22 MR. LeGRANT: Okay. I'm having a little problem  
23 getting to it. But why don't you go ahead and read it, and  
24 --

25 MR. BROWN: All right. There are two examples.

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1 One is showing where you trigger the special exception  
2 requirement, and one where you don't trigger the special  
3 exception requirement. And in each case, you start out with  
4 an existing dwelling -- four-dwelling unit of 3,000 square-  
5 feet in gross floor area. And you say, well, you would  
6 trigger the special exception requirement if you added four  
7 dwelling units and 3,000 or more square-feet. Okay?

8 MR. LeGRANT: Okay.

9 MR. BROWN: And Commissioner Turnbull was  
10 expressing some concern about how these particular triggers  
11 are not in the regulations, but they are what you said you  
12 arrived at after long internal discussion on where we draw  
13 the line. And the second example starts with the same basic  
14 building and says, you'll be okay if you're only adding three  
15 dwelling units and less than -- 2,999 square-feet or less.  
16 So basically, a builder would have the guidance of saying,  
17 this is where we draw the line for your particular building,  
18 at this kind of standard. Why -- I guess my first question  
19 is, why is it necessary to draw a line at all?

20 MR. LeGRANT: Well, for you and everyone --  
21 members of the Board, my office is confronted constantly with  
22 examples of developments, that there's a question as how to  
23 apply the regulation. I develop interpretations and guidance  
24 to assist my staff and assist the development community as  
25 to what constitutes the power a particular regulation

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1 applies.

2 MR. BROWN: But this is also guidance that could  
3 have actually been rewritten as an amendment to the Zoning  
4 Regulations, correct?

5 MR. LeGRANT: It could be. And as I noted,  
6 working with the Office of Planning, but then also providing  
7 -- and I'm fairly confident of writing a copy to the  
8 Commission so the Commission, if it so wished, can say, wait  
9 a second, this is the wrong direction, it's too permissive,  
10 it's too restrictive, or whatever, and codify a regulation  
11 that would obviously speak to the matter.

12 MR. BROWN: Mr. LeGrant, as someone who represents  
13 clients who are worried about developers crossing the line,  
14 I appreciate your attempt here. But I want to say that the  
15 example that you have used here is that the expansion of an  
16 existing four-dwelling unit into adding either three or four  
17 more additional dwelling units. This is a case, an example  
18 where you're not changing the use. Isn't that right?

19 MR. LeGRANT: In the example you're citing, that's  
20 correct. There's not a change of use.

21 MR. BROWN: And I can understand your need to tell  
22 developers how much of an expansion is going to be allowed  
23 without having to go through the process again. For example,  
24 if you have, I don't know, a six-unit multiple dwelling unit  
25 and you've got a special exception, you just want to add one

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1 more unit. I can see where you would say, well, you really  
2 don't have to start all over again just to add one more unit.  
3 But where do you think you have the authority to authorize,  
4 through this process, a change in use?

5 MR. GREEN: I'm going to object. This is Hugh  
6 Green with DCRA. I'm going to object. It's clearly -- is  
7 there a specific question you're asking, Mr. Brown?

8 MR. BROWN: Yeah, where do you find in the statute  
9 the authority to authorize not just an expansion but a change  
10 in use?

11 CHAIRPERSON HILL: I guess, hold on, Mr. Brown.  
12 I've got to say something. So your -- and we can stop using  
13 charged words, right, like authority and things like this.  
14 But your question is -- I mean, Mr. LeGrant is trying to  
15 answer your question, I'm sure. Can you clarify the question  
16 again?

17 MR. BROWN: Where do you find, Mr. LeGrant, in  
18 this provisions the authority to authorize, through this  
19 regulatory guidance, a change in use when use permissions are  
20 prescribed in the Zoning Regulations?

21 MR. GREEN: Do you understand, Mr. LeGrant?  
22 Because it's an incredibly complex compound question, but if  
23 you can understand it, feel free to answer. But it's not  
24 clear to me what he's trying to ask.

25 MR. LeGRANT: I would simply say my role as Zoning

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1 Administrator, I must interpret and apply the Zoning  
2 Regulations. There are development standards in uses  
3 constantly, and the guidance document was an attempt to  
4 provide some framework of how that one provision is -- how  
5 that one provision can be interpreted given the lack of  
6 clarity as to the lack of definition for these types of  
7 developments.

8 MR. BROWN: Okay. Just a couple more questions,  
9 Mr. LeGrant. I want to talk about the side yard issue for  
10 just a moment. If I understand how the rules apply, if the  
11 applicant had proposed to expand the single family dwelling,  
12 into a larger single family dwelling that extended further  
13 back on the lot, that expansion of the house into the back,  
14 on Mr. Yates' side, would have to observe the eight-foot  
15 setback requirement. Is that right?

16 MR. LeGRANT: With the single family, the standard  
17 is different than the one employed here. It would have to  
18 at least have the eight-foot side yard on the one side. And  
19 the question would be to extending existing nonconforming  
20 side yard and would nonconforming provisions kick in. Again,  
21 the standard, I believe, is three feet on the side of the  
22 detached single family. So I believe -- but I didn't analyze  
23 the single family side yard.

24 MR. BROWN: All right. Aside from the number, if  
25 there is a requirement that is greater than the existing two

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1 feet, eight inches, the addition in the back on Mr. Yates'  
2 side would have to observe that requirement, correct?

3 MR. LeGRANT: I would agree.

4 MR. BROWN: But because it's being converted to  
5 an apartment house, not only does that new structure, or  
6 whatever you want to call it, not have to comply with that  
7 requirement, it doesn't have to comply with the existing 2  
8 feet, 8-inch requirement either, does it? Because there is  
9 a larger side yard on the other side and no side yard  
10 required on this side.

11 MR. LeGRANT: There is -- that's correct. There's  
12 a different side yard provision that applies.

13 MR. BROWN: So the upshot is that if this  
14 applicant were just expanding the house, the side yard would  
15 be maintained and perhaps enhanced. But by converting the  
16 use from a house to an apartment building, they could have  
17 eliminated the side yard entirely.

18 MR. LeGRANT: That's correct. On the one side.  
19 One the one side.

20 MR. BROWN: Thank you, Mr. LeGrant. I have  
21 nothing further.

22 MR. LeGRANT: Thank you.

23 CHAIRPERSON HILL: Okay. Let's see. So does the  
24 Board have any additional questions? I know that, Mr.  
25 LeGrant, Mr. Hart was looking for how you got to the 40

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1 percent with the remaining building, right? And then so  
2 that's one question I guess we'd want to hear about.

3           Since I do have you here and I'm going to ask Mr.  
4 LeGrant again, I mean -- again, what I'm getting a little bit  
5 confused on in terms of the matter of right use. I mean, I  
6 understand in 401.1, the matter of right use, and they go  
7 through that. And then (d) says -- Mr. Brown could you mute?  
8 There's someone creating static on the line. Oh, great.  
9 Thank you.

10           It says, matter of right use, 401.1(d), except for  
11 the RA-1 and R-6 Zones. And they put, in multiple dwellings  
12 provided in an apartment house, accommodations may be  
13 provided only to residents who stay at the premises a minimum  
14 of one month. And so I'm a little confused, and I know you  
15 tried to provide clarity. Why does that -- doesn't that mean  
16 that in the RA-1 Zone you can't do the multiple dwelling?

17           MR. LeGRANT: As I believe I testified to, I  
18 interpret that section to apply U for new construction.  
19 Other guidance is given in U-421.1 as to what comes about for  
20 special exception requirements for a new residential  
21 development.

22           CHAIRPERSON HILL: Got it. Okay. All right.  
23 Let's see. So the property owner, do you have anything you'd  
24 like to add, Mr. Mlakar?

25           MR. MLAKAR: Yes, I'm in -- (audio interference).

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1 I did every rule, I got a permit.

2 VICE CHAIR HART: He's going in and out.

3 CHAIRPERSON HILL: Right. Mr. Mlakar, you might  
4 want to speak a little slowly.

5 MR. MLAKAR: Trying to ---

6 VICE CHAIR HART: I can't hear him at all. Mr.  
7 Mlakar, we cannot hear you at all. You're just kind of going  
8 in and out.

9 MR. MLAKAR: Can you -- yes, can you hear me now?

10 VICE CHAIR HART: I heard you just say that, and  
11 I don't know what was happening, but it was -- the video feed  
12 was going kind of off and on, and your voice was kind of  
13 going off and on.

14 MR. MLAKAR: Okay. I'm switching off the Wi-Fi.  
15 Can you hear me now?

16 CHAIRPERSON HILL: Yes.

17 MR. MLAKAR: Okay. So what I was trying to say  
18 is that I'm in a very tricky position, because I followed all  
19 the rules, I did all the right -- I took all the right steps,  
20 I hired all the right experts, I got a permit, I started a  
21 building.

22 And it's very unfortunate that I'm two months away  
23 from completing my project. And at this point when I've  
24 invested so much into it, that I could receive this  
25 devastating blow because it looks like the Zoning

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1 Administrator and the Zoning Commission aren't 100 percent  
2 in sync, in terms of what the rules are and how to go about  
3 this.

4 This an area -- and I think Mr. Brown was  
5 inaccurate in saying that this all single-family homes.  
6 There's an apartment building behind this building -- behind  
7 both 1214 and 1216 Madison. There's a large apartment  
8 building. There's two large apartment buildings right across  
9 the street from Mr. Yates' house.

10 This is not purely a single family area. There's  
11 a number of apartment buildings. The building that I'm  
12 constructing follows close to the outline of Mr. Yates'  
13 house. Mr. Yates lives in a huge house.

14 I just -- I'm a little bit -- I listened to what  
15 Mr. Yates said, and I was accommodating to him in terms of  
16 privacy by putting all the windows on the other side. The  
17 owner on the other side was a lot more amenable. We talked  
18 to her, so we worked with the neighborhood, we worked with  
19 the neighbors.

20 Originally, the plan was to have all the windows  
21 on Mr. Yates' side, I heard his complaints, we switched the  
22 building around. We moved all the windows onto the other  
23 side. I tried to do everything that I'm supposed to. I  
24 tried to listened to the neighbors. And it's really  
25 disheartening to hear now that potentially we're -- my permit

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1 is being challenged after I've invested so much in this  
2 project. That's it.

3 CHAIRPERSON HILL: Okay. Mr. LeGrant, I was  
4 curious to something as well, and I don't even know, and this  
5 is more -- I don't know who could answer this. Mr. Mlakar,  
6 if you can just go ahead and mute your microphone again there  
7 for a second. In terms of -- I know the way that the appeal  
8 process works is there's 60 days after the building permit  
9 is then when the appeal comes forward, right?

10 And I don't know who to answer this. I'm just  
11 curious whether you know, Mr. LeGrant, if anything in the  
12 past, if this were to be upheld, then Mr. Mlakar's project  
13 would have to be removed, correct? Nothing -- like, is there  
14 an estoppel thing or anything? There's nothing that he has  
15 to come back at DCRA with, is there? Or you don't know?

16 MR. LeGRANT: Well, I had a chance to speak to  
17 this. But right, yes, if the Board were to grant the appeal,  
18 then -- or maybe Mr. Green could speak to this -- then the  
19 project would need a special exception if that the Board's  
20 conclusion. And then the property owner could -- and I can't  
21 speak for him -- he has various options to pursue.

22 MR. GREEN: Hi, this is Hugh Green. This is a  
23 follow up. The order -- I mean, the BZA -- I'm just saying  
24 that the BZA order would have held the appeal. But that  
25 still doesn't -- the other ancillary pieces of what the BZA

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1 order would be different.

2           So if it's a demolition, I don't -- in other  
3 words, the appeal would not necessarily then mean demolition.  
4 But it would say the appeal is upheld. There'd be further  
5 actions that the property owner would need to do. But that's  
6 really to confirm what Mr. LeGrant had said.

7           CHAIRPERSON HILL: Okay. All right. Mr. Brown,  
8 you had -- I guess, Mr. Cross, I see you there as well. But  
9 in terms of summary, I don't know where we're at. I mean,  
10 I know we're going to have to think about this for a while,  
11 and I don't know what more information anyone needs.

12           I mean, there's now, I guess, the request, Mr.  
13 LeGrant, in terms of how you got to this is not new  
14 construction with the 40 percent. And I guess you can submit  
15 something into the record that shows that it has the 40  
16 percent there and that criteria. Mr. Hart, I think you did  
17 ask for that. Ms. John or Mr. Turnbull, was there anything  
18 else you needed?

19           MEMBER JOHN: No, I think it would be helpful to  
20 have that information from Mr. LeGrant.

21           CHAIRPERSON HILL: Okay. All right. And --

22           COMMISSIONER TURNBULL: I don't think I want  
23 anything.

24           CHAIRPERSON HILL: Okay. And then Mr. Cross, you  
25 have your hand up?

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1 MR. CROSS: Yeah, I didn't know if it was  
2 appropriate, I have just a couple questions, if I'm able to  
3 speak.

4 CHAIRPERSON HILL: That's a good question. I  
5 guess you're with the property owner. Yeah, sure. Well, who  
6 do you want to ask questions to?

7 MR. CROSS: Yeah, I've got one question for Mr.  
8 Brown. Just wanted to ask what your understanding of what  
9 the RA in the RA-1 Zone stands for.

10 MR. BROWN: I suppose it's to distinguish it  
11 general as a zone where apartments are found, as compared to  
12 single-family dwellings and row houses.

13 MR. CROSS: All right. I appreciate that. And  
14 a question for Mr. LeGrant. I was wondering if you could  
15 clarify whether the zoning guidance document that's been  
16 focused on here today, that's 2019-001, represents a new  
17 enforcement in the RA-1 Zone at the time of publishing? Or  
18 is it published in order to generally provide written  
19 clarification of the enforcement that was imposed in this  
20 zone?

21 MR. LeGRANT: Okay. What I can say is that the  
22 zoning guidance document was issued to clarify how new  
23 residential developments were distinguished in cases of  
24 conversion and changes of use and expansions. I would say  
25 for the preceding several months, it was informally applied.

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1 But it was, I believe, incumbent upon my office to publish  
2 it on DCRA's website and share with the Zoning Commission,  
3 the Office of Planning, so as to let everybody know that was  
4 what my office -- how we were applying that provision.

5 MR. CROSS: And would you say that the guidance  
6 in 2019-001 was more strict than the enforcement previously  
7 enforced in the RA-1, and subsequently the preceding R-5A  
8 Zone, prior to its publication?

9 MR. BROWN: I object to the relevance of that  
10 question.

11 CHAIRPERSON HILL: What was the question again,  
12 Mr. Cross?

13 MR. CROSS: Yes. I was asking if the standards  
14 set forth in the guidance document were more strict than the  
15 enforcement prior to the guidance document. I guess the  
16 reason for the question is, this permit application spans the  
17 time where the guidance document was published. And the  
18 Appellant has argued that the guidance document is not  
19 relevant because it was applied before. That was brought up,  
20 I guess, possibly in Mr. Ndaw's testimony or written email.

21 CHAIRPERSON HILL: Okay. Mr. Brown, honestly, I  
22 have always just let people ask their questions, usually.  
23 And so you can go ahead and object to the question. But Mr.  
24 Cross, you were asking Mr. LeGrant if the guidance document  
25 was a stricter application. Is that what your question was?

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1 MR. CROSS: Yeah, whether its standards were more  
2 strict than the standards of the enforcement prior to its  
3 publication, in that span of time.

4 CHAIRPERSON HILL: Mr. LeGrant?

5 MR. LeGRANT: Okay. What I can speak to, going  
6 back several years, prior to any guidance, there was probably  
7 a much more expansive allowance of projects that did not  
8 constitute a brand new building. And I believe in the summer  
9 before issuance of the guidance, I attempted to install  
10 policy to be more restrictive, there was some pushback.

11 I believe there were some applications filed for  
12 relief to the Board in which then, after we came out with the  
13 guidance, obviated the need for those applications, which in  
14 at least one instance, it was withdrawn from the Board's  
15 consideration. So I would like to say it was nicely  
16 consistent over the many years, but the guidance was an  
17 attempt to get to the point of some clarity for all involved.

18 CHAIRPERSON HILL: Okay. Mr. Cross, is that it?

19 MR. CROSS: That's it. I appreciate it.

20 CHAIRPERSON HILL: Okay. Let's see. So we'll  
21 just kind of go around the table here. Mr. Yates, do you  
22 have anything you'd like to add at the end?

23 MR. YATES: Yeah, I just want to point out that  
24 this process, this appeal, didn't start one month ago. In  
25 fact, it started one year ago. There's a couple of theories

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1 about when he's built and made modifications. In fact, he  
2 did not. This started -- a year ago we have been going  
3 through this, and he has not responded to any of our filings.  
4 Neither did Mr. LeGrant.

5 So to come right now at the 11th hour and say,  
6 well, I'm almost finished with my building. To me, it's not  
7 credible. He's had one year to make the changes, also at  
8 least listen to the argument that myself, my attorney, was  
9 putting forward on this development. And it was virtually  
10 ignored. Thank you.

11 CHAIRPERSON HILL: Okay. Let's see now. Mr.  
12 Green, do you have anything you'd like to add for a summary?

13 MR. GREEN: No, just to counter Mr. Yates' -- just  
14 very brief. Mr. Yates said that the Zoning Administrator did  
15 not meet. It's not true. Mr. Yates met with myself, Mr.  
16 LeGrant, and Mr. Brown and he expressed his concerns during  
17 the pendency of the appeal. So I don't think that's  
18 accurate.

19 But in short, essentially, there's -- I mean, very  
20 briefly in summary fashion, Mr. LeGrant provided substantial  
21 justification for how this project was a by-right  
22 construction within the zone, and has provided the parameters  
23 for which that determination was made. Certainly, there's  
24 evidence in the record to show how the process and procedures  
25 were met in order for this by-right construction to be done.

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1 So in that case, we would formally ask that the Board deny  
2 the appeal.

3 CHAIRPERSON HILL: Okay. Mr. Brown, go ahead and  
4 I'll let you give your conclusion.

5 MR. BROWN: Thank you very much, Chairman Hill.  
6 I'll start with Mr. Green's last point about Mr. LeGrant  
7 giving substantial evidence that this is a by-right use.  
8 What we have shown you is that there are two clear --  
9 unambiguously clear provisions in the Zoning Regulations in  
10 the RA-1 Zone that say otherwise.

11 And the third regulation, which is the foundation  
12 for the guidance document, when you read that regulation, the  
13 plain language of the regulation is completely consistent  
14 with the other two provisions, that everything except single-  
15 family homes and semi-detached dwellings have to be reviewed  
16 as special exceptions. It's only by a very convoluted and  
17 twisted analysis of the term, new residential development,  
18 that one comes to an opposite conclusion. And it really  
19 can't be squared with the unambiguously clear different  
20 conclusion that comes from reading 401.1 and 420.1(a).

21 And I reiterate again from the Court of Appeals  
22 case, that the job of the Board is to harmonize these  
23 statutes, not create conflict among them. And I don't think  
24 that the Zoning Administrator has provided any credible  
25 evidence for his justification that you can use a guidance

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1 document that helps you draw the line between what is and is  
2 not an expansion of an existing use to justify a conversion  
3 of that use into something else, whether it's an expansion  
4 or not.

5           To me, that's absolutely crystal clear. I respect  
6 Mr. Turnbull's objection -- it's a bit out of school, but it  
7 is necessary for the Zoning Administrator to draw a practical  
8 line between what is an expansion, and requiring special  
9 permission, and what isn't. But it simply cannot -- you  
10 cannot transmogrify the word expansion into conversion.

11           The conversion of a single family dwelling into  
12 an apartment house is expressly covered in Section 320.2,  
13 which is incorporated into the use permissions in Section  
14 420.1(a). And there are no exceptions.

15           Chairman Hill referenced 420.1(a), any use or  
16 structure permitted under U-320, except as modified by this  
17 section. One can go through the rest of the pages of Section  
18 420 and you will find no modifications that would alter or  
19 change the special exception requirement for the RA-1 Zone.

20           Finally, it wasn't until today that I heard for  
21 the first time that the Zoning Administrator was going to be  
22 repudiating the advice given by his deputy, regarding the  
23 fact that this project was not one that was covered by the  
24 compliance regulation that's at issue here. As a result, I  
25 did not directly challenge the legitimacy of that regulation

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1 by simply saying that it didn't apply.

2 But if the Board, in reviewing the testimony in  
3 this case, finds that that regulation is illegitimate and  
4 applicable here, then I would request that you consider my  
5 appeal amended to reflect the challenge to the guidance  
6 itself.

7 And as a last point, I want to align myself with  
8 the remarks by Board Member John with her RF analysis in  
9 Section U-301.1(b), which she said, essentially that even if  
10 one is allowed to look at an apartment building as by-right  
11 in the RA-1 Zone, it would be limited by the number of units  
12 that one finds allowed in that section of the RF Zone.

13 So in the final analysis, I would request that the  
14 Board reverse the grant of the building permit as in  
15 violation for the reasons that we have said and that the  
16 Board issue a stop-work order and require the applicant to  
17 present an application for a special exception, at which  
18 point we will be back to contest the various items delineated  
19 for you today, with regard to why this project will not  
20 comply with the special exception requirements made  
21 applicable here under 420.1(a). Thank you very much.

22 CHAIRPERSON HILL: Okay. All right. Does  
23 anybody, Mr. Turnbull, Ms. John -- Mr. Mlakar, you're trying  
24 to say something?

25 MR. MLAKAR: Yeah, yeah.

1           CHAIRPERSON HILL:       Just before you do say  
2 something, just to let you know, I've kind of gone through  
3 the process. And whatever you say now, everybody else is  
4 going to have an opportunity to respond to it. And then I'm  
5 going through this process again. I mean -- but go ahead and  
6 say what you want to say.

7           MR. MLAKAR: I just wanted to make a closing --  
8 everybody got a chance to make a closing statement, I just  
9 wanted to really quickly do that. This project, I'm being  
10 singled out here. This conversion that I'm doing is not the  
11 first time that it's happened.

12           The only reason why I made this investment into  
13 this property is because there was a large precedent of doing  
14 this kind of conversion in the RA-1 Zone before. And I'm  
15 sure the Zoning Administrator can attest to the fact that  
16 this has been approved many dozens of times. And I did my  
17 research, and I made sure that this was something that was  
18 very routine and readily available to do.

19           I'm very risk adverse. So I don't -- I find it  
20 very hard to believe that we're at this point now, where --  
21 so if my permit is not valid, then all of the other  
22 construction that happened in the RA-1 Zone shouldn't be  
23 valid. Are we going to tear down all of those buildings as  
24 well at the same time? There's probably over 50 of them.  
25 Anyway, that's just my one final statement.

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1           And the idea is to build affordable housing in  
2 D.C. I'm trying to build a multi-unit building with price  
3 points in the 400s in order to provide the much needed  
4 affordable housing in D.C. Every house on that block is  
5 close to Mr. Yates' house, which Mr. Yates lives in a  
6 mansion. His property is well over \$1,000,000.

7           CHAIRPERSON HILL: Mr. Mlakar, I've got to tell  
8 you. Let's just not bring up other people's houses and  
9 what's going on and everything.

10          MR. Mlakar: I apologize.

11          CHAIRPERSON HILL: That's okay. I mean, I know  
12 that you're really, obviously, invested in this, as is Mr.  
13 Yates. And so I wish you guys weren't here either, right?  
14 And so we're here to try to figure out whether or not the  
15 Zoning Administrator made an error, and we're just looking  
16 at the facts. And as I said, I'm very disappointed that  
17 you're here as well. And as I've said, Mr. Yates is also  
18 very disappointed that you're here -- both of you are here.  
19 So I guess, I mean, that's it. Okay. Do you have anything  
20 else?

21          MR. Mlakar: Yeah, okay. Thank you. No, that's  
22 it. Thank you very much.

23          CHAIRPERSON HILL: Okay, sure. All right. So Mr.  
24 Hart, Mr. Turnbull, Ms. John, do you guys have anything else  
25 that you need from anybody in terms of how we're going to --

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1 I mean, I'm going to have to think about this for a while.  
2 And so I at least want a couple of weeks. So I would imagine  
3 that we won't put this on for decision until, like, June 24th  
4 perhaps, or even if that is good for you guys.

5 Mr. Moy is about to raise his hand. I saw you,  
6 Mr. Moy. So I'll get back to you. But before we do, do  
7 that, Mr. Turnbull, Ms. John, Mr. Hart, do you need anything?

8 COMMISSIONER TURNBULL: I need nothing.

9 CHAIRPERSON HILL: Ms. John, I saw you shaking  
10 your head no.

11 MEMBER JOHN: Yes. No, nothing.

12 CHAIRPERSON HILL: Okay. Mr. Hart?

13 VICE CHAIR HART: I don't think I need anything  
14 else. I think we've gotten the questions that I had answered  
15 through the testimony so far and presentation. So thank you.

16 CHAIRPERSON HILL: Mr. Green, you had your hand  
17 up?

18 MR. GREEN: Just a quick question. Just to  
19 confirm, Chairman. The specific ask of information of the  
20 Zoning Administrator was what, again? They wanted -- in  
21 terms of demo versus raze? I just want to confirm what the  
22 Board had indicated they wanted submitted. I just wanted to  
23 circle back on that so I can write it down. I'm sorry.  
24 There's a lot going on. So if you could clarify it, I will  
25 write it down and then know what to submit.

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1 CHAIRPERSON HILL: Sure. Mr. Hart, can you  
2 provide that? You wanted -- I mean, how he got the fact that  
3 it wasn't razed, right?

4 VICE CHAIR HART: The determination -- the zoning  
5 raze determination that was made so that you got to -- so  
6 that we understand how the -- what was being described is  
7 actually a conversion because it is -- or an expansion on an  
8 existing building, because it was not an -- it is an existing  
9 building. It is not a raze -- a zoning raze. So I just  
10 needed that. Mr. LeGrant said that he had that, and I just  
11 was -- I didn't remember seeing that and it's helpful as I  
12 contemplate the case.

13 MR. GREEN: Yeah, I just wanted to confirm, and  
14 I'll work with Mr. LeGrant to get that to the Board. Thank  
15 you.

16 VICE CHAIR HART: No problem.

17 CHAIRPERSON HILL: Okay. Mr. Moy, you had your  
18 hand up about scheduling, I guess?

19 MR. MOY: Yes, sir. I'm ready to go through that  
20 for your suggestion when you're ready.

21 CHAIRPERSON HILL: Okay. I was just going to put  
22 it on for decision on the 24th of June.

23 MR. MOY: Well, I was going to suggest, Mr.  
24 Chairman, for you to consider when this additional  
25 information that you're requesting from DCRA, that they make

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1 that filing by June the 17th, which is next Wednesday. And  
2 you should responses from all the parties, let's say the  
3 following week, which would be June 24th. And that will take  
4 you up for decision on July 1st, which I think works out  
5 nicely with Zoning Commissioner Michael Turnbull.

6 CHAIRPERSON HILL: He's back on the 1st?

7 MR. MOY: That's correct, sir.

8 CHAIRPERSON HILL: Okay. All right. Then let's  
9 go ahead and do that. And so we will be deciding this on the  
10 1st. And then actually, previously, Mr. Turnbull, you're  
11 coming back for -- oh, yeah. Okay. We can then push the  
12 previous appeal also to the 1st. But now, I guess it's too  
13 late. So --

14 MR. MOY: I believe it is on the 1st.

15 (Simultaneous speaking.)

16 CHAIRPERSON HILL: Yeah. No, it was next --  
17 actually, that wouldn't have worked out anyway. Okay. All  
18 right. Well, everyone, thank you very much for all your time  
19 and wish you all a good day. Bye-bye. Mr. Moy, we're done,  
20 correct?

21 MR. MOY: Yes, sir. Done and it's early. Well done.

22 CHAIRPERSON HILL: Let's hit the clock. All right.  
23 Well, thank you very much. We stand adjourned. Bye-bye.

24 (Whereupon, the above-entitled matter went off the  
25 record at 4:21 p.m.)

**NEAL R. GROSS**

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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: 06-10-20

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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Court Reporter

**NEAL R. GROSS**

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