

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

AUGUST 5, 2020

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 1:49 p.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

PETER G. MAY, Commissioner (NPS)  
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
MAXINE BROWN-ROBERTS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

DANIEL BASSETT, ESQ.

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

2 1:49 p.m.

3 BZA CHAIR HILL: Okay. All right, so the hearing  
4 will please come to order. We're convening and broadcasting  
5 this public --

6 VICE CHAIRPERSON HART: Mr. Chairman?

7 BZA CHAIR HILL: Yes.

8 VICE CHAIRPERSON HART: Sorry. Did you want to  
9 do the last meeting case, and then do that? Or does it  
10 matter? The --

11 (Simultaneous speaking)

12 BZA CHAIR HILL: Right. I don't think it matters.

13 VICE CHAIRPERSON HART: That's fine. Okay.

14 BZA CHAIR HILL: Yeah. So we'll come back to that  
15 meeting case after the appeal. Right?

16 VICE CHAIRPERSON HART: Right.

17 BZA CHAIR HILL: So we're convened and  
18 broadcasting this public hearing by video conference. This  
19 is the August 5th, 2020, public hearing of the Board of  
20 Zoning Adjustment, District of Columbia.

21 My name is Fred Hill, Chairperson. Joining me  
22 today is Carlton, our Vice Chair, Lorna John, Board Members,  
23 and representing the Zoning Commission is Peter Shapiro, and  
24 Peter May for continued cases.

25 Today's hearing agenda is available to you on the

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1 Office of Zoning's website. Please be advised that this  
2 proceeding is being recorded by court reporter, and is also  
3 webcast live via WebEx, and YouTube Live.

4 The video will be available on the Office of  
5 Zoning's website after the hearing. Accordingly, everyone  
6 who is listening on WebEx or by telephone will be muted  
7 during the hearing.

8 And only persons who have signed up to participate  
9 or testify will be unmuted at the appropriate time. Excuse  
10 me.

11 Please state your name and home address before  
12 providing oral testimony or your presentation. Oral  
13 presentation should be limited to a summary of your most  
14 important points.

15 When you're finished speaking, please mute your  
16 audio so that your microphone is no longer picking up sound  
17 or background noise.

18 If you're experiencing difficulties accessing  
19 WebEx, or with your telephone call-in, or if you have  
20 forgotten to sign up 24 hours prior to this hearing, then  
21 call our OZ Hotline number, and, I'll repeat it, at  
22 202-727-5471.

23 Once again, 202-727-5471, to sign up to testify  
24 and receive WebEx log-in and call-in instructions. All  
25 persons planning to testify, either favor or in opposition,

1 must have signed up in advance, and will be called by  
2 name.

3 At the time of sign-up, all participants completed  
4 the Oath of Affirmation, as required by Subtitle Y 408.7.

5 If you wish to file a testimony or additional  
6 supporting documents at the time of your hearing, then please  
7 be prepared to describe and discuss at the time of your  
8 testimony. The order procedures for special exceptions,  
9 variances is also pursuant to Subtitle Y 409.

10 Appeals are Subtitle Y 507. And -- excuse me.  
11 At the conclusion of each case, an individual who is unable  
12 to testify because of a technical issue may file, or request  
13 for a leave to file, a written version of the planned  
14 testimony to the record within 24 hours.

15 If additional written testimony is accepted, then  
16 parties will be allowed a reasonable time to respond. The  
17 Board will then make its decision at this next meeting, but  
18 no earlier than 48 hours after the hearing.

19 Moreover, the Board may request additional  
20 specific information to complete the record. The Board and  
21 the staff will specify at the end of the hearing exactly what  
22 is expected, and the date when persons must submit the  
23 evidence to the Office of Zoning.

24 No other information shall be accepted by the  
25 Board. The Board's agenda may include previous cases set for

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1 decision. After the Board adjourns the hearing, the Office  
2 of Zoning, in consultation with myself, will determine  
3 whether a full or summary order may be issued.

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

8 Although the Board favors the use of summary  
9 orders whenever possible, an applicant may not request the  
10 Board to issue such an order.

11 The District of Columbia Administrative Procedures  
12 Act requires that the public hearing on each case be held in  
13 the open, before the public, pursuant to Section 405(b) and  
14 406 of that Act.

15 However, the Board may, consistent with its rules  
16 and procedures in that Act, enter in a closed meeting on a  
17 case, for purposes of seeking legal counsel on a case,  
18 pursuant to the DC Official Code Section 2-575(b)(4).

19 And we're delivering on a case pursuant to DC  
20 Official Code Section 2-575(b)(13), but only after providing  
21 the necessary public notice, and, in the case of an emergency  
22 closed meeting, after taking a roll call vote.

23 Preliminary matters are those which relate whether  
24 a case will issue be heard today, such request for  
25 postponement, continuance, or withdrawal. Mr. Secretary, do

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1 we have any preliminary matters? You're on mute, Mr. Moy.

2 MR. MOY: I'm sorry, Mr. Chairman. I was looking  
3 for the button. I couldn't find the button. Sorry. Yes,  
4 there are, but Staff would suggest that for the rest of the  
5 afternoon, that the Board address those preliminary matters  
6 when I call the case.

7 BZA CHAIR HILL: Okay. Great. Let's see. Ms.  
8 John, are you using your camera, or you're choosing not to,  
9 which is fine? I just want to know.

10 MEMBER JOHN: Yes, Mr. Chairman.

11 BZA CHAIR HILL: Okay, great. Perfect. Thank  
12 you. Mr. Young, could you let in the people for the case?  
13 And could you let in the appellant, the property owner, and  
14 DCRA? And we'll hold the witnesses until the appropriate  
15 time.

16 Oh, and Mr. Moy, I'm sorry. Could you read the  
17 case?

18 MR. MOY: Thank you, Mr. Chairman. So the Board  
19 is in this hearing session, and the case is Appeal number  
20 20191, of DC for Reasonable Development.

21 This is an appeal from the decision made on August  
22 16, 2019, by the Zoning Administrator, Department of Consumer  
23 and Regulatory Affairs, to issue demolition permit D1600814  
24 to permit the demolition of several aspects of the McMillan  
25 Sand Filtration Site.

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1           And from the decision made on August 27, 2019, by  
2 the Zoning Administrator, Department of Consumer and  
3 Regulatory Affairs, to issue foundation permit, Number  
4 FD1800040, to permit the foundation of a new community  
5 center, in the RA-2 Zone.

6           This is at 2940 N Capitol Street NW, Square 3128,  
7 Lot 800. And as you're aware, Mr. Chairman, there are a  
8 number of motions made on this application, on this appeal.

9           BZA CHAIR HILL: Okay, great.

10          MR. MOY: I'm sorry?

11          BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.  
12 Were you about to say something? I'm sorry.

13          MR. MOY: Well, there have been a number of  
14 filings that were made yesterday, August 4, as well as today,  
15 like 10 minutes ago, one of the plaintiffs made a filing 10  
16 minutes ago. So I just want to make the Board aware of that.

17          BZA CHAIR HILL: Okay. All right. Is the  
18 appellant here?

19          MR. OTTEN: Hello?

20          BZA CHAIR HILL: Hello, is this the appellant?

21          MR. OTTEN: Hello?

22          BZA CHAIR HILL: Hi. Can you hear me?

23          MR. OTTEN: Yes, sorry, Chairman Hill. This is  
24 Chris Otten, representing DC for Reasonable Development, as  
25 well as the joint appellants, Daniel Wolkoff, Cynthia Carson,

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1 Melissa Peffers, Jerome Peloquin, James Fournier, Linwood  
2 Norman, and Jimmie Boykin.

3 BZA CHAIR HILL: Okay. When you say joint  
4 appellants -- so those are the other people who are part of  
5 the appeal?

6 MR. OTTEN: Correct. Yes. These are all the  
7 joint appellants under DC for Reasonable Development.

8 BZA CHAIR HILL: Okay. So let me go around there  
9 -- and that's to OAG. I didn't know everybody was listed on  
10 that appeal, Mr. Ritting.

11 So, and I think Mr. Otten just mentioned a bunch  
12 of names, so maybe, if you can just check and see and make  
13 sure those are all there.

14 And by the way, the screen's moving around, so I'm  
15 just trying to see -- he's kind of popping in and out of here  
16 as I'm getting a chance to introduce everybody. Mr. Otten,  
17 are you able to mute your phone?

18 MR. OTTEN: Let's see. Okay, I'm talking now,  
19 about to mute it.

20 BZA CHAIR HILL: Okay, great. Perfect. But you  
21 can hear me, correct? And you can unmute your phone and say  
22 yes.

23 MR. OTTEN: I think I just unmuted. Are you able  
24 to see me?

25 BZA CHAIR HILL: I can't see you.

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1 MR. OTTEN: Okay. I don't know why that is. But  
2 that's not that big of a deal.

3 BZA CHAIR HILL: Are you on the telephone, or are  
4 you on a computer?

5 MR. OTTEN: I'm looking at you on my computer.  
6 Is there a button I should press for video?

7 BZA CHAIR HILL: Maybe if you hover over the  
8 screen --

9 MR. YOUNG: I'm not able to -- for some reason,  
10 I'm not able to make him a panelist. It's only letting me  
11 mute and unmute.

12 BZA CHAIR HILL: But you can see everything. Is  
13 that correct, Mr. Otten?

14 MR. OTTEN: As far as what's on the screen at any  
15 given time. Like I can see your face right now.

16 BZA CHAIR HILL: Right. Can you see the other  
17 people on the screen?

18 MR. OTTEN: I just see you.

19 BZA CHAIR HILL: Okay. Mr. Young, do you know if  
20 there's another way to let him in?

21 MR. YOUNG: I do not know.

22 BZA CHAIR HILL: Okay. Mr. Otten, do you want to  
23 try to re-sign -- did you sign in through the computer?

24 MR. OTTEN: Yes.

25 BZA CHAIR HILL: Do you want to try to re-sign --

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1 I mean, do you know, Mr. Young, if that might be helpful?

2 MR. YOUNG: It might be. It could be a setting  
3 on the computer. But I'm not sure why it allows me to make  
4 someone a panelist or doesn't allow me to make someone a  
5 panelist.

6 BZA CHAIR HILL: Okay. Okay. Well, let me -- I  
7 mean, Mr. Otten, I'm just trying to go through and introduce  
8 people that are here. So why don't we get through the  
9 introductions first.

10 MR. OTTEN: Okay.

11 BZA CHAIR HILL: And then we'll see where we get.  
12 I see Mr. Saidon? Is it Saidon?

13 MR. SAINDON: Saindon, sir.

14 BZA CHAIR HILL: Saindon.

15 MR. SAINDON: Yes.

16 BZA CHAIR HILL: Could you introduce yourself,  
17 please, sir?

18 MR. SAINDON: Sure. My name is Andrew Saindon.  
19 I'm an attorney for the property owner, Deputy Mayor for  
20 Planning and Economic Development.

21 Co-counsel is with me, Brendan Heath, also from  
22 the office of the Attorney General. We have Gilles Stucker,  
23 from the Deputy Mayor for Planning and Economic Development  
24 on hand, in case the Board has questions.

25 BZA CHAIR HILL: Okay. Okay, so, then, you said

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1 Brendan Heath, right? So, Mr. Heath, could you introduce  
2 yourself, please?

3 MR. HEATH: Yes, Mr. Chairman. My name is Brendan  
4 Heath, and with my colleague, Andrew Saindon, representing  
5 the property owner, the office of the Deputy Mayor for  
6 Planning and Economic Development.

7 BZA CHAIR HILL: Okay, and who's your colleague?

8 MR. HEATH: Andrew Saindon.

9 BZA CHAIR HILL: Oh, got you. Okay.

10 MR. HEATH: Yes.

11 BZA CHAIR HILL: Okay. Got it. Are you choosing  
12 not to use your camera, which is fine? I just want to know.

13 MR. HEATH: I didn't see the button. Let me find  
14 the button. Is that working now?

15 BZA CHAIR HILL: Yes. Got it. Okay. Is it Ms.  
16 Stucker or Mr. Stucker? I don't know.

17 MR. STUCKER: It's Mr. Stucker.

18 BZA CHAIR HILL: Okay. Could you introduce  
19 yourself, please?

20 MR. STUCKER: Hi, good afternoon. My name is  
21 Gilles Stucker. I'm the Director of Strategic Initiatives  
22 with the Office of the Deputy Mayor for Planning and Economic  
23 Development, the property owner.

24 BZA CHAIR HILL: Okay. Great. All right. Mr.  
25 Stucker, if you could mute your microphone, please? Let's

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1 see. Did I get Mr. Schulman, there? Could you introduce  
2 yourself, please? You're on mute, sir.

3 MR. SCHULMAN: How about now?

4 BZA CHAIR HILL: You're off mute.

5 MR. SCHULMAN: Good. Yes, Jim Schulman, Ward 6,  
6 testifying as an individual in support of the appeal.

7 BZA CHAIR HILL: Okay. Hi, Mr. Schulman. So  
8 you're a Commissioner, but you're here on behalf of yourself.  
9 Correct?

10 MR. SCHULMAN: Not a Commissioner, an architect,  
11 practicing architect.

12 BZA CHAIR HILL: Okay. All right. And then,  
13 let's see. Mr. Green, could you introduce yourself?

14 MR. GREEN: Yes. Good afternoon. Hugh Green,  
15 with -- attorney with the DCRA.

16 BZA CHAIR HILL: Okay. And then is it Mr.  
17 LeGrant?

18 MR. LEGRANT: Good afternoon. Matt LeGrant,  
19 Zoning Administrator, DCRA.

20 BZA CHAIR HILL: Okay. And then I see, is it a  
21 Mr. Theresa?

22 MR. THERESA: Yes. Mr. Theresa.

23 BZA CHAIR HILL: Theresa.

24 MR. THERESA: Yes.

25 BZA CHAIR HILL: Could you introduce yourself?

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1 MR. THERESA: My name is Aristotle Theresa, and  
2 I'm a zoning attorney. I'm testifying in favor of the  
3 appeal.

4 BZA CHAIR HILL: Okay. All right. Thank you, Mr.  
5 Theresa. If you want to -- okay, if everybody could just  
6 mute their microphones when they're not speaking? Thank you  
7 very much. All right. Mr. Otten, can you hear me? I can  
8 hear you now, if you want to speak.

9 MR. OTTEN: Hi. Can you hear me?

10 BZA CHAIR HILL: Yes. Can you hear me?

11 MR. OTTEN: Yes, I can.

12 BZA CHAIR HILL: Okay, perfect. So I guess  
13 there's a bunch of preliminary matters, as you know, that  
14 we're going to kind of somehow walk through. And so I want  
15 to walk through them first with the Board, and then we'll get  
16 to where we are in terms of the appeal. Okay?

17 MR. OTTEN: Do I weigh in at this point? I mean,  
18 with the motions? Or we just wait until you work through  
19 them?

20 BZA CHAIR HILL: I'm working through all of the  
21 motions right now, that has been put before us.

22 MR. OTTEN: Okay, I'll be available for any  
23 questions.

24 BZA CHAIR HILL: Okay. Thank you. Let's see.  
25 So, all right. I see my -- I'm just trying to look for my

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1 fellow Board members. All right, Commissioner Shapiro, Mr.  
2 Hart, Ms. John. Okay, great. And then we have OAG with --  
3 great.

4 So, as you guys know, there's just a tremendous  
5 amount of information into the record, as well as a variety  
6 of different motions. So I'm now going to try to walk  
7 through them with my Board members, and kind of tell you  
8 where I think I am right now on a lot of these motions.  
9 Right?

10 And I'm going to kind of read through some of this  
11 stuff. And so just bear with me, because there's a lot of  
12 notes that I took and have here to look at it.

13 And also if everyone would just kind of listen to  
14 me, including the appellant, in terms of some of the things  
15 that I'm speaking to.

16 So the burden is on the appellant, once again, to  
17 show that there has been an error in issuing a permit, and  
18 that that error is based on the Zoning Regulations.

19 With the statement of appeal, the appellant must  
20 identify how the appellant believes the Zoning Administrator  
21 erred in issuing the permits, and what statements and  
22 information the appellant will introduce at the hearing will  
23 show that there is an error.

24 And that's in Subtitle Y 302(g) and (h). The  
25 problem that I see with the appellant's initial statement of

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1 appeal, and with its filing since then, is it did not clearly  
2 provide any explanation of how the Zoning Regulations has  
3 been violated.

4           Instead, there are citations to the Regulations  
5 and statements that permits should not have been issued.  
6 However, I don't think there's an explanation at all about  
7 any specific errors in applying the Zoning Regulations to the  
8 decision to issue the permits.

9           Without this information, I think the Board and  
10 other parties do not know what the hearing is supposed to be  
11 about. So we notified the appellant of this deficiency at  
12 our June 24th meeting, and gave the appellant the opportunity  
13 to cure it in a submission by July 8th.

14           The appellant's submission July 8th I don't think  
15 specifically responded to the request, and still did not  
16 identify any specific errors. I'm going to kind of walk  
17 through some of my thoughts on all of this and see where we  
18 get to.

19           I do still think that there might be some issues  
20 that we'd like to appellant to help clarify. See, when the  
21 July 8th came up, the submission July 8th, the appellant  
22 seemed to add new issues and claims that were not identified  
23 in the statement of appeal.

24           And as the Board knows, this is not permitted by  
25 the Board's rules, and the Board, therefore, will not be able

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1 to consider any new claims. With that introduction, I kind  
2 of want to talk through a little bit about some of the  
3 pending motions.

4 The appellant had put forward an emergency motion  
5 to supplement the record with additional expert credentials.  
6 And that's in Exhibit 51.

7 In my opinion, this is late. I mean, we -- you  
8 know, this is now becoming a prejudice to the property owner  
9 and the DCRA. And I say that because we talked about getting  
10 everything by July 8th.

11 And so I think that I'm going to deny the motion,  
12 and that the appellant has had several opportunities to  
13 provide the information in a timely manner, because, again,  
14 as far as the July 8th, and had failed to do so.

15 So, first I'm going to ask the Board members, and  
16 I guess I'm going to kind of walk this -- and there's a lot  
17 of motions. So I'm going to walk through them all, and have  
18 an opportunity for all my fellow Board members to weigh in  
19 on any of this.

20 The first one is, I'm going to make a motion to  
21 deny the emergency motion to supplement the record, because  
22 I believe it's late.

23 And I am asking if -- one, if anybody wants to  
24 raise their hands and first tell me what they think of that.  
25 I'm going to ask, Mr. Hart, if you would begin?

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1 MR. HART: Yes. I would agree with you. I think  
2 that there's been sufficient time to be able to kind of get  
3 this information in. And I just -- I would agree with your  
4 statement. I would not be in favor of the motion, either.

5 BZA CHAIR HILL: Commissioner Shapiro?

6 COMMISSIONER SHAPIRO: Mr. Chair, I have the same  
7 analysis. No concerns at all with your interpretation. And  
8 I would support the action you recommended.

9 BZA CHAIR HILL: Ms. John?

10 MEMBER JOHN: Mr. Chairman, I would support your  
11 recommendations.

12 BZA CHAIR HILL: Okay. So then there's DMPED's  
13 motion to strike any testimony as experts.

14 I mean, again, in terms of the expert witnesses,  
15 I think that, you know, whoever the appellant has put forward  
16 on their witness list, and/or, as I believe -- and this is  
17 where I can look to OAG, in terms of who is part of this  
18 appeal, and who has been part of this appeal -- then they  
19 should have the opportunity to testify.

20 But in terms of the expert witness status, I again  
21 think that this was late. And I would not be in support of  
22 granting expert status. However, they can testify as the  
23 witnesses, as they have been previously put forward.

24 And, again, I'm going to go around the horn and  
25 see if my fellow Board members have any thoughts on that, or

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1 if they would agree or disagree. Mr. Hart?

2 VICE CHAIRPERSON HART: As I'm thinking about it,  
3 I understand what you're saying, and I would generally agree  
4 with that.

5 I am wondering if it would be helpful to  
6 understand if there's a -- if there's some sort of rationale  
7 for why the information is submitted late. But that's --

8 BZA CHAIR HILL: Okay.

9 VICE CHAIRPERSON HART: I can be in support of it.  
10 I just think I might need to have a little explanation as to  
11 why that -- why there was a delay.

12 BZA CHAIR HILL: Okay. And I'll get to the  
13 appellant, then. So, Ms. John?

14 MEMBER JOHN: Mr. Chairman, I believe we requested  
15 that information to be submitted in response to the show  
16 cause. And so I am not in favor of admitting expert  
17 testimony at the moment.

18 The response pointed to a webpage to describe the  
19 expertise of one of the proffered experts. But we still  
20 don't know what that expert would be testifying to. We have  
21 no witness statement. And so, you know, the other party's  
22 not able to provide a concept, right.

23 No one knows what this expert will testify to, and  
24 whether or not that expert is qualified to provide an opinion  
25 with respect to those particular matters. So I am not in

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1 favor of allowing that testimony.

2 BZA CHAIR HILL: Okay. Mr. Shapiro?

3 COMMISSIONER SHAPIRO: Mr. Chair, I think Ms.  
4 Board Member John's logic around that mirrors my own. I have  
5 nothing further to add.

6 BZA CHAIR HILL: Okay. Mr. Otten, can you hear  
7 me again?

8 MR. OTTEN: Yes, I can.

9 BZA CHAIR HILL: Can you provide some explanation  
10 as to why you were late with the expert testimony?

11 MR. OTTEN: Mr. Hill, as you know, we're in a  
12 global pandemic right now. And I know you're in your bubble  
13 there, and everybody's in their bubbles.

14 I actually have a mask on right now, because there  
15 are people who are sharing my internet connection with me to  
16 deal with this appeal via WebEx.

17 But to the issues here, your Commission gave our  
18 party a chance to cure and remedy issues you raised at the  
19 June 24th hearing. Exhibit 42 shows us attempting to do  
20 that. In that Exhibit, we highlight one of our expert  
21 testifiers to be Mr. Aristotle Theresa.

22 He is a known zoning attorney and land use expert.  
23 We pointed to his website because, again, global pandemic.  
24 He didn't have all the stuff ready in the time that we could  
25 access him.

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1 Mind you, we are not paid staff. We're not -- we  
2 don't have OAG attorneys. We don't have -- we're all  
3 volunteers. This is a completely volunteer campaign.

4 And so, with that, we were able to access Mr.  
5 Theresa. He said let's put a point to my website, which  
6 clearly delineates all of his expertise in this field about  
7 zoning and zoning laws and zoning cases.

8 So now, when the opposition parties, DMPED and  
9 DCRA responded on July 16th to our notice to cure, to our  
10 response to our notice to cure in Exhibit 42.

11 You'll see in Exhibit 46 and 47, they pretty much  
12 -- land-based volunteers, the public, who they're supposed  
13 to represent, are not providing the full details of Mr.  
14 Theresa's resume and whatnot. So then we responded --

15 BZA CHAIR HILL: Mr. Otten?

16 MR. OTTEN: Let me finish my thought, if I could.  
17 So then we filed this motion to put his credentials on the  
18 record. So that's the process that we're under, under a  
19 global pandemic, as a volunteer campaign. I hope that makes  
20 sense.

21 BZA CHAIR HILL: Yes. I was just trying to  
22 understand -- the question was, again, why were you late?  
23 And the answer that you're giving me is that we're in a  
24 pandemic. And --

25 MR. OTTEN: No, that's not the answer. That's not

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1 the answer. Let me just clarify this to be completely clear,  
2 for all of the people in the web world.

3           You gave our party an opportunity to cure problems  
4 with our application. Exhibit 42 has done that. We provided  
5 an expert with a link to his credentials.

6           BZA CHAIR HILL: Okay, Mr. Otten. Mr. Otten --

7           MR. OTTEN: Yeah.

8           BZA CHAIR HILL: I'm trying to work -- I'm trying  
9 to work --

10          MR. OTTEN: So are we. That's the point. We  
11 weren't late.

12          BZA CHAIR HILL: Mr. Otten --

13          MR. OTTEN: We filed --

14          BZA CHAIR HILL: That's fine, Mr. Otten. That's  
15 fine.

16          MR. OTTEN: Okay. Just clarifying that for you.

17          BZA CHAIR HILL: Okay, well --

18          MR. OTTEN: We're not late. We weren't late.

19          BZA CHAIR HILL: They're saying -- or, I shouldn't  
20 say they. I don't know whether, in your exhibit, there was  
21 enough information to speak to the expert witness and what  
22 that witness was going to be testifying about.

23                 And we're currently walking through the motions,  
24 as to whether or not you did or didn't cure your application  
25 from your July 8th posting. And that's kind of what we're

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1 walking through right now.

2           However, if you're saying that, you know, you  
3 pointed to a website and that Mr. Theresa is an expert in  
4 zoning, you know, I don't -- I guess I don't have a terrible  
5 issue with him being an expert in zoning.

6           But I guess I can look for the Board members,  
7 again, in terms of whether or not you would like to grant Mr.  
8 Theresa expertise in zoning. And Ms. John is currently at  
9 a no. And Mr. Hart, where are you?

10           VICE CHAIRPERSON HART: I appreciate the  
11 clarification. But from what I understand -- while I  
12 understand that we had requested some information, was this  
13 information actually due when the appeal was filed?

14           So, you know, while I understand that we are now  
15 in a pandemic, the information that -- the reason that the  
16 delay or the lateness was not from when we requested the  
17 information, it's from when it was originally supposed to be  
18 filed.

19           And my understanding is that we are in a pandemic.  
20 There are -- they responded to it. We're in a pandemic.  
21 They're not paid, you know, they're volunteers to do this.

22           But, again, I think that the information really  
23 should have been supplied to us when this was originally  
24 filed, so that we would have all the information before us.

25           But, so, I'm there. I understand the explanation

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1 given. And I don't think that I would be in support of the  
2 motion.

3 BZA CHAIR HILL: Mr. Shapiro?

4 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
5 have to say I'm a bit lost now. So I don't have any doubt  
6 around Mr. Theresa's credentials as an expert in zoning. You  
7 know, we've seen him in a number of cases. I didn't think  
8 that was the issue before us. Not Mr. Theresa's expertise.

9 BZA CHAIR HILL: It was that it was filed late,  
10 and that there wasn't enough information to grant Mr. Theresa  
11 as an expert witness.

12 However, given that there's a lot of things going  
13 on right here, I have no issue granting Mr. Theresa's  
14 expertise now, after we've had more discussion. And so  
15 unless -- I'd like to kind of get through more of these  
16 motions.

17 And so if that's the case, then I'm going to go  
18 ahead and grant Mr. Theresa as an expert in zoning, unless  
19 the Board has any issues, and you can raise your hand. And  
20 then I'm going to continue through what I believe if before  
21 us in terms of preliminary issues.

22 COMMISSIONER SHAPIRO: I have no objection to  
23 that, Mr. Chair.

24 BZ CHAIR HILL: Okay. So we're going to go ahead  
25 and grant the expertise of Mr. Theresa -- and strike the

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1 motion by DMPED -- as expert testimony. Let's see. Okay.

2 So --

3 MR. RITTING: Could I interrupt, Mr. Hill? The  
4 motion that you're currently considering is, I believe it's  
5 Exhibit 46. It's DMPED's motion to strike any testimony as  
6 expert from Theresa, or Mr. Schulman.

7 The way I understand your decision is, you're  
8 denying the motion to strike Mr. Theresa as an expert. But  
9 what I'm not -- what you haven't ruled on is the second part,  
10 Mr. Schulman.

11 So before you move on, I think, for the sake of  
12 clarity, you ought to consider that.

13 BZA CHAIR HILL: We're now, after having this  
14 discussion, and Commissioner Shapiro pointing out Mr. Theresa  
15 has -- and I remember Mr. Theresa from before the Board, as  
16 well, the BZA. You know, so I would be granting Mr. Theresa  
17 as a zoning expert.

18 And Mr. Schulman, can you tell us again what your  
19 expertise is, and what you would be presenting on with your  
20 expertise?

21 MR. SCHULMAN: I'm an architect. And I was asked  
22 to weigh in on matters pertaining to a proposed project, as  
23 a built construction. And that could, or might not, also  
24 break zoning rules.

25 BZA CHAIR HILL: Okay. So we have -- well, let

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1 me look at this exhibit. Do you know, Mr. Schulman, where  
2 your expertise exhibit is?

3 MR. SCHULMAN: I sent my resume in as an exhibit  
4 very early this --

5 COMMISSIONER SHAPIRO: 57.

6 BZA CHAIR HILL: 57.

7 MR. SCHULMAN: And I have testified before the BZA  
8 before, and I was an expert witness before --

9 BZA CHAIR HILL: I got you, Mr. Schulman. I'm  
10 sorry. I guess part of this is that we just got this. And  
11 so that's why we're kind of going through this.

12 MR. SCHULMAN: I intended to only testify today  
13 as a resident. But because I was asked, there's a concern  
14 about whether anybody could testify as an expert. So I  
15 offered myself up --

16 BZA CHAIR HILL: Okay. I'm going to go ahead and  
17 accept Mr. Schulman as an expert as an architect, unless the  
18 Board has any issues with it. And you can go ahead and raise  
19 your hand if you do.

20 COMMISSIONER SHAPIRO: No objection.

21 BZA CHAIR HILL: Okay. All right. Okay, so I'm  
22 going to keep moving through this now. So DCRA has a bunch  
23 of other motions in Exhibit 47, one of which is to strike all  
24 issues and evidence not raised in the appellant's statement  
25 of appeal.

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1 I mean, I think we have to grant this motion,  
2 because, again, the original statement of appeal is what is  
3 before us. The appellant cannot bring up any new issues that  
4 weren't in its original statement of appeal. So I would be  
5 granting that motion.

6 And I'm going to walk around again and see if my  
7 fellow Board members agree. Mr. Hart?

8 VICE CHAIRPERSON HART: I don't have any objection  
9 to that. I'd grant it as well.

10 BZA CHAIR HILL: Ms. John?

11 MEMBER JOHN: No objections.

12 BZA CHAIR HILL: Commissioner Shapiro?

13 COMMISSIONER SHAPIRO: No objections, Mr. Chair.

14 BZA CHAIR HILL: Okay. So that's that. Then  
15 there's another one here, strike all testimony from witnesses  
16 other than Theresa or Schulman. So this is where I'm  
17 confused as to what the witness list is.

18 I know that at the beginning of the appeal, in the  
19 Regulations, it has to state who the witnesses are, so that  
20 everybody knows who the witnesses are and what they're  
21 testifying on. Isn't that correct, OAG?

22 MR. RITTING: Yes.

23 BZA CHAIR HILL: So who else is -- so then Mr.  
24 Otten, the appellant, he mentioned a bunch of people on the  
25 appeal itself. Mr. Otten, can you list those names again?

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1 MR. OTTEN: Sorry, can you repeat that?

2 BZA CHAIR HILL: Mr. Otten, can you hear me?

3 MR. OTTEN: I cannot unmute. I cannot unmute.  
4 Can you hear me?

5 BZA CHAIR HILL: I can hear you.

6 MR. OTTEN: Okay. What do we all --

7 BZA CHAIR HILL: You mentioned a bunch of names  
8 that were part of the appeal?

9 MR. OTTEN: I didn't mention a bunch of names.  
10 Please tell me what you're referencing.

11 BZA CHAIR HILL: At the beginning --

12 MR. RITTING: Can I interrupt, Mr. Hill and Mr.  
13 Otten? I listened to that earlier statement where Mr. Otten  
14 listed the other appellants.

15 And I was able to look at the statement of appeal  
16 and confirm that they are in fact listed as members of his  
17 group, and are in the statement of appeal. So the rules  
18 provide that they are allowed to testify at the hearing.

19 BZA CHAIR HILL: Okay, right, that's good. I'm  
20 just trying to make sure I can get people in that are  
21 supposed to get in. So, Mr. Otten, can you read through  
22 those names again, please?

23 MR. OTTEN: I don't understand what's going on  
24 here. I was asked to file a list of witnesses yesterday, and  
25 sign them up for this hearing, which I did. And I think some

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1 of them are on the line.

2 I don't know if all of them -- I can't tell if all  
3 of them are on the line. But those rules are not clear. Are  
4 you saying that the BZA will not accept public witnesses who  
5 are proponents of the appeal?

6 BZA CHAIR HILL: OAG?

7 MR. RITTING: Yes. In appeals, there's rules  
8 about who can testify. They're in Subtitle Y 302. And they  
9 provide that -- well, I'm not going to read the whole thing.

10 But it's not like a variance or a special  
11 exception where members of the general public have the  
12 ability to sign up and testify. The rule says, essentially,  
13 that they need to be identified with the statement of appeal.

14 And that was -- it's Subtitle Y, Section 302. And  
15 that was the reason that the Board asked you to cure it, at  
16 the 24th. And the written submission that you provided on  
17 July 8th mentioned two names, Mr. Theresa and Mr. Schulman.

18 And then, in a third category, said that you would  
19 name other people later. However, that's not the way the  
20 rule is written, and it's intended to limit the number of  
21 people that testify to just the people that are identified  
22 in that statement.

23 MR. OTTEN: So, Mr. Ritting, just so I'm  
24 completely clear, and for the record. You're telling me, and  
25 maybe the changes have happened in Zoning, but I've been part

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1 of several appeals, including as a public witness.

2           You're saying that when somebody appeals a  
3 building permit or demolition permit in the District of  
4 Columbia, and that appeal is heard, that people who are  
5 affected by that appeal cannot testify as public witnesses?

6           MR. RITTING: I'm saying that the parties have to  
7 comply with the rules for appeals, including Subtitle Y,  
8 Section 302. And the rule speaks for itself.

9           MR. OTTEN: Yes, but that's for our witnesses.  
10 Are you saying anybody in the public who might be affected  
11 by this appeal, cannot testify to that merits of the appeal?

12           MR. RITTING: I've already answered the question.

13           MR. OTTEN: Okay, so --

14           BZA CHAIR HILL: Mr. Otten?

15           MR. OTTEN: Yes, I just want to clarify --  
16 because, you know, I also saw in that section, 11 Y 302.13,  
17 that new issues can be brought, and discretionally brought  
18 into the appeal by the Commission.

19           I heard earlier that new issues couldn't -- not  
20 that we are bringing in any new issues, and by the way, no  
21 new issue has ever been identified, for the record, that  
22 we've brought in at any point.

23           But discretionarily, we understand, the Board can  
24 pull in new issues if new information has been found later  
25 on, after the appeal was filed.

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1 BZA CHAIR HILL: So, Mr. Otten, I know that, in  
2 terms of the appeal, we need to know who your witnesses are  
3 going to be, so that all of the people in the appeal know who  
4 the witnesses are and what they're going to testify on. That  
5 --

6 MR. OTTEN: I understand.

7 BZA CHAIR HILL: -- was what the list -- that was  
8 what the list of witnesses were for. So --

9 MR. OTTEN: I get that. I get that, but there's  
10 an appeal here, and the public should be able to participate.  
11 Am I right?

12 BZA CHAIR HILL: That's what I'm saying, is the  
13 public is able to participate, when you file the appeal.

14 MR. OTTEN: Those are my witnesses. I'm talking  
15 about the general public.

16 BZA CHAIR HILL: We don't have the general public  
17 during appeals.

18 MR. OTTEN: That's funny, because that's never  
19 happened before. I've been in several appeals, and I've  
20 actually participated as a public witness, not as a witness  
21 for the party who's appealing, as a public witness who's  
22 affected by the appeal.

23 BZA CHAIR HILL: Not at the BZA.

24 MR. OTTEN: When did this change? Yes, at the  
25 BZA. That's' the only place to appeal zoning decisions by

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1 the Administrator.

2 BZA CHAIR HILL: Not while I was there.

3 MR. OTTEN: Well, it doesn't matter. You're  
4 saying the rules have changed? The rules have --

5 BZA CHAIR HILL: I'm telling you the rules. So  
6 I'm not -- I'm just trying --

7 MR. OTTEN: For my witnesses, yes, but you're  
8 saying the public can't testify on this?

9 BZA CHAIR HILL: Yes.

10 MR. OTTEN: That's insane. And that's  
11 unconstitutional.

12 BZA CHAIR HILL: Well, it's in the rules. I don't  
13 know --

14 MR. OTTEN: No, it's not in the rules. It's the  
15 rules for my witnesses. It's not about the public witnesses.  
16 And by the way, you have the discretion, you have the  
17 complete discretion --

18 BZA CHAIR HILL: Mr. Otten --

19 MR. OTTEN: Why are you making this difficult for  
20 us? Why are you making it difficult for us to participate  
21 in what --

22 BZA CHAIR HILL: I'm not making --

23 MR. OTTEN: Yes, you are. This is a public appeal  
24 about public property. And anybody in the public who is  
25 affected by this should be able to testify.

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1 BZA CHAIR HILL: Mr. Otten, I'm not making it  
2 difficult for you at all. I'm just --

3 MR. OTTEN: Yes, you are. This is very difficult.

4 BZA CHAIR HILL: That's incorrect. I'm just --

5 MR. OTTEN: It's very difficult. Remember our  
6 motion -- our motion, Exhibit 32.

7 BZA CHAIR HILL: Excuse me, Mr. Otten, I'm not --

8 MR. OTTEN: Excuse me. In a motion in Exhibit 32  
9 --

10 BZA CHAIR HILL: Mr. Otten --

11 MR. OTTEN: You're approving permits that is  
12 bringing people to our community that aren't wearing masks.  
13 We explained this thoroughly in Exhibit 32.

14 BZA CHAIR HILL: I'm trying to get through this  
15 hearing, and --

16 MR. OTTEN: Oh, I'm glad you're trying to get  
17 through the hearing. We're trying to make sure the public  
18 can participate. How can you help that?

19 BZA CHAIR HILL: They just read -- they just read  
20 the regulation that says, that I know of, that you're  
21 supposed to list your witnesses --

22 MR. OTTEN: For my witnesses, yes. For my  
23 witnesses. Great. What about the public? The affected  
24 public.

25 BZA CHAIR HILL: You're supposed -- they don't --

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1 it's not in the regulation.

2 MR. OTTEN: Is that right?

3 BZA CHAIR HILL: Yes.

4 MR. OTTEN: Well, that's unconstitutional.

5 (Simultaneous speaking)

6 MR. RITTING: Mr. Hill and Mr. Otten, the relevant  
7 rule is Subtitle Y 507, that describes the order of appeals  
8 and, Mr. Otten, if you want to take a moment to read it, you  
9 can see that it doesn't provide for testimony from the  
10 general public.

11 BZA CHAIR HILL: Mr. Otten?

12 MR. OTTEN: Yes. I am looking up the titles.

13 BZA CHAIR HILL: Okay.

14 MR. OTTEN: You said 507, in Section Y?

15 MR. RITTING: Yes, Subtitle Y, Section 507. I  
16 think it's quite clear. Mr. Hill, if you want to continue  
17 --

18 MR. OTTEN: Not quite.

19 BZA CHAIR HILL: Let me --

20 MR. OTTEN: It's not quite clear. I'm sorry.

21 BZA CHAIR HILL: Mr. Otten, why don't you --

22 MR. OTTEN: You know, we have gotten no help from  
23 the Attorney General on this, so I'm glad you think it's  
24 quite clear. It's not quite clear to the general public,  
25 what their rights are, okay? This situation. And by the

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1 way, you're approving variances, permits --

2 (Simultaneous speaking)

3 BZA CHAIR HILL: Mr. Otten, I'm trying --

4 MR. OTTEN: -- our neighborhoods, that affect our  
5 lives.

6 BZA CHAIR HILL: I'm trying to recognize the Board  
7 member. Mr. Shapiro?

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
9 appreciate your patience right now. My reaction to this is  
10 that if Mr. Otten cannot maintain the order that you're  
11 asking, then I would have you ask Mr. Young to mute him when  
12 you need to speak.

13 Because I feel like it is inappropriate for him  
14 to not give you the space to speak. You're chairing the  
15 meeting. And I know, I trust your capacity for this, but I  
16 just need to support you in this, because it's inappropriate.

17 And I'm not going to -- I don't want to spend the  
18 next hour or two having Mr. Otten thinking he's chairing this  
19 meeting when he's not.

20 BZA CHAIR HILL: Okay. All right. So Mr. Otten,  
21 just, if you could take a look at the regulation, and we're  
22 going to kind of continue on here. Because I have to get --

23 MR. OTTEN: Okay, well, just to clarify, just look  
24 at the regs. It does not affirmatively deny the public  
25 participation in appeals. It talks about my witnesses and

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1 what I have to do for my witnesses.

2           It does not affirmatively deny the public in  
3 Section 507, Mr. Ritting. It does not affirmatively deny the  
4 public from testifying the appeals. I just want to put that  
5 on the record. I --

6           BZA CHAIR HILL: I think that the regulation, I  
7 will agree with Mr. Ritting, does speak for itself.

8           Because in my experience so far now, doing many  
9 appeals, in the beginning, you have to put the other, again,  
10 your witnesses, and then the people that are part of the  
11 process have an opportunity to know who's going to speak.  
12 So that's where that all comes from.

13           MR. OTTEN: That's fine --

14           (Simultaneous speaking)

15           MR. OTTEN: -- my scenario. That's all. I'm  
16 telling you, my appeals, the public have testified.

17           BZA CHAIR HILL: Okay. I've been there for five  
18 years, and the public hasn't testified in an appeal.

19           MR. OTTEN: Because they didn't know their rights.  
20 Obviously, the Office of the Attorney General isn't telling  
21 them.

22           BZA CHAIR HILL: No, that's not -- the regulations  
23 --

24           MR. OTTEN: Okay. Fine. You still have the  
25 discretion to accept our witnesses.

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1 BZA CHAIR HILL: Mr. Otten. Mr. Otten. I'm going  
2 to just --

3 MR. OTTEN: They should know. They should know.

4 BZA CHAIR HILL: I'm going to ask you to mute your  
5 line for a second, while I continue to work through this.  
6 Okay? So let's see.

7 So they had -- so I'm going to come back to this  
8 witness issue, because what I started to try to understand  
9 is that DCRA was trying to strike any testimony, except for  
10 the witnesses that had been named in the exhibit on July 8th.

11 And what I was trying to understand from the  
12 appellant, which -- what are the other names that are on that  
13 appeal? And then we could actually hear from those people  
14 as well. So that's what I was trying to get at. And we can  
15 always come back to that. Okay.

16 Okay. All right. So let's see now. All right,  
17 then, now we're getting to the motions to dismiss the appeal.  
18 Right? And I'll kind of tell you where I am in terms of  
19 these different areas for dismissal of the appeal.

20 So the first one, I guess, and I'm asking my Board  
21 members to listen, because I'm going to try to read through  
22 this as I am kind of understanding it.

23 So the allegations of error in carrying out an  
24 enforcement of a Historic Preservation Act and Fine Arts  
25 permit review, as DCRA and the property owner state in their

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1 motion to dismiss, that the Board lacks jurisdiction to  
2 decide an appeal based on alleged violations of the DC  
3 Historical Preservation Act.

4 I think this is true, regarding the alleged  
5 failure to comply with Historic Preservation covenants, and  
6 the latest alleged failure to complete a Fine Arts permit  
7 review.

8 So, again, I believe that the Fine Arts permit  
9 review error came after their original appeal. And so I  
10 would agree with the motion from DCRA to dismiss this part  
11 of the appeal.

12 And so, again, the part of the appeal that we're  
13 dismissing is the failure to complete a Fine Arts permit  
14 review. And I'm going to turn to Mr. Hart and see if you  
15 understand what I'm saying, and whether you have any  
16 thoughts.

17 VICE CHAIRPERSON HART: Can you repeat that one  
18 again? Once?

19 BZA CHAIR HILL: Sure. So the issue is  
20 allegations of error in carrying out an enforcement of the  
21 Historic Preservation Act and Fine Arts permit review.

22 DCRA and the property owner state that, in the  
23 motion to dismiss, that the Board lacks jurisdiction to  
24 decide an appeal based on alleged violations of the DC  
25 Historic Preservation Act.

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1           And I believe this is true, regarding that we  
2 don't have the purview to the failure to comply with Historic  
3 Preservation covenants, and this latest failure to complete  
4 a Fine Arts permit review. Is that accurate?

5           VICE CHAIRPERSON HART: I understand that.

6           BZA CHAIR HILL: And so I would be in favor of  
7 dismissing that.

8           VICE CHAIRPERSON HART: That's fine. I understand  
9 that. Yes. I would agree with that as well.

10          BZA CHAIR HILL: Okay. Ms. John?

11          MEMBER JOHN: Yes. I agree with that, that the  
12 decisions of the HPRB are not within our jurisdiction, for  
13 the purposes of an appeal.

14          BZA CHAIR HILL: Commissioner Shapiro?

15          COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
16 want to make sure that I have it right in my head, because  
17 I think there are two issues. One is the lateness of the  
18 filing related to the Fine Arts permit review, right?

19          BZA CHAIR HILL: One is it, I believe, that the  
20 claim is a new claim.

21          COMMISSIONER SHAPIRO: Right.

22          BZA CHAIR HILL: And it wasn't in the original  
23 argument.

24          COMMISSIONER SHAPIRO: So are we addressing the  
25 new claim, or are we addressing the issue of our lack of

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1 jurisdiction?

2 I mean, at some level, it's a bit moot, because  
3 we lack jurisdiction on both these issues. But one of them,  
4 we may not even be considering, the Fine Arts permit review,  
5 because that was late to being with.

6 BZA CHAIR HILL: Okay, I'm sorry. I'm clarifying.  
7 OAG, could you help clarify?

8 MR. RITTING: Yes, the way I understood your  
9 earlier ruling is that you dismissed all of the claims that  
10 weren't actually listed in the original statement of appeal.

11 So I believe that Mr. Shapiro is making the point  
12 that the portion of what you described, relating to the Fine  
13 Arts permit review, has already been dismissed. At least  
14 that's the way I understood it --

15 COMMISSIONER SHAPIRO: Yes.

16 MR. RITTING: -- which, then, leaves the issue of  
17 whether you lack jurisdiction over anything other than  
18 carrying out enforcement of the Zoning Regulations, which is  
19 what your statute says.

20 And that would mean that you lack the jurisdiction  
21 to decide the Historic Preservation Act claims and the  
22 covenant claims, as well, which are related.

23 COMMISSIONER SHAPIRO: Thank you, Mr. Ritting.  
24 He was mansplaining for me, but it did an excellent job.

25 BZA CHAIR HILL: That's fine. So then, again, so

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1 then, the claim for the DC Historic Preservation Act, that's  
2 out of our purview. And the Fine Arts permit review, that  
3 was after the original appeal allegations.

4 And so the Fine Arts thing, we've already decided  
5 we're not going to take up, because that was after the  
6 original allegations. And the Historic Preservation Act,  
7 we're now dismissing. Issue. Okay? All right.

8 And so, Mr. Shapiro, you're nodding your head yes  
9 in agreement. Ms. John, you said yes. Mr. Hart, you're  
10 nodding your head in agreement. Okay. So I'm trying to  
11 understand what's before us. Okay.

12 So this leaves the allegations of error based on  
13 the Zoning Regulations. As DCRA and the property owner point  
14 out, the appellant has not alleged any specific errors in its  
15 pleadings.

16 Instead, it identified several zoning regulations,  
17 without explaining how the decision to issue the permit was  
18 in error. So I'm going to kind of read through some of  
19 these, and think and understand where we are. Right?

20 So one was -- and I'm going to repeat it for the  
21 Board -- one was 11 X DCMR 309.2.

22 The Zoning Commission finds the application to be  
23 in accordance with the intent and purpose of the Zoning  
24 Regulations, the PUD process, and the first-stage approval,  
25 the Zoning Commission shall grant approval to the

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1 second-stage application, including any guidelines,  
2 conditions, and standards that are necessary to carry out the  
3 Zoning Commission's decision.

4 So this regulation does not apply to the Zoning  
5 Administrator. In other words, what I'm saying, this was put  
6 in the appellant's alleged errors. And I'm saying that this  
7 regulation does not apply to the Zoning Administrator.

8 Instead, it provides a standard for the Zoning  
9 Commission to apply in deciding whether to grant or deny a  
10 PUD application. The Commission approved the PUD through ZC  
11 Order 13-14(6).

12 Commission's decision to approve the PUD was  
13 affirmed by the Court of Appeals, Friends of McMillan Park  
14 versus DC Zoning Commission. So this basis for the appeal,  
15 I think, should also therefore be dismissed.

16 Does the Board follow what I'm saying, and do we  
17 have any comments? And I'm going to start with you, Mr.  
18 Hart.

19 VICE CHAIRPERSON HART: Yes, I follow what you're  
20 discussing. I didn't have any, I guess, further comment on  
21 it. So this is really whether or not they have -- sorry, I'm  
22 like -- after lunch, it's always trying to digest and listen  
23 and think about what it is we're working through. Let me  
24 think about it for a second, and let me digest it.

25 BZA CHAIR HILL: Okay. I'm going to reread what

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1 I have here. This regulation does not apply to the Zoning  
2 Administrator. Instead, it provides a standard for the  
3 Zoning Commission to apply in deciding whether to grant or  
4 deny a PUD application. So I believe that the basis of this  
5 appeal -- I'm sorry, this claim should be dismissed. Mr.  
6 Shapiro?

7 COMMISSIONER SHAPIRO: I think that's crystal  
8 clear, Mr. Chair, that, you know, the issue around whether  
9 or not the Zoning Administrator erred. This isn't related  
10 to whether the Zoning Administrator erred. The Zoning  
11 Commission approved the PUD. So I agree with you. This  
12 basis for the appeal should be dismissed.

13 BZA CHAIR HILL: Ms. John?

14 MEMBER JOHN: This section does not describe any  
15 action that the Zoning Administrator is required to take.  
16 It related only to actions of the Zoning Commission.

17 BZA CHAIR HILL: Okay. So we're agreeing we're  
18 going to dismiss this alleged error.

19 MEMBER JOHN: Yes.

20 BZA CHAIR HILL: Okay. Mr. Hart?

21 VICE CHAIRPERSON HART: Yes, I understand. Thank  
22 you.

23 BZA CHAIR HILL: Mr. Shapiro? Okay. I see you're  
24 agreeing.

25 COMMISSIONER SHAPIRO: Yes.

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1           BZA CHAIR HILL: The next one is that in 11 X DCMR  
2 311.1, following approval of an application by the Zoning  
3 Commission, the applicant may file an application for a  
4 building permit with the proper authorities of the District  
5 of Columbia. So this regulation states that an applicant may  
6 file for a building permit after approval of a PUD by the  
7 Zoning Commission. In this case, the appellant does not make  
8 any allegations of how the ZA erred on this rule.

9           And it is uncontested that the Zoning Commission  
10 approves the PUD. The applicant filed an application for a  
11 building permit thereafter. The regulation does not provide  
12 any standard for the Zoning Administrator to apply in  
13 deciding whether to issue the building permit. Thus there  
14 could be no error by the Zoning Administrator based on this  
15 regulation. So, again, I think that the Zoning Administrator  
16 has nothing to do with this. So I would go ahead, agree with  
17 DCRA and the property owner, and dismiss this portion of the  
18 appeal, as it does not apply.

19           VICE CHAIRPERSON HART: I agree.

20           BZA CHAIR HILL: And I think, for Mr. Hart, you're  
21 agreeing?

22           VICE CHAIRPERSON HART: Agreed.

23           BZA CHAIR HILL: Ms. John?

24           MEMBER JOHN: Agreed.

25           BZA CHAIR HILL: Okay. So we've taken a vote, and

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1 we're dismissing that portion. So then, the next alleged  
2 error is, again, 11 X DCMR 311.3.

3           The Zoning Administrator shall not approve a  
4 permit application, unless the applicant has recorded a  
5 covenant in the land records of the District of Columbia  
6 between the owner or owners and the District of Columbia  
7 satisfactory to the Office of the Attorney General and the  
8 Zoning Administrator, which covenant will bind the owner and  
9 all successors in title to conduct on and use the property  
10 only in accordance with the adopted orders, or amendments  
11 therefore, of the Zoning Commission.

12           So, again, the appellant does not make any  
13 allegations of how the Zoning Administrator erred, which is  
14 what is before us. How did the Zoning Administrator err on  
15 its rule? And DCRA submitted evidence that the PUD covenant  
16 was recorded in the land records. And that's in Exhibit 23  
17 and in Exhibit 1. It is therefore uncontroverted that the  
18 Zoning Administrator did not approve the permit application  
19 until after the PUD covenant was recorded.

20           So, again, I think that this is not how the Zoning  
21 -- I don't think there's anything here that shows that the  
22 Zoning Administrator erred. And then I would also be in  
23 favor of dismissing this portion of the appeal. And I look  
24 to Mr. Shapiro. I'll start with you first, whether you  
25 understand and agree.

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1 COMMISSIONER SHAPIRO: I understand and agree.

2 BZA CHAIR HILL: Ms. John?

3 MEMBER JOHN: I agree that there's no error by the  
4 Zoning Administrator, alleged, based on this paragraph.

5 BZA CHAIR HILL: Mr. Hart?

6 VICE CHAIRPERSON HART: I concur. I agree, as  
7 well.

8 BZA CHAIR HILL: Okay. So then the other one that  
9 was in the appeal says, at 11 X DCMR Z, 702.7, following  
10 approval of an application by the Commission, the applicant  
11 may file an application for a building permit with the proper  
12 authorities of the District of Columbia. Again, this is kind  
13 of the same thing. The appellant does not make any  
14 allegations of how the ZA erred on this rule.

15 And it's not controverted that the property owner  
16 filed for the permit after the Zoning Commission approved the  
17 PUD application, which are public record. So I would, again,  
18 be in favor of granting the motion to dismiss for this issue  
19 that was raised.

20 Commissioner Shapiro, do you understand? And what  
21 do you have to say?

22 COMMISSIONER SHAPIRO: Nothing further to add.  
23 It's quite clear that this basis for the appeal should be  
24 dismissed. I concur.

25 BZA CHAIR HILL: Ms. John?

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1           MEMBER JOHN: I concur, as well. And I would also  
2 note that the Zoning Commission order 13-14.6, which is in  
3 the record of the appeal, actually directs the property owner  
4 to file an application for building permit for Phase One.  
5 And Phase One includes the community center. So I don't  
6 believe there's any error by the Zoning Administrator, based  
7 on this paragraph.

8           BZA CHAIR HILL: Okay. And Mr. Hart?

9           VICE CHAIRPERSON HART: I don't have anything to  
10 add. But I would be -- I would concur with my fellow Board  
11 members. Thanks.

12           BZA CHAIR HILL: Okay. So this brings us to the  
13 last regulation that was cited by the appellant in its  
14 statement of appeal. And that's at 11 Z DCMR 702.8.

15           The Zoning Administrator shall not approve a  
16 permit application unless the plans conform in all respects  
17 to the plans approved by the Commission, as those plans may  
18 not have been modified by any guidelines, conditions, or  
19 standards that the Commission may have applied. Nor shall  
20 the Zoning Administrator accept the establishment of an  
21 escrow account in satisfaction of any condition in the  
22 Commission's order approving the PUD.

23           So this last one, I guess, you know, it is  
24 something that the appellant could point out as to how  
25 there'd be potential grounds for an error. The last

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1 regulation, only if the -- I guess, but again, only if the  
2 plans approved by the Zoning Administrator for the permit  
3 application do not conform with those approved by the  
4 Commission.

5           So that's where, again, I would ask now the  
6 applicant -- I mean, sorry, the appellant, to show us how the  
7 Zoning Administrator has erred in the plans. I don't know  
8 if the appellant has still stated how it believes the  
9 decision to issue the permit violates this rule. And so  
10 that's, I guess, where I kind of am, in terms of what I would  
11 like to hear from the appellant.

12           And before we ask the appellant if we're  
13 understood as to what we're kind of talking, or what we have  
14 before us, does the Board have any other questions or  
15 thoughts about everything that I've just said? Mr. Shapiro?

16           COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
17 just want to make sure that we're crystal clear about this.  
18 What we're asking the appellant to provide is any evidence  
19 that the Zoning Administrators approved plans did not conform  
20 with what the Zoning Commissioner approved.

21           That's the only question before us at this point.  
22 That's right? Is that your -- that's where you are?

23           BZA CHAIR HILL: That's my understanding. Yes.

24           COMMISSIONER SHAPIRO: Okay.

25           BZA CHAIR HILL: Okay. Ms. John?

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1 MEMBER JOHN: Yes. And yes.

2 BZA CHAIR HILL: Okay. Mr. Hart?

3 VICE CHAIRPERSON HART: I'm fine with that. I  
4 think that that's an appropriate -- that question is still  
5 outstanding, or just needs further clarification.

6 BZA CHAIR HILL: Commissioner Shapiro, could you  
7 repeat what you said, in terms of clarification?

8 COMMISSIONER SHAPIRO: I had to -- I had to unmute  
9 myself. So the only issue that's left for us is for the  
10 appellant to provide any evidence that the Zoning  
11 Administrators -- that the Zoning Administrator approved  
12 plans that did not conform with what the Zoning Commission  
13 approved.

14 Now, at some level, right, that's what they were  
15 supposed to come to us with at the beginning, with what the  
16 allegations of error were. And we still don't have that.  
17 But I think, you know, so we give the appellant one more  
18 opportunity. I imagine DCRA and DMPED would disagree with  
19 this, but we're giving the appellant one more opportunity to  
20 show where there might have been an error, where, in some  
21 ways, what the Zoning Administrator approved, did not conform  
22 with what the Zoning Commission approved.

23 BZA CHAIR HILL: Yes. Okay.

24 COMMISSIONER SHAPIRO: The appeal is to us to even  
25 do that. But let's do that, and see if we can get some

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1 information about somewhere, where the alleged error is.

2 BZA CHAIR HILL: Okay. Mr. Otten, are you there?

3 MR. OTTEN: Yes.

4 BZA CHAIR HILL: Did you hear what Commissioner  
5 Shapiro had said?

6 MR. OTTEN: Yes.

7 BZA CHAIR HILL: Could you provide testimony as  
8 to how the Zoning Administrator erred in that area?

9 MR. OTTEN: So this is a question of fact by which  
10 a trial would ascertain before the question on the table  
11 right now. We're talking about 11 Z DCMR, Section 702.8.  
12 The Zoning Administrator shall not approve a permit  
13 application. Here we have two permits. The demolition  
14 permit under appeal, and a foundation permit under appeal.  
15 And unless those plans conform in all aspects or respects to  
16 the plans approved by the Commission, the Commission approved  
17 the plans in 13-14. Right? That Zoning order.

18 We have cited that several times throughout the  
19 record, including in our statement of appeal. In that Zoning  
20 order, it discusses what was approved by the Zoning  
21 Commission.

22 The First Stage PUD approval for the McMillan  
23 Master Plan, Parcels 2 and 3. It also approved consolidated  
24 PUD approval for Parcels 1, 4, 5, 6, and 7.

25 Our claim number one -- and the claims haven't

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1 changed at all since the statement of appeal was filed -- we  
2 have two claims. The first claim is the McMillan Master Plan  
3 requires a second-stage zoning review and approval by the DC  
4 Zoning Commission before any permits can be issued. That is  
5 noted in Exhibit 960 on Record 13-14, which is the zoning  
6 order.

7 BZA CHAIR HILL: Mr. Otten? So my question to you  
8 -- so we've kind of walked through all of the alleged errors,  
9 and the one that I believe is left, as you've cited, was 11  
10 Z DCMR 702.8.

11 MR. OTTEN: Correct.

12 BZA CHAIR HILL: So I'm going to give you an  
13 opportunity to present the argument that the Zoning  
14 Administrator has approved plans that the PUD -- that the  
15 Zoning Commission did not approve.

16 MR. OTTEN: Okay. Okay.

17 BZA CHAIR HILL: And so I'm going to go ahead and  
18 put some time on the clock so you can present that. Can I  
19 go ahead and start with 20 minutes?

20 MR. OTTEN: Yes.

21 MR. GREEN: Chairman Hill?

22 BZA CHAIR HILL: Yes.

23 MR. GREEN: This is Hugh Green of DCRA. I'm  
24 sorry, I don't want to interrupt the appellant's statement,  
25 but I just wanted to clear a matter up before we move

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1 forward, if I could, because of the way it -- just to be  
2 clear, for the record. And that is, when we're talking about  
3 your ruling and dismissing on 11 DCMR Section 311.3, the  
4 clause there about the application, approving the  
5 application, and having the covenant of record.

6 I believe the timing was, just to be clear, that  
7 the permits were issued, but then the covenant was  
8 subsequently recorded, making it moot. The reason why I  
9 wanted to bring that to the Board's attention is because I  
10 think there was some -- as I was listening to your dismissal,  
11 that DCRA is making the emphasis that it was moot because it  
12 was made of record, but the timing is a bit -- is  
13 significant.

14 I wanted to bring that up to clarify to you. I  
15 can pause there, but I wanted that to be clear for the Board  
16 before we move forward, if that makes sense.

17 BZA CHAIR HILL: Does the Board understand? Mr.  
18 Shapiro? Mr. Green, could you explain that again?

19 MR. GREEN: Yes. So it's brought up in our  
20 filings. So the -- I can get the dates, but the permits were  
21 issued in August, and the covenant in August of 2019, and the  
22 covenant was put on record in November. So there's a timing  
23 issue in which we want to bring to the Board's attentions.  
24 But nevertheless, DCRA's position is that it is moot,  
25 nonetheless, now that the covenant is of record.

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1           As I understand it, and certainly we can talk to  
2 the property owners and -- the property owner as well as --  
3 it's our understanding that there was no construction, and  
4 nothing occurred in between the issuance of the permit and  
5 when it went on record, meaning the covenant was recorded.  
6 So I wanted to pause there so we can clear that up. And I  
7 hope I've made it clear, Mr. Shapiro. I'll be happy to make  
8 it --

9           COMMISSIONER SHAPIRO: If I'm understanding what  
10 you're doing is pre-empting a bit where you think Mr. Otten  
11 might go, by saying that if there was any action, the  
12 covenant was recorded at a later date, and therefore anything  
13 that Mr. Otten brings forward might be moot?

14           MR. GREEN: No, sir. What I'm saying is, and I'll  
15 try to be -- the regulation provides that -- is the reading  
16 of the regulation is that the covenant be on record before  
17 the permits are issued. The permits were issued, and the  
18 covenant then went on record. However, between that gap,  
19 there was no construction, there was no movement on the  
20 property. The point that DCRA has made --

21           COMMISSIONER SHAPIRO: So that's not a violation,  
22 you're saying.

23           MR. GREEN: There's no violation, and it is moot  
24 nonetheless. So the reason I wanted to put the brakes on  
25 this discussion is so it was clear for the Board, because I

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1 think Chairman Hill, and the way I was hearing it was that  
2 -- I wanted to make that clear. That's all. And I can pause  
3 there for further clarification. But I wanted the Board to  
4 be aware of that.

5 MEMBER JOHN: So, Mr. Green, you're saying there  
6 was no harm to the public, because no work had been done.

7 MR. GREEN: That is our position, yes, Ms. John.

8 MEMBER JOHN: Thank you.

9 BZA CHAIR HILL: Mr. Hart?

10 VICE CHAIRPERSON HART: Yes, I don't think I have  
11 any questions on it. I mean, I understand what Mr. Green was  
12 saying. So I appreciate the clarification.

13 BZA CHAIR HILL: Okay. Mr. Otten, are you there?

14 MR. OTTEN: Yes. A question for Mr. Green. When  
15 did work begin, to your knowledge?

16 MR. GREEN: What --

17 MR. OTTEN: Is he there?

18 MR. GREEN: I don't think --

19 MR. OTTEN: When did work on the site begin?

20 BZA CHAIR HILL: Wait, can I get in here, just in  
21 a -- one second. So Mr. Otten, why don't you go ahead and  
22 give your presentation? Then DCRA will give theirs, and then  
23 you'll have an opportunity to ask questions of Mr. Green.  
24 So if I could, again, Mr. Otten, if you want to go ahead and  
25 begin? And, again, the one that we're focusing on is 11 Z

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1 DCMR 702.8.

2 MR. OTTEN: Yes. Chairman Hill, and, you know,  
3 I'm in a different phase now. We're talking about merits.  
4 A little bit earlier, we were talking about public  
5 participation so I got a little upset about that. But now  
6 that we're at merits, I want to be very clear and calm with  
7 this presentation, so I don't miss anybody along the way,  
8 okay? And if there's any questions, just pause me, and I'll  
9 deal with the question at the time, or save them for later.

10 But I definitely want to clarify all of this,  
11 okay? Now, we're not -- first of all, we're not attorneys,  
12 okay? When we submitted our appeal, we view claims maybe  
13 differently than the Board. We have two overall claims. And  
14 then we cited regulations that we believed supported those  
15 claims. What I just heard the Commission go through was  
16 regulation, as if it was a claim.

17 But we cited some of those regulations in support  
18 of the ultimate regulation here, which is 11 Z DCMR 702.8,  
19 where it references the Zoning Administrator. Why did we  
20 cite the other ones, like 11 X 309.2, and 11 X 311.1? It's  
21 because it sets the standard by which the Zoning  
22 Administrator, who's supposed to be reading the Regs before  
23 he approves the permits, is supposed to be understanding, as  
24 the process, the administrative process, that got to the  
25 point where we're at.

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1           And so, yes, procedurally, 309.2 says the Zoning  
2 Commission can approve a second-stage permit if the  
3 first-stage is followed through with. 311.1 says after  
4 first- and second-stage applications are approved, then the  
5 applicant can file for permits. So I just wanted to clarify  
6 that those weren't claims, those were supportive regs of 11  
7 Z 702.8. The Zoning Administrator shall not approve a permit  
8 unless the plans conform in all respects.

9           The plans are being changed, Commissioners. The  
10 CFA is currently changing them. And by the way, you do have  
11 jurisdiction over the CFA. It's in 11 A DCMR 400, as well  
12 as 11 X DCMR 203.6 and 11 Y DCMR 405.8(c). Maybe Mr. Ritting  
13 could look at those. But the jurisdiction is there. The CFA  
14 has a role in this. They're changing the plans post the  
15 Zoning Commission decision.

16           This is why we, our argument, our position, is  
17 that, looking at the zoning order, okay, when you look at  
18 13-14, the Zoning Commission makes very clear, first-stage  
19 approval has been granted, PUD approval, to the McMillan  
20 Master Plan.

21           The McMillan Master Plan is shown by Exhibit  
22 number 44 on the record of 13-14, as well as Exhibit 785, and  
23 there's a bunch of exhibits in that Zoning Commission record  
24 that reference the McMillan Master Plan. I think Mr. Young  
25 has my slideshow. I don't know if he could pull it up. We

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1 were talking about evidence of where the Zoning Administrator  
2 erred. If that can be pulled up, I would love to show you  
3 --

4 BZA CHAIR HILL: He's --

5 MR. OTTEN: -- some of what I'm talking about.

6 BZA CHAIR HILL: He's pulling it up.

7 MR. OTTEN: I appreciate that. So that's Page 1.  
8 Okay, so if we can go to Slide 2? So this is the McMillan  
9 Master Plan. It's referenced throughout the Zoning  
10 Commission record. Slide 3? Here's the McMillan Master Plan  
11 design guidelines. That's Exhibit 17C in the Zoning record.  
12 We can go to Slide 4. Slide 5. Slide 6 is the Master Plan  
13 for the first-stage PUD approval.

14 BZA CHAIR HILL: Mr. Otten?

15 MR. OTTEN: That's Exhibit --

16 BZA CHAIR HILL: Mr. Otten?

17 MR. OTTEN: I'm just --

18 BZA CHAIR HILL: Do you know which exhibit this  
19 slide deck is in?

20 MR. OTTEN: I don't offhand. I think it was in  
21 one of my motions to affirm the appeal. If we go to Slide  
22 8, that's the demolition permit. Okay? This demolition  
23 permit, I can't really read it on this screen.

24 But it is, you know, for the full extent of the  
25 site, all 25 acres. It describes a major, you know,

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1 demolition of the entire site. Well, that matches Slide 9,  
2 which is the first-stage approval of a two-stage planned unit  
3 development.

4           And that discusses the Master Plan, the major new  
5 mixed-use development across 25 acres, signed and put in to  
6 the Zoning Commission to start the application on the  
7 McMillan Master Plan, in this case, a first-stage approval  
8 of the McMillan Master Plan.

9           Why is that important? Well, we believe the  
10 Zoning Commission, whether purposely or not, anticipated that  
11 their plans would change by other agencies along the way.  
12 The Historic Preservation Office changed them in 2016. The  
13 CFA is changing them right now, for Parcel 6, and they're  
14 going to have to do that for the rest of the parcels.

15           The idea of a second-stage of the Master Plan is  
16 that all of this stuff could be tied in a ribbon by the  
17 Zoning Commission as a second-stage approval, all these other  
18 changes by these other agencies that are happening, including  
19 the CFA.

20           And so, the Zoning Administrator prematurely,  
21 according to 702.8 of 11 Z DCMR, prematurely approved the  
22 permit application. In this case, the demolition  
23 application. Because -- and also the foundation permit  
24 application -- because the plans have to conform with the  
25 plans approved by the Zoning Commission. And as we know now,

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1 those plans have been changed. They're in the process of  
2 being changed right now.

3           And that's been all put on the record in our  
4 motion to include what's happening, the new information at  
5 the CFA. We were not made aware of that by the DMPED or by  
6 the applicant, that they were going to the CFA after the  
7 Zoning Commission approval. We didn't even know that was  
8 happening until June, which is why we raised it. And it's  
9 not a new issue.

10           It falls in line with this claim that the plans  
11 are changing and that the Zoning Commission had anticipated  
12 that, which is why they're expecting a second-stage PUD  
13 approval on the McMillan Master Plan. Again, Slide -- just  
14 to show you in the order, I put that in the slide deck. That  
15 is at Slide 18, okay, which is the zoning order.

16           Okay, on Page 1, first -- it's in that second  
17 paragraph, the remanded order granting first-stage  
18 consolidated review of the PUD and consolidated review of the  
19 PUD for the site. Now, if you go to the second slide, which  
20 is the second page of the order, the Zoning Commission makes  
21 very clear for the Zoning Administrator that the -- on that  
22 first paragraph, in the second sentence.

23           The Commission granted first-stage PUD approval  
24 for the Master Plan and Parcels 2 and 3, and granted  
25 consolidated PUD approval for the remaining five parcels.

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1           We are arguing, in our first claim, which cites  
2 a bunch of regulations, but the key regulation being DCMR  
3 702.8, 11 Z, that the Zoning Administrator prematurely  
4 approved the permit application. Because, as 309.2 and  
5 311.2, you need a second-stage PUD approval before you can  
6 start issuing building permits by the Zoning Administrator.

7           And he has not ensured that to happen. The  
8 McMillan Master Plan needs to come back as a second-stage  
9 PUD. Moreover, the plans are being changed. The CFA's  
10 changes are, in some ways, substantial. So either the  
11 applicant has to go back to the Zoning Commission and ask for  
12 a modification of the order to include the CFA's plans, or  
13 do as we had anticipated, as we believed the Zoning  
14 Commission anticipated, is to have all the parcels, go to CFA  
15 for all the parcels.

16           Because that's what they're required to do, and  
17 get approvals and work in all the changes into a second-stage  
18 review for the Master Plan. This hasn't happened yet. The  
19 second-stage review has not happened at the Zoning  
20 Commission.

21           No modification of Parcel 6 has been submitted by  
22 the applicant to the Zoning Commission. So the ZC order  
23 13-14 and the plans therein are remaining the same, as  
24 approved by the Zoning Commission. They do not take into  
25 account the CFA's review and the HPRB's review, that have

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1 happened subsequent, now, to the Zoning Commission review.

2           And so we believe the Zoning Administrator thus  
3 prematurely issued the permit applications for both  
4 demolition and the foundation center. And the foundation of  
5 the community center, excuse me. And we know, from 11 A DCMR  
6 303.1, that, you know, the provisions of the Zoning Regs, you  
7 know, when permits are going to be issued, any conditions in  
8 the plans and these sort of things have to be conforming with  
9 the zoning order.

10           And if the plans are being changed right now,  
11 after the zoning order was issued, clearly either  
12 modification has to happen before a permit is issued, or, as  
13 we anticipate, the Zoning Commission will deal with all this  
14 in the second-stage for the overall Master Plan. They have  
15 yet to do that, so therefore it's a premature issuance of the  
16 permit application. Moreover, the second claim, regarding  
17 the covenants.

18           Yes, it has -- the timing of it, as Mr. Green has  
19 pointed out, has shown that they have put a covenant filing  
20 on the record after the issuance of the permits. However,  
21 it is a contested fact in this case, a very disputed fact,  
22 that these covenants are full in scope. In fact, we believe  
23 they are not. They do not include the -- they do not include  
24 the Historic Preservation covenants that ride with the land  
25 in perpetuity, as shown in Exhibit 38 on this record,

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1 Attachment A, submitted by the appellants.

2           Basically, Exhibit 38 details this claim in our  
3 Point E. And then we refer to Attachment A as the covenants  
4 that currently exist at the site and shall in perpetuity.  
5 Those were not included in the exhibit or the document that  
6 DCRA put on the record for you all to see. So we do not  
7 believe it is a moot issue. And it is a factual question  
8 that can come out at trial, under cross-examination of Mr.  
9 LeGrant, certainly. I don't know if this helps. Does any  
10 of this help?

11           BZA CHAIR HILL: Yes.

12           MR. OTTEN: Okay. By the way, I just want to put  
13 on the record, in the slide deck -- and we put this on the  
14 record in the statement of appeal. Slide 20, basically from  
15 Slide 19 to the end, emails. It's not like we didn't try,  
16 as the general public, volunteers in this campaign, to ask  
17 the decision-maker how did he get to, you know, how, why did  
18 he issue these permits?

19           Why did he approve the permits, given these Regs  
20 that show first-stage, only a first-stage PUD approval has  
21 been granted to the McMillan Master Plan? How could he  
22 approve a demolition permit for the whole site, when the  
23 McMillan Master Plan has only been given first-stage PUD  
24 approval?

25           He would not respond. The only response is he --

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1 and if you look at Slide 20, 21, and 22, the only responses  
2 he would say is, like, I'm sorry, I'm delayed, I'm consulting  
3 counsel, I'll get back to you. And basically almost like  
4 waiting out our appeal rights on this issue. So we had to  
5 file the appeal, and it was a rush job, because we were  
6 trying to understand the Zoning Administrator's rationale  
7 here.

8 He has never filed a letter of determination for  
9 the record or for the public for anything. And usually, I  
10 mean, usually there's an appeal of a letter of determination.  
11 We couldn't get that out of Mr. LeGrant.

12 I tried to FOIA one, and we did not have a lot of  
13 success with that, as well. But it's not as if we didn't try  
14 to say, hey, we're reading these Zoning Regs, Mr. LeGrant.  
15 How does granting these permits fall in line with the Regs?

16 And we cite the Regs that we have included.  
17 Including the one that you all have zoomed in on, which is  
18 11 Z DCMR 702.8. And I would like to say that it is still  
19 very much alive, 11 X DCMR 311.3, for the reasons stated.

20 BZA CHAIR HILL: Okay. Thank you. Can you say  
21 that last one again? Oh, 311.3.

22 MR. OTTEN: Yes.

23 That's key, because we believe it's a factual  
24 question that the covenants that the Zoning Administrator has  
25 used to grant the permits are not complete in scope, as they

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1 are missing the Historic Preservation covenants that ride  
2 with the land in perpetuity, as shown in our Exhibit 38,  
3 Attachment A.

4 BZA CHAIR HILL: Okay. I'm sorry, I'm just kind  
5 of looking around here. Do you know when about -- do you  
6 know where -- you don't know -- Mr. Young, do you know which  
7 exhibit Mr. Otten's presentation is in?

8 MR. YOUNG: I do not know. But I'll see if I can  
9 find out.

10 BZA CHAIR HILL: Okay. Okay.

11 MR. OTTEN: If for any reason they're not in  
12 there, this is, you know, we'd like to submit them. This is  
13 all matters of public records. You can find all this stuff  
14 on the public record.

15 BZA CHAIR HILL: Sure, no, no. This, Mr. Otten,  
16 is where it gets into this whole timing thing, like, when I'm  
17 supposed to get, or when we're supposed to get the  
18 PowerPoints. And also I just want to be able to look at it.  
19 That was the --

20 MR. OTTEN: Sure. Sure. Were you able to see the  
21 slide deck as I was moving through it?

22 BZA CHAIR HILL: I could.

23 MR. OTTEN: Okay.

24 BZA CHAIR HILL: And, again, just to clarify  
25 again, we did -- I'm just mentioning this again for clarity.

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1 We did dismiss already your claim at 311.3.

2           And, however, you did continue to focus back on  
3 702.8, which I appreciate, so I can actually ask questions  
4 of DCRA and the Zoning Administrator. However, now I'm going  
5 to turn to DCRA and ask if they have any questions of the  
6 appellant. I can't hear you, Mr. Green.

7           MR. GREEN: No questions for the appellant at this  
8 time, Mr. Hill.

9           BZA CHAIR HILL: Okay. Mr. Otten, can you hear me?

10          MR. OTTEN: Yes, I can.

11          BZA CHAIR HILL: So this came back to that whole  
12 beginning thing. There are some people here with you, right?  
13 There's Mr. Theresa.

14          MR. OTTEN: Yes.

15          BZA CHAIR HILL: And then there's Mr. Schulman.

16          MR. OTTEN: Correct.

17          BZA CHAIR HILL: There was also another person  
18 that was mentioned -- oh, yeah, no. Those two were  
19 mentioned. And then you had -- and then you had a bunch of  
20 people listed, and it was, you know, the other appellants  
21 were listed. Right?

22          MR. OTTEN: Correct. Yes.

23          BZA CHAIR HILL: And so what I'm trying to make  
24 sure of is that your witnesses get an opportunity to speak.  
25 And it would be great if they could focus, again, how the

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1 Zoning Administrator erred in 702.8.

2 MR. OTTEN: Sure. But I don't know -- I don't  
3 know who is actually on the line at this point. I know that  
4 Ms. Ginny Boigant had to leave the -- she's at a funeral.  
5 Jerome Peloquin was supposed to be on the line. I think I  
6 just got a text saying he's having technical difficulties  
7 here.

8 BZA CHAIR HILL: Mr. Schulman's right there, as  
9 is Mr. -- and I'm sorry -- Theresa? If I'm pronouncing that  
10 correctly. Mr. Theresa? Can you hear me?

11 MR. THERESA: Yes, that's correct. Mr. Theresa.

12 BZA CHAIR HILL: Can you -- are you choosing not  
13 to use video? I just want to know that it's working or not.

14 MR. THERESA: There you go.

15 BZA CHAIR HILL: Okay, great. Perfect. Thank  
16 you. Do you -- were you able to kind of follow along in how  
17 we're kind of talking about 11 Z DCMR 702.8, how the Zoning  
18 Administrator erred in issuing those permits?

19 MR. THERESA: Yes, I've been following along.

20 BZA CHAIR HILL: Okay. Would you like to provide  
21 some testimony as to how he erred?

22 MR. THERESA: Well, yes, the order -- I think it's  
23 13-4, and it's the sixth order. On the first page, it's  
24 pretty clear that the Master Plan is not a consolidated  
25 approval, and that the Master Plan has only been approved

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1 through the first-stage PUD, and that it would have to return  
2 for the second-stage PUD.

3 And so to grant a permit to demolish or build a  
4 foundation, on the Master Plan, on the entirety of the Master  
5 Plan, clearly, is ahead of -- is ahead of what should be  
6 happening under Subtitle X 702.8. And I did read --

7 BZ CHAIR HILL: Can you -- when you're saying the  
8 first page of the Master Plan, is there a particular exhibit  
9 you might be referring to?

10 MR. THERESA: Well, not the first page of the  
11 Master Plan, I'm referring to the order 13-14(6). The first  
12 page of that. It states very clearly that the Master Plan  
13 was subject to second-stage review.

14 BZA CHAIR HILL: Okay. I got you.

15 MR. THERESA: Right. And --

16 BZA CHAIR HILL: Please continue. I'm sorry.

17 MR. THERESA: Okay. And so I looked at the motion  
18 to dismiss, from the applicant, and they didn't substantively  
19 address 702.8. What they did say was that it was a  
20 procedural -- it was something that was procedural, and  
21 therefore was within the Zoning Commission's discretion to  
22 waive it, and therefore the Zoning Administrator did not err  
23 by not taking 702.8 in consideration.

24 But that is not true. When you look at Subtitle  
25 X 101.9, it does say that some of the Zoning procedures are

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1 waivable. However, as a prerequisite to waive a Zoning  
2 procedure, the Commission will have had to shown good cause  
3 for waiving it. And also, no party could be prejudiced by  
4 waiving it. And neither of those conditions to waive a  
5 procedure have been fulfilled.

6           There's nothing that I saw on the record to show  
7 that the Zoning Commission displayed that there was good  
8 cause to waive that procedure. Moreover, clearly the  
9 demolition of a historic site would prejudice parties that  
10 are in opposition about what's to happen at the site. And  
11 so I don't feel like Subtitle Z 702.8 is waivable, because  
12 it wasn't waived, and I feel like the Zoning Administrator  
13 was bound by that.

14           BZA CHAIR HILL: Okay. Okay, thank you, Mr.  
15 Theresa.

16           MR. THERESA: You're welcome.

17           BZA CHAIR HILL: Mr. Schulman? Can you hear me?

18           MR. SCHULMAN: Yes. Yes.

19           BZA CHAIR HILL: Do you have anything to add?

20           MR. SCHULMAN: I have some testimony. Is this the  
21 appropriate time to offer my testimony? Or are you asking  
22 me a specific question?

23           BZA CHAIR HILL: Sure. I guess, Mr. Schulman, you  
24 have been put forward as an expert witness to help support  
25 the claims of how the Zoning Administrator erred.

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1           And currently we're focused on how the Zoning  
2 Administrator erred in 702.8, issuing the building permit,  
3 and how that's different from what the Zoning Commission had  
4 put forward. So do you have any testimony to that?

5           MR. SCHULMAN: If it hadn't come up, I was going  
6 to actually read that section to you. Although, it's  
7 curious, in my version doesn't have the word not in it. When  
8 you read it, Mr. Hill, Chairman Hill, there was a not in the  
9 --

10          BZA CHAIR HILL: Mr. Schulman, I can't hear you  
11 very well, Mr. Schulman.

12          MR. SCHULMAN: -- the version I have, you have to  
13 --

14          BZA CHAIR HILL: Mr. Schulman? I'm sorry, you  
15 said that the version that you had has what? I couldn't hear  
16 you.

17          MR. SCHULMAN: I think my microphone -- can you  
18 hear me?

19          BZA CHAIR HILL: Yes.

20          MR. SCHULMAN: Is that all okay?

21          BZA CHAIR HILL: Yes.

22          MR. SCHULMAN: I'm going to use the microphone in  
23 the computer. Is that better? Can you hear me?

24          BZA CHAIR HILL: Yes.

25          MR. SCHULMAN: Let's see. Can you hear me now?

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1 BZA CHAIR HILL: Yes.

2 MR. SCHULMAN: Okay. Yes. When you read, I  
3 believe you read 702.8, you used the word not. As those  
4 plans may not be modified in the PUD. My version doesn't  
5 have the word not in it. But I think the intent is the same.  
6 I think that this section is, of the essence, and of the  
7 idea.

8 And I think it's ridiculous to kind of separate  
9 what the Zoning Administrator might do, and his culpability  
10 in procedural harms from what the Zoning Commission is doing,  
11 when his role is to implement what the Zoning Commission has  
12 offered. Very clearly, the Zoning Commission isn't done with  
13 their work, so how could the Zoning Administrator even deal  
14 with this yet? Because it's not been tied up with a ribbon,  
15 as Chris has said. It's a premature application for permits.

16 And this is the second time, second time the  
17 demolition permit has been issued incorrectly, improperly,  
18 and illegally. So there is a rush to get those bulldozers  
19 in the ground that is improper. And we're arguing -- I  
20 recognize it's a procedural argument. But we're arguing that  
21 the Zoning Commission has to finalize the second-stage PUD  
22 before demolition permits can be issued. That's -- and I  
23 think that makes sense, with reports.

24 And it's also addressed in 702.10 of that same  
25 Subtitle Z, that is dealing with -- mentions the Office of

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1 Attorney General needing to sign off.

2 BZA CHAIR HILL: We're only at 702.8, Mr.  
3 Schulman.

4 MR. SCHULMAN: All right, well, forgive me for  
5 riffing, then.

6 BZA CHAIR HILL: That's all right. Unfortunately,  
7 you're not allowed to riff. Okay. Mr. Otten, can you hear  
8 me?

9 MR. OTTEN: Yes, Chairman.

10 BZA CHAIR HILL: Are you finished with the  
11 presentation?

12 MR. OTTEN: Well, these were my witnesses. I was  
13 wondering if I could ask some questions of them?

14 BZA CHAIR HILL: Sure.

15 MR. OTTEN: Okay, so Mr. Schulman, can you hear  
16 me?

17 MR. SCHULMAN: Yes.

18 MR. OTTEN: So you are an architect. You've seen  
19 some of the stuff I sent to you regarding the iterations and  
20 changes happening at the community center on parcel 6,  
21 correct?

22 MR. SCHULMAN: Yes.

23 MR. OTTEN: And would you say they're pretty  
24 substantial or you know, significant?

25 MR. SCHULMAN: They could be if they're

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1 implemented. I do understand that there's some who have  
2 argued that they're only recommendations, Commission of Fine  
3 Arts recommendations.

4 VICE CHAIR HART: Mr. Otten, this is Vice Chair  
5 Hart. I'm not exactly sure what plans that you all are  
6 speaking to?

7 MR. OTTEN: These are the -- so for the foundation  
8 permit that was issued by the Zoning Administrator in error,  
9 we believe, primarily, that the foundation permit is for a  
10 community center that's been approved by the Zoning  
11 Commission, but yet those plans are being changed right now  
12 by the CFA and as testified by our expert, they're pretty --  
13 they can be considered significant.

14 VICE CHAIR HART: But the question that I was  
15 asking, I understood that aspect of it. I was more  
16 specifically asking Mr. Schulman just said the plans that he  
17 had seen are significant. I'm asking where are those plans?

18 MR. OTTEN: Yes, all right, so in the slide deck  
19 and we submitted it as part of our record as well, but in the  
20 slide deck on -- let's see, on page -- it's the Commission  
21 of Fine Arts website showing -- it has links to the plans.  
22 I don't know if the slide deck can come up, Mr. Young, but  
23 basically at slide -- it's all in Exhibit 52, but slide 10,  
24 slide 11. Thank you, Mr. Young.

25 So yes, so slide 10, this is our section on the

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1 CFA just to show you. First of all, in slide 12, okay,  
2 Zoning Administrator at the DCRA, he's looking at this. That  
3 first line there permit control talks about fine arts. And  
4 if we get to cross or examine Mr. LeGrant we would ask him  
5 how did he overlook that. But the slide 13 shows the  
6 processing by the CFA right now and what they're dealing with  
7 and they're responding to Mr. Falcicchio who is with DMPED,  
8 who is one of the applicants here. And that's why 13 and  
9 slide 14, in discussing the plans and how they want them to  
10 be changed. And again, that's in Exhibit 52 on this record.

11 And so the point is I wanted to ask Mr. Schulman,  
12 as an architect, how significant is that, are those changes  
13 being suggested. I mean the point being, again, these plans  
14 are in flux. They are going to have to either -- the  
15 applicant either is going to have to ask for a modification.  
16 We can confirm that with Mr. Theresa, the zoning expert,  
17 either ask for a modification or as we expect they'll do, as  
18 anticipated, was get all the other parcels on too, because  
19 all of the parcels have to go to the CFA, not just parcel six  
20 and this building. All of them will have to go to the CFA  
21 according to the zoning regs that I cited earlier with the  
22 jurisdiction on the CFA.

23 And so you know, the point is that how do you  
24 approve demolition? How do you approve foundation permits  
25 for plans that are in flux?

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1           So we're saying to the Zoning Administrator we  
2 have evidence here showing that the Zoning Administrator has  
3 issued these permits prematurely.

4           BZA CHAIR HILL: Mr. Hart?

5           VICE CHAIR HART: Yes.

6           BZA CHAIR HILL: Okay. Mr. Otten, do you want to  
7 continue with your questions of your witness?

8           MR. OTTEN: Just to maybe go back to Mr. Schulman  
9 for a second. When you read the demolition permit on this  
10 record by which we are appealing, what is being demolished?  
11 Is it not the whole site?

12           MR. SCHULMAN: My sense is that it was a pretty  
13 complete demolition with the elements, certain historic  
14 elements that have been retained, but to come back to the  
15 question, we started to talk about the community center. If  
16 indeed changes are made, for instance, to the entrances or  
17 exits on the community center as the Fine Arts Commission  
18 wishes, that would impact the foundation plan.

19           MR. OTTEN: Okay. But when you look at the  
20 demolition permit, just to switch back to the demolition  
21 permit, because doesn't 702.8 say the Zoning Administrator  
22 shall now approve a permit application. So we're talking  
23 about building permits, foundation permits, demolition  
24 permits. You know, according to the plan, conforming with  
25 that approved by the Commission.

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1           So here, is it not the case that the Commission  
2 has approved plans in Order 13-14 and now here at this late  
3 date, we have another agency that has jurisdiction to do this  
4 apparently, apparently they're just late in the game, but  
5 they're changing those plans, correct?

6           MR. SCHULMAN: They could. They could. The only  
7 thing that is out there is the fact that they don't have to  
8 listen to it. The Commission of Fine Arts may be treated by  
9 the applicant the same way they've been treating the public  
10 with a deaf ear.

11           MR. OTTEN: Okay. All right, so are you familiar  
12 with the zoning regs around the CFA?

13           MR. SCHULMAN: I am not.

14           MR. OTTEN: Can we move then to Mr. Theresa on  
15 that issue as a zoning expert?

16           BZA CHAIR HILL: Sure. Mr. Theresa.

17           MR. THERESA: Yes.

18           BZA CHAIR HILL: You had a question for him, Mr.  
19 Otten?

20           MR. OTTEN: Yes. Just a question. First of all,  
21 are there zoning regulations contending with CFA's role in  
22 all of this?

23           MR. THERESA: Yes.

24           MR. OTTEN: Okay, and they have an active role in  
25 changing plans? They can change plans -- or they can

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1 effectuate plans?

2 MR. THERESA: Yes, and they're sent there and  
3 subject to their review and they're able to change them.  
4 They have to meet whatever criterion the CFA has for the  
5 projects. And these are located within the zoning  
6 regulations, Subtitle A, Subtitle X and Subtitle Y.

7 MR. OTTEN: And so in theory if they're doing this  
8 in parcel 6, they're going to have to do this with parcel 1,  
9 the buildings on parcel 1, 2, 3, 4, 5, 7 in theory.

10 MR. THERESA: If it's in a historic district, yes.

11 MR. OTTEN: Okay, and would it therefore make  
12 sense that it's expedient, that as the master plan is the  
13 envelope for all these parcels that first stage review had  
14 happened, they're expecting to have all these changes for all  
15 these parcels come back at some point to wrap it up in a  
16 second stage approval for the master plan? Is that a silly  
17 notion?

18 MR. THERESA: Well, the only other way they could  
19 it would be to file a modification for every single one  
20 individually or just do it through the second stage PUD  
21 process.

22 MR. OTTEN: Okay. I appreciate that. And so in  
23 this case, you're testifying that the second stage to the  
24 master plan has not been approved in Zoning Order 13-14 and  
25 that the Zoning Administrator should have known that before

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1 issuing permits?

2 MR. THERESA: Yes, it's my belief that the Zoning  
3 Administrator should have been aware of quite a few things,  
4 these CFA statutes among them, and also Z 702.8 for sure.

5 MR. OTTEN: I appreciate that. Well,  
6 Commissioners, you know, the plans are in flux here. I think  
7 we've proven that.

8 According to our expert on zoning, Mr. Theresa,  
9 like basically, some process has to happen and yes, this is  
10 a process questioned. But the Zoning Administrator is  
11 supposed to be aware of this zoning process before issuing  
12 permits. He has not done that. Mr. LeGrant has not done  
13 that. We've asked him why in several emails. He would not  
14 respond to us. He has not put a letter of determination on  
15 the record to explain his position.

16 We're left grasping straws, but we've brought,  
17 despite being volunteers and all of that, we've brought these  
18 issues to the fore as best we can, given what's going on on  
19 the planet. But I think we've shown that these plans are in  
20 flux, that these permits have been issued prematurely by the  
21 Zoning Administrator and in error.

22 BZA CHAIR HILL: Okay. Thank you, Mr. Otten, for  
23 your testimony.

24 Mr. Green, you'll have the same amount of time.  
25 They went probably 30 minutes, even maybe more. But you have

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1 an opportunity now to give your presentation.

2 MR. GREEN: Okay, thank you, Chairman Hill and  
3 members of the Board. Good afternoon.

4 We're here because the appellant has appealed two  
5 of the permits in connection with the McMillan Reservoir and  
6 Filtration Project located at 2940 North Capitol Street, N.W.  
7 And the appellant appeals demolition permit D1600814 and  
8 foundation permit D1800040.

9 So of the issues that have been raised by the  
10 appellant in their statement of appeal, there are several --  
11 the Board has addressed some of them, but just very briefly  
12 that the permits were issued prematurely in violation of the  
13 Zoning Commission Order 13-146 because the project only  
14 received the first stage PUD approval. The second point, the  
15 Zoning Administrator erred by not issuing a determination  
16 letter in connection with the permits. And they identify,  
17 the appellant identified several zoning regulations which the  
18 Board has already determined did not apply -- many of which  
19 don't even apply to the Zoning Administrator.

20 With respect to a couple of issues before in terms  
21 of this particular appeal, with respect to the determination  
22 letter, Mr. LeGrant cited in our filings and our brief  
23 there's no statutory zoning regulation which requires the  
24 Zoning Administrator to issue a determination letter. So the  
25 fact that one was not issued by Mr. LeGrant really has no

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1 bearing on any issue before the Board. And they've appealed  
2 these permits and that's what is on appeal today.

3           With respect to ZC Order 13-146 and has been  
4 repeatedly mentioned such in 11Z DCMR 702.8, the mere fact  
5 that the project has a second stage of review does not impact  
6 the validity of those permits. And more importantly, the  
7 foundation permit was approved for -- the community center  
8 was approved for which is in parcel 6 of the permit,  
9 expressly approved by the Board and certainly any demolition  
10 work in preparation for that would also be included.

11           And so I think there are, in terms of our actual  
12 request, we would ask that this appeal be dismissed and if  
13 the Board seeks to determine, seeks a decision on the merits  
14 that the appeal be denied.

15           Since many of the matters have already been  
16 disposed of by the Board, I have a few questions I'd like to  
17 ask the Zoning Administrator. And so -- I'd like to ask Mr.  
18 LeGrant, could you please state your name and introduce  
19 yourself to the Board?

20           MR. LeGRANT: Yes. Thank you. Thank you, Hugh,  
21 and thank you members of the Board and all parties. I'm  
22 Matthew LeGrant, the Zoning Administrator of DCRA.

23           MR. GREEN: Okay, Mr. LeGrant, one of the issues  
24 that the appellant raises is that the permits were issued  
25 prematurely because the Zoning Commission reviewed and

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1 approved first its PUD of the applicant's Master Plan. And  
2 the error that's attributed to you, and I'm sure you've heard  
3 the testimony, is 702.8.

4 So the direct question is this. With respect to  
5 the fact in terms of the premature issuance of these permits  
6 that's alleged by the appellant, and the first stage  
7 approval, that's only been probated and not set in stage, are  
8 they correct in their argument?

9 MR. LeGRANT: No, they are not.

10 MR. GREEN: And why not, Mr. LeGrant?

11 MR. LeGRANT: Well, this is an example which is  
12 common in many large projects that are developed and approved  
13 in stages.

14 The McMillan project is no different. In this  
15 case, the Zoning Commission in its order approved the  
16 community center in the parcel that we've talked about. The  
17 foundation permit is for that community center.

18 The Commission order extensively provides for a  
19 community center. I understand that certain site  
20 preparations in the form --- so the applicant has applied for  
21 a demolition permit which is not unusual for larger projects  
22 of that scale to be approved in different stages.

23 In this case, the first stage was approved by the  
24 Zoning Commission with permits related to that approval. In  
25 particular, this foundation permit conforms to the order.

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1 MR. GREEN: And a follow up on that, so is it your  
2 opinion, Mr. LeGrant, that even though the McMillan project  
3 may have a second stage review by the Commission, that those  
4 permits -- were those permits properly issued? Is that your  
5 opinion?

6 MR. LeGRANT: Yes.

7 MR. GREEN: And again, can you just expound on  
8 that a little bit more, please?

9 MR. LeGRANT: Yes. As I indicated, the Zoning  
10 Commission's order approved the community center for parcel  
11 6. And the foundation permit was issued in regard to that.

12 No approvals have been given to any above-grade  
13 construction. I don't think -- I'm not sure if a permit has  
14 even been applied for any above-grade construction to date.

15 MR. GREEN: So I appreciate that and I guess you  
16 mentioned we have two permits at issue and so I wanted to ask  
17 you about the demolition permit in general in terms of what  
18 is your office's position with respect to zoning implications  
19 of demolition permits? In other words, how does the Zoning  
20 Administrator address demolition permits in its review?

21 MR. LeGRANT: Okay, so a demolition permit is  
22 typically for removal of a structure. Well, no structure is  
23 being added, so there's no impact of the zoning regulations  
24 per se. The zoning regulations don't speak to demolition.  
25 There's no zoning regulation that already has a demolition

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1 aspect.

2 Occasions when our office has to distinguish a  
3 raze and a demolition which is a partial removal of a  
4 building or structure, it doesn't impact the zoning  
5 regulations which again here if this was a construction  
6 permit where structures are being added to a lot, then the  
7 zoning regulations prescribe that there would have to be a  
8 full-blown analysis as to whether the use and the setbacks  
9 and aspects of the building are in conformance with either  
10 the zoning regulations or in this case with the applicable  
11 zoning order.

12 MR. GREEN: So in looking at this, again, the  
13 allegation is that the demolition permit was issued  
14 prematurely, after there was a second stage review. What is  
15 your position on that, what's your opinion on that, Mr.  
16 LeGrant?

17 MR. LeGRANT: Well, as I just stated, there is no  
18 aspect of the zoning regulations that impact demolition. I  
19 will hasten to add that as was discussed in some of the  
20 preliminary motions that protection of the historic resources  
21 is a District Government responsibility. However, it does  
22 not fall within the Office of Zoning Administrator. It falls  
23 with the Office of Historic Preservation and the CFA. So if  
24 in the demolition permit that was cited that my office signed  
25 off on was ultimately reviewed by those other agencies. It's

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1 their responsibility for the protection of the historic  
2 resources. It's not part of the zoning regulations.

3 MR. GREEN: And so I appreciate that and so one  
4 of the other issues that got brought up is and it was  
5 mentioned in the filings and Mr. Otten's presentation is  
6 that, it's regarding determination letters, and so one of the  
7 issues that was raised by the appellant is that there was no  
8 determination letter issued with respect to the McMillan  
9 project.

10 So I guess does your office issue determination  
11 letters for every project?

12 MR. LeGRANT: No, it does not.

13 MR. GREEN: So for this project did you issue any  
14 determination letters in connection with either of the  
15 permits?

16 MR. LeGRANT: No, I did not.

17 MR. GREEN: Is there an obligation for you to  
18 issue determination letters to say third parties such as the  
19 appellants?

20 MR. LeGRANT: No.

21 MR. GREEN: So is there -- and didn't the  
22 appellant make a request for determination -- well, you  
23 issue determination letters after permits are issued  
24 typically?

25 MR. LeGRANT: Let me explain. The determination

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1 letter is typically brought -- is almost -- is brought to  
2 bear by an applicant, a property owner, a developer, or their  
3 representatives for scoping out a project prior to a permit  
4 application or certainly before a permit issuance. So it  
5 comes from an applicant representing the property owner  
6 trying to get information about the applicability of the  
7 zoning regulations to a particular design scheme.

8           It comes from an applicant so only when an  
9 applicant asks for a determination letter there's no -- it's  
10 an administrative function in my office. There's nothing in  
11 the zoning regulations about that. As I just noted, there  
12 was no request from the property owner for a determination  
13 letter, nor have I issued one. And there's no obligation to  
14 issue a determination letter if none has been requested.

15           MR. GREEN: So but I guess more specifically are  
16 you obligated to say issue a determination letter to a third  
17 party after a permit was issued?

18           MR. LeGRANT: Please repeat that.

19           MR. GREEN: Sure. Are you obligated to issue a  
20 determination letter to third parties after a permit is  
21 issued? Do you do that?

22           MR. LeGRANT: No, we do not.

23           MR. GREEN: And so in this particular case, I mean  
24 does the issuance of a determination letter impact a party's  
25 rights in any way, meaning could there be failure to issue

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1 one?

2 MR. LeGRANT: No.

3 MR. GREEN: No.

4 MR. LeGRANT: Once my office completes a review  
5 of the permit application and approves said permit  
6 application, that is my office's action that we have found  
7 the permit application to be in compliance with the zoning  
8 regulation.

9 The permit itself speaks to that conformance with  
10 the zoning regulations, my office would not approve a permit  
11 unless it was in compliance with applicable regulations. So  
12 there's no need to do a determination letter, nor does my  
13 office do so after we complete our zoning analysis and  
14 approve a permit application.

15 MR. GREEN: I want to shift gears just really  
16 briefly, Mr. LeGrant, and the issue is and it's been brought  
17 up a couple of times about the foundation permit in terms of  
18 its prematurity, if you will, or the fact that it may have  
19 been issued prematurely. And so does that Zoning Commission  
20 order speak to the validity or the -- in terms of your  
21 issuance of that permit?

22 In other words, let me try to say it another way.  
23 Can you talk about the foundation permit and its relationship  
24 to the Zoning Order 13-14, 6?

25 MR. LeGRANT: Sure. So the foundation to grade

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1 permit was for the community center on parcel 6. There is  
2 a community center identified in the Zoning Order as a  
3 requirement as part of the package of the development of the  
4 overall site. I'll note that it is the foundation to grade  
5 and if no above-ground construction permit has yet been  
6 applied for.

7 MR. GREEN: Okay. Thank you. Just one second,  
8 Mr. Chairman. I just want to see something.

9 So one of the issues that was raised has to do  
10 with the CFA and its possible review. What is your office's  
11 interaction, if at all, with the CFA in terms of permit  
12 issuance? Is there any correlation between that?

13 MR. LeGRANT: Let me just clarify for all of the  
14 parties. A building permit application that's applied to  
15 DCRA has to go through reviews of several disciplines of DCRA  
16 as well as other agencies. Only until that application is  
17 reviewed and approved by all the applicable entities does it  
18 get issued.

19 My office's responsibility, as the Board knows,  
20 is to enforce the zoning regulations. So when a building  
21 permit application comes to us, we look at that for  
22 conformance with the zoning regulations. My DCRA employees  
23 in the Permit Operations Division apply the building permit  
24 applications to sure that the D.C. building and construction  
25 code is complied with.

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1           The Department of Environmental -- Environment  
2 applies the storm water regulations and so on. Then our  
3 sister agencies, as we call them, including the Office of  
4 Historic Preservation and the Office of Planning and which  
5 takes on responsibility to coordinate with the Commission of  
6 Fine Arts, the CFA, they're responsible to ensure that before  
7 a building permit is issued, that it goes through a historic  
8 preservation review. My office does not conduct that review.  
9 The Office of Historic Preservation in consultation with CFA  
10 does that review.

11           In this case, there was ultimately a demolition  
12 permit that we're talking about here and a foundation permit  
13 that has been discussed, had to go through those other  
14 entities reviews as well as my office. Those entities, if  
15 there's a question about conformance with historic or CFA  
16 regulations, it's their purview.

17           In the process, after Zoning has conducted its  
18 review and all the entities I described, at the end of the  
19 process, with all the applicable disciplines of DCRA and all  
20 the applicable sister agencies have concluded their review,  
21 then the DCRA's Permit Operations Division issues the  
22 building permit.

23           MR. GREEN: I just have a few more questions, Mr.  
24 LeGrant. And so, Mr. LeGrant, your opinion based on your  
25 experience and role as an administrator for the District, is

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1 Permit D1600814 and Permit FD1800040 conform to the zoning  
2 regulations?

3 MR. LeGRANT: They do.

4 MR. GREEN: And Mr. LeGrant, your opinion based  
5 on your experience and role as a Zoning Administrator, do  
6 those aforementioned permits conform to Zoning Commission  
7 Order 1314-6?

8 MR. LeGRANT: Yes, they do.

9 MR. GREEN: Chairman Hill, I have no further  
10 questions and we open -- Mr. LeGrant is available for  
11 questions from the Board and other parties.

12 BZA CHAIR HILL: Okay, thank you, Mr. Green.

13 Does the Board have any questions for Mr. Green  
14 or Mr. LeGrant?

15 Mr. Hart, you're nodding your head?

16 VICE CHAIR HART: Yes, just a little bit of  
17 clarification from Mr. LeGrant. Good to see you again.

18 MR. LeGRANT: Yes.

19 VICE CHAIR HART: So in 11 DCMR 702.8, you know  
20 what that states and this has been somewhat a discussion for  
21 today. And in it, and the part that I'm really interested  
22 about is that -- and I'll read this portion. It's not that  
23 long, just a portion of this.

24 The Zoning Administrator shall not approve a  
25 permit application unless the plans conform in all respects

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1 to the plans approved by the Commission. So the appellant  
2 in this case is saying that these plans are being changed.  
3 The designs are being changed for this community center by  
4 various groups including the Commission of Fine Arts. So how  
5 can you -- you have preemptively allowed this to -- he was  
6 saying that you did it in an error to allow this to move  
7 forward, to allow the foundations permit as well as the  
8 demolition permit to move forward.

9 I understand the demolition permit aspect of it,  
10 but the foundation permit aspect of it, could you explain how  
11 you see that aspect of the regulations?

12 MR. LeGRANT: Sure. It's an excellent question.  
13 So what happens with the applicant in this case, DMPED, who  
14 represents the property owner, namely the District of  
15 Columbia, made an application. They noted the location of  
16 this foundation. Again, it's only a foundation at grade.  
17 There's no above-grade construction.

18 The process that my office went through was oh,  
19 is this location's dimensions consistent with what was  
20 approved in the exhibits of the approved Zoning Commission  
21 Order and we concluded that it was. It was the same  
22 location, same dimension.

23 So it's very common practice that projects are  
24 subject to other reviews. And including that of Historic  
25 Preservation or CFA. The CFA normally is involved with the

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1 above-grade construction, the appearance of buildings. So  
2 given that this was only foundation at grade that issue is  
3 not at hand. If the Commission's initial approval of the  
4 plan showed a 20 foot tall building with concrete cladding  
5 and the CFRA said no way, we want nice brick and we want an  
6 18-foot building, then that issue that not yet come to fore  
7 because there's no above grade construction plans yet have  
8 been considered or reviewed by my office.

9           But let's take a worst case here. Let's say the  
10 Commission said under DMPED when they applied is this  
11 location consistent with the approved plans and we're going  
12 to go to CFA and let's say the CFA changes the location.  
13 They say we don't want it here. We want it over there. The  
14 applicant is operating at his own risk if they were to  
15 continue construction if the CFA ultimately said it's going  
16 to be moved five feet over here and the property owner  
17 constructed that as was originally represented to my office  
18 that we found it in conformance with the zoning regulations  
19 and the zoning order, they would have to dig it up and move  
20 it if going with CFA. They're operating at their risk.

21           So I am trying to think of an instance that ever  
22 occurred which I don't think it has, but the above grade  
23 construction aspect and I think the appellant correctly  
24 points out if the CFA makes considerable changes, if the CFA  
25 blesses what the Commission originally did, then the property

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1 owner could proceed with the application and say hey, the CFA  
2 has blessed what we represented before the Commission and  
3 showed the Commission exhibits or continue. If they say oh,  
4 we're going to change it. We're going to put brick on it.  
5 We're going to make it 20 feet taller, they would have to  
6 either -- the two avenues would be, is it within my purview  
7 set forth in the zoning regulations to approve the extent of  
8 changes from what the Commission originally saw and approved  
9 in the original order or they go back to the Commission for  
10 modification.

11 So those are the two avenues for the above-grade  
12 construction if the CFA were to make changes to what the  
13 Commission originally approved.

14 VICE CHAIR HART: I appreciate that. That's  
15 helpful to understand that better. And so I think the other  
16 question is around -- you are looking at the foundation  
17 permit, excuse me, the foundation as being just slab on  
18 grade. And a building that goes above that, may or may not  
19 conform to the plans that were approved by the Zoning  
20 Commission. If they do, then that's fine and they can move  
21 forward with the various permits that they need for building  
22 permits. If it doesn't, then there's a decision that you  
23 will have to make that says is this within the Zoning  
24 Administrator of purview to be able to approve this? Are  
25 they minor changes, really, you know, de minimis changes, or

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1 is it something that actually needs to go back to create  
2 modification to the Zoning Commission?

3 MR. LeGRANT: That is correct. And remember,  
4 there is no yet above grade construction permit application  
5 that has been presented or has been approved by my office.  
6 So that is not yet been -- certainly not before this appeal.

7 VICE CHAIR HART: Okay, and the final question I  
8 have is with regard to the -- it looked like there were some  
9 changes between -- changes for the lack of a better term the  
10 landscaping that was kind of around plazas and that sort of  
11 thing that were around these buildings.

12 Would they be included in the foundation permit  
13 as well or is it just the foundation for the actual building  
14 itself?

15 MR. LeGRANT: The foundation permit, as I recall,  
16 was just for the foundation itself. I will add that the  
17 landscaping from the the site which again is not before this  
18 Board on the appeal, has been part of separate conversations  
19 between the property owner and my office with on-going review  
20 of the matter by CFA. But that would be subject to separate  
21 permits.

22 VICE CHAIR HART: Understood. I just wanted to  
23 kind of differentiate between those elements. I didn't think  
24 that the foundation permit would include that. I just wanted  
25 to make sure because there were some -- I just wanted to make

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1 sure what it was that we were speaking of specifically. But  
2 those are my questions. Thank you.

3 MR. LeGRANT: Thank you.

4 BZA CHAIR HILL: Ms. John?

5 MEMBER JOHN: I wanted to ask Mr. LeGrant how this  
6 project differs from the situation where the ZA would have  
7 to wait for the phase 2 PUD approval. What is the normal  
8 process?

9 MR. LeGRANT: Board Member, I'm having trouble  
10 hearing you. I'm sorry.

11 MEMBER JOHN: Okay, I'm trying to find a way to  
12 ask this. So the applicant's main -- appellant's main  
13 argument is that the ZA had to wait for the phase 2 PUD  
14 approval. And I just wanted to know what would be that  
15 process? What would that process look like?

16 MR. LeGRANT: Okay.

17 MEMBER JOHN: So if not, I'll ask someone else.

18 MR. LeGRANT: Right. So as in the case of other  
19 PUDs, if there's a second stage approval, the construction  
20 that is to be specified in the second stage, no permit  
21 application could be approved for that -- the applications  
22 about the construction of buildings, above grade construction  
23 could not approved until the second stage approval would  
24 occur with those aspects of the geography of the site.

25 MEMBER JOHN: And so that approval process is

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1 really for the above-ground construction or could it  
2 sometimes include foundation work?

3 MR. LeGRANT: As I noted, the property owner in  
4 pursuing a building of foundation above grade permit would  
5 -- if in either as a result of the separate review process  
6 from the CFA or in the second stage said, nobody is going to  
7 change here and the Commission has not changed it. If they  
8 did do construction they would be at their own risk because  
9 they either constructed something that would be subject to  
10 change from what was originally shown, just like with the  
11 foundation aspect, not with the above grade aspect.

12 MEMBER JOHN: Let me try to ask it a different  
13 way. I don't seem to have asked the question properly. So  
14 in this case there is a specific paragraph that describes the  
15 community center and the basic dimensions that gave complete  
16 dimensions, but where it would be constructed in parcel 6,  
17 I believe it was.

18 If this part of stage 2 approval process instead  
19 of direct order or direct permission from the property owner  
20 to apply for a permit, this would be a different process.  
21 Yes, Mr. LeGrant?

22 MR. LeGRANT: The above grade construction would  
23 be subject to a separate permit where they have to go through  
24 a separate process.

25 MEMBER JOHN: I guess what's sort of a fog for me,

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1 when we say phase 2, we're basically talking about  
2 above-ground construction?

3 MR. LeGRANT: Well, phase 2, there's different  
4 aspects of the geography of this site that phase 2 has to  
5 address and the Commission itself at that time would do a  
6 well-refined and specify the construction on the site.

7 MEMBER JOHN: Okay. I think I've got it. Thank  
8 you.

9 MR. LeGRANT: Thank you.

10 BZA CHAIR HILL: Commissioner Shapiro.

11 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
12 think Vice Chair Hart, and Board Member John captured most  
13 of what I wanted to ask. The only thing I would say is if  
14 you could be clear, Mr. LeGrant, if there's anything unique  
15 about McMillan, because of the historic nature of it, what's  
16 above ground and below ground, that makes this a little bit  
17 different in relation to the demolition permit and the  
18 foundation permit?

19 MR. LeGRANT: Well, my familiarity with the  
20 McMillan project, as everybody here knows has been subject  
21 to a long review process, the original Commission approval,  
22 and then appeal to the Court of Appeals and so on and so  
23 forth. The Commission, of that history notwithstanding, the  
24 Commission when approving the subject order specified the  
25 development of the site. There are, as I know and everybody

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1 knows, these underground cisterns and things that any  
2 demolition of that would be subject to the ultimate -- if  
3 there are historic protections of that, the Historic  
4 Preservation would have to ensure that those protected  
5 elements would not be removed.

6           So I would say that the McMillan site can be  
7 probably made distinct from a lot of other projects because  
8 of the presence of some of these underground water -- as I  
9 recall the water things, and in my understanding the order  
10 itself, it said okay, some of these have to be preserved and  
11 some of them can be removed. That was the Commission's  
12 approval.

13           COMMISSIONER SHAPIRO: And you take that into  
14 account when you make your determination that what comes  
15 before you is -- does conform?

16           MR. LeGRANT: Yes. For example, let's say one of  
17 the preserved sand filter features -- if the property owner  
18 came in and said we want to put the community center here on  
19 a portion of the site that was like to be this -- and I'm  
20 grasping at the exact words, I forget the above ground  
21 concrete features that was part of the original water  
22 filtration system, but they said we're going to put it here  
23 and knock this thing down. I would say full stop. You can't  
24 do that. That was shown in the site plan as an element  
25 that's going to be preserved. But as is the case here, the

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1 community center is on the site the Commission approved on  
2 this location, same dimensions, okay, that could be approved  
3 for a foundation grade permit.

4 COMMISSIONER SHAPIRO: Right. Thank you for that  
5 because I'm asking because I just want to hear from you that  
6 you're aware of the complexity of it and this specific site  
7 where the demolition permit is being considered, you're aware  
8 of all the other things that are going on on other parts of  
9 the site and it's not relevant to this specific site where  
10 the community center is being proposed?

11 MR. LeGRANT: That's correct.

12 COMMISSIONER SHAPIRO: Okay. Okay. That's all  
13 I have, Chair.

14 BZA CHAIR HILL: Okay, thank you. Mr. Otten, can  
15 you hear me?

16 MR. OTTEN: Yes, Chairman Hill.

17 BZA CHAIR HILL: Do you have any questions for Mr.  
18 Green or Mr. LeGrant?

19 MR. OTTEN: Yes. Mr. LeGrant, this is an  
20 important time because this is what we wanted to get at at  
21 trial was to be able ask Mr. LeGrant questions pertinent to  
22 the appeal. Can I do that now?

23 BZA CHAIR HILL: Yes, sure. Mr. Otten, I  
24 appreciate you using the word trial, but it's not -- I think  
25 it's more like something else than a trial. This is a

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1 hearing, but yes, of course. Please ask your questions of  
2 Mr. LeGrant.

3 MR. OTTEN: I appreciate that. So Mr. LeGrant.

4 MR. LeGRANT: Hello Mr. Otten.

5 MR. OTTEN: Hi, there. You might remember me.  
6 We were in an appeal of the Mt. Pleasant Library case,  
7 correct?

8 MR. LeGRANT: Yes, I believe it was about 12 years  
9 ago.

10 MR. OTTEN: Right, and -- okay, let's not get into  
11 that. Everybody can go to the zoning record and look how  
12 joyful that was.

13 So we're going to try to keep this very pointed.  
14 When you're looking at the permit plan presented before you,  
15 here we have two permit applications, right? A demolition  
16 permit and a foundation permit, right?

17 You're comparing them to the zoning order that was  
18 issued and the zoning regs as I understand it. That's your  
19 role.

20 MR. LeGRANT: Is that the question?

21 MR. OTTEN: Okay, I'll go on. Tell me if you  
22 object to anything as I'm going to the question. You looked  
23 at the zoning record in Case No. 13-14 that gave approval,  
24 that gave first stage and second stage -- first stage and  
25 consolidated approvals to this project, correct?

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1 MR. LeGRANT: Yes, we did.

2 MR. OTTEN: And in that record, you see -- on that  
3 record, it's fair to say, in the zoning record, has all the  
4 plans by which you're looking at the final plans that the  
5 Commission approved before you issued the permits?

6 MR. LeGRANT: The -- as is the case with the Board  
7 of Zoning Commission Approvals, those exhibits of the plans  
8 that the Commission, the ZA approved had a reference to the  
9 order and representations of the development of the project.

10 MR. OTTEN: Okay, you saw Exhibit 4, right, that's  
11 the application in this case in 13-14?

12 Not in this record, but in record 13-14, you saw  
13 Exhibit 4 which is the application for the project?

14 MR. LeGRANT: You didn't speak clearly.  
15 Application for the demolition permit or the application for  
16 the --

17 MR. OTTEN: For the zoning, for the first stage  
18 of the zoning here. In the Zoning Commission case, the  
19 application, the first stage zoning application, did you see  
20 that, Exhibit 4 of the 13-14 record?

21 MR. LeGRANT: I would say this. As is the  
22 standard for evaluating an application that is before DCRA,  
23 we look at the order and we looked at the exhibits that  
24 include plans for the order. There are lots of other  
25 aspects, other filings are part of the PUD record including

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1 the application of the PUD, but normally my office only looks  
2 at the Commission's decision as embodied in the order and the  
3 approved exhibit plans.

4 MR. OTTEN: Okay, and did you -- have you had a  
5 chance to see how the CFA is suggesting changes to those  
6 plans?

7 MR. LeGRANT: I have had some discussions with the  
8 property owner about its CFA process, but to my knowledge,  
9 that process has not been completed.

10 MR. OTTEN: Okay, and did you see the changes to  
11 the Zoning Commission's plans by the Historic Preservation  
12 Office in 2016 where they moved some things around?

13 MR. GREEN: I'm sorry, I just wanted to weigh in.  
14 Mr. Otten, can you try to clarify what you're trying to get  
15 at? I'm sorry, I'm kind of confused by what the question is.  
16 I'm sorry.

17 MR. OTTEN: I'm trying to understand what plans  
18 Mr. LeGrant relied on in approving the permit.

19 MR. GREEN: Well, I believe they're all submitted  
20 as part of the record. Certainly Mr. LeGrant can speak to  
21 it. It's your question, but I guess I'm trying to help move  
22 this where -- what the question is.

23 MR. OTTEN: Okay. Let me move on. Mr. LeGrant,  
24 you testified to the historic nature of the site. It is  
25 indeed a nationally recognized or registered historic site,

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1 correct?

2 MR. LeGRANT: I'm not aware if that's in the  
3 National Register listed. It may be. But not to my specific  
4 knowledge.

5 MR. OTTEN: You talked about DCRA playing a role  
6 in issuing a demolition permit. Is it true that they're  
7 demolishing parts of the historic site, so like the water  
8 cisterns. You mentioned the water cisterns.

9 MR. LeGRANT: I believe that the demolition permit  
10 included removal, as per the demolition permit itself,  
11 removal of certain present structures on the site.

12 MR. OTTEN: And those structures are historic,  
13 right, as you're aware? Or they're protected. Or maybe you  
14 don't know.

15 (Simultaneous speaking.)

16 BZA CHAIR HILL: Mr. Otten. Hold on, hold on.  
17 Okay. Mr. Otten, again, and we're all really listening here.

18 MR. OTTEN: Right.

19 BZA CHAIR HILL: So I'm trying to understand again  
20 how 702.8, how he is in violation of 702.8 and I'm kind of  
21 getting some of it, but some of it I'm not.

22 MR. OTTEN: Well, Mr. LeGrant testified to the  
23 risk taking that might be going on here and I'm wondering  
24 when he was talking about that if plans change and the  
25 applicant doesn't modify the plans with the Zoning Commission

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1 or doesn't seek a second stage review as we anticipate. You  
2 know, they're taking on this risk. And the risk is of a  
3 nationally recognized historic site. I just wanted him to  
4 --

5 BZA CHAIR HILL: What was the risk taking? I  
6 don't remember any testimony about risk taking.

7 MR. OTTEN: Mr. LeGrant said several times in his  
8 testimony today that if plans change and the applicant  
9 doesn't amend the plans before the Zoning Commission, then  
10 that's a risk on them that he would move -- he would ask them  
11 to move things, dig things up, that was his testimony today,  
12 was it not?

13 MR. LeGRANT: Well, let me -- I just want to  
14 reiterate that documents were submitted and received an  
15 approved demolition permit on foundation at grade permit.  
16 If for whatever reason some other agency's entity like the  
17 CFA says you can't do X, Y, Z, then if the property owner had  
18 already pursued that actual construction, they were doing so  
19 at their risk because if those issues, which I do not know,  
20 are historic or CFA issues are still outstanding.

21 BZA CHAIR HILL: Okay.

22 MR. OTTEN: The case is DMPED, right? That's the  
23 D.C. agency that's the applicant here?

24 MR. LeGRANT: Yes.

25 MR. OTTEN: Okay. So and you mentioned the CFA,

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1 the CFA's jurisdiction is expressed in the zoning regs by  
2 which you look at, correct, when you're approving things?

3 MR. LeGRANT: The CFA is referenced in several  
4 zoning regulations.

5 MR. OTTEN: Okay, and when we're looking at  
6 demolition, the permit that you approved on demolition,  
7 doesn't it extend far past parcel 6? It's across the whole  
8 site, is it not, the whole historic site?

9 MR. LeGRANT: I believe it's beyond parcel 6, yes.

10 MR. OTTEN: Okay, so -- but you only approved a  
11 foundation permit here, correct, for the community center on  
12 parcel 6?

13 MR. LeGRANT: The only construction that my office  
14 has reviewed and approved.

15 MR. OTTEN: And that foundation permit, would you  
16 qualify that as a building permit?

17 MR. LeGRANT: It is.

18 MR. OTTEN: And is it fair to say the above grade  
19 aspects of a project would affect a foundation of that  
20 project?

21 MR. LeGRANT: Well, my response would be the above  
22 grade construction is limited to the foundation that was  
23 approved that it would sit upon.

24 MR. OTTEN: Yes, so if there are structural  
25 elements of the above grade aspects that are changing,

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1 perhaps even now at the CFA, would that affect the load issue  
2 and things on the foundation? Wouldn't the permit be changed  
3 then?

4 MR. LeGRANT: I cannot speak to the load on the  
5 foundation. That's the not the purview of the zoning  
6 regulations. It's construction code.

7 MR. OTTEN: In the Zoning Order 13-14, going back  
8 to the Zoning Commission's role vis-a-vis and interplay with  
9 you, when you're looking at the plans in 13-14, isn't the  
10 location of like the plaza next to the community center and  
11 the berms and other kind of aspects around the community  
12 center, doesn't the Zoning Commission sign off on those plans  
13 in 13-14?

14 MR. LeGRANT: I don't know what you mean by sign  
15 off on those.

16 MR. OTTEN: They approved a certain set of plans  
17 on parcel 6 around the foundation of the community center,  
18 berms, plazas, things like that, right?

19 MR. LeGRANT: I would agree, yes.

20 MR. OTTEN: Okay. And you're saying parcel 6, the  
21 reason why you could grant that permit was because it  
22 received consolidated PUD review, right?

23 MR. LeGRANT: It was part of the overall PUD  
24 approval that was cited and shown on the plans as the  
25 location for the community center.

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1 MR. OTTEN: And the overall master plan has only  
2 received first stage approval by your reading of the order?

3 MR. LeGRANT: The overall master plan?

4 MR. OTTEN: Yes, and the order as cited. Do you  
5 see that it's only received first stage PUD approval?

6 BZA CHAIR HILL: I am just trying to remember, did  
7 you testify to that, Mr. LeGrant?

8 MR. OTTEN: Yes.

9 MR. GREEN: I guess my question is -- Mr. Otten,  
10 can you rephrase it and I guess I'm struggling to get the  
11 gist of what you're trying to ask. I'm sorry.

12 MR. OTTEN: I am asking if he read the zoning  
13 order where it says the master plan received first stage PUD  
14 approval.

15 MR. GREEN: He testified to that.

16 MR. OTTEN: Okay. And so is it demolition? Well,  
17 first of all, let me ask Mr. LeGrant, you said in your  
18 testimony there's nothing in the zoning regulations  
19 pertaining to demolitions, right?

20 MR. LeGRANT: Correct.

21 MR. OTTEN: Isn't demolition of the site a  
22 condition of the carrying out of the Zoning Commission's  
23 decision? Isn't it in Zoning Order 13-14?

24 MR. LeGRANT: Well, any approval by the Zoning  
25 Commission or the BZA for a site that has an existing

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1 structure and if that approval is for a new structure or a  
2 modification of an existing structure, that the existing  
3 structure has to be removed in whole or in part. It's an  
4 extremely common aspect that you have to demo or raze the  
5 existing structures to then replace the new approved  
6 structure, in this case, Zoning Commission approved  
7 development scheme, PUD's development scheme.

8 BZA CHAIR HILL: Mr. Otten?

9 MR. OTTEN: Yes.

10 BZA CHAIR HILL: How more questions do you have?

11 MR. OTTEN: Just a couple more if I could.

12 BZA CHAIR HILL: Okay. And the reason why I'm  
13 also asking if you could, apparently there's a lot of like  
14 feedback and so Ms. John, I don't know if have yours on mute  
15 or whatever and Mr. LeGrant, if you could just let Mr. Otten  
16 ask the question and then Mr. Otten if you could mute your  
17 line and then Mr. LeGrant if you could ask the question and  
18 we'll try to go that way so that the Board can hear more  
19 clearly.

20 So Mr. Otten, can you go ahead and ask your next  
21 question?

22 MR. OTTEN: Yes, I didn't quite get the answer to  
23 that one. Is demolition a condition of Zoning Order 13-14?

24 MR. LeGRANT: I don't believe there is an explicit  
25 condition regarding demolition.

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1 BZA CHAIR HILL: Okay, Mr. Otten.

2 MR. OTTEN: Okay, I am being auto muted now. I  
3 didn't actually click the mute button there. I guess  
4 somebody else did, but I appreciate that.

5 So with regards again to the historic site, you  
6 talked about the recorded covenant, land covenant.

7 BZA CHAIR HILL: What's your question about it,  
8 Mr. Otten?

9 MR. OTTEN: Okay, just wondering why the existing  
10 preservation covenants were not included in that land  
11 covenant recorded?

12 MR. GREEN: I thought this was settled, Chairman  
13 Hill, that this was dismissed.

14 BZA CHAIR HILL: Yes, I agree with you.

15 (Simultaneous speaking.)

16 BZA CHAIR HILL: I'm just trying to follow along  
17 with everybody. So again it's just on 702.8 and how Mr.  
18 LeGrant approved plans. And I think you're making -- I  
19 understand the points you're making, but how Mr. LeGrant  
20 approved plans that the Zoning Commission didn't approve.

21 MR. OTTEN: Okay.

22 BZA CHAIR HILL: So what's your next question?

23 MR. OTTEN: So in 702.8, Mr. LeGrant, does it  
24 mention the types of permit applications? Can it be a  
25 building permit application? Can it be a demolition permit

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1 application? A foundation permit application? 702.8  
2 references permit applications, correct?

3 MR. LeGRANT: It does.

4 MR. OTTEN: And isn't it true that the zoning  
5 regulations have a section of code regarding design review,  
6 talking about how the Zoning Commission can actually  
7 effectuate how buildings look and embellishments and what  
8 not?

9 MR. LeGRANT: Yes, the authority under -- by the  
10 Zoning Commission is should both -- can, in the context of  
11 a PUD application such as the case here, can specify design  
12 aspects.

13 MR. OTTEN: Last question. And in your reading  
14 of Zoning Order 13-14, did you see anywhere where the  
15 Commission waived any aspects of the zoning procedures that  
16 would allow you to bypass the first stage requirements, like  
17 in other words, that second stage would have to come back,  
18 second stage review? Was there any waiver of a second stage  
19 application in the zoning order?

20 MR. LeGRANT: No, I'm not aware of any waiver.

21 BZA CHAIR HILL: Okay, Mr. Otten, can you ask your  
22 last question, please?

23 MR. OTTEN: Yes, just curious. I know it's been  
24 established that you have the discretion to respond to the  
25 public, but as a public servant, I'm just curious, why did

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1 you say you were going to respond, but then never actually  
2 did, never actually respond?

3 MR. GREEN: Actually, I think it's beyond the  
4 appeal, but I do know that Mr. LeGrant did respond to Mr.  
5 Otten.

6 MR. OTTEN: The response was if you read the  
7 exhibit, it says hey, I'll get back to you. But he never  
8 does.

9 MR. GREEN: And there was a subsequent email to  
10 you.

11 MR. OTTEN: Well, please use that for the record.

12 MR. GREEN: Okay.

13 BZA CHAIR HILL: Okay, all right. Thank you, Mr.  
14 Otten.

15 Let's see now. Does the property owner have any  
16 presentation that they'd like to make?

17 MR. SAINDON: Good afternoon. Thank you, Chairman  
18 Hill. No, I don't want to extend an already extended process  
19 here. Our arguments are contained in our filings and we  
20 would join DCMR's presentation and the testimony of Mr.  
21 LeGrant.

22 It's our belief that appellants fail to meet their  
23 burden and we're not sure if that violates any zoning  
24 regulation or the Zoning Commission's order and we would  
25 respectfully request that the BZA issue a decision

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1 expeditiously at our motion to dismiss.

2           As you know, the D.C. Court of Appeals in joint  
3 demolition at the site while the proceedings are occurring  
4 at the Office of Administrative Hearings and that was in  
5 February of this year and the longer we delay, the more the  
6 District is harmed and the community is harmed by the  
7 inability to commence construction and to provide the  
8 benefits that the project would provide.

9           BZA CHAIR HILL: Okay. Does the Board have any  
10 questions of the property owner?

11           COMMISSIONER SHAPIRO: No, sir.

12           BZA CHAIR HILL: Mr. Otten, based on the quick  
13 comment that the property owner made, do you have any  
14 questions of the comment that the property owner made?

15           MR. OTTEN: Yes. Wondering does DMPED, who is the  
16 Deputy Mayor's Office for Planning and Economic Development,  
17 correct, that's what that stands for? That's an agency of  
18 the Mayor?

19           BZA CHAIR HILL: You are asking who the property  
20 owner is?

21           MR. OTTEN: Yes, I'm trying to figure out who the  
22 property owner is.

23           MR. SAINDON: The District is the property owner,  
24 the Office of the Deputy Mayor for Planning and Economic  
25 Development is acting District on this project.

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1 MR. OTTEN: And when you say the District, you're  
2 referencing the public? Is it D.C. residents?

3 MR. SAINDON: The District and its citizens.

4 MR. OTTEN: Okay, and your understanding is that  
5 the foundation permit is a building permit?

6 BZA CHAIR HILL: Mr. Otten, I think if you're  
7 going to be --

8 (Audio interference)

9 So the property owner basically repeated  
10 everything that they had. They were along the same line as  
11 the Zoning Administrator and so your question again to the  
12 property owner is what?

13 MR. OTTEN: Well, okay. I just unmuted. I guess  
14 the main question here is looking at the Zoning Commission  
15 record, Exhibit 4 has been signed off by the property owner,  
16 DMPED in this case. That exhibit shows a first stage PUD  
17 application, does it not, for the entire site?

18 BZA CHAIR HILL: When you're talking about Exhibit  
19 4, are you talking about the one in our record?

20 MR. OTTEN: No, on the zoning record, but it is  
21 in the slide deck. I don't know where it is in this record,  
22 but it is in the slide deck on page 9. I mean, yes, slide  
23 number 9.

24 BZA CHAIR HILL: So your question again of the  
25 property owner is what again?

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1 MR. OTTEN: Just to affirm that this application  
2 is for a first stage planned unit development, that this  
3 exhibit shows first stage of the entire site of the McMillan  
4 Master Plan.

5 MR. SAINDON: The Zoning Commission Order speaks  
6 for itself and my interpretation of it or DMPED's  
7 interpretation of it is irrelevant. It's up to the Zoning  
8 Commission and what the members of the Board here decide.

9 BZA CHAIR HILL: Okay.

10 MR. OTTEN: No, no, no. I'm not asking for an  
11 interpretation. I'm just asking for affirmation or  
12 confirmation that Exhibit 4 on the zoning record in 13-14 is  
13 your application. By your, I mean DMPED's application for the  
14 McMillan Master Plan.

15 MR. SAINDON: I'm going to refer to my previous  
16 answer. Members of the Board, the Zoning Commission order  
17 speaks for itself.

18 BZA CHAIR HILL: Okay. All right. Okay. All  
19 right, let's see. Mr. Otten, do you have anything you'd like  
20 to add in rebuttal?

21 MR. OTTEN: Just to understand, rebuttal versus  
22 close? Is this a close essentially?

23 BZA CHAIR HILL: Rebuttal is -- what does OAG  
24 know.

25 Jacob, I mean, Mr. Ritting. Can you explain the

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1 process --

2 (Simultaneous speaking.)

3 MR. RITTING: Yes, hi. Sure, sure, I can answer  
4 that. You've stepped through all of Subtitle Y 407.1. We're  
5 now at F which is rebuttal evidence from the appellant.  
6 That's what the rule says. So my understanding of what  
7 rebuttal evidence is, evidence that the appellant is  
8 providing to rebut any assertions made by the other parties  
9 in their case in chief.

10 BZA CHAIR HILL: Okay. Mr. Otten, did you hear  
11 that part?

12 MR. OTTEN: Yes.

13 BZA CHAIR HILL: Okay. Do you have any rebuttal  
14 you'd like to give?

15 MR. OTTEN: Well yes. So the evidence speaks for  
16 itself, we think, in the zoning order, but I'd certainly like  
17 -- would like to move the slide deck, if it's not already on  
18 the record, into the record as our rebuttal evidence.

19 And then, you know, looking at that evidence it's  
20 clear the plans are being changed by the Commission of Fine  
21 Arts right now. They have been changed by Historic  
22 Preservation Review Board. This is all post Zoning Order  
23 13-14 being published.

24 And therefore, in contradiction to what the Zoning  
25 Administrator is saying, that he should have told the

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1 applicant, look, you've got to go either get your second  
2 stage done of the McMillan Master Plan or get it modified  
3 accordingly.

4 That has not happened here, and we have put lots  
5 of evidence on the record showing that. You know, the Master  
6 Plan is kind of like the envelope of all the parcels.

7 So yes, Parcel 6 received a consolidated PUD  
8 approval, but it has not -- it's still part of the overall  
9 Master Plan.

10 And I think that's an important note here because,  
11 you know, I guess the -- you know, the -- I'm sorry, I just  
12 got a phone call. I had to close that out.

13 BZA CHAIR HILL: Mr. Otten, I got you. I'm just  
14 trying to --

15 MR. OTTEN: Okay. I just want to make sure this  
16 is in the evidence. It's rebuttal.

17 BZA CHAIR HILL: Sure.

18 COMMISSIONER SHAPIRO: I'm fine with him having his  
19 slide deck be his rebuttal.

20 BZA CHAIR HILL: Right. I'm just trying to  
21 understand that. So I guess I'm looking through my  
22 procedures again. See, there's rebuttal and then closing.

23 MR. OTTEN: Oh, there is. Okay.

24 BZA CHAIR HILL: So do you want to do both now?

25 MR. OTTEN: Yeah, that's fine. I think it's right.

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1           Okay. So -- okay. Our position is obviously in  
2 support of the appeal. You can tell by the people who signed  
3 up to testify today, but who weren't able to, there's massive  
4 support for approving this appeal.

5           It's clear, Fact No. 1, the overall Master Plan  
6 for McMillan Park, as shown in the Zoning Commission record  
7 13-14 at Exhibit 4 785 and even 960, which is the Zoning  
8 Order of record 13-14, has shown that the McMillan Master  
9 Plan received first-stage PUD approval.

10           Yet the demolition permits are for the entire  
11 Master Plan for the entire site. It kicks off the Master  
12 Plan. The Zoning Administrator knows that he cannot approve  
13 permits until all zoning applications, first and second  
14 stage, are applied for and won and published.

15           Fact No. 2, the community center on Parcel 6,  
16 which did receive consolidated first- and second-stage zoning  
17 approval, is now being changed -- and it has been by the  
18 Historic Preservation Office and the U.S. Commission of Fine  
19 Arts -- beyond what was approved as conditions in Zoning  
20 Order No. 13-14.

21           Fact No. 3, demolition is a condition of this  
22 Zoning Order 13-14. And therefore, the Zoning Administrator  
23 -- that, by and in itself, pulls it into the zoning regs  
24 because at 702.8 says, you know, must conform, in all  
25 respects, to the plans approved by the Commission including

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1 those conditions.

2           Those conditions include demolition, and he knows  
3 that that second stage has to come back for them to tie a  
4 ribbon on this whole thing before they can begin demolition  
5 of an entire historic site. This is not demolition just for  
6 Parcel 6, for the community center. This is for the entire  
7 site.

8           Now we know strict compliance with conditions in  
9 the Zoning Commission orders is required by the zoning  
10 regulations according to 11A DCMR 303.1, et cetera. That  
11 means the changes being asked for by the applicant and the  
12 CFA after Zoning Order 13-14 was issued, therefore, need to  
13 be brought into the order whether that's by modification or  
14 a second-stage review.

15           Now we believe it is second-stage review because  
16 we believe the Zoning Commission anticipated that when they  
17 gave first-stage approval to the Master Plan as clearly shown  
18 in the order.

19           So because the CFA is going to look at all of  
20 these parcels and change these plans, it may be so  
21 significantly. So a second-stage review would bring it all  
22 together and tie it up.

23           As when the applicant comes back with the  
24 second-stage review of the Master Plan, as required, these  
25 changes to the various parcels can be summed up in that

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1 approval.

2           Only then can permits be issued by DCRA according  
3 to the zoning regulations as shown in our appeal statements.  
4 Otherwise the applicant will have to ask, as I said,  
5 modifications for each parcel and the changes post facto.

6           That is not expedient administratively nor does  
7 it make sense. Second stage don't even review the Master  
8 Plan for McMillan Park because clearly what is anticipated  
9 and required by Zoning Order 13-14; therefore, any issuance  
10 of permits, any permit at 702.8 points out, it's any permit  
11 before this happens is premature, as outlined in our appeal  
12 statements and in 11X 308.3, 11X 309.2, 11X 309.2, and in 11Z  
13 702.1, 702.4 and 702.8.

14           The Zoning Administrator should be well aware of  
15 these zoning regulations, and thus not issue the permits.  
16 He has erred. The Zoning Administrator's errors are  
17 furthered with our Claim No. 2 regarding the historic  
18 preservation covenants, which I know you've already  
19 apparently ruled on.

20           I didn't hear a vote, but we, you know, believe  
21 that that issue is still very much ripe under 11X DCMR 311.3.  
22 They have not put a land covenant on the record that is in  
23 full in scope including the existing preservation covenants  
24 and we believe that is also an error.

25           Thank you very much, Commissioners. We hope you

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1 will affirm our appeal.

2           BZA CHAIR HILL: Okay. All right. Okay. Thank  
3 you all very much. Thank you all for being here. And I  
4 guess if anybody has anything else, then I will just let the  
5 Board come back and let's see where we are.

6           (Pause.)

7           MR. YOUNG: Mr. Chair?

8           BZA CHAIR HILL: Yes.

9           MR. YOUNG: I just wanted to note that I spoke with  
10 OG staff, and that slide deck was not in the record.

11           BZA CHAIR HILL: Okay. Mr. Otten, can you -- so  
12 Mr. Shapiro, you were interested in seeing that in the  
13 record?

14           COMMISSIONER SHAPIRO: I would defer to counsel,  
15 but my quick reaction is if he wants his rebuttal to be the  
16 written slide deck that he was proposing to us anyhow, I  
17 don't have any concerns with that.

18           BZA CHAIR HILL: Okay. Mr. Ritting?

19           MR. RITTING: Yeah. I mean the issue is that it  
20 was submitted late. So it's up to the Board to waive its  
21 rules and allow the late submission. That's the issue.

22           COMMISSIONER SHAPIRO: But can I -- let me ask the  
23 question differently. He -- I'm not saying we should allow  
24 late submission of a filing. I'm saying he wants his  
25 rebuttal to be in writing.

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1           And he essentially already showed us half his  
2 rebuttal anyhow. So I don't see it as a late filing so much  
3 as, you know, it's just his rebuttal that he wants to, you  
4 know. We've already heard the --

5           BZA CHAIR HILL: Mr. Green, do you have any issues  
6 about the filing?

7           (Pause.)

8           BZA CHAIR HILL: I can't hear you.

9           MR. GREEN: Only insofar as I haven't seen the full  
10 deck. But if it's clearly -- I mean I would object on that  
11 ground, but if it's clearly items that are already in public  
12 record, then no. But again, I haven't had an opportunity to  
13 look at all of the slides.

14           But if it's just what he's already filed -- if Mr.  
15 Otten has already filed these, then that's really no  
16 objection. I don't know if DMPED has a position on it.

17           (Simultaneous speaking.)

18           COMMISSIONER SHAPIRO: He hasn't filed yet. That's  
19 the distinction that the Board was making.

20           MR. GREEN: Mr. Shapiro, I couldn't hear.

21           COMMISSIONER SHAPIRO: Say again?

22           MR. GREEN: I'm sorry, Mr. Shapiro, are you asking  
23 me a question? I could not hear it. I apologize.

24           COMMISSIONER SHAPIRO: I was just responding. I  
25 was kind of stepping on the Chair, but I was just --

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1 MR. GREEN: Oh, okay.

2 COMMISSIONER SHAPIRO: -- I was responding that  
3 this isn't -- he did not file this.

4 MR. GREEN: Okay.

5 COMMISSIONER SHAPIRO: So it's more of a question  
6 as are we okay with -- are you okay with his rebuttal being  
7 that slide deck?

8 MR. GREEN: That's fine. I -- but again, that --  
9 DCRA would be fine with his rebuttal being the slide deck.  
10 If that helps to put a resolution to the particular matter,  
11 then that -- then we would be amenable.

12 BZA CHAIR HILL: Mr. Saindon?

13 MR. SAINDON: Thank you, Mr. Chairman. We agree  
14 that DCRA would not object to the inclusion of the slide deck  
15 as appellant's rebuttal testimony assuming it's all public  
16 record documentation.

17 BZA CHAIR HILL: Mr. Otten, can you hear me?

18 MR. OTTEN: Yes. Hi, Chair. Just can I get some  
19 clarity because I'm not completely -- you're helping me with  
20 the rules today, thank you, but the rebuttal, is that  
21 something that we file later, or am I acquiescing my right  
22 to do that?

23 BZA CHAIR HILL: No. We weren't -- so in terms of  
24 the timing, everything was supposed to have been in the  
25 record already. So that's why Mr. Shapiro is saying that

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1 your slide deck is late.

2           However, if it's just things that are in the  
3 public record, then we were going to go ahead and allow it  
4 basically as your rebuttal like, you know, so you know, to  
5 help -- I mean basically as your rebuttal, but just to help  
6 us understand your rebuttal, right?

7           And so my question to you, is the information that  
8 is in your slide deck all within the public record?

9           MR. OTTEN: Okay. I was just unmuted. Everything  
10 in the slide deck except for the emails between myself and  
11 Mr. LeGrant, but that was submitted with the appeal  
12 statement. So yes, that's also in the public record.

13           Everything otherwise is in the public record. You  
14 can access it online through the Office of Zoning website or  
15 the CFA website. And yeah, I mean it's -- there's no  
16 testimony or anything like that.

17           BZA CHAIR HILL: Okay. Okay. Mr. Shapiro, you  
18 have a question?

19           COMMISSIONER SHAPIRO: The emails we've already  
20 seen. So it's moot as to whether they're in the public  
21 record or not because they're in the public record now.

22           BZA CHAIR HILL: Okay. So Mr. Otten, if you want  
23 to go ahead and we'll allow that slide deck to be uploaded  
24 into the record. Mr. Moy, could you please allow that into  
25 the record?

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1 MR. MOY: Yes, sir. Done.

2 BZA CHAIR HILL: Okay. Mr. Saindon, I guess I'm  
3 kind of curious on a couple of things. So you know, this  
4 appeal we had gone through -- this has gone on for -- it's  
5 been before us for quite some time, and we postponed and did  
6 a variety of discussions today about where we thought we were  
7 with some of the errors that were brought before us.

8 You mentioned the timing of this, and I guess I  
9 wonder, you know, how -- and I do ask this often of people  
10 that are before us, how the timing portrays to what you're  
11 trying to do.

12 And the reason why I'm asking this, is this is our  
13 last hearing until our break. And the next time we're  
14 together again is the 16th of September. So what will a  
15 decision one way or the other do if it were the 16th of  
16 September? That's my question.

17 MR. SAINDON: Thank you, Mr. Chairman. Practically  
18 nothing. I mean I just wanted to put in the record that we  
19 all know the Court of Appeals said in February that the  
20 agencies, particularly OAH, needs to decide expeditiously.

21 So certainly if the BZA worked all night tonight  
22 and Mr. Ritting worked hard on a written decision and issued  
23 it tomorrow, we still couldn't do anything because demolition  
24 is stayed, but this is just one piece of the puzzle to get  
25 the project approved to move forward.

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1           So certainly nothing before September 16th as long  
2 as the OAH is still dealing with their aspect of this appeal.  
3 And the record --

4           BZA CHAIR HILL: Okay. All right. Okay. All  
5 right. Well anyway, thank you very much, Mr. Otten. Thank  
6 you very much, if you can hear me.

7           And from all the appellants, people that were  
8 here, also thank you very much. Have a nice day. Everyone  
9 at DCRA and everybody, bye-bye.

10           I'll wait for my Board. Okay. So I'm sorry that  
11 we've got two cases, and I'm going to take a break. I mean  
12 do you want to take a break, Mr. Hart, before you start your  
13 next couple cases? And then I'll hear from Mr. Shapiro --  
14 I'm going to hear from everybody.

15           So the questions -- the question is, are you all  
16 ready to deliberate now, or do you want or need some time?  
17 And I guess the fact is that we're -- yeah. So anyway, so  
18 I'll start with that or whatever. Mr. Shapiro, you were  
19 about to ask something or say something. What was it?

20           COMMISSIONER SHAPIRO: I've got a time crunch. So  
21 setting aside the deliberating now, which I do have an  
22 opinion on, but in terms of the next case, if we could -- I  
23 just want to make sure that we can do the -- the case that  
24 I'm on right after this, if it's possible to do that without  
25 a break because I think it's going to be quick anyhow.

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1 BZA CHAIR HILL: Sure. Yeah. That's fine.

2 COMMISSIONER SHAPIRO: Okay. And in terms of  
3 deliberating now, I -- I -- you know, my preference, you  
4 know, my view, I have not heard anything that feels like it's  
5 more complicated than something that I could decide on right  
6 now, but you know, I don't have a strong opinion about that,  
7 and the applicant has said it doesn't matter if it's  
8 September. So --

9 BZA CHAIR HILL: So for me, I actually would like  
10 to be able to look at everything and kind of like listen to  
11 everything again, and kind of like take a look at everything  
12 because there was a lot that was said.

13 So Mr. Hart, you are gone. So you don't have any  
14 objections, correct?

15 VICE CHAIR HART: I strongly object to it.

16 BZA CHAIR HILL: Okay. Ms. John, are you okay with  
17 that?

18 MEMBER JOHN: I strongly object, Mr. Chair.

19 BZA CHAIR HILL: All right. You are joking,  
20 correct?

21 MEMBER JOHN: I'm fine with September, Mr. Chair.

22 BZA CHAIR HILL: Okay. All right. So Mr. Moy,  
23 we're going to put this on for decision for September 16th.  
24 Okay.

25 MR. MOY: The record is closed, correct?

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1 BZA CHAIR HILL: The record is closed, the Board  
2 hasn't asked for anything, and then we'll put this on for  
3 decision September 16th.

4 VICE CHAIR HART: With the exception of the one  
5 document that he's submitting, or is he not submitting that?

6 BZA CHAIR HILL: That's right. The appellant was  
7 allowed to submit their slide deck.

8 VICE CHAIR HART: Yes.

9 BZA CHAIR HILL: And actually --

10 COMMISSIONER SHAPIRO: As rebuttal.

11 BZA CHAIR HILL: As rebuttal. Was allowed to  
12 submit the slide deck as rebuttal. There should be no new  
13 information submitted. And Mr. Young, are you there?

14 MR. YOUNG: Yeah, I'm here.

15 BZA CHAIR HILL: You have his slide deck, right?  
16 You have the appellant's slide deck?

17 MR. YOUNG: I do.

18 BZA CHAIR HILL: So we'll know whether or not  
19 anything new is submitted?

20 MR. YOUNG: Correct.

21 BZA CHAIR HILL: Okay. All right. And Mr.  
22 Ritting, if you can confirm that or whenever that actually  
23 happens, I just want to make sure that it's very clear that  
24 we want the slide deck that we saw today, okay?

25 MR. RITTING: Yes.

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1 BZA CHAIR HILL: Okay. All right. Then that being  
2 the case, then I guess we can call that last case that Mr.  
3 Shapiro is on.

4 (Whereupon, the above-entitled matter went off the  
5 record at 4:51 p.m. and resumed at 5:07 p.m.)

6 VICE CHAIR HART: Welcome, Mr. May.

7 COMMISSIONER MAY: Nice to be here. I have a few  
8 choice things left to say, but I will -- no, I will say I --  
9 you know, it's been terrific.

10 I think you've done a great job for NCPC. I've  
11 seen many people sit in the chair for NCPC over my way too  
12 many years on the Zoning Commission and you know, you've  
13 really done a terrific job.

14 And you know, I mean you're the first time that  
15 anybody from NCPC has been the vice chair in my time. So you  
16 know, you really stepped up and were a -- I think a very  
17 positive and stable force throughout your whole time and I'm  
18 going to miss you.

19 I'm sure you'll be -- you know, your successor  
20 will be very capable, but, you know, change is hard.

21 VICE CHAIR HART: Yeah. You met my successor?

22 COMMISSIONER MAY: I did, yes. Yeah. And I look  
23 forward to continuing to work with you and --

24 VICE CHAIR HART: Definitely.

25 COMMISSIONER MAY: -- harass you at the podium

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1 when you are presenting at NCPC.

2 VICE CHAIR HART: Yes. I await those wonderful  
3 moments of so it's always something.

4 COMMISSIONER MAY: Yeah. Yeah. Always something  
5 to say.

6 VICE CHAIR HART: Ms. John is back with us?

7 MEMBER JOHN: Yes, she is.

8 MR. YOUNG: Mr. May, your fan is sounding a little  
9 loud today.

10 COMMISSIONER MAY: Me?

11 BZA CHAIR HILL: So I'm going to get off, but I'll  
12 come back at the end.

13 COMMISSIONER MAY: Paul, what were you saying?

14 MR. YOUNG: Your fan sounded loud, but it sounds  
15 better now.

16 COMMISSIONER MAY: Yeah. I'm continually tweaking  
17 the fan situation.

18 VICE CHAIR HART: You gotta stay cool.

19 COMMISSIONER MAY: I'm working so hard I'm  
20 overheating my computer all the time.

21 VICE CHAIR HART: Fast and the furious.

22 All right, Mr. Moy, you can read in the first --  
23 well, this next case. I guess it's the 20249

24 MR. MOY: Yeah. Thank you, Mr. Vice Chair.

25 The Board is back in session -- hearing session

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1 for the remaining two cases and the time is at or about 5:10  
2 p.m.

3 This will be Case Application No. Vincent  
4 Gallagher as amended for a special exception under the  
5 Downtown-use requirements, Subtitle I Section 303.1(a),  
6 pursuant to Subtitle X, Chapter 10, for a variance from the  
7 MU-Use Group E requirements, Subtitle U Section 513.1(a)(2).

8 This would permit an animal care and boarding use  
9 on the ground floor of an existing mixed-use building, D-5  
10 Zone at premises 22 M Street, N.E., Square 672, Lot 858.  
11 This was last heard by the Board July the 8th.

12 VICE CHAIR HART: Thank you. And I think you --  
13 I see Mr. Gallagher is here and Mr. Mordfin is here, and do  
14 we have the ANC rep here as well? Anyhow it's okay. So --

15 MR. GALLAGHER: I sent him the invite. I don't  
16 know if he could make it.

17 VICE CHAIR HART: Oh, that's fine. Okay. So Mr.  
18 Gallagher, when you were last before us, which was I think  
19 July 8th --

20 MR. GALLAGHER: Yes.

21 VICE CHAIR HART: -- we heard your presentation.  
22 We gave you some direction with regard to the one issue, I  
23 think, that we were kind of struggling with with regard to  
24 the variance request. And that was the exceptional condition  
25 aspect of that.

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1           And understanding -- we thought that it might be  
2 helpful to hear from the Zoning Administrator in -- and  
3 correct me if I'm wrong, but I thought it was you were  
4 looking for some sort of determination letter from the Zoning  
5 Administrator, so that they could have a -- this is kind of  
6 their official position on it.

7           I understand that you have -- in reading your  
8 submission, you've met with the Zoning Administrator. And  
9 if you could talk a little bit about that, and if you're  
10 expecting to get some sort of determination letter or if you  
11 had requested it or if you know what that is, that would be  
12 helpful for me to understand this.

13           And I'll say that it's -- I'll just listen to kind  
14 of where we are right now, but I don't know if the other  
15 Board members have anything else that they'd like to add onto  
16 that.

17           MR. GALLAGHER: I -- did you want -- so I submitted  
18 a request to the Zoning Administrator. Unfortunately they  
19 got back to me on the deadline due to vacations, but Mr.  
20 Mordfin was able to meet with them and he's joined the  
21 conference.

22           So he might be able to -- and I know he alluded  
23 to it in his report. So I would defer to him to give the  
24 position of the Administrator, if you don't mind.

25           VICE CHAIR HART: That would be helpful. And I

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1 just didn't know if you had gotten -- and it sounds like you  
2 hadn't actually gotten the determination letter, but had  
3 conversations with them.

4 MR. GALLAGHER: I wrote them. I asked them for a  
5 letter. They got back to me on the deadline. So I was not  
6 able to get one in time, but Mr. Mordfin was able to discuss  
7 it with them and include that in his report.

8 VICE CHAIR HART: We could hear from Mr. Mordfin.  
9 That's fine. Good afternoon.

10 (Pause.)

11 VICE CHAIR HART: We can't hear you yet, though.

12

13 There you go.

14 MR. MORDFIN: Good afternoon. First, I just want  
15 to say I've enjoyed, you know, working with you on the Board,  
16 and I hope you go on to bigger and better things.

17 As for this case, OP did meet with the Zoning  
18 Administrator. We don't have anything in writing from him,  
19 but what he did tell us is that he couldn't consider our  
20 mezzanine to be a floor. So therefore, the variance to that  
21 provision is still necessary.

22 And so what the applicant did was then revise the  
23 application to include the mezzanine, and then we evaluated  
24 the mezzanine proposal in the supplemental report that I  
25 filed, which I can go through it if you would like me to do.

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1           VICE CHAIR HART: I don't think we need to  
2 necessarily have you read through it. I don't know if my  
3 fellow Board members had questions for, you know, you or the  
4 -- Commissioner May?

5           COMMISSIONER MAY: Yeah. I had one question for  
6 Mr. Mordfin. Thank you very much, by the way, for the report  
7 and, Mr. Gallagher, for the updated plans for the space.

8           Mr. Mordfin, when you spoke with the Zoning  
9 Administrator, did you ask the question of whether a  
10 mezzanine would satisfy this condition that's necessary in  
11 order to avoid having a variance, or did you show him the  
12 plan for the intermediate floor that Mr. Gallagher provided  
13 in the record?

14           MR. MORDFIN: We didn't have the plans yet from Mr.  
15 Gallagher. So we did not show those to him. I did ask him  
16 if we could -- if we built a mezzanine within this entire  
17 space, if that could be considered a floor. And we were  
18 informed that it could not be considered a floor, it would  
19 be a mezzanine.

20           It doesn't, you know, it takes up less than  
21 one-third of the first floor of that entire building, and so  
22 he ruled that it would be a mezzanine.

23           COMMISSIONER MAY: Yeah. So I mean this is my  
24 biggest concern is I think the Zoning Administrator is wrong  
25 in that interpretation. And I mean it happens every once in

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1 a while I disagree with the Zoning Administrator, but the  
2 one-third rule applies to the -- not to the building or to  
3 the entire floor. It applies to the room that is -- into  
4 which the mezzanine is inserted, right?

5           So it -- you know, you can't -- I mean in this  
6 sort of circumstance it would have to be one-third of the  
7 space that Mr. Gallagher had actually -- is actually leasing.  
8 If it was only one-third of that, then it would be considered  
9 a mezzanine.

10           I think it's actually -- it should be considered  
11 a floor. And I think that once the Zoning Administrator  
12 takes a better look at it, I think they should agree -- I  
13 don't know if they will because, again, sometimes they  
14 disagree with me, but -- so I'm -- that's just my difference  
15 in opinion on this because I was very -- I was confused about  
16 whether they would consider it a mezzanine or not. So  
17 anyway, I'll save the rest of my thoughts for deliberation.

18           VICE CHAIR HART: Thank you.

19           Board Member John, do you have any questions for  
20 either the Office of Planning or Mr. Gallagher?

21           MEMBER JOHN: No. I am still trying to work my way  
22 through this.

23           (Pause.)

24           VICE CHAIR HART: Sorry. I keep on like muting  
25 myself and then I realize that I need to unmute before I

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1 start talking. And do you think that you need any more  
2 information, or do you think you have enough -- do both of  
3 you think you have enough information?

4 MEMBER JOHN: I have enough information based on  
5 what's in the record.

6 COMMISSIONER MAY: So I think I have enough  
7 information. I mean it would be nice if we had gotten the  
8 Zoning Administrator to look at the plans and even, you know,  
9 had some sort of explanation what their logic was.

10 But I think that based on what I've seen and my  
11 understanding of the mezzanine regulations and the Zoning  
12 Commission, I have dealt with the issue of what's a  
13 mezzanine, what's not a mezzanine, on a regular basis, and  
14 I'm prepared to deliberate on this and to try to make a case  
15 in favor of the relief that's been requested.

16 So if we're willing to go that far, we'll go that  
17 far and -- you know, there are only three of us. We all have  
18 to agree. If we can't all agree, then I think we have to  
19 defer and wait for more information.

20 And then somebody else is going to have to read  
21 the record to make up for Mr. Hart's absence. Although Mr.  
22 Hart could come back for that one case. That has happened.  
23 No? Yeah?

24 VICE CHAIR HART: Mr. Hart is not coming back for  
25 any cases.

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1 (Laughter.)

2 COMMISSIONER MAY: Not even in September? One  
3 little, tiny case?

4 VICE CHAIR HART: I'll say this: that's called a  
5 slippery slope. And you do understand that Mr. Hill is  
6 listening to this, right?

7 COMMISSIONER MAY: Oh, okay. So he could step in  
8 at a moment's notice.

9 VICE CHAIR HART: No, no, no. I'm saying he's  
10 listening to you talk and say, well if he can come back for  
11 that case, then there are other cases he can come back for.

12 COMMISSIONER MAY: I see.

13 VICE CHAIR HART: Yeah.

14 COMMISSIONER MAY: I see. Okay.

15 VICE CHAIR HART: I think that the capable hands  
16 of my successor, Crishaun Smith, will be more than enough to  
17 -- actually I don't think we need to go to that level, but  
18 I didn't need any other information from either Mr. Mordfin  
19 or Mr. Gallagher.

20 I do appreciate the information that you've  
21 provided so far to us. And I know this is a little bit  
22 strange, Mr. Gallagher, because we didn't really have you do  
23 a presentation or anything, but we were really kind of  
24 focused on a particular aspect of that. And so that's kind  
25 of where we are. And Ms. John, are you still there?

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1 MEMBER JOHN: Yes, I'm still here. I had to adjust  
2 my --

3 VICE CHAIR HART: That's okay. You just went out,  
4 and I just wasn't sure if you had logged on or not.

5 MEMBER JOHN: Thank you.

6 VICE CHAIR HART: So I think we can close the  
7 record and -- is the Board ready and -- I have closed the  
8 hearing. Is the Board ready to deliberate on this?

9 And I actually need to ask Mr. Bassett, OAG, can  
10 we deliberate on this today? I'm a little bit unclear as to  
11 how we do this because of the -- I know that we have had to  
12 separate, in some instances, the public hearing versus the  
13 public meeting.

14 But since we didn't really have anybody that we  
15 were looking -- from the public that was looking to speak,  
16 that's usually the issue that we have with having to separate  
17 the two, but Mr. Bassett, if you could just give me some  
18 guidance on that, that would be helpful.

19 MR. BASSETT: I believe under your new rules you  
20 can deliberate on this case today.

21 VICE CHAIR HART: Okay. That's fine. That's fine.  
22 I'm fine with that. I just wanted to double-check. Okay.

23 So thank you very much, Mr. Gallagher, and thank  
24 you very much, Mr. Mordfin. I think we are going to -- as  
25 I've closed the case already, we're going to start

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1 deliberation. And Mr. Young, I think we can excuse both Mr.  
2 Gallagher and Mr. Mordfin.

3 (Pause.)

4 VICE CHAIR HART: I don't know if Mr. Young heard  
5 me. I think he did.

6 (Pause.)

7 COMMISSIONER MAY: Maybe it takes a minute  
8 sometimes.

9 VICE CHAIR HART: I don't know.

10 (Pause.)

11 VICE CHAIR HART: Still don't know. Mr. Young, are  
12 you reading me? Can you hear me?

13 MR. YOUNG: Yeah, sorry. What did you say?

14 VICE CHAIR HART: I was just excusing Mr. Mordfin  
15 and Mr. Gallagher.

16 MR. YOUNG: Okay.

17 VICE CHAIR HART: Great. So it sounded like the  
18 Board was ready to deliberate. Mr. May, it seems like you  
19 are --

20 COMMISSIONER MAY: I'm ready to go, yes.

21 VICE CHAIR HART: Yeah. Most definitely, please.

22 COMMISSIONER MAY: I've been thinking about this  
23 for eight hours now.

24 (Laughter.)

25 VICE CHAIR HART: Okay. So just keep it to about

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1 less than five minutes, and that will be great.

2           COMMISSIONER MAY: Absolutely. So the -- you know,  
3 originally when we heard this case, I was very skeptical that  
4 the case could be made for the variance for reasons that I  
5 think we were all aware of. The exceptional circumstance is  
6 not clear in this case.

7           Certainly Mr. Gallagher had done all of the things  
8 that he could do in order to be able to make use of the  
9 property -- or to, you know, put this use into the property.  
10 It's just that, you know, variance is a high bar for this.

11           However, I was very encouraged by seeing the plans  
12 that were developed, which covered the entire floor with an  
13 intermediate floor. And I think I've already explained that  
14 I think that that intermediate floor is a floor, not a  
15 mezzanine. A mezzanine is one-third of the area of that  
16 volume that is being occupied of the floor area below.

17           This is not one-third of the floor area, it is the  
18 entirety of that floor area, and it is completely separate  
19 from the unit next to it. So I think it is -- it is an  
20 intermediate floor.

21           Now it could raise issues with the FAR for that  
22 building. I mean if that building is at 100 percent of the  
23 FAR, it could be that the Zoning Administrator couldn't  
24 approve it because, you know, it would exceed the FAR.

25           There's no doubt in my mind that it is an

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1 intermediate floor. I don't -- you know, I appreciate Mr.  
2 Mordfin's argument that some folks maybe thought that this  
3 intermediate floor would be in the spirit of the regulation,  
4 which is to provide that buffering level between what is  
5 potentially a noisy use and the people living above it.

6 In this circumstance, it's not about the spirit.  
7 I don't really vote on spirit or vote in favor of things  
8 based on the spirit of the regulations. In this circumstance,  
9 I believe that the applicant is taking the right steps to  
10 make sure that it is consistent with the zoning regulations  
11 as they've been written. I think they've made a case for the  
12 special exception for this use.

13 And I am willing to vote in favor for both the  
14 special exception and the variance, not because I think the  
15 variance is necessary, I actually don't think it is, but I  
16 also don't want to make Mr. Gallagher come back again if he  
17 gets some different interpretation from the Zoning  
18 Administrator than what I would expect.

19 So I'm willing to vote in favor of it because I  
20 do believe it actually meets the zoning regulations, and Mr.  
21 Gallagher is entitled to the relief that he has requested.  
22 So I'm in favor.

23 VICE CHAIR HART: Okay. Ms. John?

24 MEMBER JOHN: Mr. Vice Chair, may I hear from you  
25 first?

1 (Laughter.)

2 VICE CHAIR HART: And we're playing some tennis,  
3 and the ball's in your court. So yeah, I -- I appreciate  
4 that. I did have one question for Mr. May, though.

5 With regard to the 1/3rd rule that you were  
6 talking about for the mezzanines, that is what the Zoning --  
7 that is what is in the zoning regulations themselves or what  
8 the Zoning Administrator actually --

9 COMMISSIONER MAY: So the definition of a  
10 "mezzanine" in the zoning regulations is that it can be no  
11 larger -- it's an intermediate floor area, but it can be no  
12 larger -- to be considered a mezzanine, it is no larger than  
13 one-third of the floor area of the room below.

14 VICE CHAIR HART: Yeah.

15 COMMISSIONER MAY: Right. And that's important  
16 because people want to put in mezzanines in, you know, spaces  
17 where they have spare height. They can put in that mezzanine  
18 and get a loft and a bedroom at the top of their house or --

19 VICE CHAIR HART: Uh-huh.

20 COMMISSIONER MAY: -- in a penthouse or something  
21 like that without it being considered a floor. But once you  
22 go over that one-third, it's no longer considered a  
23 mezzanine, it's considered a floor.

24 VICE CHAIR HART: Yeah. Okay. Thank you. So in  
25 looking at this case, I think the exceptional condition issue

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1 is probably the -- you know, the one issue that we kind of  
2 focused on. I appreciate the applicant went to the ZA and,  
3 you know, got some idea about what -- how they saw the  
4 project.

5 I think you're right, Commissioner May. It would  
6 have been helpful if the applicant would have the plans  
7 before the ZA because then it would -- you would know that  
8 they're not talking about a hypothetical, they're talking  
9 about, you know, this kind of on the ground and I am most  
10 definitely supportive of the special exception.

11 The variance, I'm still -- I think that the --  
12 because the variance is for the owner of the building and not  
13 necessarily the applicant, that's where I kind of have the  
14 issue.

15 The owner of the building, you know, they have --  
16 there is an exceptional condition for them. I feel for the  
17 applicant. I understand that they have that particular  
18 concern. I'm just -- they're trying to kind of deal with the  
19 issue that's kind of before them.

20 I will say I thought that there was a possible  
21 re-zoning that may be necessary or starting to be discussed  
22 about this particular issue. And I don't know if you're  
23 aware of that or if you had any insight on that?

24 COMMISSIONER MAY: The text amendment?

25 VICE CHAIR HART: Yeah.

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1 COMMISSIONER MAY: I'm not aware. I mean it  
2 certainly could be possible because it's come up. This is  
3 a topic that comes up regularly and --

4 VICE CHAIR HART: Yeah.

5 COMMISSIONER MAY: -- there's such demand for  
6 these kinds of facilities that I think the regulations  
7 continue to evolve, but I don't know of anything specific.  
8 But you know, I've got, I don't know, maybe 15 zoning cases  
9 at the moment. So I don't --

10 VICE CHAIR HART: Just 5,000, you know.

11 COMMISSIONER MAY: Yeah.

12 VICE CHAIR HART: So that's kind of where I am.  
13 I'm more -- I'm not in support of the variance, but it's not  
14 a strong denial, I guess. I'm on the fence with it, I guess,  
15 is what I'm saying and I'd like to hear from Board Member  
16 John.

17 MEMBER JOHN: So I was trying to pull up the  
18 drawings and I couldn't. I've just been having technical  
19 issues all day with my second computer. But do the drawings  
20 show separate entrance for the mezzanine? I mean do you have  
21 to access it through the first floor?

22 COMMISSIONER MAY: Yeah. There are two stairways.  
23 There's a front stairway and a back stairway --

24 MEMBER JOHN: Is the back --

25 COMMISSIONER MAY: -- and it's from the space

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1 below.

2 MEMBER JOHN: So they -- okay. So it's -- both  
3 entrances are from within the space.

4 COMMISSIONER MAY: Yes.

5 MEMBER JOHN: So you know, I've had difficulty with  
6 this special exception criteria since I've first heard it.

7 The only thing that's different here is that now,  
8 I guess, the application before us is an application with a  
9 mezzanine. And so the question is, does that make it an  
10 exceptional condition because it is a space with a mezzanine?

11 And you know, I support the application, but  
12 having difficulty with the -- with creating a new principle  
13 here.

14 And so I really think we need a text amendment  
15 because this is going to keep happening in the city because  
16 next to, I guess, day care centers, I think, you know, places  
17 for dog grooming and boarding are just really needed, you  
18 know.

19 So I think -- I don't know. I struggle with these  
20 cases. So I will leave it to Mr. May to convince me that  
21 this is not a situation where we're not creating a new rule  
22 that could be applied across the board. And in that case,  
23 it really isn't an exceptional condition.

24 COMMISSIONER MAY: Yeah. Well certainly the  
25 actions of the Board of Zoning Adjustment don't, in effect,

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1 constitute any kind of change in the zoning regulations,  
2 right? We can't make our decisions here and then expect that  
3 that's going to have a ripple effect in other cases.

4           That is up to the Zoning Commission to rewrite the  
5 rules and they may well do that. I mean I think my thinking  
6 about the special exception -- or, sorry, the exceptional  
7 condition here has to do -- actually goes back to that  
8 question of the issue of a, you know, inserting this floor,  
9 right?

10           And I'm moving away from calling it a mezzanine  
11 because it's not a mezzanine in zoning terms. This  
12 intermediate floor, if the -- if creating this intermediate  
13 floor actually did cause some -- cause the project to exceed  
14 the -- or the building to exceed its FAR, that for me gets  
15 closer to that exceptional circumstance, right, because it  
16 -- you know, if you try to comply with one part of the  
17 regulations, which is to have that second floor, but it  
18 causes a need for other -- for FAR relief, you know, as a  
19 result, I mean I think that that's where the special -- the  
20 exceptional condition kicks in for the owner of the building,  
21 right?

22           It's in order to -- I mean it has implications for  
23 the entire project and not just for this individual space.

24           So I mean I'll admit it's not the strongest, most  
25 logical case, but that's, you know, that's kind of what we

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1 have to deal with sometimes in the Board of Zoning  
2 Adjustment.

3           And I think, again, in this circumstance, I do  
4 believe that what is being proposed here actually is  
5 consistent with the conditions that are required to approve  
6 this use by special exception.

7           I mean we could make the decision only on that --  
8 I mean make a decision to approve that alone and see if Mr.  
9 Gallagher can, you know, convince the Zoning Administrator  
10 that he should agree with me and see what happens there.

11           Maybe we could hold the variance in abeyance for  
12 the moment. In case Mr. Gallagher has to come back, he would  
13 not have to file a new case I think. I don't know. I mean  
14 maybe we need Mr. Bassett to weigh in on that, or Mr. Moy.

15           But you know, we could grant part of that relief  
16 today and if that gets them over the finish line, great. If  
17 not, then Mr. Gallagher could come back with -- either to try  
18 to further make the case, or with the owner in hand to  
19 further make the case, or to modify the relief, if that's  
20 necessary.

21           VICE CHAIR HART: Yeah. I mean I think that --

22           MR. BASSETT: Hello.

23           VICE CHAIR HART: -- it would be a modification  
24 for this. If the -- I mean because we would have to -- we  
25 would have an order by the time -- you know, for -- you would

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1 have to have the -- Mr. Gallagher would have to have an order  
2 from the BZA in order to, you know, kind of bring the project  
3 before the DCRA.

4           And for them to have that, there has to be -- this  
5 has to be -- there has to be some finality to this process.  
6 So in my mind, they would have to come back for a  
7 modification if we only approve the special exception and  
8 deferred on the -- or I don't know what we would do with the  
9 variance, but --

10           COMMISSIONER MAY: Well at least in the Zoning  
11 Commission we have made, you know, separate decisions.

12           VICE CHAIR HART: Yes. Oh, yeah, yeah. Yeah, we  
13 can. I'm just saying that it's -- we could make that in the  
14 -- as part of the order.

15           But if they wanted to come back with the -- and  
16 say yes, I'd like to have a decision on the variance, then  
17 I -- that would have to be a modification of the order that  
18 had been already issued, which would be to approve the  
19 special exception and defer on the other areas.

20           COMMISSIONER MAY: I'm not sure that we couldn't  
21 just do a complete order just on the special exception. But  
22 I don't know, maybe Mr. Moy -- Mr. Moy turned his camera on.  
23 Maybe he's got something to say.

24           VICE CHAIR HART: Hopefully. Mr. Moy?

25           COMMISSIONER MAY: May he's just looking at us.

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1 MR. MOY: Yes. Well as Mr. May has mentioned, I  
2 mean the Board has on occasion approved in part and denied  
3 in part. So that's always an option.

4 Although I don't advocate that because I tend to  
5 go fully one way or the other, but that's me. Other than  
6 that, the other option is to delay on this to give the  
7 applicant time to get the information and a response from the  
8 ZA.

9 COMMISSIONER MAY: So I was not advocating  
10 approving in part and denying in part. I was suggesting that  
11 we approve in part and leave the variance for the case open  
12 for future decision, which is a very unusual thing.

13 But I don't -- I mean I don't see why we couldn't  
14 do that particularly since we're probably talking about a  
15 summary order since there's no, you know, Office of Planning  
16 is in support and we don't have any opposition.

17 MR. MOY: Well there's another option here which  
18 I haven't really seen. The applicant could withdraw his  
19 request for the variance.

20 COMMISSIONER MAY: Well true. I'm trying to avoid  
21 him having to go through more trouble in the future, but I  
22 think we might eventually have to hear from him.

23 MR. MOY: Okay. That's true.

24 COMMISSIONER MAY: Mr. Bassett, do you have any  
25 opinion on whether we could approve the special exception and

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1 then leave the variance case open?

2 MR. BASSETT: I would have to look at this further,  
3 but my initial interpretation is that the Board approves or  
4 denies applications, and therefore I don't think there is  
5 leeway there for the Board to defer part of an application  
6 until a later date.

7 They would have to decide on the whole application  
8 as it is presented to them by the applicant.

9 COMMISSIONER MAY: Okay. Well I'll give up on that  
10 thought then. Maybe we should hear from Mr. Gallagher about  
11 what he prefers to do. It looks like he's actually raised  
12 his hand.

13 VICE CHAIR HART: Yeah. Go ahead, Ms. John.

14 MEMBER JOHN: I think we can defer the decision to  
15 see if there's any movement with the ZA, and maybe  
16 potentially there's a text amendment at some point.

17 COMMISSIONER MAY: Yeah. That could take a long  
18 time. I'm very interested to know whether Mr. Gallagher  
19 would prefer that we just decide the whole case today. In  
20 which case, we could --

21 VICE CHAIR HART: Mr. Young, can you bring Mr.  
22 Gallagher back? And I guess I'm going to now reopen the  
23 case. Mr. Gallagher, welcome back.

24 MR. GALLAGHER: Thanks. Sorry, I've been -- I  
25 wanted to get back and answer some of your questions.

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1 VICE CHAIR HART: Sure.

2 MR. GALLAGHER: If you wanted to bring back Mr.  
3 Mordfin, I know he had written up a change to the actual  
4 zoning code. He had not had time to put it before you guys  
5 in July, but he was thinking about doing that this fall. So  
6 if you want to bring him back, he can testify to that.

7 And then I prefer to just try and get a whole  
8 decision here. And whether you -- like I said, I believe  
9 it's under the special exception. I don't need the variance.  
10 If you could just abstain from the variance vote or just set  
11 it aside, I'd be perfectly fine with that.

12 VICE CHAIR HART: I think it would be helpful if  
13 you actually withdrew the variance request. That will be  
14 coming -- because this is a self-certified application. So  
15 this is your, you know, application before us.

16 If we do that, then we can most definitely decide  
17 it. I just -- I think it would be cleaner if we did it that  
18 way.

19 MR. GALLAGHER: I can absolutely, yeah, --

20 VICE CHAIR HART: All right.

21 MR. GALLAGHER: -- strike the variance  
22 application.

23 VICE CHAIR HART: I think we've gotten the  
24 information that I need and I appreciate your coming back,  
25 Mr. Gallagher.

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1 MR. GALLAGHER: One more thing. About the  
2 floor-to-area ratio, according to Mr. Mordfin, because it's  
3 a downtown zone, that was not an issue with the building.

4 VICE CHAIR HART: Okay. Good to know.

5 COMMISSIONER MAY: Okay.

6 VICE CHAIR HART: Appreciate the information.

7 Thank you.

8 MR. GALLAGHER: Sure.

9 VICE CHAIR HART: Okay.

10 MEMBER JOHN: Mr. Vice Chair, before Mr. Gallagher  
11 goes --

12 VICE CHAIR HART: Sure.

13 MEMBER JOHN: -- do we not need to amend his  
14 application on the record to withdraw the variance request  
15 before we could decide?

16 VICE CHAIR HART: That's fine.

17 MR. GALLAGHER: I'm happy to, yeah, officially say  
18 I would like to withdraw my application for an area variance.

19 VICE CHAIR HART: Thank you very much. And Mr.  
20 Moy, do we need to have that in writing? Do you need an  
21 updated self-cert?

22 MR. MOY: Yeah. I was going to mention that.

23 VICE CHAIR HART: Okay. So get a self-cert, Mr.  
24 Gallagher. If you could get that to us by tomorrow, that  
25 would be helpful --

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1 MR. GALLAGHER: Sure.

2 VICE CHAIR HART: -- but I think we can decide  
3 this today.

4 MR. GALLAGHER: Okay.

5 VICE CHAIR HART: Excellent. Thank you all. Thank  
6 you very much, Mr. Gallagher. And you can dismiss -- Mr.  
7 Young, you can dismiss Mr. Gallagher.

8 Okay. So I think we're -- it sounds like we're  
9 in agreement. I can make a motion to approve Application No.  
10 -- well I guess I have to say this is now a changed  
11 application.

12 Approve Application No. 20249 of Vincent  
13 Gallagher. I guess this is as amended to -- pursuant to 11  
14 DCMR Subtitle X, Chapter 9, for a special exception under  
15 Downtown-Use requirements for Subtitle I 303.1(a), and -- or  
16 to permit an animal care and boarding use on the ground floor  
17 of an existing mixed-use building in the D-5 Zone at premises  
18 22 M Street, N.E., Square 672, Lot 858.

19 And do I have a second?

20 MEMBER JOHN: Second.

21 VICE CHAIR HART: Mr. Moy, could you do a roll call  
22 vote, please.

23 MR. MOY: Yes. Thank you. So when I call your  
24 name, if you would please respond with a yes, no, or abstain  
25 from the motion made by Vice Chair Hart to approve the

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1 application only for the special exception relief as amended.  
2 And seconding the motion is Ms. John -- oh, wait a minute --  
3 yeah, seconded by Ms. John. So Zoning Commission Peter May?

4 COMMISSIONER MAY: Yes.

5 MR. MOY: Ms. John?

6 MEMBER JOHN: Yes.

7 MR. MOY: Vice Chair Hart?

8 VICE CHAIR HART: Yes.

9 MR. MOY: Staff would record the vote as 3 to 0 to  
10 2. This is on the motion of Vice Chair Hart, seconded by Ms.  
11 John. Also in support Zoning Commission Peter May. We have  
12 a Board seat vacant and one Board member not participating.  
13 Motion carries 3 to 0 to 2.

14 VICE CHAIR HART: Excellent. Thank you. Okay.  
15 I guess it's the last case that we have, which is 20186.

16 MR. MOY: Yes. Thank you. So that would be Case  
17 Application No. 20186 of Elisabeth Hando, as amended, for  
18 special exceptions under the R-Use group requirements,  
19 Subtitle U Section 203.1(h), and under Subtitle C Section  
20 703.2, from the minimum parking requirements, Subtitle C  
21 Section 701.5, to convert an existing expanded child  
22 development home to a new child development center with 20  
23 children in the R-1-B Zone at premises 240 Quackenbos Street,  
24 N.E., Square 3719, Lot 24.

25 This case was last heard by the Board at its

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1 hearing on July the 8th.

2 VICE CHAIR HART: Okay. We have the folks that are  
3 here. I am getting a lot of feedback somewhere. I'm not  
4 really sure who is the -- oh, it stopped.

5 Okay. So we've last heard this case on July 8th  
6 and we have quite a long -- okay. Is there someone talking  
7 in the -- who's actually speaking right now? Mr. Young, do  
8 you see who's -- is there somebody else on the phone that's  
9 joined us?

10 MR. YOUNG: Yeah. I just muted them, sorry.

11 VICE CHAIR HART: Oh, thank you. No, that's okay.  
12 I just kept on hearing them, and I couldn't figure out who  
13 was talking there.

14 So we last heard this on July the 8th. And at  
15 that point, we were -- we had heard from the applicant about  
16 their project. And if you could -- Ms. Hando, welcome to the  
17 meeting. I guess I should go through and see -- just have  
18 folks introduce themselves.

19 So Ms. Hando, we can start with you. Welcome.  
20 If you could just introduce yourself.

21 MS. HANDO: Yeah. Elisabeth Hando, the applicant.

22 MR. DAVIS: Michael Davis is here also in the same  
23 room.

24 VICE CHAIR HART: Okay. And Mr. Davis, you are  
25 just helping -- you're helping with Ms. Hando, correct?

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1 MR. DAVIS: Yes. Yes.

2 VICE CHAIR HART: And we have Mr. Dorsey.

3 (Pause.)

4 VICE CHAIR HART: You're on mute. So I cannot --  
5 I can't see you. So I don't know if you're speaking or not.

6 (Pause.)

7 VICE CHAIR HART: Hello? Mr. Dorsey. Are you with  
8 us, Mr. Dorsey? Okay. We'll come back to Mr. Dorsey.

9 Ms. Brooks, can you hear me?

10 MS. BROOKS: Yes, I can hear you. I am here.

11 VICE CHAIR HART: Okay. If you could introduce  
12 yourself please.

13 MS. BROOKS: Yes. I'm the ANC Commissioner for  
14 4B08 in which Ms. Hando's facility will be located.

15 VICE CHAIR HART: Welcome, Commissioner.

16 MS. BROOKS: Thank you.

17 VICE CHAIR HART: And I don't know if we could --  
18 if Mr. Dorsey is there right now. Can you hear me, Mr.  
19 Dorsey?

20 (Pause.)

21 VICE CHAIR HART: Mr. Dorsey, can you hear me?

22 MR. DORSEY: Yes.

23 VICE CHAIR HART: Okay. I can't see you. So I  
24 wasn't sure if you were listening to us at this point.

25 MR. DORSEY: Yes. I can hear you, but my video is

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1 not working for some reason.

2 VICE CHAIR HART: That's okay. I just wanted to  
3 make sure that you were able to -- we were able to speak to  
4 you.

5 MR. DORSEY: Yes. I --

6 VICE CHAIR HART: If you could mute your phone?  
7 Thank you. There's a lot of feedback, and it's hard to hear  
8 when there's as much feedback coming through the line.

9 So as I said, we last heard this case in early  
10 July. And at that point, there were -- there was, I guess,  
11 some changes, Ms. Hando, at least to the relief that you were  
12 requesting.

13 If you could talk about that a little bit, that  
14 would be helpful. And I -- we can start with that, and I  
15 don't know if my fellow commissioners have any questions --  
16 any other questions for Ms. Hando.

17 Doesn't look like it. Okay. Ms. Hando, if you  
18 could talk about the relief that you're requesting now, the  
19 change.

20 (Pause.)

21 VICE CHAIR HART: There we go.

22 MS. HANDO: Yeah, the change was the side yard.  
23 So we requested to remove the relief on side yard because we  
24 removed the cover. The cover for the ramp wasn't a  
25 requirement. So now we get a new memo from DCRA for two

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1 special exception, the parking and the day care center.

2 (Pause.)

3 MS. HANDO: I can't hear you.

4 MR. DAVIS: We can't hear you.

5 VICE CHAIR HART: Thank you. Thank you very much.

6 I was on mute. I'm sorry. I must because I've got a fan

7 going on and sometimes it's a little loud.

8 So thank you very much for that, and I understand

9 your -- the changes that you are now proposing. So you're  
10 seeking less relief. That's what's the change.

11 And I see that we have the Office of Planning here  
12 as well, Ms. Brown-Roberts. How are you?

13 MS. BROWN-ROBERTS: I'm fine, thank you, Mr. Vice  
14 Chair.

15 VICE CHAIR HART: Yeah.

16 MS. BROWN-ROBERTS: I'm sorry, my video isn't  
17 starting. I don't know --

18 VICE CHAIR HART: I can hear you. It's fine.

19 MS. BROWN-ROBERTS: Okay. I think the video is  
20 just coming up.

21 VICE CHAIR HART: There you go.

22 MS. BROWN-ROBERTS: All right.

23 VICE CHAIR HART: Hello.

24 MS. BROWN-ROBERTS: Hi.

25 VICE CHAIR HART: So you've seen that the applicant

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1 has changed the relief, and I think you had suggested that  
2 they make that change to the --

3 MS. BROWN-ROBERTS: Yes, they did. Yes. After  
4 conversations with DCRA and -- they concluded that the side  
5 yard was not necessary since it wasn't covered.

6 And so basically we remain in support, as stated  
7 in our report, and just less the side yard discussion.

8 VICE CHAIR HART: Understood. Thank you very much.

9 MS. BROWN-ROBERTS: Okay.

10 VICE CHAIR HART: Do the Board members have any  
11 questions for the Office of Planning? Okay. Not seeing --  
12 I don't know if you're talking, but --

13 MEMBER JOHN: I am talking.

14 VICE CHAIR HART: Okay.

15 MEMBER JOHN: I want to ask the applicant to  
16 address some of the neighbors' concerns about the drop-off  
17 and pickup, and how she would address traffic issues.

18 I believe I saw a presentation in your package  
19 talking about how you could mitigate those potential adverse  
20 impacts.

21 VICE CHAIR HART: This is directed towards you, Ms.  
22 Hando. If you could talk a little bit about the -- how  
23 you're going to address the traffic concerns that the  
24 neighborhood has expressed.

25 MEMBER JOHN: If Mr. Young could put that up on the

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1 screen so we can see it and she can step through it.

2 VICE CHAIR HART: Do you know which exhibit that  
3 is, Ms. John?

4 MEMBER JOHN: No. My computer isn't working.

5 (Pause.)

6 VICE CHAIR HART: And we can't hear you, Ms. Hando.  
7 You're muted right now.

8 MS. HANDO: Okay.

9 MR. DAVIS: They want you to explain. Just go.  
10 It will be alright.

11 MS. HANDO: Okay. I just wanted to go down with  
12 the slide on parking. So because on parking, I decided to  
13 have someone outside to -- okay. This is the slot. This is  
14 where I am.

15 Two-page report is -- so we decided to have a --  
16 we decided to have a drop-off and pickup plan that we will  
17 have someone outside when parent drop and -- drop the kids.  
18 The person will just facilitate taking the kids outside.

19 We don't really need parents who come in the  
20 facility once they drop the kids. So the traffic can be --  
21 we won't have traffic issue during the drop-off. So once  
22 they drop, somebody will be picking them up and take them to  
23 the room.

24 And also we planning to address the issue to the  
25 parent during the orientation, make sure the parents get to

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1 understand the parking and the drop-off and pickup policy.  
2 So we going to have it in the parent handbook and the  
3 website. And during the orientation as well, we will explain  
4 to the parent how they can -- they're going to be dropping  
5 kids and pick up kids during the pickup and drop-off time.

6 VICE CHAIRPERSON HART: And Ms. Hando, this plan  
7 you're looking at is on page 21 of the PowerPoint. Is that  
8 what you're looking at?

9 MS. HANDO: Yes, that's -- yes, two pages down  
10 before the last, yes.

11 VICE CHAIRPERSON HART: Okay.

12 MS. HANDO: So like I explained, number three,  
13 where all this design is a staff member, we're going to be  
14 there at the intersection of Quackenbos and Third Street to  
15 welcome the parents and the kids. So they'll be picking up  
16 the kids and take them to the classroom. And also, number  
17 four, we talk about orientation for the parent. We will  
18 explain to them how the parking plan will work so that they  
19 won't be confused. And also, we are talking about car pool,  
20 so for parent, really needs to -- all live in the same area,  
21 they can use car pool. And we have a lot of family in the  
22 neighborhood, so the walking distance, the parent can just  
23 walk and drop the kids, because sometimes we also have  
24 parents that work, that they just -- they live next to the  
25 daycare, but I think I will explain to them that in the

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1 future, they need to just walk than drive the car, maybe come  
2 a little bit early and drop the kids before -- or going home  
3 to take the car for work, because most of them lie in the  
4 neighborhood so --

5 VICE CHAIRPERSON HART: Yes. I --

6 MS. HANDO: -- that will be --

7 VICE CHAIRPERSON HART: -- I think I understand.  
8 Board Member John, did you -- would you like another -- some  
9 other -- do you have any other questions for the applicant?

10 MEMBER JOHN: That's helpful for now, thank you.

11 VICE CHAIRPERSON HART: And following up on that,  
12 Ms. Hando, do you have a -- the parking for the parents would  
13 be -- they're dropping off in front of the building you're  
14 saying, right?

15 MS. HANDO: Yes.

16 VICE CHAIRPERSON HART: Okay. And -- okay, I  
17 think I understand that. And the very younger -- the  
18 youngest children know they still -- you still allow the  
19 parents to come in? You're looking at --

20 MS. HANDO: Actually --

21 VICE CHAIRPERSON HART: -- six weeks. That's --  
22 those are really, really young kids.

23 MS. HANDO: Yes.

24 VICE CHAIRPERSON HART: They're infants.

25 MS. HANDO: Yes. Actually, they come with the car

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1 seat, so we have a space for the car seat, so we just pick  
2 up the kids in the car seat and take them in. But even now  
3 with the COVID, the new regulation, at RC, parents are not  
4 allowed to come in. So they have to call like five minutes  
5 ahead of time, and then we have to get kids from outside and  
6 take them in. So they don't have to, and we are planning to  
7 schedule orientation or a meeting. If parents want to come  
8 in, we have to have like one parent at a time, so we're going  
9 to be having a meeting, and plan any meeting with the  
10 parents.

11 VICE CHAIRPERSON HART: Okay. I think I  
12 understand. Okay. Do the Board members have any other  
13 questions for Ms. Hando?

14 No. Okay. And Commissioner Brooks --

15 MS. BROOKS: Yes.

16 MR. COX: -- did you have any questions for the  
17 Office of Planning or Ms. Hando?

18 MS. BROOKS: I have a question with regard to the  
19 -- put my headset and I'm not actually on the headset.  
20 That's hilarious -- I have a question with regard to the  
21 traffic plan, because Quackenbos -- I'm sorry, not Quackenbos  
22 -- but you can't turn from New Hampshire Avenue onto  
23 Quackenbos in the rush hour, and you can't -- and Third  
24 Street is "One Way" or "Do Not Enter" during the rush hour  
25 near Quackenbos. So I'm not quite clear on how these cars

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1 would be coming without having to either make some type of  
2 U-turn or illegal turn to get onto the street. I'm having  
3 trouble visualizing that.

4 MS. HANDO: I'm going to answer to that, because  
5 it's actually perfect when the -- the One Way helps a lot on  
6 the parking, because that One Way will be facilitating the  
7 traffic actually, because when parents come to the daycare  
8 right now, they use Third Street. They turn right on  
9 Quackenbos, and drop the kids, and continue to New Hampshire,  
10 and take -- and continue and go. So One Way is really  
11 perfect for us, really. It helps us a lot. We don't have  
12 any traffic on Quackenbos in the morning because of One Way.

13 MS. BROOKS: Okay. And could you also define the  
14 community when you say that, you know, we have neighbors --  
15 we have folks in the neighborhood that are using the school?  
16 I think our definitions of neighbors are different in that  
17 I think you're using sort of Ward 4 much more broadly than  
18 I am.

19 MS. HANDO: Yes. I was planning to -- actually,  
20 we have a child on Third Street and Nicholson. We have  
21 children by Third and Nicholson, by Walmart. Walmart is part  
22 of the community, so I have two kids living next to the  
23 Walmart, and next to the school -- LaSalle School on Madison  
24 Street, I have another child there. Down from my house on  
25 Eastern Avenue and Quackenbos, I have somebody here -- there,

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1 too. So it's in the community, and I can connect you for  
2 those -- to those families if you want to talk to them.

3 VICE CHAIRPERSON HART: I didn't know if you had  
4 any other questions, Commissioner Brooks.

5 MS. BROOKS: Not right now.

6 VICE CHAIRPERSON HART: Okay. Commissioner  
7 Brooks, did you have any --

8 MS. BROOKS: Actually, Mr. Hart, I do have on  
9 other questions.

10 VICE CHAIRPERSON HART: Sure.

11 MS. BROOKS: Because just -- is I'm picturing  
12 Third Street. You can't turn left onto Third or right --  
13 left from Maryland on New Hampshire Avenue or right from DC  
14 onto Third Street during rush hour in the morning. So I  
15 don't understand. I still don't understand how they're  
16 getting on Third Street to turn right on Quackenbos unless  
17 they're making illegal turns.

18 MS. HANDO: So what parent -- because most of my  
19 parents already know the system, they go down on New  
20 Hampshire and turn right on Rittenhouse -- and turn left on  
21 Rittenhouse, or right on Rittenhouse when they come from  
22 Eastern Avenue. So if a parent comes from Eastern Avenue,  
23 they will turn right on Rittenhouse and left -- then right  
24 on Third Street. They'll use Rittenhouse, most of them.

25 MS. BROOKS: Okay. I'm not sure that's a legal

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1 turn, but I'll let that --

2 MS. HANDO: It is.

3 MS. BROOKS: -- point go.

4 MS. HANDO: It is. On Rittenhouse, by the  
5 (simultaneous speaking) --

6 MS. BROOKS: It's illegal to turn on Third Street.

7 MS. HANDO: -- by -- yes, by the liquor store,  
8 yes. On Rittenhouse --

9 MS. BROOKS: Right.

10 MS. HANDO: -- that's how they --

11 MS. BROOKS: So Third Street is before  
12 Rittenhouse, before the liquor store.

13 MS. HANDO: When they come --

14 MS. BROOKS: That is an illegal turn --

15 MS. HANDO: -- when they come --

16 MS. BROOKS: -- onto --

17 MS. HANDO: -- when they come from Eastern Avenue,  
18 they use Riggs Road, they turn right on Eastern Avenue and  
19 left on Rittenhouse, and then they can turn right on Third  
20 Street -- left on Third Street, sorry.

21 MS. BROOKS: Okay. So now you're coming from  
22 Riggs Road and not from Eastern and New Hampshire?

23 MS. HANDO: I'm saying yes -- yes, I'm saying --  
24 I said -- I was saying that Eastern Avenue, they use Eastern  
25 Avenue. If they come from Riggs Road by Walmart, they can

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1 just go ahead and make that turn. Yes. That's how they do.  
2 They use Walmart. They turn around in front of Walmart, and  
3 they --

4 MS. BROOKS: So then they can't -- if they're  
5 coming from that direction, they couldn't be making a right  
6 turn onto Quackenbos. That has to be a left turn.

7 MS. HANDO: They are not making a right turn on  
8 Quackenbos.

9 VICE CHAIRPERSON HART: Hold on for a second.

10 MS. HANDO: I did not say Quackenbos. I said --

11 VICE CHAIRPERSON HART: Hold on a second.

12 MS. HANDO: -- Rittenhouse.

13 VICE CHAIRPERSON HART: Ms. Hando?

14 MS. HANDO: Yes.

15 VICE CHAIRPERSON HART: Okay. So we're talking  
16 a lot about the driving and how we're doing -- and how we're  
17 getting here.

18 MS. HANDO: Yes.

19 VICE CHAIRPERSON HART: Let's assume that people  
20 are actually using their correct turns, they'd be able to get  
21 in there? Okay.

22 MS. BROOKS: Okay.

23 VICE CHAIRPERSON HART: That's --

24 MS. BROOKS: The reason --

25 VICE CHAIRPERSON HART: Yes.

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1 MS. BROOKS: -- the reason that would be a concern  
2 to us is because there's already an issue with people making  
3 illegal turns with -- you know, separate from the daycare,  
4 there's a traffic issue on Third Street. We don't -- we've  
5 already been working with DDOT with regard to traffic-calming  
6 measures in that area, and we certainly don't want to do  
7 anything else that aggravates the traffic-calming concerns  
8 on the street.

9 VICE CHAIRPERSON HART: Okay. I understand that.

10 MS. BROOKS: And so that's the purpose of my  
11 question, really, because we need to get to the bottom of how  
12 they're getting there, because if they're doing something  
13 that aggravates what we're already trying to address, that's  
14 not going to be helpful.

15 MS. HANDO: Actually --

16 MS. BROOKS: I can leave it at that.

17 VICE CHAIRPERSON HART: Thank you very much.

18 MS. HANDO: -- actually, I explain because also,  
19 it was the DDOT reports, it wasn't an issue, because DDOT  
20 knows about the traffic.

21 MR. DAVIS: And they approved.

22 MS. HANDO: And then approved it.

23 VICE CHAIRPERSON HART: Okay. Ms. -- Commissioner  
24 Brooks?

25 MS. BROOKS: Yes.

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1 VICE CHAIRPERSON HART: Did you have anything that  
2 you wanted to say? I know those were questions that you were  
3 asking. Did you have any -- you all took a vote?

4 MS. BROOKS: We did. We had a meeting Monday,  
5 July 27th. It would -- you know, how we -- how this was back  
6 on our agenda. We reviewed that and there was the  
7 opportunity -- some opportunity for comments. The meeting  
8 was very long already, and we had already heard the position  
9 of the residents just, you know, as you had. We weren't --  
10 there wasn't new information. It was a matter of voting on  
11 the existing information.

12 And I noticed, when I was looking at the exhibits in  
13 preparing for this meeting, there were some items that  
14 contradicted some of the things that are in that resolution.  
15 And so what I would point out is that we submitted a  
16 resolution; although we initially provided a letter of  
17 support, obviously, things have changed. And so the  
18 resolution that was presented before the Commission and then  
19 subsequently voted was a letter of opposition based on the  
20 things that have transpired over the last year-and-a-half.

21 And while -- I know Ms. Hando's aware of that  
22 resolution and responded to it and submitted to BZA  
23 commentary that the plans were submitted to the -- the plans  
24 for the construction on the property were submitted to the  
25 ANC. And I continue to dispute that point. There were eight

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1 out of nine Commissioners present, and none of them are under  
2 the impression that they've seen the most recent plans and  
3 voted on those plans. What was discussed was a letter of  
4 support to increase a home daycare, not to vote on the  
5 property itself. And so there's a distinction there, and I  
6 wanted to make that point.

7 VICE CHAIRPERSON HART: Yes. I understand. I  
8 think you made that point, actually, at the -- at our last  
9 hearing that there was a description of the project that the  
10 ANC was in approval of that was basically a -- having more  
11 children be included in there, in the daycare. And what is  
12 before the BZA is a -- there is a -- there are additions  
13 being added to the building, and at the last hearing, you  
14 were noting that that was not your understanding of the  
15 project. There are additional children, but there was also  
16 this addition to the house. And I understand that the ANC,  
17 you know, went back and had a -- took a different vote on  
18 that --

19 MS. BROOKS: Yes.

20 VICE CHAIRPERSON HART: -- after finding out the,  
21 you know, the full extent of the project. So I appreciate  
22 that.

23 Do Board members have any questions for the ANC?

24 MEMBER JOHN: Yes, just a couple. So in your  
25 latest meeting, did you talk about the expansion by nine

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1 students and whether there would be any potential adverse  
2 impacts from the expansion?

3 MS. BROOKS: So what we discussed in the meeting  
4 was that while everyone supports, you know, children and  
5 understands the need for daycare, and many of the  
6 commissioners have children and, you know, use daycare  
7 facilities, that we felt that we were duped, in a sense, in  
8 that we were asked to support an increase of 20 students to  
9 a home daycare because ultimately, there was the intention  
10 to add onto the property once it was approved to 20, and that  
11 wasn't conveyed to everyone -- or once there was support for  
12 20, and that wasn't conveyed to everyone. By "everyone," I  
13 think I mean, you know, commissioners and resident and  
14 resident associations in the neighborhood.

15 So yes, there had been some discussion about that  
16 and, you know, what was said in the meeting was there are  
17 other neighborhood locations where a larger facility could  
18 work and is applicable. Even in that area by the Walmart,  
19 which is walking distance from Ms. Hando's home, there would  
20 be the opportunity to have, you know, a much larger facility  
21 in what is more of a business area as opposed to in her home  
22 and turning that into a business.

23 MEMBER JOHN: So you are --

24 MS. BROOKS: That answered your question,  
25 Commissioner?



1 MEMBER JOHN: Yes. The ANC's objection is not to  
2 having the daycare center but to having it in this location.

3 MS. BROOKS: Yes and no. The -- it's going from  
4 a home daycare to a daycare center --

5 MEMBER JOHN: Yes.

6 MS. BROOKS: -- and she's not planning to live,  
7 and that's the objection, right? If it were going to be a  
8 home center with an increased number of children, and she was  
9 still going to be in the home, and it wasn't going to be  
10 primarily a business and not a home, I think there would have  
11 been more support for that by both the Commissioners and the  
12 neighboring -- the neighbors who currently oppose.

13 MEMBER JOHN: Okay. Thank you.

14 VICE CHAIRPERSON HART: Okay. Does the applicant  
15 have any questions for the ANC?

16 MS. HANDO: Yes. My question -- this is not  
17 really a question. It's -- I need to just address something  
18 about -- oh --

19 VICE CHAIRPERSON HART: Actually, it's not --

20 MS. HANDO: -- oh, question.

21 VICE CHAIRPERSON HART: -- this is not an  
22 opportunity --

23 MS. HANDO: Okay.

24 VICE CHAIRPERSON HART: -- to --

25 MS. HANDO: Okay.

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1 VICE CHAIRPERSON HART: -- it's asking questions  
2 of anything that the Commissioner just discussed. If there  
3 isn't, we can move forward with it. I just --

4 MS. HANDO: Okay. Let's just move --

5 MR. DAVIS: One question. Why does she think the  
6 traffic problem would not exist if it's down at Walmart  
7 versus three blocks up the street, because she's saying  
8 there's going to be a traffic problem three blocks up the  
9 street from Walmart, but then (audio interference). Sorry.

10 MS. BROOKS: That's okay. So first of all,  
11 there's less -- in the area closer to the Walmart, that's  
12 already considered much more of a business district than  
13 where Ms. Hando's home is.

14 MR. DAVIS: Yes, but wouldn't --

15 MS. BROOKS: In my opinion, that's --

16 MR. DAVIS: -- the traffic --

17 MS. BROOKS: -- the traffic would flow up from  
18 Walmart.

19 VICE CHAIRPERSON HART: If you could actually  
20 allow the --

21 MR. DAVIS: (Simultaneously speaking) --

22 VICE CHAIRPERSON HART: -- to respond, that --

23 MR. DAVIS: Yes, go ahead.

24 VICE CHAIRPERSON HART: -- would be very helpful.

25 Thank you.

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1 MS. BROOKS: Oftentimes in the morning, there are  
2 DDOT -- or I don't know if they're DDOT or DPW, but there are  
3 government representatives out at the intersection of South  
4 Dakota and Ridge Road to direct traffic, so that's one reason  
5 that I think traffic would be different. There's already two  
6 hour parking in that area and short-term in that area and  
7 less residential parkers. And again, the facilities are  
8 designed for business versus residents.

9 MR. DAVIS: I am not sure that answers the  
10 question, but it's okay.

11 MS. BROOKS: Okay.

12 MR. DAVIS: Do you have any more questions? No  
13 more questions.

14 COMMISSIONER MAY: Mr. Chairman, you're muted.  
15 No, you're not.

16 VICE CHAIRPERSON HART: I am not now. I was  
17 trying to see if you could actually just read my lips as I  
18 was, you know, talking.

19 (Laughter.)

20 VICE CHAIRPERSON HART: I was going to --

21 (Laughter.)

22 VICE CHAIRPERSON HART: I do this for the, you  
23 know. So, Mr. Young, I think there was someone that had  
24 actually signed up. Yes, please.

25 COMMISSIONER MAY: Oh, I'm sorry, Mr. Chairman.

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1 I had a question, actually, for Commissioner Brooks. The --  
2 so I had the impression from the previous meeting that part  
3 of the concern in the neighborhood has to do with the  
4 addition to the house?

5 MS. BROOKS: Yes.

6 COMMISSIONER MAY: So is that -- I mean you  
7 understand that they can do an addition like that as a matter  
8 of right, right?

9 MS. BROOKS: Now my understanding is -- and feel  
10 free to correct me if I'm incorrect -- my understanding is  
11 one, that had we not provided the letter of support, it would  
12 not have been a matter of right, and that's why I think that  
13 some people feel misled. And that might not be the case, but  
14 also, more importantly, the addition seems to be large enough  
15 to hold more than 20 students. And as I mentioned in the  
16 last meeting, the concern that ultimately this is going to  
17 grow beyond 20 students as, you know, some people previously  
18 supported.

19 COMMISSIONER MAY: Sure.

20 MS. BROOKS: So lack of transparency, I think, is  
21 what is causing so much concern for residents. And  
22 therefore, you know, there is -- just -- the bond is broken.  
23 The lack -- there's just a lack of trust at this point, and  
24 as I've said --

25 COMMISSIONER MAY: Well, you're going way beyond

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1 --

2 MS. BROOKS: -- many, many times --

3 COMMISSIONER MAY: -- you're going way beyond my  
4 question. You answered my question already so I think I'm  
5 satisfied with that. I do have a follow-up that's specific  
6 to the addition. First of all, the -- you know, an addition  
7 is or is not a matter of right. It doesn't have anything to  
8 do with whether there's an ANC vote in favor. But the  
9 addition would be only -- I mean it's a matter of right for  
10 the current use, right? They -- we're not going to expand  
11 the number of students, and they're just going to build an  
12 addition so they have more room in the house. You know, they  
13 can do that as a matter of right.

14 Is -- but my question for you is, "Is the ANC's  
15 concern about this -- I mean can we just -- the lack of  
16 transparency -- but is -- does this really boil down to an  
17 opposition to having this large addition to the building?  
18 Or is it -- you know, is it all of the rest of it, the  
19 traffic? Is the traffic the bigger issue? What's the --  
20 what is the real concern?

21 MS. BROOKS: The concerns are all of the above.  
22 The addition is a concern. The increased traffic is a  
23 separate concern. The third concern is that the size of the  
24 addition would allow the daycare center to hold more than 20  
25 students, which is what was presented. And then lastly, the

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1 fact that no one will live in the home is providing a lot of  
2 concern for residents also.

3 COMMISSIONER MAY: Okay. Thank you.

4 VICE CHAIRPERSON HART: Thanks. And actually, one  
5 little follow-up to that. We can -- the BZA and -- if we  
6 seek to approve the application, we can limit the number of  
7 children that are -- as part of the -- as a condition and  
8 that, so they would have to then come back to the BZA in  
9 order to expand to a larger amount, or else be in, I guess,  
10 violation of the DCRA -- the BZA order. So that's kind of  
11 one thing.

12 You know -- and I don't know if it makes sense to  
13 -- sometimes we've had time limits on a certain thing so that  
14 at some point, just to kind of see if there are kind of  
15 impacts, to kind of look at the project again. So there may  
16 be a five-year time limit and just say in five years, we need  
17 to see what that might, you know -- and I don't know where  
18 my fellow Board members are on with that, but I know that  
19 we've done that in the past for projects. They're typically  
20 much larger projects, and I just kind of throw that out there  
21 as a possibility.

22 So -- and I didn't know if you had, Commissioner,  
23 I you had any -- Commissioner Brooks, if you had any thoughts  
24 on that?

25 MS. BROOKS: So I would definitely support the

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1 idea of limiting the number of students, and I think that  
2 that would give some of the residents, you know, some comfort  
3 and peace of mind.

4           With regard to being able to build on the property  
5 as a matter of right, you know, that's -- if that's what it  
6 is, that's what it is. I think that it definitely can, you  
7 know, alter the view of the houses across the street given  
8 the height of the structure. You know, it definitely will  
9 change their quality of life, and I think that should be  
10 taken into consideration. And I think the fact that no one  
11 within 200 feet of this property submitted a letter of  
12 support, as I understand it, should be concerned -- should  
13 be considered -- excuse me. And let me not speak in  
14 absolutes. The majority of the residents within 200 feet of  
15 the property are not in support of the addition or in support  
16 of this special exception.

17           VICE CHAIRPERSON HART: I understand. Thank you  
18 very much for your thoughts. So Mr. Young, there is someone  
19 that is signed up to speak, if I'm not mistaken. Let me get  
20 the list.

21           MR. YOUNG: Yes. I just brought her in. It's  
22 Patrice Richardson.

23           VICE CHAIRPERSON HART: And Ms. Richardson, are  
24 you -- can you hear me?

25           MS. RICHARDSON: I can hear you.

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1 VICE CHAIRPERSON HART: Okay. You want to speak  
2 on this application?

3 MS. RICHARDSON: Yes. But there are several  
4 things that I need clarification on before I actually speak,  
5 and I am now not understanding. Is this special exemption  
6 to be inclusive of changing the house from a residence to a  
7 business zone, because I'm just not clear. And I'd like to  
8 know that before I start to give my testimony or so forth.

9 VICE CHAIRPERSON HART: They are -- it's not a --  
10 they're not changing the zone. They're just -- they are  
11 having this -- the building itself -- the applicant has  
12 submitted a request for the BZA to give special exception  
13 relief for the minimum parking requirement and to convert to  
14 this -- an existing child development home to a child  
15 development center with 20 children in this R-1-B zone. So  
16 these are special exceptions. These are within the zoning  
17 regulations. They are -- they will allow this and we are  
18 looking through the criteria in the zoning regulations to  
19 understand that.

20 MS. RICHARDSON: Okay. So that means that someone  
21 will be living in the residence?

22 VICE CHAIRPERSON HART: My understanding, there  
23 is no one living in the building.

24 MS. RICHARDSON: Okay. Confusion. So, based on  
25 this information -- my name is Patrice Richardson, and I live

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1 next door to the case for review today. I covered several  
2 valid points in my oral testimony from July the 8th. In  
3 addition to that testimony, I would like to add a few more  
4 relevant facts. This area has mild flooding whenever we get  
5 any type of rain, heavy, light, and our basements flood. I  
6 would like to know how this construction will impact my house  
7 as well as the neighbor's house for this massive proposed  
8 structure. The foundation is definitely not going to be  
9 sturdy enough to have that massive building.

10 I would also like to know if the architects who designed this  
11 are licensed architects in the District of Columbia by the  
12 Office of Professional and Licensing Administration.

13           There are environmental issues that are currently  
14 happening. The unused trash containers are housing rodents,  
15 as we speak, that run between the plastic storage containers  
16 and the rusting school chairs located on the side of the  
17 house. The newly developed garden is attracting pests and  
18 not cultivated for consumption and teaching any students how  
19 to garden.

20           I hope this is not an example of what we can  
21 endure if this childcare center expands.

22           In reference to the drop-off zone, the new fence  
23 does not have an entrance on Third Street side, so the  
24 parents will be double-parking on Quackenbos Street until  
25 someone from the center retrieves the child from the car or

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1 the parent sends the child up to the door.

2           In addition, this opposition to this case is based  
3 on how we, the neighbors, purchased a residence in a  
4 residential zone for quiet and in-home staying home living  
5 space. We all are in agreement that day care is necessary  
6 in the appropriate places. We have daycare centers down by  
7 the Walmart that the constituents have referenced and in a  
8 commercial zone. We also have, down by the Walmart, vacant  
9 properties where this expansion could be great. We also  
10 have, on another site that's less than a mile away, vacant  
11 property on Kansas Avenue.

12           So the current residence, as a home, has a  
13 business on Rhode Island Avenue that is great and all of  
14 those children that they're referring to, could actually go  
15 there. I think it is not right for a person to buy a  
16 residence and then want the residents conform to their plan.

17           And I also have construction environmental  
18 impacts. The light and property complements will not be met.  
19 Trash collection will need to be from a business. That will  
20 also increase our rodents. The building too close to my  
21 property, non-residential light, and future blighted  
22 properties, asbestos and other toxic products will be used  
23 and discarded and not in accordance to OSHA.

24           If this plan is approved, I believe that all the  
25 residents that are one foot to 250 feet should get some kind

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1 of tax relief for having their property appraisals harmed.

2           Thank you for listening to my opposition of this  
3 case, and I hope you listened to my earlier testimony and  
4 visit this location as we look forward to your support to  
5 deny the exemption request entirely, allow an exemption from  
6 residential to business, which I understand is not the case,  
7 but I would like to know that that's on record that it is not  
8 and that the residence will remain a residence as its  
9 originally purchased use was for. Thank you, and everyone,  
10 have a great evening. This has been a very long day.

11           VICE CHAIRPERSON HART: Yes, it has. Thank you  
12 very much for your testimony. Does the Board have any  
13 questions for Ms. Richardson?

14           Does the applicant have any questions for Ms.  
15 Richardson?

16           And Commissioner Brooks, do you have any questions  
17 for Ms. Richardson?

18           MS. BROOKS: No.

19           VICE CHAIRPERSON HART: Okay. Thank you. Thank  
20 you very much, Ms. Richardson. You are excused. Have a  
21 great day. So we're back to the applicant. It's your --  
22 this is your application before us. I don't know if there  
23 are any final questions for the -- from the Board.

24           MEMBER JOHN: One question. So Ms. Hando, would  
25 you provide a diagram of how the parents would approach the

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1 school without having to make that -- the daycare center  
2 without having to make illegal turn? Could you prepare  
3 something like that? How -- what would the traffic flow be  
4 like?

5 MS. HANDO: I did explain in my PowerPoint but  
6 DDOT addressed that. We don't need a management dropoff plan  
7 when it's less than 20 kids, so we don't need any -- but I  
8 did explain to -- just explained how the traffic is going to  
9 be in. And for nine kids, it's been happening, so we never  
10 had any issue with the traffic, so adding 11 kids will not  
11 be a problem.

12 MR. DAVIS: Just let me add on. It seems to me  
13 that if the daycare center is two blocks down the street at  
14 Walmart, the neighbors have no problem with cars going up and  
15 down Quackenbos Street, so two blocks in, her property up the  
16 street, I don't see why it suddenly becomes a problem. Yes.  
17 There is a one-way street, but DDOT made the people who plan  
18 transportation patterns in the city, they have approved it  
19 and said they don't need an extra plan for this.

20 VICE CHAIRPERSON HART: And I understand that the  
21 -- I was looking at the DDOT report in Exhibit 36, and in the  
22 report, one of the points that they made is that since the  
23 child development center is not proposed to have more than  
24 20 students, DDOT does not require a pick up and drop off  
25 plan. I mean that was part of what the report said.

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1 MR. DAVIS: Exactly.

2 MEMBER JOHN: I know but I was just trying to  
3 figure out what the traffic situation was, because I couldn't  
4 get an understanding from the --

5 MS. HANDO: The (simultaneous speaking) --

6 VICE CHAIRPERSON HART: And I'm not sure, Ms.  
7 John, if you're looking for just on Third and Quackenbos or  
8 you're looking for from New Hampshire. Are you looking for  
9 from Eastern?

10 MEMBER JOHN: If there is something in the plan  
11 that shows the location. I did see something that I think  
12 about it, but I can't see my laptop right now. So I don't  
13 know if Paul can put that up. I don't want to prolong this,  
14 but if the question is that (simultaneous speaking) ----

15 MEMBER JOHN: -- to and from the school (audio  
16 interference) neighbors, I believe (audio interference) like.  
17 That's all.

18 MS. BROOKS: Commissioner Hart, can I add  
19 something, please? This is Commissioner Brooks.

20 VICE CHAIRPERSON HART: Yes, sure.

21 MS. BROOKS: Okay. So quickly, the Walmart is not  
22 two blocks away, so that's like saying that you could walk  
23 to the subway but also, while -- my understanding is that  
24 while indicating that there are only going to be 20 students,  
25 DDOT, did not require a traffic study doesn't mean they are

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1 saying there won't be traffic issues. I think those are two  
2 different statements, and I want to make a distinction with  
3 regard to that. Also, part of the concern, as we expressed  
4 before, is that there won't only be 20 students, and so when  
5 talking about traffic and larger concerns, that is one of the  
6 reasons that that's coming up. Also, it's not so much  
7 driving up and down the street as it is parking and using the  
8 parking spaces on Quackenbos that, while we don't own our  
9 parking spaces in front of our houses, the expectation is  
10 that, you know, residents would like to be able to come home  
11 and not have to walk walks, or would like to be able to leave  
12 and come back and have their parking spots being present.  
13 And given the construct of this community, that has always  
14 been possible in the past before, you know, daycares were in  
15 the homes and that sort of thing. And I think that is the  
16 neighbors' concern.

17 VICE CHAIRPERSON HART: Thank you. Okay. So I'll  
18 move to the applicant. Do you have a conclusion --  
19 concluding statement that you would like to make?

20 MR. DAVIS: We do, actually. In this process, Ms.  
21 Hando reached out to the community in 2018 to start this  
22 process. She has always been open and transparent about it.  
23 In January 2019, when she met with the ANC when they gave her  
24 a letter of support, she got plans from her architect, and  
25 she brought it to that meeting. Again, they met in March of

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1 2019. Again the plans were made public. On September 29th,  
2 she published the plans when she filed her application, so  
3 it has always been available to the public.

4 The application is for 20 kids only, not more or  
5 not anticipating any more than that.

6 Ms. Hando has indicated that if given the  
7 opportunity to live on the third floor of the property, she  
8 would willingly do so, but they tell her because it's a  
9 "center," it cannot be a residence. She may have to talk to  
10 OC about that in the future, but the plan is to have a  
11 20-person daycare center with five staff. The idea is to  
12 have dropoff for children and pickup, and to work with the  
13 parents, and to continue to consult and work with the  
14 neighborhood.

15 She started with this process a long time; 2018  
16 is when she started this process. She has reached out over  
17 and over. The only reason that the ANC gave a letter of  
18 support in January of 2019 is because she reached out, not  
19 because the plan was already filed that it was referred by  
20 the BZA to the ANC. She reached out to the ANC prior to  
21 going to the BZA. That is how she modified the plan and got  
22 it down to what the neighborhood -- she took their  
23 suggestions on board -- and accepted, okay, 20 is working,  
24 and that's how we're going to get it done. She wants  
25 approval by the citizens of the community. She wants to be

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1 open to the community, and she wants to work with her  
2 neighbors. That's what she sees.

3 VICE CHAIRPERSON HART: Okay.

4 MR. DAVIS: Thank you.

5 VICE CHAIRPERSON HART: Thank you very much. And  
6 does the Board have any follow-up questions for the  
7 applicant?

8 Okay. Thank you all very much. I am going to  
9 close the hearing. And Ms. John, did you say that you wanted  
10 to have -- or did you say that there were some drawings  
11 already in the --

12 MEMBER JOHN: And actually, I did but when you  
13 reminded me that DDOT specifically addressed some of my  
14 concerns, I will withdraw that.

15 VICE CHAIRPERSON HART: Sure. So I'll thank you,  
16 Ms. Hando. And Mr. Davis, thank you very much for coming  
17 here. Commissioner Brooks, I appreciate you and giving your  
18 testimony as well. Have a great evening, and Ms. Maxine  
19 Brown-Roberts, also good seeing you. I haven't seen you in  
20 a little while.

21 MS. BROWN-ROBERTS: Thank you, Mr. Vice Chair, and  
22 it was nice having you in this capacity, and I'll see you all  
23 in places.

24 VICE CHAIRPERSON HART: Thank you. Take care.  
25 So now we will -- I'm closing the hearing, closing the

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1 record.

2 VICE CHAIRPERSON HART: And is the Board ready to  
3 deliberate? Yes? Okay, great. I can't hear you.

4 COMMISSIONER MAY: Sorry.

5 VICE CHAIRPERSON HART: Yes.

6 COMMISSIONER MAY: Are we able to make a decision  
7 on this today? I mean we've allowed --

8 MS. NAGELHOUT: Based on your conversation in the  
9 last case when Mr. Bassett said the rules had been amended  
10 to allow that, it was not something I was aware of, but if  
11 that's the case, then I guess you can.

12 COMMISSIONER MAY: Yes. I don't recall the rules  
13 actually -- the changes actually taking place yet. I could  
14 be wrong. I could go back and look and see if we took  
15 emergency action. I wasn't here for that hearing last week  
16 when it was being considered.

17 VICE CHAIRPERSON HART: Well, it seems like Mr.  
18 Moy is putting his hand up, so maybe he wants to add  
19 something?

20 MR. MOY: Yes. As a matter of fact, we were  
21 briefed on this by -- from OHE two years ago, but based on  
22 the emergency text amendment last Thursday, they can make a  
23 bench decision. The only note is that in order -- the order  
24 to have the issue any earlier than 48 hours, that's all.

25 VICE CHAIRPERSON HART: I understand.

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1           COMMISSIONER MAY: Yes. That's right. I just  
2 checked my notes, because I listened to the hearing. I  
3 didn't -- after the fact, I listened to the hearing and yes,  
4 there was a note that it was a second emergency action on the  
5 basis of the new rules which defers order issuance but allows  
6 us to make decisions.

7           VICE CHAIRPERSON HART: Okay. I -- are you ready  
8 to deliberate?

9           COMMISSIONER MAY: I am ready for someone to start  
10 the deliberations.

11           VICE CHAIRPERSON HART: So I can start. That's  
12 fine. So I -- after, you know, hearing the case, and it was  
13 quite a bit of the public has kind of weighed in on this, I  
14 understand that the ANC is not in support of the application.  
15 The Office of Planning is in support of the application, and  
16 DDOT was also in support of the application. The Office of  
17 Planning did provide some conditions if we're to approve it.

18           I would be in favor of the application. I felt  
19 that they -- while I understand that there are some concerns  
20 about the number of children that are going to be at the  
21 site, I think if we look to limit the number of children at  
22 the site and make that a condition, that could, at least, put  
23 some of the concerns that the ANC and the residents all had.  
24 At least that could make that a little bit easier.

25           The -- I do understand that there are -- there

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1 were some traffic concerns that the neighborhood raised. The  
2 applicant put forward some ideas about what they could do for  
3 kind of the pickup and dropoff. It was, you know, some items  
4 that they listed in one of the exhibits, and I'll get to the  
5 exhibit if I can get it fairly quickly. I think that's  
6 helpful. I think it may be -- there were -- some of the  
7 things that they noted, I wasn't sure how it was going to  
8 work, but they did note that, you know, during the COVID  
9 times, they are -- parents are having to drop off the kids  
10 without having to -- without being able to go into the  
11 facility. So I kind of understand that aspect of it.

12           So as I said, I thought that they, you know,  
13 provided sufficient information to me to for me to be able  
14 to support it, but I'll hear from my fellow Board members.  
15 We cannot hear you Board Member John.

16           MEMBER JOHN: So I can support the application.  
17 (Audio interference)

18           VICE CHAIRPERSON HART: Commissioner May, can you  
19 mute for a second. It's hard for me to hear Board Member  
20 John.

21           MEMBER JOHN: -- and five staff members. And so  
22 the only relief that the amended application is requesting  
23 right now is parking relief, and the building is a matter of  
24 right. So they'll have to comply with the zoning regulations  
25 for massing and so on. So some of the neighbors are -- seem

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1 to be more concerned about the building as opposed to the  
2 addition of the 11 students, but it seems that -- I think  
3 that the applicant has put in enough information in the  
4 record to show how she complies with the requirement for the  
5 special exception. And I think I will give credit to OP's  
6 analysis.

7           In looking at the ANC's objection and their  
8 written reports, I cannot credit much of their objections,  
9 because they seem to relate to, you know, the issue of things  
10 that are not related to our decision, like the lack of  
11 transparency -- alleged lack of transparency, that there are  
12 other locations that the applicant could use for establishing  
13 the center. That's not something we would tell an applicant  
14 to do.

15           Of course, there is some concern about parking and  
16 traffic, which is understandable, and I believe the applicant  
17 has shown how the parking could be mitigated by having a  
18 crossing guard and trying to enforce that requirement.

19           So I think I'm able to support this application,  
20 and with the dire need for daycare centers in the city, it  
21 is very difficult to not approve, you know, an application  
22 like this. But more importantly, based on the full record,  
23 I think that the application meets the criteria for  
24 recommendation.

25           VICE CHAIRPERSON HART: Commissioner May?

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1           COMMISSIONER MAY: Yes. So I'd say this is a very  
2 difficult case from my perspective. You know, there are  
3 aspects of it that are pretty straightforward. I don't  
4 believe that the impacts associated with cars is going to be  
5 substantial because of the number of students and the fact  
6 that it is the sort of facility that's going to grow largely  
7 from the immediate neighbors. Plus, you know, there are --  
8 there seems to be ample curb space available for people  
9 coming and going and parking and so on. It's not a, you  
10 know, super-congested area like some parts of the city where,  
11 you know, there would necessarily have to be a lot of double  
12 parking and so on. So I'm not sympathetic about that.

13           I understand the ANC's concerns about the building  
14 or the addition, and it is a matter of right of addition, but  
15 it's also a matter of right addition that's -- that would be  
16 critical to the proposed use. In other words, they couldn't  
17 shift the use without that addition. So it is connected,  
18 even if it is a matter of right addition.

19           The thing that I find most compelling that is a  
20 concern of both the ANC and the immediate neighbor and others  
21 is this notion of changing from a child development home, or  
22 whatever the term is, to a daycare center that does not  
23 require somebody to live at the premises, or it's not an  
24 accessory use to somebody's living premises. I do think that  
25 is a substantial change in the nature of the operation, and

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1 it changes the relationship between this small business and  
2 the surrounding community. So I am -- you know, given the  
3 level of concern that the neighbors have and the ANC has and  
4 the -- I just -- I have a hard time saying that I can support  
5 this, because it's -- I mean it's -- I mean I think about the  
6 impacts on the immediate neighbors. If it's not a well-run  
7 business with a good, strong relationship with the immediate  
8 neighbors, it's not going to get any better if there are 20  
9 kids instead of 9. And I don't get the impression that the  
10 relationship was there, so I'm just very, very concerned  
11 about it, and I would be much happier if there was at least  
12 some support from the ANC.

13           It would also be good if the ANC were to focus on  
14 the issues at hand so, you know, I appreciate the concern  
15 about lack of transparency but, you know, we have to base our  
16 decision-making on what's in the record, not based upon the  
17 ANC feeling like they had been slighted because they didn't  
18 get good information from the applicant or that there was  
19 some sort of sleight of hand.

20           So I am not, unfortunately, in a position to vote  
21 in favor of this today. I think that if there were some  
22 further conversation between the ANC and the applicant, and  
23 a greater meeting of minds, or at least some progress, maybe  
24 that would be enough. But I just don't feel like there's  
25 enough here for me to say that the conversion of this child

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1 development home care, whatever the term is, to a daycare  
2 center is something that I could support.

3           MEMBER JOHN: So I wanted to offer up something  
4 before we vote, and in the past, when we've had situations  
5 like this, we've put a time limit on it, as Vice Chairperson  
6 Hart said, which would allow the neighbors to evaluate if  
7 this expanded facility would be a good neighbor, because I  
8 don't think that this ANC's ever going to come around to  
9 accepting 11 more students, because there is too much  
10 distrust at this point. And the regulations allow expanded  
11 daycare centers in residential zones, neighborhoods. So  
12 those would be my two thoughts. I really believe that with  
13 COVID-19 and the situation we're in now, we need every single  
14 daycare slot that we can find. And so those would be my two  
15 thoughts. These are serious concerns by the neighbors. I  
16 think there might be a way to put a time limit on it, and  
17 then it's up to the applicant to be a good neighbor. And if  
18 they come back before the Board for renewal and that's not  
19 happening, then that would be the time to, you know, say no.

20           I think we've also had situations in the past  
21 where we've asked the community and the applicant to  
22 establish some sort of, you know, liaison group to work  
23 together to make sure the facilities work with the neighbors.  
24 So I don't think it's -- you know, I don't think that the  
25 applicant's application is so deficient that there aren't

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1 conditions that we could impose to enable them to function.  
2 So that would be my two cents, Commissioner May. This is  
3 payback for earlier today.

4 COMMISSIONER MAY: Well, you won earlier today.

5 MEMBER JOHN: It's not a win thing. It's not a --

6 COMMISSIONER MAY: No. I know. So I appreciate  
7 that. No, I -- so I thought about the time limit thing, and  
8 I would be in favor of doing it with a time limit if we  
9 weren't talking about the necessity to have a substantial  
10 addition to the building in order to make the business  
11 functional. And so what we're saying, you know, to them is  
12 if we put a limit of three or five years on it, they could  
13 operate for that period of time, but then if it doesn't work  
14 out, then they're stuck with a much bigger house and, you  
15 know, not have the ability to make use of it. I don't think  
16 that would be a smart business investment to them based on  
17 having only a, you know, three or a five-year lease on life  
18 for the business. So I don't think that's really a viable  
19 circumstance. If it was not going to be an addition, I would  
20 say -- I mean that would certainly convince me, but it's --  
21 you know, the addition, that investment is necessary, and I  
22 don't think it's fair to the applicant to say, "Hey, we'll  
23 do this; you know, we'll approve this but you're only good  
24 for a certain period of time."

25 As for the ANC coming around, I do understand how

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1 it seems like the ANC is dead set opposed to this, but I mean  
2 I do think that there is substantial support in the community  
3 for this as well as opposition. And I think a more thorough  
4 hearing on it by the ANC and further cooperation on part of  
5 the applicant could have turned things around. I am a -- I  
6 have become a strong supporter of the good neighbor policy  
7 as instituted by the Chairman of the Zoning Commission,  
8 Anthony Hood, who will tell you repeatedly, and I think he  
9 actually may be listening, so I'm not just saying this for  
10 you, Anthony. But he has said repeatedly that the good  
11 neighbor policy can work. He's seen it work. I've seen it  
12 work, and I do think that a little bit of reset and going  
13 back to the drawing boards with the ANC, you know, welcoming  
14 the applicant to discuss and to go through the issues that  
15 they see that they may be able to find some more common  
16 ground. It may not work. I may be wrong, but I think that  
17 that's worthwhile. It certainly is something I would want  
18 to see before I would want to take a vote on this.

19 VICE CHAIRPERSON HART: So you're looking for  
20 possibly -- you're looking for a kind of a, I don't want to  
21 say "cooling off." You want a period, maybe a month or, you  
22 know -- no. I'm just saying there's a period of time that  
23 you're looking at to kind of come back to kind of revisit  
24 this.

25 COMMISSIONER MAY: I would appreciate it if the

1 ANC would engage in a new dialogue with the applicant and  
2 that the applicant would engage in a new dialogue with the  
3 ANC to see if they can come to some resolution upon their  
4 differences. And, you know, if not -- I mean whatever the  
5 result of that is, I think the Commission -- or the Board  
6 should take it up again after we hear further from the  
7 applicant and from the ANC. But I don't really want to just  
8 continue this on forever.

9 VICE CHAIRPERSON HART: Yes.

10 COMMISSIONER MAY: But I do feel like we should --  
11 you know, there's enough of a problem with the -- in the  
12 community, but I feel like we need to give this a little bit  
13 more time for them to figure it out. I know they've been  
14 working on it since 2018.

15 VICE CHAIRPERSON HART: Yes.

16 COMMISSIONER MAY: It's 2020 but, you know,  
17 another couple of months is not going to, you know, make or  
18 break.

19 VICE CHAIRPERSON HART: So -- and I appreciate  
20 that. That's a -- you're -- you know, the thoughts are  
21 helpful for me. Well, maybe my successor.

22 COMMISSIONER MAY: Helpful for you.

23 (Laughter.)

24 VICE CHAIRPERSON HART: When are you back, do you  
25 know?

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1 COMMISSIONER MAY: I don't know. Mr. Moy, you  
2 know when I'm back?

3 MR. MOY: It's October 7th.

4 VICE CHAIRPERSON HART: Actually, that's not that  
5 bad. Then maybe that's -- because it'll give the ANC time  
6 to, in September, to be able to meet and possibly get that,  
7 what you're looking for. Currently, we do not have -- we  
8 only have three people that are -- three of the Board members  
9 that are reviewing this. There is no -- I mean I -- you  
10 know, I've worked with both of you long enough to know the  
11 comments that you've made and where we are with this. So  
12 it's -- there is no vote either way on this, so they'd have  
13 to wait anyway. So I think October -- you said 7th, Mr. Moy  
14 -- would be fine.

15 And now the issue is when we can get the ANC  
16 report, you know, an updated ANC report on this, and that may  
17 not be until, you know, I don't know, later in September.  
18 I don't know if you have some dates you can think about, Mr.  
19 Moy?

20 MR. MOY: Well, given the discussion and then the  
21 work that still needs to be done in terms of the coordination  
22 between the applicant and the ANC and the community, I would  
23 allow them as much time as possible. The Board brings us  
24 back either as a continued hearing or a distinction,  
25 whichever one you wish to have, then perhaps the applicant

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1 can provide an update of where they are at this moment -- or  
2 at the moment. Let's say -- and I don't know whether you  
3 want any responses from the ANC, but if you do, I would have  
4 to take on another week. But let's say if there's no  
5 responses, then the applicant can file an update of where  
6 they are, let's say, by Monday, September the 28th. Or let's  
7 make it Wednesday, September 30th from the applicant. If you  
8 want responses, I would move things up another week.

9 COMMISSIONER MAY: Well, we're looking for  
10 feedback from the applicant and from the ANC I think.

11 MR. MOY: Okay. That's fine.

12 COMMISSIONER MAY: Whatever the timing should be  
13 for that, whether it's the applicant followed by the NAC or,  
14 you know, the ANC report on their meeting, and then the  
15 applicant gets to respond to that, I guess maybe that's what  
16 you're suggesting? That's fine from my perspective.

17 MR. MOY: Okay. Then let's make it simply  
18 September 23rd and September 30th.

19 VICE CHAIRPERSON HART: And who's on the 30th?  
20 Who would -- who's giving the report? Is that the ANC giving  
21 it on the 30th -- or the 23rd? Excuse me.

22 MR. MOY: The ANC would be the 23rd and the  
23 applicant on the 30th.

24 VICE CHAIRPERSON HART: Okay. That's fine. So --  
25 yes.

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1           MEMBER JOHN: I would like to suggest to the  
2 applicant that she work with the neighbors to come up with  
3 a construction plan as to how she will proceed with  
4 construction to minimize the -- any adverse impacts on the  
5 neighbors.

6           VICE CHAIRPERSON HART: They're not going to get  
7 that by the end of --

8           MEMBER JOHN: Yes. But I would like to know that  
9 she's at least talked to the -- I believe there are two  
10 neighbors?

11          VICE CHAIRPERSON HART: So you want a status --  
12 kind of a status --

13          MEMBER JOHN: Yes.

14          VICE CHAIRPERSON HART: -- an update on a  
15 construction management plan for, you know, the addition that  
16 they're looking at?

17          MEMBER JOHN: Yes. Even though it's not before  
18 the Board but somehow, she should be able to discuss to  
19 mitigate the impacts of the additional trash and rodents and  
20 things like that.

21          VICE CHAIRPERSON HART: What Ms. Richardson  
22 brought up during her testimony?

23          MEMBER JOHN: Yes. Those were really very real  
24 concerns for Ms. Richardson, and she should address them.

25          VICE CHAIRPERSON HART: That's it.

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1 MR. MOY: The only thing I have, for clarity on  
2 my part, would this be back on October 7th as a decision or  
3 a continued hearing?

4 VICE CHAIRPERSON HART: What are your thoughts on  
5 it, hearing?

6 COMMISSIONER MAY: I believe we're going to wind  
7 up having to have some further conversation with the ANC.

8 VICE CHAIRPERSON HART: Yes.

9 COMMISSIONER MAY: But I think it can be a limited  
10 scope hearing just based on the applicant's -- or the P&C  
11 report and the applicant's response to that. I think we can  
12 limit it.

13 VICE CHAIRPERSON HART: Yes. I think we can.

14 COMMISSIONER MAY: Okay, we can.

15 VICE CHAIRPERSON HART: Sorry. I just had to --  
16 oh, look who's coming back. So I think we've -- so we will  
17 have a continued hearing. Thank you very much, Mr. Moy for  
18 the dates.

19 BZA CHAIR HILL: When are you doing the continued  
20 hearing?

21 VICE CHAIRPERSON HART: The -- October 7th.  
22 You're welcome.

23 BZA CHAIR HILL: Okay. Are you guys done with  
24 that?

25 VICE CHAIRPERSON HART: Back to you.

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1           BZA CHAIR HILL: Okay. So we got a couple of  
2 things to take care of, and then we're done. Let's see.  
3 Okay. So I came back really originally just to say goodbye,  
4 you know, like Carlton, goodbye; everybody, goodbye. But now  
5 there is, I guess, one more piece of work that is fun to do  
6 with you, Carlton, before we leave. So you're leaving. You  
7 have been the Vice Chair. And actually, I think Mr. May --  
8 Commissioner Mayo commented on how you were the only Vice  
9 Chair from NCPC and also the reason why that happened is you  
10 were the only other Board member with me --

11           VICE CHAIRPERSON HART: Yes.

12           BZA CHAIR HILL: -- for a while, right?

13           VICE CHAIRPERSON HART: Oh, yes.

14           COMMISSIONER MAY: N. It was completely on the  
15 merits, I'm sure.

16           BZA CHAIR HILL: There was nobody there. So to  
17 follow on that tradition, there is no one else left, so --

18           (Laughter.)

19           MEMBER JOHN: Oh, go.

20           BZA CHAIR HILL: -- that being the case, I would  
21 like to nominate Ms. Lorna John as Vice Chair for the Board  
22 of Zoning Adjustment for the City of Washington, D.C. after  
23 you have now gone. I don't -- I think that's all I need to  
24 do for the regulations and ask for a second, which I guess  
25 we'll get from -- can I still get it from Mr. Hart?

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1 VICE CHAIRPERSON HART: Whoo, second.

2 BZA CHAIR HILL: Mr. Hart, would you like to  
3 second --

4 VICE CHAIRPERSON HART: My last official act. I'm  
5 handing the baton.

6 BZA CHAIR HILL: Very well, the motion has been  
7 made and seconded. Would you please take a roll call vote,  
8 Mr. Moy?

9 MR. MOY: Yes. Are you going to ask for any  
10 commentary from any of the --

11 MR. MOY: I will gladly testify to Ms. John and  
12 her capabilities and how absolutely marvelous she would be  
13 in this role for the city. And in fact, I would, if, in  
14 fact, there is a time when she has to be the Chair, if  
15 something were to happen to me, I really think that she will  
16 be a much more efficient person, particularly with the law  
17 and I have the capacity for. So that is my testimony. Mr.  
18 Hart, would you like to testify?

19 VICE CHAIRPERSON HART: Well, I think that -- Ms.  
20 -- Board Member John would be a wonderful Vice Chair. She  
21 most definitely has an expert grasp of the law. I ask her  
22 legal cases -- legal issues, and she asks me questions about,  
23 you know, architecture. So we try to help each other on that  
24 end of the dais. But seriously though, I think that Ms. John  
25 will be a tremendous asset as a Vice Chair, and I don't think

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1 you have -- you'd have a better choice as the only choice.

2 BZA CHAIR HILL: Commissioner May?

3 COMMISSIONER MAY: I don't think I -- I don't have  
4 anything to add. I'm fully supportive of this, of Ms. John  
5 becoming the Vice Chair, and I will also let you know that  
6 Chairman Hood is listening, and he corrected me and pointed  
7 out that Shane Dettman actually did serve as the Vice Chair  
8 for a period. And I had completely forgotten that, which  
9 just goes to show how much, you know, BZA action I actually  
10 remember from my year-to-year. But anyway, I'm fully  
11 supportive and very eager to vote in favor and end the  
12 meeting.

13 BZA CHAIR HILL: Ms. John, do you have anything  
14 to add?

15 MEMBER JOHN: Well, I suppose I should thank you  
16 all for this nomination and, you know, being the only person  
17 left for the job, it is really a very competitive process  
18 and, you know, it was really very difficult and didn't know  
19 how it was going to end up, but I am happy the way things  
20 turned out. I just want to say that I will have big shoes  
21 to fill and literally and figuratively, but I look forward  
22 to working with the Board and giving it my best shot. How's  
23 that, Mr. Chair?

24 BZA CHAIR HILL: It is wonderful. Do we need to  
25 take a vote, Mr. Moy?

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1 MR. MOY: Yes, sir. So when I call your name, if  
2 you would please reply with a "yes" or "no" to the nomination  
3 of Ms. Lorna John the next Vice Chair of the Board of Zoning  
4 Adjustment? Okay. Zoning Commissioner Peter May?

5 COMMISSIONER MAY: Yes.

6 MR. MOY: Vice Chairperson Hart?

7 VICE CHAIRPERSON HART: Yes.

8 MR. MOY: He's the current vice chair, okay?  
9 Chairman Hill?

10 BZA CHAIR HILL: Yes.

11 MR. MOY: And Ms. John, you vote also.

12 MEMBER JOHN: I do?

13 MR. MOY: Yes. You get to vote.

14 MEMBER JOHN: Yes.

15 MR. MOY: Okay. The vote is four to zero to one.  
16 This is on the motion made by Chairman Hill, also in support;  
17 seconded was -- is by Chair Hart; also in support. Zoning  
18 Commissioner Peter May and Ms. John.

19 (Simultaneous speaking.)

20 BZA CHAIR HILL: Does anyone have anything else  
21 they'd like to say, saying goodbye to Carlton. There you go?  
22 That's it? We're done?

23 (Simultaneous speaking.)

24 MR. MOY: The only anecdote, I like to name --I  
25 know Peter would like this. I will miss having my

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1 conversations with Carlton Hart on talking about the  
2 beautiful game.

3 BZA CHAIR HILL: There you go.

4 MR. MOY: On that note, we stand adjourned.

5 (Whereupon, the above-entitled matter went off the  
6 record at 7:03 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 08-05-20

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

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