PUBLIC TESTIMONY

OF

TAALIB-DIN A. UQDAH, SECRETARY
ADVISORY NEIGHBORHOOD COMMISSION (ANC) 4C
SINGLE MEMBER DISTRICT (SMD) 4C01

BEFORE THE

BOARD OF ZONING ADJUSTMENT (BZA)

IN THE MATTER OF

BZA CASE NUMBER 19067
DCRA BUILDING PERMIT #B1505734
AND/OR #B1600488

TUESDAY, DECEMBER 01, 2015

My name is Taalib-Din Uqdah, Secretary for Advisory Neighborhood Commission 4C and assigned by my colleagues to shadow and assist the appellant – Ms. Lyn Abrams – on behalf of the ANC and the 20,000 or so constituents we represent.

My volunteering to accept such a role, with the support and vote of my colleagues, came as a result of the Commission's Resolution and authorization at a properly noticed March 11, 2015, with a quorum present, voted ten (10) yeas and zero (0) nays to accept the report and its conclusion – to oppose this variance and support the appeal of Ms. Abrams; and in a second vote, at the same properly noticed meeting and that same quorum present, voted nine (9) yeas and one (1) nay, to have Ms. Abrams, be the person named and authorized by the ANC to present its report before the BZA, representing the ANC's interest, as our representative.

The latter vote was taken because the 4C03 SMD seat, where the subject property is located, was, (at the time), scheduled to be vacated that same month, by the former Commissioner, and was not replaced until May of this year. That SMD 4C03 Commissioner – Commissioner Elisa Irwin – is in the audience.

Just over 7-weeks ago, I was ready to offer my testimony before this distinguished body and was prepared to offer you a litany of reasons we had previously outlined in our Resolution Report and subsequent filings, why you should rule in favor of the appellant – the ANC – and against the property owner.

Prior to this 7-week period, I, and my colleagues, reviewed document after document, plans, drawings and submissions supplied by the property owner, as a matter of the public record, but not uploaded to IZIS, save what we had done ourselves.

Throughout this process, since its inception, the property owner has been all but mute in their filings and has relied on us to present our case against them, with no rebuttal, of substance, as DCRA has been fighting the case for them, against the very people whom our tax dollars should be supporting; and even then, the filings of DCRA have only come forward, here of late.

Now, if you review the record, you'll see both DCRA on behalf of the ZA and the applicant, have filed a flurry of motions and counter-motions; just one document after another, as if they're running from something – and we know what that is – trying to escape and get out of this mess they created, by making ill-advised and unsubstantiated decisions, in the first place – I simply call it shoddy work – thinking no one would notice, because they've been doing it the same way, for so long, it's become second nature to them.

Even the brief, on the record testimony, of Mr. Derek Hora, Office of the General Counsel, DCRA, representing the Zoning Administrator, claimed on October 27th, [and I quote] " . . . *in submitting DCRA's request for continuance we specified that we would be requesting plans, simply with clarifications* [and I'm stressing] ***that would allow it to be more easily heard at the Board, without having to employ the kinds of instruments and go through the kind of analysis, step-by-step, that the Zoning Administrator engages in, in his actual evaluation of plans.***" [end quote]

This – all of this – learning all the kinds of analysis, instruments, and step-by-steps he employs, in my opinion, is at the very heart, nature and soul, of why we're before you today. We, as an ANC, simply don't know what those things are, other than being simply words or concepts on a page.

To now have it not explained to us, I get it; they've been doing it so long, it's become second-nature to them by now, but to espouse that same rhetoric to this Board, I consider that to be disingenuous at best; and at its worse, an insult on your collective intelligence; as if to say, if you knew it, you wouldn't understand it or worse, we don't want to bore you with all the details of how we came to our decision; all you really need to know is what we decided. Details, for us, are just a minor annoyance; so, if you would, please allow us to cutout all of the love scenes and get right to the chase.

They are now operating in "mop-up mode," that includes hints of disrespect and being dismissive of us, as the appellant – as they're anxious to get back to "business as usual" – and just want this to be over, before the real truth is discovered – the system is flawed.

For the past, nearly 10-months now, we have been negotiating with ourselves; presenting both our case and that of the applicant. It's like standing at a crap table, betting against yourself, as the house or no one else at the table is fading you – that's covering your bets for the non-gambler.

Yet, in all of these postings, preparation and back and forth with DCRA and the property owner's representative, who had still not registered their appearance until, (arguably), recently, there is one thing that has constantly stood out as being glaringly absent from all the pleadings, either party has

filed – the one thing I know as a Commissioner, our duty – yours and mine – as Commissioners, serving in different capacities, for the same constituents, we must, at this point, consider the impact of this Allison Street variance on not just the block, but the entire 4C community. (See DCMR Title 11: §§330.1 thru §§330.3)

As an ANC Commission, that's how we voted, as a Commission, 10 strong. To have voted any other way, would not have afforded us the "great weight" – the guaranteed meaningful consideration – we're entitled to under DCMR.

Our primary interest, as an ANC, and my testimony before you today, is going to focus in on that affected 4C neighborhood/community and its residents – the impact on us – which the zoning administrator is also required to do, but chose not to. The same applies to myself and this distinguished body; that we consider this project's impact on the neighborhood, in general, but specifically the 4C community.

To begin, as a foundation for my testimony, the greater issue before this BZA hearing is the integrity of the process and procedure.

But for the fee-waiver accorded to the ANC, Ms. Abrams and her neighbors would be forced to tender over $1,000.00, just for the right to be heard. The entire process, in the real world, bypasses any other lower remedy, to be considered first, before we even get to the BZA.

The Zoning Administrator makes a decision where there are, to my knowledge, no rights of appeal, except to the BZA itself; where we are today. So, the whole notion of due process – the 5th Amendment to the US

Constitution – goes right out the window; but to have the "due process" require a $1,000.00 entry fee is unconscionable.

Those who may say a resident can appeal the ZA's decision to the ZA before coming before this body, are not taking into consideration the reality of how the process and procedure works in the real world, especially as it relates to a timeliness issue, something the ZA does not have to consider, but this body does.

The Zoning Administrator has "rubber-stamped" this project, and I base this on one (1) observation and two (2) facts.

1. **Observation:** It is highly unlikely, given the caseload demands on one (1) ZA, plus his appearances before this and other authoritative bodies, and whatever duties and responsibilities he has that I'm not aware of, to make a thorough review of such a plan before you today, in the record time in which it was done. This is not a deck, fence or a parking slab, it's a 3,000+sf demolition and construction development;
2. **Fact 1:** Observation 1 is confirmed by the fact that DCRA had to request a last-minute continuance in order to shore-up the ZA's initial claims that it was inside of the allowable lot occupancy, tainting this process and calling its integrity into question; and
3. **Fact 2:** We are revisiting a decision made in March 2015, with "new plans" submitted in October 2015 – based on whatever "spin" DCRA chooses to put on it – all the while, there has been an intervening change in the law.

So, we're effectively being asked to review "new plans," under an old law, which is causing a discreet harm – depriving the communities, which we represent, of their collective voice – circling back to a denial of due process.

Once the plans were changed, for whatever reason, the clock starts ticking over again; as far as I know, there're no "do-overs" in this process.

What is adding more insult to injury, is the community is being burdened with the incompetence of its own government; a government that should be protecting our interest, as citizens and taxpayers of the District of Columbia. Instead, we are burdened with paying for time and expertise to not only protect us from the applicant, but from the very government officials we pay to protect us, while they're working feverishly on behalf of the applicant, and not the appellant. DCRA's latest filings, pleadings and motions show they're not defending us – they've failed us – leaving us vulnerable and responsible for defending ourselves.

Is it not lost on any of you, as you look around the room, many of us sitting here, pay the taxes to defend ourselves, while we're sitting right next to the very representatives of government, who <u>are not</u> sitting here to defend us, but are our opponents. There's something wrong with that picture.

If this is how the process is supposed to work, then it's going to be my job, in collaboration and consultation with others, to change it.

I thank you for your time and attention to this matter, and urge you to reject the ZA's calculations, whichever formula he may have used, from whatever set of plans he may have drawn them from and to whatever extent of the law you can find to rebuke his shoddy and incompetent work, I pray you do so.

I am prepared to answer your questions, to the best of my ability.