

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

See yellow highlights pages

67 69 76-80 106-108 153 154-158 162-164 175-176 184
WEDNESDAY

SEPTEMBER, 19, 2018

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The Regular Public Hearing convened in the
Jerrily R. Kress Memorial Hearing Room, Room 220 South,
441 4th Street, N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Frederick Hill, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK L. HILL, Chairperson
- LESYLLEE M. WHITE, Board Member
- CARLTON HART, Board Member (NCPC)
- LORNA JOHN, Board Member
- MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- MAXIMILLIAN TONDRO, ESQ.
- MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
ELISA VITALE
BRANDICE ELLIOTT

The transcript constitutes the minutes from
the Public Hearing held on September 19, 2018.

C-O-N-T-E-N-T-S

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Case No. 19550: Application of ANC 6C 8

Case No. 19819 Application of Southern Hills LP

Case No. 19804 Application of 716 Upshur LLC

Case No. 19811 Application of Columbia
Heights Partners LLC

Case No. 19817 Application of Judith LaValle

Adjourn

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

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9:43 a.m.

CHAIR HILL: The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, NW. This is the September 19th Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair, Lesyllee White, and Lorna John, Board Members. And representing the Zoning Commission is Michael Turnbull.

Copies of today's agenda are available to you and located in the wall bin near the door. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address. When you're finished speaking, please turn off your microphone so the microphone is no longer picking up sound or background noise.

All persons planning to testify either in favor or in opposition must have raised their hand and been sworn in by the Secretary. Also, each witness must fill out two witness cards. These cards are located on the table near the

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1 door and on the witness table. On coming forward to speak
2 to the Board, please give both cards to the reporter sitting
3 at the table to my right.

4 If you wish to file written testimony or
5 additional supporting documents today, please submit one
6 original and 12 copies to the Secretary for distribution.
7 If you do not have the requisite number of copies, you can
8 reproduce copies on an office printer in the Office of Zoning
9 located across the hall.

10 The order of procedures, and special exceptions,
11 and variances, as well as appeals, are listed as you walk
12 into the door -- as you walk into the hearing room. The
13 record shall be closed at the conclusion of each case except
14 for any material specifically requested by the Board. The
15 Board and the staff will specify at the end of the hearing
16 exactly what is expected and the date when the persons must
17 submit evidence to the Office of Zoning. After the record
18 is closed, no other information shall be accepted by the
19 Board.

20 The Board's agenda includes --- so this is new
21 again. I mentioned this last week, primarily for the
22 attorneys in the room. The Board's agenda included cases set
23 for decision. After the Board adjourns, the Office of
24 Zoning, in consultation with myself, will determine whether
25 a full or summary order may be issued.

1 A full order is required when the decision it
2 contains is adverse to a party, including and affected ANC.
3 A full order may be needed if the Board's decision differs
4 from the Office of Planning's recommendations. Although the
5 Board favors the use of summary orders whenever possible, an
6 Applicant may not request the Board to issue such an order.

7 The District of Columbia Administrative Procedures
8 Act requires that the public hearing on each case be held in
9 the open before the public pursuant to Section 405 B and 406
10 of that Act. The Board may, consistent with its rules or
11 procedures, and the Act, enter into a closed meeting on cases
12 for purpose of seeking legal counsel on a case pursuant to
13 DC Official Code, Section 2-575(b)4 and/or deliberating on
14 a case pursuant to DC Official Code, Section 2-575(b)13, but
15 only after providing the necessary public notice in the case
16 of an emergency closed hearing after taking the roll call
17 vote.

18 The decision of the Board in cases must be based
19 exclusively on the public record. To avoid any appearance
20 to the contrary, the Board requests that persons present not
21 engage the members of the Board in conversation. Please turn
22 off all beepers and cell phones at this time so as not to
23 disrupt the proceeding.

24

25 Preliminary matters or those which relate to

1 another case will or should be heard today, such as request
2 for a postponement, continuance, or withdrawal, or whether
3 proper and adequate notice of the hearing has been given.

4 If you are not prepared to go forward with the
5 case today, or believe that the Board should not proceed, now
6 is the time to raise such a matter. Mr. Secretary, do we
7 have any preliminary matters?

8 MR. MOY: Good morning, Mr. Chairman, members of
9 the Board. The docket is as recorded on the agenda which is
10 on the wall bin to my left. There are preliminary matters,
11 but staff would suggest that the Board address those when a
12 case is called.

13 CHAIR HILL: Okay, great. Thank you. For those
14 of you who have been here before, I usually whip through that
15 thing. So that's how fast this day is going to go.

16 Let's see, if anyone is planning on testifying,
17 one way or the other, if you would please stand and take the
18 oath administered by the Secretary to my left.

19 MR. MOY: Good morning. Do you solemnly swear or
20 affirm that the testimony you're about to present in this
21 proceeding is the truth, the whole truth, and nothing but the
22 truth?

23 (Chorus of ayes)

24 MR. MOY: Thank you, ladies and gentlemen. You
25 may consider yourselves under oath.

1 CHAIR HILL: Okay. So just to again kind of give
2 a heads up as to how I think the day will move, we are going
3 --- well, we're going to delay our deliberations until the
4 end of the day unless I don't make it. And then we'll do
5 that before I leave. So therefore, the decisions -- our
6 meeting agenda is going to be at the end of the day.

7 Our hearing agenda is now going to move forward.
8 And we're going to go in the order in which we have, except
9 for one mistake that was put in the order, Application 19819
10 of Southern Hills will be the last to be heard. Otherwise,
11 we're going to be following the agenda. So, Mr. Moy,
12 whenever you have a chance.

13 MR. MOY: Thank you, Mr. Chairman. So with that,
14 I would call parties to the table to appeal Number 19550 of
15 ANC 6C as amended for appeal from the decision made on March
16 31st, 2017, by the Zoning Administrator, Department of
17 Consumer Regulatory Affairs, to issue a building permit
18 Number B, B as in Bravo, 17006219, as revised by B 1805207,
19 to permit the renovation of a one-family dwelling to two
20 separate one-family dwelling units, RF1 Zone at Premises 1125
21 7th Street, NE, Square 886, Lot 35.

22 This was last heard, Mr. Chairman, at, as you
23 recall, at the Board's hearing on May 9th, 2018.

24 MR. ECKENWILER: Mr. Chair, I just need to point
25 out that I have reviewed the record on this, and I'm ready

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1 to sit on the case.

2 CHAIR HILL: All right. Thank you, Mr.
3 Commissioner.

4 (Off the record comments)

5 CHAIR HILL: Okay, great. One other thing, I
6 suppose. If you're probably the fourth case, you'll be heard
7 probably after lunch. This one particular appeal will
8 probably take some time. And then I would assume the next
9 case also will probably take a little bit of time. So I'm
10 just trying to give you a heads up. Probably the fourth case
11 will be after lunch. But I'm not really sure. We'll see how
12 this goes.

13 If you could please introduce yourselves from my
14 right to left.

15 MS. LORD-SORENSEN: Good morning, Adrienne Lord-
16 Sorenson, assistant general counsel with the DC Department
17 of Consumer and Regulatory Affairs.

18 MR. LEGRANT: Good morning. Matthew LeGrant,
19 zoning administrator, DCRA.

20 MR. CUMMINS: Kevin Cummins, a District resident.

21 MR. ECKENWILER: Good morning, Mr. Chairman, Mark
22 Eckenwiler here on behalf of ANC 6C.

23 MR. BROWN: Good morning, Patrick Brown from
24 Greenstein, DeLorme and Luchs, on behalf of the property
25 owner, Atlas Squared.

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1 MR. BELLO: Good morning, Toye A. Bello.

2 MR. TAWED: Good morning, Tarique Tawed, property
3 owner, Atlas Squared.

4 PARTICIPANT: Mr. Chairman, I have two other
5 witnesses. I don't know if we need to introduce them now.
6 They're not at the table.

7 CHAIR HILL: Why don't we --- we'll bring them up
8 when it's your presentation.

9 PARTICIPANT: Very good.

10 CHAIR HILL: So, Mr. Eckenwiler, I believe we're
11 going to start with you.

12 MR. ECKENWILER: Mr. Chairman, I think there's a
13 pending motion.

14 CHAIR HILL: Thank you, Commissioner.

15 MR. MOY: Yes, Mr. Chair, that's the motion that
16 was filed on August 9th by the property owner to amend the
17 appeal to include the second revised permit that was issued
18 August 2nd, 2018. I'll check to see which exhibit number
19 that is.

20 CHAIR HILL: That's Exhibit Number 55. You know,
21 I remember the motion now. So does the Board have any
22 thoughts on the motion, I guess?

23 Mr. Eckenwiler, so as I understand it, the ANC and
24 DCRA were in agreement in terms of the permit for this?

25 MR. ECKENWILER: ANC 6C consented. And my

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1 recollection is that DCRA had likewise consented.

2 CHAIR HILL: Yes. And so, Mr. Cummins, did you
3 have any comments or thoughts on --- I know the permit just
4 got, again, over our recess in August. Are you aware of the
5 motion?

6 MR. CUMMINS: I am. And given that it was a
7 consent motion and consented to do so quickly, I just didn't
8 have time to respond in the record but have no objection to
9 that motion.

10 CHAIR HILL: Okay. So then unless the Board has
11 their own objections, I would go ahead and approve the motion
12 to amend the appeal.

13 MEMBER WHITE: Second.

14 CHAIR HILL: Okay, so the motion's been made and
15 seconded. All in favor say aye?

16 (Chorus of ayes)

17 CHAIR HILL: All those opposed?

18 (No audible response)

19 CHAIR HILL: All right. So, Mr. Eckenwiler, we're
20 going to start with you again as the Appellant. I'm trying
21 to remember the order, I guess. Well, we'll start with you,
22 and then I'll try to look up the order, because I'm ---

23 MR. ECKENWILER: I have the hearing procedures
24 here, Mr. Chairman, if you want to ---

25 CHAIR HILL: Oh, great. Sure, go ahead.

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1 MR. ECKENWILER: I can hand those out if you like
2 or just describe it to you. So preliminary procedural
3 matters, Appellant's case, then the respective case of
4 parties who are interveners, so that would be Mr. Cummins,
5 the administrative official's case, so that's DCRA, and then
6 parties in opposition. So that would be the property owner.
7 And then we go to rebuttal and closing.

8 CHAIR HILL: Okay, great. Thanks, I appreciate
9 that. And, yes.

10 MR. ECKENWILER: Do you want to --- I'm sorry to
11 interrupt, Mr. Chairman.

12 CHAIR HILL: Sure.

13 MR. ECKENWILER: Did you want an estimate of how
14 much time to put on the clock. I know you usually like to
15 ---

16 CHAIR HILL: I have a general idea. Well,
17 actually no, that's not true. Mr. Eckenwiler, how much time
18 do you think the ANC will need?

19 MR. ECKENWILER: It's hard for me to estimate with
20 any precision. If the Chair would put 45 minutes on the
21 clock, I will try and keep it under that.

22 CHAIR HILL: Wow, okay, okay. I only say wow
23 because I thought I was going to do 30. And so ---

24 MR. ECKENWILER: Well, let's see how it goes.

25 CHAIR HILL: Let's shoot for 30, because then

1 everybody'll get 30. But, Mr. Eckenwiler, I wasn't sure if
2 I was going to mention this, because I didn't want to give
3 too much air time to it all. But I did see on the news and
4 how, like, you came and --- you were there counter-protesting
5 to a controversial protest. And I commend you for your
6 participation in that. I think you know what I'm speaking
7 of.

8 MR. ECKENWILER: Thank you, Mr. Chairman.

9 CHAIR HILL: Yes. So all right. Okay, so you can
10 start. We'll put 30 minutes on there, and if you can kind
11 of go ahead and -- you know, there's a lot of information in
12 the record. Obviously as precise and as simple you can make
13 it for the Board is always helpful, Commissioner.

14 MR. ECKENWILER: Absolutely. So with that, Mr.
15 Chairman, this is the appeal of ANC 6C. Let me sort of give
16 an overview. This is a slightly odd order in which to do it,
17 but let me tell you there are four points of argument, four
18 separate bases on which the Board should order this permit
19 revoked as being in violation of the zoning regulations.

20 So one, there is an improper setback, in fact, a
21 lack of any setback of a rooftop structure. That's a
22 guardrail.

23 Second, it allows the removal of a protected
24 rooftop architectural element, in this case a cornice.

25 Third, it allows two principal structures on the

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1 lot. And then there's sort of a cascading series of
2 consequences from that that make all of that improper under
3 the regulations.

4 And then last, and probably the most complicated
5 issue is that it allows a rear addition more than ten feet
6 past an adjacent dwelling.

7 So, let me begin with a timeline. Because as you
8 know, just from having cited this motion, there's a lot
9 that's gone on procedurally and administratively with respect
10 to this appeal. So the original permit, that's B1706219, was
11 issued on March 31st of 2017. We filed this appeal on May
12 30th of 2017.

13 The property owner revised the permit, I'm going
14 to call that the first revised permit, and that's B1805207,
15 on April 18th, 2018. And you can find that, if you for some
16 reason want to consult it, that's at Exhibit 46A.

17 Most recently, and this goes to the motion that
18 the Board just decided, on August 2nd, 2018, the permit was
19 further revised. I'm going to that as the second revised
20 permit, that's Number B1811245. And you can find that at
21 Exhibit 55.

22 One other thing, there will be two documents.
23 Unfortunately, I don't have an electronic presentation for
24 you. But I'm going to refer repeatedly to two documents in
25 the record, so it may be convenient for you to have those

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1 ready at hand. The first is Exhibit 46 and its attachments.
2 That is ANC 6C's second revised pre-hearing statement. And
3 the second is Exhibit 59 and its attachments. That is our
4 reply.

5 So with that, the first ground for appeal here is
6 the failure to provide a mandatory minimum setback for a
7 rooftop guardrail. A section of the regulations, it's C
8 1502.1, sub (c), requires a one-to-one setback of any
9 guardrail from the edge of a roof in this particular zone,
10 which is RF-1.

11 The drawings for the current permit, so that's the
12 second revised permit, show a 36 inch railing with zero
13 setback from the edge of the roof. Now, if you will turn to
14 Exhibit 59 at Page 2, and I'll give you a moment just to make
15 sure everyone is there, you will see a detail from one of the
16 drawings for the current permit.

17 And there's an arrow and an oval that identifies
18 this 36 inch guardrail. It runs north/south. And the north
19 end of it, these drawings are all oriented opposite, south
20 is to the top. You can see that the north end of it at the
21 bottom is immediately adjacent to the edge of the roof. It
22 runs right up to the edge.

23 So that one's pretty straightforward. And I'm
24 happy to answer any questions, if the Board has any questions
25 on that. Otherwise, I'll move on to the second ground for

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1 appeal.

2 (No audible response)

3 MR. ECKENWILER: Okay. So the second ground is
4 the second revised permit illegally authorizes the removal
5 of a protected architectural rooftop element.

6 So when DCRA issued this original permit on March
7 31st of 2017, Section E-206 of the regulations did not list
8 cornices among the categories of protected rooftop elements.
9 It was not until a month later, at the end of April when
10 Zoning Commission Order 1411-B took effect, that E-206 was
11 amended to include the language "such as cornices."

12 So the original permit was not subject to this
13 restriction. However both subsequent revisions, which took
14 place on April 18th of this year and then August 2nd of this
15 year, occurred after that rule became final.

16 And under the regulations, Section A 301.4, any
17 permit amendment must, as a general matter, comply with the
18 regulations in effect on the date of amendment. And the
19 exception there is if there's a vesting provision. There is
20 no such vesting provision in this case.

21 Now, the cornice on the existing structure, so
22 this is 1125 7th Street, the property, along with identical
23 cornices on several other rowhouses in the same block,
24 including the adjacent dwelling, 1123, which Mr. Cummins owns
25 and resides in, you can see those at Exhibit 46, Pages 6

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1 through 8. There's a series of photographs that were
2 included in our second revised pre-hearing statement. So
3 I'll pause just to make sure the Board is able to examine
4 those.

5 And the drawings for the latest permit, the second
6 revised permit, clearly depict the removal of that cornice.
7 You can see that removal at Exhibit 59A, Sheet A4.1, which
8 depicts the existing and the proposed front elevations.

9 Now, one of the issues that's presented in this
10 appeal, and you'll see it if you're looking at Sheet A4.1,
11 is whether or not this particular element is a cornice. That
12 term is not defined in 11 DCMR. And so we resort to
13 Webster's Unabridged Dictionary which provides all the
14 fallback definitions.

15 As we've cited in our pre-hearing statement, a
16 definition from one of the many unabridged dictionaries is
17 that a cornice is a horizontal member, typically molded and
18 projecting, that crowns a composition such as a facade.

19 And that is precisely what the feature that's
20 visible in these photos, again, Exhibit 46, Pages 6 through
21 8, does. And while it's true that that cornice does sit
22 below the very top, it's not at the very, very top of the
23 parapet wall, it is abundantly clear that it rises above the
24 highest point on the roof.

25 Significantly, DCRA previously determined in

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1 writing that the feature in question is, in fact, a cornice.
2 So going back to the process by which DCRA reviewed the
3 application for the first revised permit, so that's the first
4 one that was subject to this rule, several important events
5 occurred.

6 So the April 5th, 2018 notes of DCRA Zoning
7 Reviewer, Mamadou Endall, flagged the fact that the removal
8 of the cornice was problematic. And you can see Mr. Endall's
9 notes at Exhibit 46E on Page 2 at the top of the page.

10 So I want to make sure I'm not going too fast.
11 Let me just pause and make sure they're no questions.

12 Second, the property owner ---

13 MR. HART: Mr. Eckenwiler?

14 MR. ECKENWILER: Yes?

15 MEMBER HART: I do have one question.

16 MR. ECKENWILER: Sure, Mr. Hart?

17 MEMBER HART: When you're talking about this
18 cornice, and I appreciate your methodical pace of this,
19 because it's very helpful to do that. I did have the
20 question on did you believe that the owner, I guess, should
21 have requested relief for this? Do you think that's the ---

22 MR. ECKENWILER: Yes.

23 MEMBER HART: -- the correct --

24 MR. ECKENWILER: Yes.

25 MEMBER HART: -- pathway they should have gone,

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1 as opposed to the --- you're saying DCRA just approved it
2 without having come to the BZA.

3 MR. ECKENWILER: So thank you for the question.
4 Yes, so Section E-206 says that a protected rooftop
5 architectural element may not be removed absent special
6 exception or relief. So that's exactly correct. And no such
7 relief has been granted in this case.

8 In response to the comments from Mr. Endall at
9 DCRA, the property owner submitted a letter dated April 16th,
10 2018, disputing Mr. Endall's analysis and claiming that the
11 feature in question, quote, "is not a rooftop element," close
12 quote, and is instead, quoting again, "applied trim." And
13 you can see that letter. That's at Exhibit 46F on Page 1 at
14 the very bottom.

15 And I raise this because one of the things to keep
16 in mind here is it's not just that this was a disagreement,
17 that this disagreement was expressed in writing very clearly
18 to DCRA. Not only was it expressed and in DCRA's permit
19 file, we know that DCRA considered this claim.

20 Because we have an April 18th email to the Deputy
21 Zoning Administrator, that's Cathleen Beaton, that email was
22 copied to, excuse me, Mr. LeGrant, the zoning administrator,
23 that noted this disagreement and sought the guidance of the
24 leadership within the Office of the Zoning Administrator.
25 And you can see that email, that's an email from Sean Gibbs,

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1 at Exhibit 46G.

2 So there was a disagreement. It was communicated
3 to DCRA. DCRA was well aware of it, and there was
4 deliberation over this point. And DCRA rejected this
5 argument because, on April 18th, the author of that same
6 email, Sean Gibbs, who became the zoning reviewer for the
7 first revised permit, Mr. Gibbs added notes into the permit
8 review record saying, quote, "Per review with the zoning
9 administrator, removal of the cornice is permitted."

10 So let's pause for a moment. I want to unpack
11 that. And by the way, you can see that. That's also at
12 Exhibit 46E on Page 4. It's the text that's in all caps.
13 So one, there's a very clear finding that the element in
14 question is a cornice. It's not a different word that's
15 used. They don't say it's like a cornice. It's a cornice.

16 Now, it's true that the permit was issued. And
17 we can see from Mr. Gibbs' notes that there was a purported
18 basis for authorizing its removal. That basis was on the
19 mistaken theory that there's a vesting provision under ZC 14-
20 11.

21 That's simply wrong. There is no such provision
22 anywhere in the regulations. And the opposition, filed by
23 both DCRA and the property owner, they do not claim that
24 there is any such vesting provision. So DCRA was right about
25 what this element is. They were wrong about whether or not

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1 it was permissible to remove it.

2 So what matters here is that DCRA unambiguously
3 found, in a circumstance where they, you know, they could go
4 either way, right, they didn't have to listen to what Mr.
5 Endall said. So there was no pressure to decide one way or
6 the other, other than the property owner arguing with them.

7 And DCRA went the opposite direction, found that
8 the feature in question on the front of the property is
9 within the protections of Section E-206. And they did so
10 over the express objections of the property owner.

11 And that same violation, because remember this was
12 all with respect to the first revised permit, the second
13 revised permit is identical in this regard, and so that same
14 error persists, and therefore the permit should be revoked
15 on this ground.

16 Now, let me add one additional sort of detail here
17 on this second ground for appeal. Even if the Board were to
18 disagree and find that the element in question is not
19 technically a cornice, the Board should still reach the same
20 result. Section E-206 is not limited to the list of features
21 named in its text. It explicitly applies to elements, quote,
22 "Such as the listed items."

23 So it's clear that its protections extend to other
24 similar but un-enumerated architectural features. Because
25 the feature here functions in the same fashion as a cornice,

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1 it defines the top of the facade, and that's not just on this
2 property but, you know, any of the companion rowhouses built
3 in the same style on this same block. To anyone viewing it
4 from the sidewalk, the Board could still find a violation of
5 E-206.

6 In sum this is, if not technically a cornice
7 under, you know, the narrowest possible definition of that
8 term, this is in the nature of a cornice. And the experience
9 of someone standing on the sidewalk, that's where those
10 photographs that are included in Exhibit 46, those were all
11 taken from the public sidewalk looking up at the buildings,
12 it reads exactly as a cornice.

13 So there is a fallback argument here, even if you
14 don't believe, after hearing all the evidence that this is
15 a cornice, you can still find that E-206 applies. However,
16 you don't really need to reach that point.

17 I submit to the Board that DCRA's written
18 determination, with respect to the first revised permit that
19 this is a cornice, really should be, if not dispositive, at
20 least, you know, highly persuasive to the Board. That is the
21 right analysis in our view. And it is fatal to the current
22 permit that's on appeal.

23 Our third ground, and let me pause again, make
24 sure I'm not going too fast. If not then the third --- and
25 these are all independent bases for appeal, any one of them

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1 is enough to require revocation -- the third ground is the
2 two principal buildings problem.

3 The second revised permit, like its predecessors,
4 authorizes not only the renovation of the existing row
5 dwelling but also the construction of a similarly dimensioned
6 three-story structure in the rear yard.

7 You can see those front and rear towers. And
8 actually that's not my term. I think the property owner may
9 have used that in the opposition PHS. If you want to see
10 those in elevation, Exhibit 59A, Sheet A, 4.2 gives you a
11 very good sense of --- you have these two large masses with
12 basically a connecting corridor. So if there are no
13 questions on that, let me proceed.

14 So the drawings for the second revised permit
15 include this connector. And because it does not meet the
16 requirements for joining the towers into a single building,
17 and we'll get in a moment to the particulars of what makes
18 something a single building or separate buildings, the
19 second revised permit illegally allows for two principal
20 buildings containing dwelling units on a single lot in
21 violation of the regulations applicable to the RF-1 zone.

22 Now, the definition for a single building, it
23 appears in a couple of different places. It's both in the
24 definitions in Subtitle B, but also there's a separate
25 section that breaks these things out, and it's a little more

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1 readable. So I'm going to refer to Section B, 309.1. And
2 that section has four separate prongs for what it takes for
3 something to qualify as a connector that makes two masses
4 into a single building.

5 Now, the current connector scheme differs
6 substantially from what was approved in the original permit,
7 but looking at what's authorized today under the second
8 revised permit, the first three prongs of that test are not
9 at issue. So we don't need to spend any time on those.

10 The fourth prong, and that's at B, 309.1, sub (d),
11 is an alternative test. And that may be satisfied in either
12 of two ways. If the connector is, quote, "common space used
13 by all,--" excuse me, "common space used by users of all
14 portions of the building, such as a lobby, recreation room,
15 loading dock, or service bay," so that's one way that a
16 connector can legitimately join two masses into a single
17 building.

18 In the alternative, if the connector is space ---
19 skipping over --- designed and used to provide free and
20 unrestricted passage, and those are the key words here,
21 between separate portions of the building such as an
22 unrestricted doorway or walkway. And it's important. Note
23 the term unrestricted appears twice in the regulation.

24 The connector here does not meet either test. So
25 it's helpful to look at this layout in detail for a very

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1 closeup view. Take a look at exhibit 46, Page 11, where
2 there is an extract from the drawings.

3 And to be fair, that drawing is from the first
4 revised permit drawings. But it has not changed, so far as
5 I'm aware, at all for the second revised permit. So it is
6 perfectly appropriate for the Board to examine it.

7 The west end of this corridor, so that's the
8 right-hand side of the drawing, remember south is up in these
9 drawings, leads to a locked door at the rear entrance, so
10 that's the kitchen of Unit Number 1. That's at the back of
11 the existing rowhouse. The east end, so that's to the left,
12 leads to a locked door to the living room of Unit Number 2
13 in the rear tower.

14 And there is a side door, so that's at -- you'll
15 see that at the top, that's on the south edge of this
16 connector, at the mid-point opens inward from the courtyard
17 between those two towers. So if we look to the text of the
18 regulations, this narrow space, it's three feet, eight inches
19 wide, is not a rec room, it is not a loading dock, it is not
20 a service bay.

21 The property owner clearly didn't think that it
22 was a lobby, because when the original permit was filed the
23 drawings labeled this space, which was configured somewhat
24 differently in terms of the grade but had basically the same
25 width, it was not called the lobby then. It was called the

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1 breezeway. It was only after we pointed out the legal
2 deficiencies that the property owner had a change of heart
3 and suddenly started labeling it a lobby after some of our
4 initial filings.

5 The Board should disregard that self-serving
6 description. And frankly, I think you can see just from
7 looking at this space, this is not a lobby. We're
8 intelligent people, and we know what a lobby is. You know
9 it when you see it. And this is not that.

10 So it does not serve as common space intended for,
11 you know, shared functional use. All this is is a means of
12 passage. And so the only possible way in which this can
13 qualify to join these two masses together into a single
14 building is under 309.1(d)2.

15 Unfortunately, that test also is not satisfied
16 here. Because it requires a qualifying connector to provide,
17 quote, "free and unrestricted passage." But if you look at
18 that first-floor plan, and that is Sheet A, 1.1 at Exhibit
19 59A, that's the full drawing for the current first-floor
20 plan, what I said before is the case.

21 CHAIR HILL: I'm sorry, Commissioner, which Page
22 are you on?

23 MR. ECKENWILER: I'm sorry, if you go to ---

24 CHAIR HILL: Fifty-nine?

25 MR. ECKENWILER: Yes, it's Exhibit 59A. Those are

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1 the drawings for the ---

2 CHAIR HILL: Which page were you on. I'm sorry,
3 I thought you --- did you have a page number?

4 MR. ECKENWILER: Yes, it's Sheet A, 1.1. Beg your
5 pardon, Mr. Chairman.

6 CHAIR HILL: Okay.

7 MR. ECKENWILER: So that gives you the --- that's
8 the full drawing. And I think that's the cellar and the
9 first-floor plan. If you'll examine the first-floor plan,
10 you can see it's what I described before. This is a
11 corridor, and it has locked doors at either end. Because
12 those doors are entrance doors for each of the two units.

13 Have I got that right, Mr. Chairman, am I ---

14 CHAIR HILL: You're okay. You're okay. I just
15 needed a little help. But I'm listening. Thank you.

16 MR. ECKENWILER: Okay. So it's presumably those
17 doors are locked. I can't actually see on the drawings it
18 says that they're locked. But those are clearly entrance
19 doors into units. It defines that space.

20 And what the Board really should keep in mind here
21 is that when the Zoning Commission -- obviously Commissioner
22 Turnbull will recall this, he has the scars from ZR16 --- the
23 Office of Planning and the Commission, when they re-wrote
24 this rule, you know, it used to be called the Meaningful
25 Connection Rule, and obviously the wording went through a

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1 number of changes here, there was significant concern about
2 fig leaf connectors, a lot of practices in the past that were
3 highly questionable.

4 And OP and the Commission were very concerned to
5 address that, to make connections truly meaningful. So among
6 other things, that's why it now says heated and artificially
7 lit. That was not a requirement before. But that's not
8 germane here.

9 What is germane is if we look to the record, so
10 for instance, Deputy Director of OP, Jennifer Stein Gasser,
11 wrote in a 2008 memo, she complained that, you know, for
12 instance, often two buildings are combined into one building,
13 under ZR58, by a single locked doorway.

14 And that was a criticism. The point was, you
15 know, that doesn't really combine these two buildings into
16 one building. That's a fiction. And in this case, we have
17 that same fiction just extended out in space. So it's not
18 just a single locked doorway, it's a corridor that's locked
19 at either end. And since it's locked at either end, it does
20 not, it cannot provide free and unrestricted passage between
21 separate portions.

22 Now, the initial DCRA zoning reviewer, for the
23 first revised permit, that's Mr. Endall I talked about
24 before, noted that deficiency. But for some reason, and the
25 reviewer notes don't make clear, this is 46E, Exhibit 46E,

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1 there was an about face within DCRA, and the first revised
2 permit was issued without explaining why this was acceptable.
3 And this violation was then carried forward into the drawings
4 for the second revised permit.

5 Now, the regulations do not allow a second
6 principal building on the property. The regulations do allow
7 an accessory structure. But the building in this case does
8 not qualify as an accessory building. Since I'm running a
9 little short on time, I'm not going to dwell on that.

10 I've detailed in our written submissions the
11 particular regulations that describe the envelope limits, the
12 sort of height and, you know, relative size. And since the
13 rear tower is essentially identical in volume to the front
14 tower, it cannot ever qualify as an accessory structure under
15 ---

16 CHAIR HILL: Yes, Commissioner?

17 MR. ECKENWILER: Yes?

18 CHAIR HILL: It's okay. Just don't --- it's easy
19 to follow you. So go ahead and take 45 minutes and just, you
20 know, let's get through. I mean, we've been waiting on this
21 for years.

22 MR. ECKENWILER: Okay.

23 CHAIR HILL: Okay.

24 MR. ECKENWILER: All right. Well, let me just
25 touch on it very briefly. An accessory building in an RF

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1 zone may be no taller than 20 feet and two stories. And more
2 importantly, an accessory building in an RF zone must be,
3 quoting their language in the regulation here, "subordinate
4 to," close quote, the principal building and, again quoting,
5 "secondary in size," close quote, to it. And you can find
6 that at Section E, 5000.1(a) and 5000.2.

7 And if you examine the drawings submitted in
8 support of the application for the second revised permit, so
9 looking at Exhibit 59A, Sheets A-4.2 and 5.2, they make very
10 clear that this is not in any way a subordinate structure.
11 It does not meet the, you know, the height limits.

12 So that's what I was saying in the introduction.
13 So since you have two principal buildings with a dwelling
14 unit in the rear, the rear structure, it fails all these
15 other requirements. And therefore, this was issued in
16 violation of the zoning regulations.

17 So let me pause there, make sure there are no
18 questions on that third ground for appeal.

19 MEMBER HART: With regard to the -- sorry, I'm
20 just making sure I got all of this. To get back to the
21 principal dwelling unit, the connector ---

22 MR. ECKENWILER: Yes.

23 MEMBER HART: -- you're saying that because the
24 locked doors are there on either side of this connector,
25 there isn't an ability for someone from the Unit 1 to be able

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1 to walk into Unit 2. They can have access to the connector,
2 whatever you want to call it, lobby, breezeway, whatever, but
3 they do have the ability to access that and then go into the
4 courtyard that's there. But no one else can, because you
5 have to have access to that by, you know, from either one of
6 the units.

7 MR. ECKENWILER: Yes, Mr. Hart.

8 MEMBER HART: Thank you.

9 MR. ECKENWILER: That's true. So any occupant of
10 either unit has access to the rear yard and therefore can,
11 in theory, walk the entire length of that connector. But the
12 truth is, there is absolutely no reason for the occupant of
13 Unit 1 ever to walk in the east half and vice versa. And I
14 know that the property owner is ---

15 MEMBER HART: I mean, unless they know them. So
16 they could just be going to say hi to their neighbor.

17 MR. ECKENWILER: They could, they could.

18 MEMBER HART: I understand your point. I'm just
19 saying that it's hard to kind of say never that something's
20 going to happen. It is unlikely that that might happen,
21 because there is -- unless they're going to actually visit
22 that person, they wouldn't be necessarily going down the set
23 of stairs, going across this, and then going up the other set
24 of stairs to get to that other door. I understand your
25 point. I just wanted to make sure that I got all of that.

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1 MR. ECKENWILER: No. You're quite right, Mr.
2 Hart. What does bear repeating though is that it's not just
3 enough that, you know, users of the entire structure or
4 structures have access and be able to walk, you know, the
5 full length of this. It has to provide free and unrestricted
6 passage between separate portions of the building.

7 So it's not enough that you can go into this,
8 there has to be unrestricted passage. And unrestricted here
9 is truly a key word in the regulation. It appears twice in
10 this sub-paragraph.

11 And so it's not just enough that I can walk up
12 to that front door. It needs to be unrestricted. I take you
13 back to Ms. Steingasser's memo, you know, pointing out, you
14 know, the fig leaf. And this is simply a somewhat longer fig
15 leaf.

16 MEMBER HART: And just to kind of make sure I
17 close this loop, so you're saying that there could never be
18 a connection between these two. There could never be an
19 instance, maybe I shouldn't use the word never either, but
20 it'd be very difficult to get to an instance where you could
21 have a connector that met these guidelines, the criteria.
22 Because you'd have kind of a weird first floor that you could
23 -- kind of anybody could access.

24 MR. ECKENWILER: You could certainly ---

25 MEMBER HART: Do you see what I'm saying?

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1 MR. ECKENWILER: You could certainly have, I mean,
2 picture sort of a typical office building where you might
3 have a couple of towers --

4 MEMBER HART: I'm trying to get more specific to
5 this particular instance where we have two units that are ---
6 one that's connected to the other one. But I'm just trying
7 to get to a --- unless it's a single building, then I don't
8 think that you're getting to a, you know, that connector
9 piece is going to be very very difficult to do then.

10 MR. ECKENWILER: Mr. Hart, I'd say there are
11 different ways that, you know, the regulations, for instance,
12 contemplate a rec room. You could have a shared rec room.
13 That's not what this is. I think we can all tell from
14 looking at it.

15 Yes, Ms. White? And I'm sorry, just one --- I
16 want to make sure I answered your question first, Vice Chair
17 Hart.

18 MEMBER HART: Sorry, I think you have. I'm just
19 trying to kind of get down to the, you know, where does this
20 leave us ---

21 MR. ECKENWILER: So ---

22 MEMBER HART: And so that's what I was trying to
23 get at.

24 MR. ECKENWILER: Theoretically, it's possible ---
25 I think the Board needs to decide this on the basis of the

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1 record before it. And what you've got here just, it just
2 ain't it.

3 Ms. White?

4 MEMBER WHITE: So another way of looking at it,
5 would you consider it a meaningful connection based upon the
6 configuration of these structures?

7 MR. ECKENWILER: It's a very clever attempt to
8 skate right along the edge of the regulations. But no, it's
9 a failed attempt to comply with the requirements of Section
10 B, 309.1. The test used to be meaningful connection and
11 sometimes, you know, people may use that. But really, what
12 we need to look to is the text of the regulation now. So
13 whether I consider it a meaningful connection or not really
14 is not the issue here.

15 MEMBER JOHN: Mr. Chairman?

16 CHAIR HILL: Sure.

17 MEMBER JOHN: I have one question. So
18 essentially, because the passageway --- because the lobby is
19 too narrow, and only two units have access to it, if I
20 understand you correctly, then that, you think, makes it not
21 a meaningful connection.

22 So if the property owner were to enlarge the
23 structure perhaps, make it wider, would that cure some of the
24 defect in your view?

25 MR. ECKENWILER: They could make it into a true

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1 lobby or a recreation room if they wanted, in some third
2 revision to this. The problem is, and we'll come to this in
3 the fourth ground, is that this rear extension is, in and of
4 itself, a violation of the zoning regulations. So the truth
5 is, it's kind of academic.

6 MEMBER JOHN: Well, I was just trying to
7 understand your point. Because here it seems only two units
8 would have access to this area. And I'm not sure if the
9 regulation requires all units to have access or if, under the
10 regulations, it would be sufficient if only two units had
11 access, and if there were doors at either end that could be
12 opened or locked, depending on security needs. I'm just
13 trying to understand what your argument is.

14 MR. ECKENWILER: My argument proceeds directly
15 from the text of the regulation. So at the risk of repeating
16 myself, again, Section B, 309.1 (d), so that's the fourth
17 prong, has two alternative ways in which a connection can
18 join two masses into a single building. One is common space
19 used by users of all portions of the building, such as a
20 lobby, recreation room, loading dock, or service bay. So we
21 can think of that as the shared space prong.

22 And that's not what this is. This isn't a place
23 for people to mingle, this isn't a place for people to sort
24 of load and unload stuff from trucks, or play ping pong, or
25 any of those things.

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1 And then the alternative test is the passageway
2 test which is required to provide free and unrestricted
3 passage, such as an unrestricted doorway or walkway. And our
4 argument here is this is not unrestricted. If you can't
5 actually walk between the separate portions, it does not
6 qualify. It does not join the two buildings together if
7 there are two locked doorways that separate those buildings
8 from this connector. So I hope that answers your question,
9 Ms. John.

10 MEMBER TURNBULL: Mr. Eckenwiler, I wonder if I
11 can, just to clarify, the rear yard we're referring to is
12 where the parking is?

13 MR. ECKENWILER: No, Mr. Turnbull. There is an
14 interior courtyard.

15 MEMBER TURNBULL: That's what we're calling the
16 rear yard?

17 MR. ECKENWILER: I'm trying to be scrupulous. And
18 if I misspoke, I apologize. That's the courtyard --

19 MEMBER TURNBULL: Okay.

20 MR. ECKENWILER: -- between the two towers. And
21 the two towers run the full width of the lot. There is an
22 area at the rear, so that's the far east end of the lot
23 behind the rear tower, where two parking spaces are provided.
24 So I'm not talking about that area. This is what's between
25 the two towers.

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1 MEMBER TURNBULL: Two towers.

2 MR. ECKENWILER: And I apologize for any lack of
3 clarity on that.

4 MEMBER TURNBULL: Okay. And that courtyard cannot
5 be accessed from either the rear or the front separately.
6 You have to go into one of the buildings' towers to get to
7 it.

8 MR. ECKENWILER: That's correct. There are
9 underground passage ways and ---

10 MEMBER TURNBULL: There's a cellar showing on
11 this, there's a corridor in the cellar.

12 MR. ECKENWILER: Right. There are corridors in
13 both the front and rear structures. And I'm quite certain,
14 because it was in their opposition pre-hearing statement,
15 that the property owner will be discussing that in some
16 detail. They have a view for how this satisfies the
17 regulation. I won't presume to characterize their argument
18 further.

19 MEMBER TURNBULL: Okay. But basically, the
20 habitable space on the first floor, those are locked doors.
21 And your argument is that you can't go from one to the other,
22 because each door is locked.

23 MR. ECKENWILER: Yes. That's correct.

24 MEMBER TURNBULL: Okay.

25 MR. ECKENWILER: And just to be clear, that's why

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1 it doesn't satisfy this second alternative prong under the
2 309.1(d). But then we also have to account for the other
3 prong that, you know, lobby, rec room, et cetera, prong, just
4 to be clear.

5 MEMBER TURNBULL: Okay, thank you.

6 MR. ECKENWILER: Sure. All right. So with that,
7 Mr. Chairman, I'll move on to the last ground for our appeal.
8 That is the illegal rear addition. As the Board is, I
9 suspect, painfully aware, the current regulations prohibit
10 the construction of a rear addition extending more than ten
11 feet past the rear wall of an adjacent dwelling in this zone,
12 an RF-1 zone.

13 Because the second revised permit authorizes a
14 rear addition well in excess of this limit, and because there
15 is no applicable vesting provision that would exempt it, the
16 revised permit must be revoked.

17 So that restriction, the ten foot pop-back rule,
18 as it's sometimes referred to, is in Section E, 205.4. And
19 if you examine Exhibit 59A, you can look at Sheet A, 1.1,
20 Sheet A, 4.2, and I believe this is at the very back, SP01,
21 that's the site plan. I think that's the very last sheet.
22 All of those will show you very clearly that this rear
23 extension goes --- it's a little more than 57 feet. I think
24 it's about 57.9, but it doesn't really matter. It's clearly
25 well in excess of ten feet.

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1 So we know it's over the ten foot rule. And we
2 also know that, under Section A 301.4 of the regulations, it
3 requires that any amendment of a permit shall comply with the
4 provisions of this title in effect on the date the permit is
5 amended. So every time you amend or revise a permit, you're
6 subject to the new rules, unless there is a vesting
7 provision.

8 So we know the default here is the second revised
9 permit, because it was issued after August 25th, 2017, when
10 the current text of E 205.4 came into effect, that it's, as
11 a general matter, subject to this ten foot pop-back
12 restriction.

13 Now, there is a vesting provision that could
14 potentially apply. And that's A 301.14. And that is
15 specifically aimed at these ten foot pop-backs. It was
16 adopted in ZC 1411-D by the Zoning Commission. Now, that
17 requires, under the text of that provision, that two separate
18 conditions be satisfied. So you have to meet them both.
19 Failing either one is fatal.

20 First, the building permit application for such
21 construction was filed and accepted as complete by DCRA on
22 or before March 27th, 2017, and not substantially changed
23 after filing, okay. So you've got a date that you have to
24 meet. You have to not substantially change after that
25 filing. The permit here fails not just one condition but

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1 both of these conditions.

2 So to begin with, the original permit here,
3 according to the records that we've provided to the Board,
4 was not accepted as complete on or before that key date,
5 March 27th of 2017.

6 In a September 12th, 2017, email to others at
7 DCRA, including Mr. LeGrant, Maximillian Tondro, and I know
8 you're all very familiar with Mr. Tondro, pointed out that
9 B-1706219, so that was the original permit, was submitted by
10 the Applicant on March 24th but was not accepted as completed
11 until March 29th. And you can find a copy of that email.
12 There are some portions that are redacted, but you can see
13 this text at Exhibit 46H, like Henry, okay.

14 Now, Mr. Tondro's email does go on to assert that
15 there were no changes required by DCRA, and he says that it
16 was therefore deemed, through some sort of magic, to have
17 been submitted earlier. But really, the statement that you
18 need to take at face value here is when this truly was
19 accepted as complete, in reality, was March 29th. And
20 therefore the original permit application was not submitted
21 in time to benefit from the vesting rule, A 301.14.

22 And that means that all the subsequent permits,
23 including the current one, the second revised permit, are
24 ineligible for the benefit of that vesting provision, okay.
25 So that's the timing defect.

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1 The second revised permit fails to meet the
2 standards for that vesting provision in a second and entirely
3 independent way. A 301.14 applies only where the application
4 is, quote, "Not substantially changed after filing," close
5 quote. If you compare it with the original permit
6 application, the multiple revisions since then show extensive
7 changes.

8 So let me walk you through some of those. You'll
9 see a lot of them, just to sort of preview much of what I'm
10 going to refer to, if you look at Exhibit 46 starting on Page
11 15. There's a series of detailed extracts from the permit
12 drawings.

13 So the first and second revised permits flip the
14 proposed internal configuration of every level in the front
15 building. It's flipped around from one side to the other.
16 And you can see that, Exhibit 46, Page 15. I can give you
17 citations to the full drawings if you need it.

18 The first and second revised permits radically
19 alter the proposed front facade, indicating entirely
20 different materials, increasing the projecting bay height
21 from two stories to three, and flipping the front entrances
22 to opposite sides. And you can see that, Exhibit 46, Page
23 16 compared with Page 17. And that's the before and after.

24 The roof hatches, there's one on each of the two
25 towers, have evolved not once but twice. The original permit

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1 began with a hinged coffin lid style hatch that flipped up
2 on its long side.

3 The first revised permit replaced that with the
4 tall daylighter 42-80 penthouse structure. And you can see
5 that on Page 18 of Exhibit 46, how that morphed. But it
6 didn't stop there. Once we pointed that out in our second
7 ---

8 CHAIR HILL: Commissioner?

9 MR. ECKENWILER: Yes?

10 CHAIR HILL: I just wonder, I mean, we've asked
11 questions and things. It doesn't necessarily come from your
12 45 minutes. But if I could just try to get you around the
13 45 minutes, if you could kind of start to wrap up a little
14 bit, that might be helpful.

15 MR. ECKENWILER: I'm pretty close to that, Mr.
16 Chairman.

17 CHAIR HILL: Okay, thank you.

18 MR. ECKENWILER: So in the latest iteration, the
19 second revised permit has yet another style of hatch. This
20 time it's a sliding hatch that slides across the rooftop.
21 There's no hinge. You can see that depicted at Exhibit 59A,
22 Sheet A-3.1.

23 And I alluded to this earlier. That breezeway
24 that connects these two towers has changed significantly from
25 the original permit drawings. It used to be substantially

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1 below grade responding to our comments in one of our earlier
2 filings that was materially changed to bring it up to grade.

3 And the first and second revised permits remove
4 the proposed separate kitchen facilities. When this was
5 initially approved, there were what appeared to be third and
6 fourth units, the front and rear cellar both had multiple
7 attributes. We pointed this out in our first revised pre-
8 hearing statement in detail.

9 Much of that has been pulled out. So if you look,
10 again, at Exhibit 46, you can see how, you know, like, the
11 kitchen facilities have been pulled out, some of the laundry
12 facilities have been pulled out, and so on.

13 So that's by no means an exhaustive list of the
14 extensive changes. Let me just pause. I can come back to
15 that in rebuttal if I need to.

16 Taken together these numerous differences, some
17 of which go directly to material zoning defects from the
18 original permit, reflect changes from the original permit
19 application that are substantial and therefore disqualify the
20 current permit, the second revised, from the application of
21 the vesting rule at A 301.14.

22 So for all those reasons, Mr. Chairman, and
23 members of the Board, ANC 6C respectfully urges the Board to
24 find that the second revised permit, as well as all the
25 predecessor permits that underlie it, violate the zoning

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1 regulations and that the Board, therefore, order revocation.
2 I'd be pleased to answer any further questions the Board has.

3 CHAIR HILL: Okay. Does the Board have any
4 further questions at this point for the Appellant?

5 MEMBER HART: Mr. Eckenwiler, as I said earlier,
6 I do appreciate your stepping through this. I think it was
7 very helpful and very organized. So it's very easy to see.
8 It's one thing when you read something as when you kind of
9 hear it, so I do appreciate that.

10 With regard to the accessory building, are you
11 also saying that, in some ways, the owner is kind of having
12 two --- they're making a statement that the connector makes
13 these buildings kind of one building and that if they were
14 one building, then the ten foot rule should apply. And it's
15 not applying.

16 So in some ways, they're kind of getting both of
17 best worlds, if you understand what I'm saying. The
18 connector makes the buildings two buildings --- makes the two
19 buildings one building. And so they get the benefit of being
20 considered one building with a connector.

21 But with regard to the ten foot rule, they're kind
22 of getting away from that. Because it's almost like there
23 are two separate buildings. They're being considered two
24 separate buildings. So they're not having to kind of deal
25 with that aspect of it.

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1 MR. ECKENWILER: At the risk of being
2 argumentative, yes, I'd agree that the property owner is
3 trying to eat his cake and have it too. But I'm sure that
4 Mr. Brown will want to respond to that.

5 MEMBER HART: And I understand that. I just
6 wanted to make sure that I was understanding that also
7 correctly.

8 MR. ECKENWILER: Yes. No, the way I'd look at it
9 if I just sort of stepped back from, you know, immersing
10 oneself in the regulations, I'd say what they're proposing
11 to do here is build two rowhouses on one lot. That's really
12 the gist of it.

13 MEMBER HART: Thank you.

14 CHAIR HILL: Okay. Anyone else?

15 (No audible response)

16 CHAIR HILL: Okay. So now what we're going to do,
17 we're going to do cross. And then we're going to take a
18 break, okay. So Mr. Cummins, do you have any cross for the
19 Commissioner?

20 MR. CUMMINS: By cross, what are you referring to?

21 CHAIR HILL: So cross examination are questions
22 that you have for the presentation that was just given.

23 MR. CUMMINS: No, I just asked to be heard for a
24 brief statement at a point that ---

25 CHAIR HILL: Sure. No, you'll get an opportunity

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1 right after the ANC.

2 MR. CUMMINS: Thank you.

3 CHAIR HILL: Okay. DCRA?

4 MS. LORD-SORENSEN: No.

5 CHAIR HILL: Okay. Mr. Brown?

6 MR. BROWN: If I could, Commissioner Eckenwiler,
7 you filed the original appeal in May of 2017 based on what
8 we refer to as the original building permit, B1706219.

9 MR. ECKENWILER: Correct.

10 MR. BROWN: And when you filed that appeal, did
11 you raise the first issue that you discussed this morning,
12 the 36 inch high guardrail running --

13 MR. ECKENWILER: The setback? That was not
14 presented in the initial appeal filing.

15 MR. BROWN: It was not?

16 MR. ECKENWILER: It was not.

17 MR. BROWN: You did not, okay. Even though if you
18 go to the permit plans that you attached to your pre-hearing
19 statement, the guardrail is shown on the plans.

20 MR. ECKENWILER: Can you just point me to a
21 particular exhibit that you're looking at?

22 MR. BROWN: It's your pre-hearing statement.

23 MR. ECKENWILER: So that's 46.

24 MR. BROWN: Well, no, it's your revised pre-
25 hearing statement.

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1 MR. ECKENWILER: And again, I apologize. The
2 first revised or the second revised? I'm not trying to be
3 troublesome.

4 MR. BROWN: No, no, no, no, no, no. I think it's
5 the first revised. And I can --- if it would help, I'll show
6 you the ---

7 MR. ECKENWILER: Sure.

8 MR. BROWN: -- the plans.

9 MR. ECKENWILER: Sure, yes.

10 CHAIR HILL: Yes. And then you can tell us where
11 you guys are.

12 (Laughter)

13 CHAIR HILL: No, that's all right. I'm also not
14 generally problematic.

15 PARTICIPANT: Yes.

16 CHAIR HILL: Okay, right.

17 MR. BROWN: And the permit drawings you submitted,
18 and you'll see at the top corner, it says B176219.

19 MR. ECKENWILER: I'll take your word for it. It
20 appears to say that. There's a lot of text overlaid there.
21 But I trust that you're ---

22 MR. BROWN: And then if you go ---

23 MEMBER HART: We are on Exhibit, what again?

24 (Off the record comments)

25 MEMBER WHITE: Thirty-five.

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1 MR. BROWN: That sounds right to me.

2 MR. ECKENWILER: Thirty-five B? Is that the
3 building plans, or C?

4 MR. BROWN: Unfortunately, Mr. Eckenwiler didn't,
5 I don't think, include exhibit sheets on these.

6 MR. ECKENWILER: I apologize for that. I filed
7 them separately, but no, they're not on the cover sheets.

8 MEMBER HART: And which page is it again?

9 MR. BROWN: I'm referring to Page ---

10 CHAIR HILL: Which exhibit?

11 MR. BROWN: A-5.2.

12 CHAIR HILL: Sorry, which exhibit?

13 MR. BROWN: One second.

14 (Off the record comments)

15 MR. BROWN: It is Exhibit 35 C.

16 CHAIR HILL: Can somebody shut that back door for
17 me over there on the right?

18 MR. BROWN: Plans, yes, 35 C, Tab C, plans and
19 drawings. And if you see --- I think ---

20 MR. ECKENWILER: Mr. Brown, I don't mean to cut
21 you short, but I think I understand what you're getting at.
22 And so just in the interest of brevity, the first issue that
23 I presented an argument this morning with respect to the
24 guardrail setback ---

25 MR. BROWN: Yes.

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1 MR. ECKENWILER: -- it wasn't ---

2 CHAIR HILL: It was in your first application --

3 MR. ECKENWILER: -- was not in --

4 CHAIR HILL: -- in your first appeal.

5 MR. ECKENWILER: It was not in our first revised
6 pre-hearing statement which was filed on April, I believe
7 April 18th.

8 CHAIR HILL: Okay, Mr. Brown, is that your
9 question?

10 MR. BROWN: Well, that, and it wasn't referenced,
11 and I think he's already said this, it wasn't referenced in
12 the original appeal he filed, even though the issue existed
13 at that time, correct? You did not raise, in your original
14 appeal, which is Exhibit ---

15 MR. ECKENWILER: Twenty, I think.

16 MR. BROWN: No, no.

17 MR. ECKENWILER: I'm sorry, no. You're quite
18 right.

19 MR. BROWN: Your original appeal, the statement
20 is brief.

21 MR. ECKENWILER: Yes. That sounds right.

22 MR. BROWN: Exhibit 3, 530217. And in that
23 statement, you did not raise the guardrail issue.

24 MR. ECKENWILER: In none of the filings, so the
25 very initial appeal filing, the first pre-hearing statement

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1 or the first revised pre-hearing statement, all of which went
2 to the original permit. That's correct. The guardrail issue
3 was not presented in any of those submissions.

4 MR. BROWN: And then a companion question, and you
5 referred to it as a cornice, the facade trim or element that
6 we claim, rooftop architectural element potentially, the
7 original permit also provided for the removal of that
8 element, correct?

9 MR. ECKENWILER: That's correct.

10 MR. BROWN: All right. And in your appeal of that
11 permit, you never raised that question as a matter of the
12 appeal?

13 MR. ECKENWILER: Because the original permit was
14 issued at a time when E-206 did not reference cornices, yes.

15 MR. BROWN: But it did reference architectural
16 rooftop elements which you're also alleging in your current
17 filing --- violation. You've said it's a cornice, but if
18 it's not a cornice, it's a rooftop architectural element.
19 Is that correct?

20 MR. ECKENWILER: I said it's a cornice or in the
21 nature of a cornice. And I don't want to recap my whole
22 argument, but it was basically a list of things. And the
23 language of the regulations has "such as" these things. So
24 we know that it includes those things and things like those
25 enumerated things. The word "cornice or cornices,

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1 technically, was not present in the regulation at the time
2 the original permit was issued.

3 MR. BROWN: But the basic regulation did exist at
4 the time of the original ---

5 MR. ECKENWILER: 8206 existed at the time of the
6 original permit. And the amendment to it, for purposes of
7 this appeal, largely goes to the insertion of the word
8 cornices.

9 CHAIR HILL: Okay, is that it?

10 MR. BROWN: Yes.

11 CHAIR HILL: Okay, great. Thank God. All right,
12 So just as far as the cross, I just hate the cross. All
13 right. Do we want to take a break now, or do you want to try
14 to hear from Mr. Cummins?

15 PARTICIPANT: Fine.

16 CHAIR HILL: All right. So, Mr. Cummins, if you
17 would like to go ahead and have an opportunity to give us
18 your presentation, I got the impression that it wasn't as
19 long as Commissioner Eckenwiler's. But I thought
20 Commissioner Eckenwiler did a good job of walking us through
21 those issues that we're going to now have questions on from
22 DCRA.

23 But please, I'm going to go ahead and just let the
24 timer run and pleased to have an opportunity. I know that
25 you have been very patient in kind of getting to this point.

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1 Because it's been some time that, you know, we've had delays,
2 and there were --- the last time, I think, we came forward,
3 you also were not interested in the delay. And the delay
4 took place primarily because there was a new attorney from
5 DCRA. At least I remember that being one of the
6 possibilities. So please, as you like.

7 MR. CUMMINS: Good morning. And I'll try to be
8 very brief. My name is Kevin Cummins. I reside at 1123 7th
9 Street NE, which is an adjacent rowhouse that shares a party
10 wall with the property in question here in the permits in
11 question.

12 In fact, my property directly --- and go to the
13 heart of why we have zoning regulations in the first place,
14 to protect, you know, neighborhood character but also
15 adjoining properties' access to light and air.

16 And building this huge, you know, two-building
17 structure will cast deep shadows over my property, and be
18 very imposing in nature, and essentially create a double ---
19 create the possibility, because I have an identical lot and
20 presumably the same property rights as my neighbors on each
21 side.

22 It creates the possibility of having a double row
23 here where that was never contemplated. And it's completely
24 inappropriate, particular for the type of alley we have on
25 this trapezoidal block.

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1 I'm not the only neighbor who's commented. There
2 is Exhibit 28. There's also the statement from the neighbor
3 across the alley, directly across from the subject property.
4 That's also in the record.

5 And that statement describes some clear zoning
6 issues as well as the general concern about this being an
7 inappropriate structure outside the zoning regulations that
8 apply to the property, including there's a description there
9 of the building connector issue as well.

10 You just don't --- one of the things that was the
11 discussion I just would like to raise, we talked already
12 about there being locked doors, so the inhabitant of Unit 1
13 or the Tower 1 is not going to go outside their kitchen and
14 then traverse the lobby, you know, open, presumably a locked
15 door to the second tower and just breeze into the living room
16 there.

17 And in addition, if you look at the door in the
18 mid-point of the corridor, it's such a narrow corridor, when
19 that door is open, which opens inward, it effectively blocks
20 --- you have a wall blocking the free and unrestricted
21 passage.

22 So again, there are a lot of fig leaf issues that
23 Mr. Eckenwiler described as zoning issues very clearly. And
24 I think any single of those four grounds that he outlined,
25 you know, calls for this permit to be revoked on zoning

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1 issues.

2 The Board should also be aware though, there are
3 a number of irregularities outside of, strictly speaking, the
4 zoning regulation --- what the jurisdiction of this body is
5 to consider as part of the zoning.

6 But there are a number of other irregularities
7 associated with the permit. Some of those are described in
8 the ANC statement as well, the issuance of the permit in
9 eight days for a permit fee of \$36.30, the fact that the
10 plans --- and there are numerous revisions. Some of those
11 revisions the permit record described as for legal purposes
12 highly raises some questions.

13 And in addition, some of the plans just aren't
14 accurate. The site plan, for example, does not describe the
15 current conditions, the existing site conditions as is
16 required. Again, that's a building code issue. But as
17 you're looking at the plans, like, one of the things to
18 consider is, you know, they should have the drawings done
19 correctly.

20 And you have some very basic things where there's
21 a detached garage on the current existing --- behind the
22 current existing two-story rowhouse that is partially
23 demolished. But it's not even properly placed on the site
24 plan. It doesn't touch the property line. It's set back
25 approximately four feet.

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1 And why that's significant is because you have not
2 quite four feet of publicly maintained alley space which will
3 now, if the permit is allowed, will become the private
4 parking space with a fence around it for the rear yard,
5 fenced rear yard for the new second tower, as DCRA describes
6 it.

7 So that essentially --- that's one of the things,
8 where some of these other irregularities that are outside the
9 zoning regulations, I did point out on my written statement
10 in some detail that I think should just also be a
11 consideration. And the Board should certainly be aware of
12 that as they deliberate on the very clear zoning violations
13 associated with the issuance of this permit.

14 I'd be happy to answer any questions. Again, I
15 submitted a statement and a revised statement. One other
16 thing I should point out as well is there was a question of
17 timing and whether Mr. Eckenwiler raised things in 2017 that
18 he can't talk to in 2018. This has been going on so long.

19 I do want to point out my first statement
20 certainly did raise the facade issue, the removal of the
21 facade and that violation. So to the extent that that should
22 be factored into whether it's germane to consider that clear
23 zoning violation, I do want to point that out.

24 But other than that, I'd be happy to pause for any
25 questions. My main purpose in being here is as a neighbor.

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1 And I am thankful for the ANC to bring this case on behalf
2 of the ANC. But I share a party wall with this property, and
3 I'm the most directly impacted resident, who is mostly
4 directly impacted by DCRA's decision to issue this permit and
5 subsequent revisions improperly in clear violation of the
6 zoning regulations.

7 CHAIR HILL: Okay. Thank you, Mr. Cummins.

8 MR. BROWN: Mr. Chair, could I interject. And I
9 did not interrupt. I was going to object during his
10 testimony. And I didn't want to interrupt him.

11 CHAIR HILL: Okay, I appreciate that. But you're
12 interrupting me real quick, Mr. Brown.

13 MR. BROWN: All right.

14 CHAIR HILL: So just give me ---

15 (Off the record comments)

16 CHAIR HILL: No, well, I don't know. If you were
17 here last week, that was much worse. I just wanted to ask
18 a question, if the Board had any questions of Mr. Cummins at
19 this point?

20 (No audible response)

21 CHAIR HILL: Okay. Now, Mr. Brown, you had an
22 objection to something that Mr. Cummins said?

23 MR. BROWN: Well, and I put it --- and I responded
24 to his statement. It's in the record. And I think it was
25 --- I didn't want to interrupt him speaking.

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1 CHAIR HILL: Okay.

2 MR. BROWN: But I want to --

3 CHAIR HILL: I appreciate that.

4 MR. BROWN: -- reference that I responded to many
5 of the comments he said. And he clearly admitted that he was
6 talking about things beyond the zoning regulations. And our
7 job here, regardless of where we sit, is tough enough with
8 the zoning regulations. And we should be mindful that that's
9 our task.

10 And Mr. Cummins has availed himself of other
11 administrative tribunals, OH in particular. And those issues
12 will be, I'm sure, resolved there. But we ought to focus in.
13 And I want to focus in on the zoning regulations.

14 CHAIR HILL: Okay. So you're trying to point us
15 to certain exhibit through response to Mr. Cummins, is that
16 correct?

17 MR. BROWN: Yes. And yes, property owners
18 response to intervener's revised pre-hearing statement.

19 CHAIR HILL: Okay. Tell me that exhibit number
20 again please?

21 MR. BROWN: Fifty-eight.

22 CHAIR HILL: Fifty-eight, okay. So I do remember
23 the response. So that's noted. And, Mr. Brown, again, I
24 appreciate that you're doing your job for your client. Mr.
25 Cummins is just trying to make sure that this doesn't get

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1 built next to his house. So he's not exactly an attorney,
2 I would imagine. But I appreciate that he's speaking to
3 things outside of the zoning regulations.

4 Did you have any --- well, first, I'm going to
5 turn to DCRA. Did you have cross for Mr. Cummins?

6 MS. LORD-SORENSEN: No.

7 CHAIR HILL: Okay. Mr. Brown, did you have any
8 cross for Mr. Cummins?

9 MR. BROWN: No. But, Mr. Chairman, you made a
10 statement that he's here to make sure it's not built to his
11 house. That's not what we're here for. We're here to
12 determine whether this permit is in compliance with the
13 zoning regulations.

14 CHAIR HILL: Oh, Mr. Brown, I clearly know why
15 we're here.

16 MR. BROWN: Yes.

17 CHAIR HILL: And the Board knows why we're here.
18 And I just want to let you know that I clearly know why I'm
19 here. And those four items that the ANC Commissioner brought
20 up, those are the four items that we're going to be focusing
21 on. Do you have anything else, Mr. Cummins?

22 MR. CUMMINS: No. No cross.

23 MEMBER HART: Oh, okay. No cross. All right.
24 So can we go ahead and take a break. Is that all right? So
25 we'll take, like, a ten minute break real quick. All right,

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1 thank you.

2 (Whereupon, the above-entitled matter went off the
3 record at 11:00 p.m. and resumed at 11:12 p.m.)

4 CHAIRMAN HILL: The Board's reconvening, and it
5 is 11:12. Okay, great. A couple of quick points here. I
6 guess, at the break, we found out that there was a lot of
7 people here who are wishing to speak on Application 19819,
8 so we're going to put that back second again because there's
9 people here who have children and things such as this.

10 If you have any complaints about that, you should
11 bring children, young children. We're doing that next. This
12 is going to take a while, so whoever's out in the hall, they
13 can stay out in the hall. This still isn't done any time
14 soon. Ms. Lord-Sorenson, we'll go ahead and put 45 minutes
15 on the clock, I guess. That's great.

16 Whatever you do -- pardon me? Hold on a second.
17 Mr. Secretary, if you want to go up to the secretary -- I
18 can't speak to you directly. I can't speak to anybody
19 directly. People had questions to the secretary, so I'm a
20 little confused. We're apparently going to take three
21 minutes here.

22 (Whereupon, the above-entitled matter went off the
23 record at 11:14 a.m. and resumed at 11:16 a.m.)

24 CHAIRMAN HILL: All right, we're back. Ms.
25 Lord-Sorenson, again, as I mentioned, you can start whenever

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1 you like.

2 APPLICATION 19819

3 MS. LORD-SORENSEN: Good morning, Chairman Hill
4 and members of the Board. We're here today because the
5 appellant, Advisory Neighborhood Commission 6C, alleges that
6 the zoning administrator erroneously issued Permit B1805207,
7 which allowed the permit holder, Atlas Squared LLC, to
8 renovate and convert 1125 7th Street Northeast, the property,
9 from an existing single-family dwelling to a two-unit
10 townhouse.

11 On August 2, 2018, DCRA issued a revised permit,
12 B1811245, which is now incorporated into the record. DCRA's
13 position is that the zoning administrator correctly issued
14 the August 2nd revised permit, after determining that the
15 drawings were compliant with the zoning regulations. As
16 heard earlier today, there are four issues pending before the
17 Board.

18 Now, I'd like to ask the zoning administrator a
19 series of questions, following Commissioner Eckenwiler's
20 presentation earlier today. I'd like to direct your
21 attention first to architectural plan A-3.1, which can be
22 found at BZA Exhibit 57, at Page 10.

23 PARTICIPANT: Yes.

24 MS. LORD-SORENSEN: Appellant asserts that the
25 guard rail, this structure right here, that the guard rail

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1 on the roof violates the one-to-one setback. The plans show
2 that the guard rail at the property line. My question to
3 you, zoning administrators, does the location of the guard
4 rail comply with the one-to-one setback?

5 MR. LEGRANT: I believe it does. The section that
6 requires the one-to-one setback of the guard rail set forth
7 in DCMR 11-C59.2 I've interpreted as when the guard rail is
8 on the edge of the roof, parallel or on the edge of the roof,
9 running along the edge, that, I believe, is the focus of that
10 provision.

11 In this case, as you're showing, there is a guard
12 rail that comes off perpendicular to the property line. I
13 have, in this case and other cases, approved such
14 configurations, such that the guard rail is there for life
15 safety purposes.

16 MS. LORD-SORENSEN: The next issue that was raised
17 by Commissioner Eckenwiler pertains to the cornice.

18 MEMBER TURNBULL: Could you just clarify what
19 drawing you're looking at?

20 MS. LORD-SORENSEN: A-3.1. It was BZA Exhibit 57,
21 at Page 10. DCRA noted it as Attachment E, as in egg.

22 CHAIRMAN HILL: Do the architects on the Board
23 have any questions?

24 VICE CHAIR HART: Just one question. What we're
25 talking about is this area, right here?

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1 MS. LORD-SORENSEN: Yes, that's the perpendicular
2 area the zoning administrator --

3 VICE CHAIR HART: So you're just saying that does
4 not need to be set back from this -- is that south? I'm so
5 confused as to the direction here. Is that the southern
6 wall?

7 MR. LEGRANT: I'm not sure it's the southern wall,
8 but right, my position is it does not need to be set back
9 from that. That's a side property line that comes off
10 perpendicular from that.

11 VICE CHAIR HART: But it is set back from the
12 back. I don't know if that's actually showing up. What
13 happens around the -- let me see if I can -- what happens
14 around the entire property? What happens around the edge of
15 the -- is there a railing or anything that goes around the
16 entire roof? What happens between the roof deck and the edge
17 of the property or the building?

18 MR. LEGRANT: Although that wasn't raised, I
19 believe my recollection of the rest of the roof plan is that
20 it has -- it meets the setback when the railing is running
21 parallel or at the roof edge. It's only -- the issue here
22 that was raised has to do with around this roof hatch.
23 There's two portions of this railing. One is perpendicular,
24 that I've spoken to. Then as it makes the turn to the left,
25 there, then, that, of course, is -- certainly meets at least

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1 all the setbacks.

2 VICE CHAIR HART: I'm also looking at the area
3 that is all of this, so this entire area is a roof deck,
4 correct?

5 MR. LEGRANT: Yes, I believe so.

6 VICE CHAIR HART: So that has to have a railing
7 around it, as well?

8 MR. LEGRANT: The building code would require, as
9 I understand the building code, it would require a protective
10 guard rail. That would be the -- if it's not shown there,
11 I'm not sure the other drawings show it. Maybe the property
12 owner can speak to that, as to the presence or not of a
13 compliant guard rail around the rest of the roof deck.

14 VICE CHAIR HART: Okay. Thank you.

15 MEMBER TURNBULL: Mr. Hart, are you saying that
16 would have to be one-to-one?

17 VICE CHAIR HART: That was my --

18 MEMBER TURNBULL: That was our assumption. That
19 would be a one-to-one setback for the guard rail around the
20 perimeter of the building.

21 MR. LEGRANT: I would say yes.

22 MEMBER TURNBULL: Okay.

23 MR. LEGRANT: The other thing is, now I recall,
24 the building employs the use of a parapet. The parapet is
25 not a feature that is subject to the one-to-one setback. Now

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1 that I'm recalling, I believe -- and the property owner may
2 be able to confirm -- that in this case, as well as other
3 cases, an applicant will use a parapet sort of double duty
4 as meeting the building code requirements for fire safety,
5 as well as, if it's a sufficient height, to function as a
6 guard rail. I have long interpreted that is not a feature
7 that's subject to the one-to-one setback.

8 VICE CHAIR HART: Unless it's about the Height Act
9 height?

10 MR. LEGRANT: Correct.

11 MS. LORD-SORENSEN: Zoning Administrator, the next
12 issue pertained to the cornice. Do you recall when the
13 original permit was issued for this project?

14 MR. LEGRANT: I believe -- the revised or --

15 MS. LORD-SORENSEN: The original.

16 MR. LEGRANT: I don't have that date before me,
17 but it's -- oh, March 31, 2017. My apologies, yes.

18 MS. LORD-SORENSEN: At the time the original
19 permit was issued, did the zoning regulations list cornices
20 as a rooftop architectural element?

21 MR. LEGRANT: It did not. The subject provision
22 was E-206.1 had a list of provisions of specified rooftop
23 architectural elements, including dormers, turrets, and
24 towers.

25 MS. LORD-SORENSEN: Were the zoning regulations

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1 ever amended to include cornices?

2 MR. LEGRANT: They were.

3 MS. LORD-SORENSEN: Do you recall when those
4 amendments went into effect?

5 MR. LEGRANT: Yes, the Zoning Commission Order
6 1411-B was effective on April 28, 2017.

7 MS. LORD-SORENSEN: What did this amendment do to
8 the definition of rooftop architectural elements?

9 MR. LEGRANT: It added other elements, specified
10 additional elements, including cornices and porch roofs to
11 be considered as protected rooftop architectural elements.

12 MS. LORD-SORENSEN: After Zoning Commission Order
13 No. 14-11B went into effect on April 28, 2017, were there
14 revisions to the original permit?

15 MR. LEGRANT: There were.

16 MS. LORD-SORENSEN: Were these revisions subject
17 to Zoning Commission Order 14-11B?

18 MR. LEGRANT: No, they were not.

19 MS. LORD-SORENSEN: And why weren't they?

20 MR. LEGRANT: When an amendment to the zoning
21 regulations goes into effect, the overall issue of vesting
22 is were there substantial deviations from the plans that
23 would then be subject to the revised text amendment itself?
24 If there was a major alteration, such as an increase or
25 decrease of the height of the building, the gross floor area,

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1 or number of dwelling units, those, then, I have treated as
2 triggers. You have to do an analysis, taking into account
3 the new text that's been added by the Zoning Commission. In
4 this case, there were changes to the plans that did not
5 either increase the gross floor area, nor the building
6 height, nor the number of units. The basic mass of the
7 building stayed the same. There was changes to some interior
8 layout. There was changes to the exterior façade and
9 materials, and there were changes to the roof hatch element.

10 MS. LORD-SORENSEN: Do you recall whether the
11 initial plans called for the removal of the cornices?

12 MR. LEGRANT: They did not. Right, the initial
13 plans showed there was an existing cornice that was to be
14 removed.

15 MS. LORD-SORENSEN: The plans that were submitted,
16 the initial plans that were submitted depicting the removal
17 of the cornices pre-dates the effective date of Zoning
18 Commission Order No. 14-11B.

19 MR. LEGRANT: That's correct.

20 MS. LORD-SORENSEN: I would like to direct the
21 Board's attention to Architectural Plan 5.2. It can be found
22 at BZA Exhibit 57, at Page 8. DCRA noted it as Attachment
23 D. Appellant alleges that the rare tower of the townhouse
24 is a separate building, and thus constitutes an illegal
25 second principal building. In your opinion, Mr. LeGrant, are

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1 there two buildings or one building on this property?

2 MR. LEGRANT: The plans depict one building?

3 MS. LORD-SORENSEN: Why is that?

4 MR. LEGRANT: The two masses of the second
5 building, which have been described as towers, have a
6 connection that is compliant with the provision that governs
7 the regulation of single buildings, B-309.

8 MS. LORD-SORENSEN: Could you please just explain,
9 using Architectural Plan A-5.2, how this particular
10 connection satisfies 11-B DCMR Section 309.1?

11 MR. LEGRANT: As was presented by the appellant,
12 the aspects of B-309 include -- the first three criteria
13 really are not at issue. It's of grade, it's enclosed, it's
14 heated and artificially lit, so it's condition space, it's
15 enclosed, portion of the building that connects the two
16 towers.

17 The question has to do is, too, does it meet the
18 final criterion of it's -- set forth in Subsection D, which
19 I'll read, is it either one, a common space shared by users
20 of all portions of the building, such as a lobby, recreation
21 room, loading dock, or service bay; or two, space is designed
22 and used to provide free and unrestricted passage between
23 separate portions of the building, such as an unrestricted
24 doorway or walkway.

25 My analysis of this connection is that it

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1 functions as a common space, used by all users of the
2 building, all portions of the building. It does, as was
3 noted, function as a corridor, but in addition, as a doorway
4 that leads to the interior courtyard. Residents of both of
5 the units that are coincident with the two towers must, if
6 they want to -- this one way to access the courtyard is to
7 go through the doors from their respective units to this
8 common space and use the side door that would then allow them
9 to access the courtyard.

10 With that perspective, I believe it does qualify
11 as common space that allows people to use that -- to be able
12 to -- they share this space, to be able to access, in this
13 case, the closed courtyard between the two towers.

14 MEMBER TURNBULL: Mr. LeGrant, do you really think
15 that there is unrestricted access between one tower and the
16 second tower?

17 MR. LEGRANT: The second point to which you're
18 noting, this space required free and unrestricted passage.
19 Here, residents of both towers or both units can utilize that
20 hallway. This configuration, although it's fairly unique --
21 I will note there are other buildings that have a corridor
22 that residents of individual units, they would not obviously
23 be able to access, through a locked door, the other units
24 that other residents have, but they can utilize that
25 corridor.

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1 MEMBER TURNBULL: I guess I would argue that if
2 it's one building, you should be able to go from one building
3 to the other building unrestricted, but here, there are
4 locked doors. I guess my feeling is that's not an
5 unrestricted passageway. It's actually two separate towers
6 that may have a link, may have a physical attachment that's
7 heated and air conditioned and everything else, but that it
8 doesn't really meet the intent of totally unrestricted
9 access.

10 MR. LEGRANT: Of course, you're noting the second
11 point, and that's why I started with the first point. It's
12 a common space that users -- you have to -- one or the other.
13 If it's a common space that all users of the building can use
14 to utilize this passageway with the connection to the door
15 to the court, I believe it would meet that first standard.

16 CHAIRMAN HILL: I've got a quick question. If the
17 property owner actually -- I was just looking through all the
18 plans and waiting to get to this point, so we can figure out
19 what's going on. How many units are in the building? I
20 thought there were three.

21 MR. BROWN: Just two.

22 CHAIRMAN HILL: There's two units.

23 MR. BROWN: Front and back.

24 CHAIRMAN HILL: The one unit from the one unit in
25 the back, right? This will be something you can show me

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1 later. I don't want it to take away from their time right
2 now. I'd like to see where -- how the walkway is that you
3 get to this lobby common area, if there's a back door, if
4 there's back doors, how do people actually get in and out of
5 this building? Mr. LeGrant -- sorry, Ms. Lord-Sorenson.

6 MS. LORD-SORENSEN: The final issue that was
7 raised had to deal with the rear addition. At the time that
8 the permit was approved, was the permit subject to the pop
9 back rule?

10 MR. LEGRANT: No, it was not.

11 MS. LORD-SORENSEN: Why not?

12 MR. LEGRANT: The permit, in my evaluation, was
13 deemed -- the application was deemed complete for processing
14 prior to the effective date of the text amendment that then
15 subjected projects to the ten foot or pop back regulation.

16 MS. LORD-SORENSEN: Earlier, you stated that --

17 MEMBER TURNBULL: Could you repeat, just for the
18 record, those dates?

19 MR. LEGRANT: I think we're going to get to the
20 dates in a moment.

21 MS. LORD-SORENSEN: When did the Zoning Commission
22 order 14-11B, the text amendment you just mentioned? When
23 did that go into effect?

24 MR. LEGRANT: April 28, 2017.

25 MS. LORD-SORENSEN: In your opinion, when was the

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1 permit accepted?

2 MR. LEGRANT: March 24, 2017.

3 MS. LORD-SORENSEN: You stated earlier, Mr.
4 LeGrant, that the applicant had made revisions to the permit.
5 Were these revisions subject to the ten-foot limitation?

6 MR. LEGRANT: No.

7 MS. LORD-SORENSEN: Why not?

8 MR. LEGRANT: Again, the language in the
9 regulations is is there substantial changes to the plans?
10 Looking at both the original permit and the revised permit,
11 I looked to see if the intensity of the use of the building,
12 in terms of the number of units and square footage, had
13 changed, which did not -- those two units, the original two
14 units and the revised permit, square footage was the same,
15 the mass of the buildings were the same, the height was the
16 same, and the number of stories or levels also was unchanged.

17 With that analysis, I concluded that despite the
18 changes, some interior changes, the roof hatch, exterior
19 cladding, that it was not -- it did not rise to a level of
20 being a substantial change. Therefore, it was vested -- the
21 revised permits were vested in the regulations prior to the
22 effective date of 1411-B.

23 MS. LORD-SORENSEN: No further questions.

24 VICE CHAIR HART: Mr. Chairman, Ms. Lord-Sorenson
25 or Mr. LeGrant, can you tell us where you're taking the

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1 vesting from? Where are you saying that we are able to use
2 the first date of the -- the first permit, which was in early
3 2017, as the date for all of these -- that it kind of anchors
4 all of these other amendments? Because I think that's part
5 of what Mr. Eckenwiler brought up was that the changes that
6 you are calling -- I'm not sure what you're calling them, but
7 you're not saying that they are rising to the level of a new
8 permit. They are -- I don't want to characterize them as
9 minor, but I can't think of any other term. They're just not
10 a major change. Can you tell us where you're taking that
11 from?

12 MR. LEGRANT: When an application is submitted to
13 DCRA, it goes through an initial vetting to see if sufficient
14 information exists in order to begin a review, not only by
15 the Zoning Administrator, but by the other disciplines in
16 each area that administer the building code. March 24, 2017
17 was the date that the plans and the application were accepted
18 as sufficiently complete. That is the point in which, then,
19 we note that the rules in effect at that point in time govern
20 the application.

21 VICE CHAIR HART: You were saying that it is
22 vested by that date, but what -- is there something in the
23 building code or something in the zoning code that allows you
24 to say this is the date of vesting?

25 MR. LEGRANT: I believe the language in the zoning

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1 code refers to an application that is deemed sufficiently
2 complete to do a review, and then procedurally, what we do
3 in our building permit system, we have an electronic
4 application tracking system that notes those dates
5 specifically. It is the function of the intake function of
6 the permit operations division that somebody submits an
7 application which, of course, these days, is an online
8 submittal. They look at the information.

9 Sometimes there's back and forth to get to the
10 point where an application begins, is deemed complete enough,
11 and then in the parlance of the tracking system, it changes
12 its status to under review. That is the point that we -- not
13 only for this application, for any application -- deem as the
14 date in which it's deemed complete for zoning code purposes.

15 VICE CHAIR HART: I'm going to move on from that
16 piece. With regard to the rooftop embellishments or cornice
17 or however you want to talk about that, your contention is
18 that the -- that this predated the change, so that it would
19 be -- I don't want to use the word "grandfathered," but
20 that's certainly the term that is coming to mind -- so that
21 it would not be vested. It would not be -- that would not
22 be an issue.

23 MR. LEGRANT: Correct.

24 VICE CHAIR HART: Can you talk a little bit more
25 about the cornice and why you -- what you consider it?

1 MR. LEGRANT: Two points. I think DCRA laid it
2 out in her statement. One, is it truly a rooftop
3 architectural element, or is just a portion of the façade?
4 It exists on the façade, but part of the analysis I look to
5 see if it's a rooftop architecture element, is it part of the
6 roof? Now, there isn't a lot of criteria in the zoning
7 regulations, so I have to make a judgment call.

8 In this case, it fell on the fact that it's a
9 horizontal band on the façade that's not up at the actual
10 roof level, where the edge of the roof comes out. It's below
11 that. That was one aspect. I think the most important
12 aspect was, as you noted, the vesting, is it vested in the
13 rules prior to the Commission amending the list of rooftop
14 architecture elements.

15 I'll be up front with the Board. After the
16 initial provision went into effect, we had several
17 applications, not only this one, in which it was what about
18 the cornice, what about the porch roof, what about a chimney
19 that might have some architectural merit? Those aspects,
20 we're looking at case by case.

21 In some cases, I believe that the cornices might
22 fall into a category of being protected and not. The
23 Commission, then, was very clear in adding it. They said no,
24 cornices must be protected. In this particular case, though,
25 that decision came -- or the effective date of 14-11B came

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1 into effect after the application was deemed, so I made the
2 decision, and we shared here some of the internal discussions
3 of my staff, which were brought to me for making the final
4 decision as to whether it was, in fact, a protected element.
5 I determined it was not.

6 VICE CHAIR HART: Do you see the -- Mr. Eckenwiler
7 also brought forward the internal discrepancy that someone
8 had an issue, or at least thought that it might be considered
9 a rooftop embellishment. You have, in the past, looked at
10 cornices as being part of the -- in other buildings in the
11 city -- as being part of the -- as a rooftop embellishment,
12 a rooftop element?

13 MR. LEGRANT: Prior to the Commission's action,
14 to be frank, I think my office, my reviewers might have not
15 been completely consistent. Some reviewers are well, it's
16 not in the list of things; it's not protected. Some of them
17 were it looks like -- because the key in some of these
18 language is such as, elements such as would be. The
19 Commission then provided, I think, further guidance to say
20 we must look at these cornices as protected rooftop
21 architecture elements after the certain effective date of
22 that text amendment.

23 VICE CHAIR HART: So yes, you have seen?

24 MR. LEGRANT: Yes, I have seen some.

25 VICE CHAIR HART: And have included them as -- not

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1 included -- and have concluded that they are a rooftop
2 element?

3 MR. LEGRANT: In some instances, yes.

4 VICE CHAIR HART: Do you have examples of those?

5 MR. LEGRANT: I would have to look back in our
6 records. We could probably find some.

7 VICE CHAIR HART: I think it would be helpful to
8 see what those are, so that we have, at least, some
9 comparison as to what some of those elements might be to say
10 that it is or is not one. It would be helpful for us to, I
11 think, understand that. With regard to the building
12 connection -- I'm sorry I'm asking so many questions here.

13 CHAIRMAN HILL: No, that was a good question. I
14 like all the good ones. Keep the good ones.

15 VICE CHAIR HART: I'll just make sure I have that
16 criteria, good questions only. With regard to the
17 connection, a meaningful connection between these two
18 buildings, it seems like the intent of the zoning regulations
19 were that they were trying to make there to be a way in which
20 people could actually move from one part of the building to
21 the other, using the connection.

22 Because the connection is -- it's not intended to
23 be -- it didn't seem to me to be an intent to have it just
24 to make two unrelated buildings connected to each other, so
25 that is why there was the issue of if there is an

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1 unrestricted access. They could have not had the word
2 unrestricted in there at all, and it could have just said
3 access to it. This would kind of meet that. But it seemed
4 like there was an intent to have the unrestricted part of it
5 be an issue. Mr. Eckenwiler brought this to our attention,
6 as well. If you could speak to that a little bit and to how
7 you perceive that aspect of it, the unrestricted aspect of
8 that.

9 MR. LEGRANT: As I noted in response to, I think,
10 a question from Commissioner Turnbull, the subject provision
11 here is B-309.1(d)(1) and (2). You're correct that there is
12 -- one of the criteria is that the space is designed and used
13 to provide free and unrestricted passage, but preceding that
14 is the common space, common space shared by all users of
15 portions of the building, such as lobby, recreation room,
16 loading dock, or service bay, or -- the or is you can do one
17 or the other.

18 You don't have a feature that has free and
19 unrestricted access. You can have a common space. In my
20 review of several projects, they come in all sorts of
21 configurations of these common spaces that are sometimes an
22 apartment house, a condominium building that has many units.
23 There'll be a large space. In the smaller buildings, they
24 have -- I've seen one where they have a fairly modest lobby
25 with mailboxes. So that is a space that is used, again --

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1 shared use by all users of the building. I think one of the
2 key criterion here was, in my view, was that this is a means
3 of access to the adjacent closed courtyard because of the
4 side door off, so the users use this to gain access to that
5 court. Looking at all the aspects of this, I concluded that
6 it did meet the first criterion as a common space.

7 VICE CHAIR HART: Thank you.

8 MEMBER WHITE: So a common space would be defined
9 as space that would be used by all of the occupants in the
10 building, and in this case, was that true?

11 MR. LEGRANT: Yes, the wording is shared by all
12 users of the building. Here, we have residents of the two
13 units at each end of that connection that would come out and
14 be able to use that space to gain access to the court.

15 MEMBER WHITE: So the fact that it could lock, or
16 the fact that you would need a key in order to be able to
17 enter that part of the building would have no bearing on your
18 definition of common space?

19 MR. LEGRANT: Correct.

20 MEMBER WHITE: Thank you.

21 VICE CHAIR HART: I have another question, kind
22 of a follow up. Is a building connector defined in the
23 zoning code, or anything that would -- is there any
24 definition that this particular connection would fall within
25 in the zoning code?

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1 MR. LEGRANT: In the definition of building, it
2 includes language as to what constitutes a building -- I
3 believe this regulation that was included in 016 by the
4 Commission further, as was noted here, further elaborated or
5 described the criteria for that -- for the connection. Even
6 though the definition generally refers to -- definition of
7 building refers to what a single building is, this regulation
8 is much more specific.

9 VICE CHAIR HART: You're talking about in the
10 zoning code, itself, in Section B, was it?

11 MR. LEGRANT: B-100 is the definitions.

12 VICE CHAIR HART: I'm trying to kind of hit all
13 of these pieces. With that -- and I asked the question to
14 Mr. Eckenwiler, but I'll ask it to you, as well. This is
15 with regard to this building issue and what the -- there are
16 two structures -- I've now heard them called towers, but
17 whatever.

18 There are two buildings that are considered one
19 building because of this meaningful connection that you're
20 saying that this lobby or breezeway or whatever you want to
21 call that makes. That, then, to me, brings the one building
22 into two -- the two buildings into one building? It makes
23 it one building? So could you walk me through the issue of
24 the rear -- the ten-foot rule? I think that what we're
25 talking about is really when the permit was vested, so that

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1 kind of comes into play with this, as well, I think.

2 MR. LEGRANT: Yes. DCRA's position is it's not
3 two buildings. It's two portions or two masses or two towers
4 of a single building. How does it qualify for a single
5 building? It has to meet the criteria of B-309.1. When we
6 look at -- when we did our review, we said okay, this
7 particular design has a couple of masses. If it was two
8 separate buildings, in this particular zone, you cannot have
9 two principal buildings.

10 The analysis, then, must be is it a single
11 building? Oh, they have this connection. Does the
12 connection meet B-309.1? As I've described, it was my view
13 that it does. So at that point, it's a single building.
14 Then, the question is regardless of if this did not have this
15 connection, or if the masses were pushed together, then is
16 it subject to the ten-foot limitation or pop back rule?

17 Then, as DCRA has described, we know that 1411-B
18 set forth that projects after the effective date would be
19 subject to the rule. It's my view that the project was
20 vested in the regulations prior to the effective date of that
21 rule.

22 Therefore, it is not subject to the setback rule,
23 if this application was deemed -- if the Board granted the
24 appeal and the building permit was revoked, then it becomes
25 a clean slate, and the property owner came in tomorrow with

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1 the same design, it would then -- oh, we have a rule that's
2 now effective. It would be subject to at least a special
3 exception for extending ten feet beyond the rear wall of an
4 adjacent property. I don't know if that -- that walked
5 through my view of how those two aspects interact.

6 VICE CHAIR HART: No, I appreciate it. I think
7 that does -- that is helpful to understand what your thought
8 process was for it. I'll leave it there, but I do appreciate
9 the responses.

10 MR. LEGRANT: Thank you.

11 CHAIRMAN HILL: Anyone else? Just a quick
12 question, Mr. LeGrant, to follow up with Mr. Cummins. Again,
13 due to -- there was a discussion about the vesting and so
14 forth. Again, this would not -- this would be under the
15 ten-foot rule. This would have to come before us again for
16 special exception if this were to come before you again
17 today?

18 MR. LEGRANT: Yes.

19 CHAIRMAN HILL: So it's not like something would
20 happen next door to this -- I'm just speaking to Mr. Cummins,
21 saying this could happen again and again in different lots,
22 in his lot. It could, I suppose, if it came before us under
23 a special exception and we approved it, but it's not
24 something that's by right now.

25 MR. LEGRANT: Correct.

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1 CHAIRMAN HILL: Again, why is it not by right now?

2 MR. LEGRANT: Because the Zoning Commission
3 amended the zoning regulations in 1411-B that said in
4 addition to all the other development standards that apply
5 to this zone, that rule is you cannot extend more than ten
6 feet -- a rear addition cannot extend more than ten feet
7 beyond the rear wall of an adjacent property for an attached
8 or semi-detached dwelling.

9 CHAIRMAN HILL: Got it. This, again, your
10 analysis is this is a rear addition.

11 MR. LEGRANT: The subject application is a
12 conversion, an addition, including a rear and vertical
13 additions.

14 MEMBER TURNBULL: Mr. Chair, I just wonder if I
15 --

16 CHAIRMAN HILL: Sure, please.

17 MEMBER TURNBULL: So going forward, if you're
18 looking -- again, calling up on the same line of questions
19 as the Chair, you would still see it as one building because
20 of the connection, but it would have to then meet the
21 ten-foot rule.

22 MR. LEGRANT: Correct.

23 MEMBER TURNBULL: Basically, of all the objections
24 that we've heard or we're talking about, the key one would
25 be the ten-foot rule going forward in this case?

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1 MR. LEGRANT: Well, it would fail --

2 MEMBER TURNBULL: And the cornice, too, I guess,
3 would fail, maybe.

4 MR. LEGRANT: If the Board were to grant the
5 appeal, then an identical application that would come in with
6 the same characteristics, then in terms of that 1411-B
7 vesting for the cornice and the pop back, those would no
8 longer be a matter of right. It would be subject to special
9 exception before this Board.

10 MEMBER TURNBULL: Okay, thank you.

11 CHAIRMAN HILL: Right, and again, just while we're
12 talking about it, the vesting is another part of this
13 discussion, in that the changes that they made -- and we've
14 had this discussion before with the zoning administrator, in
15 terms of what changes have happened and whether or not they
16 meet the criteria to vest or not. So again, your position
17 is that this does vest. The changes that they have made do
18 not take it outside of the vesting provision.

19 MR. LEGRANT: That's correct.

20 CHAIRMAN HILL: All right. Does the ANC
21 commissioner have any questions on cross?

22 MR. ERICKSON: Yes, Mr. Chairman, I have a number
23 of questions for Mr. LeGrant.

24 CHAIRMAN HILL: Sure.

25 MR. ECKENWILER: Mr. LeGrant, did I understand you

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1 to say that with respect to setbacks for railings on roofs,
2 that you believe there is a different rule for setbacks from
3 the front of the building versus the side wall?

4 MR. LEGRANT: No. I believe I spoke to the -- in
5 terms of the setbacks applicable to rooftop elements, that
6 there is -- the code, itself, differentiates that there's
7 certain specified setbacks, depending on a rear wall, front
8 wall, or side wall.

9 MR. ECKENWILER: Just to pick up on that point,
10 which I think is a little different from what you said
11 earlier, there is a requirement for setbacks from a side wall
12 of a building?

13 MR. LEGRANT: There is.

14 MR. ECKENWILER: Is that located in Section
15 C-1502.1(c)?

16 MR. LEGRANT: Yes, that's, I believe, the correct
17 provision.

18 MR. ECKENWILER: Does that require a setback --

19 CHAIRMAN HILL: Can you say that one again, Mr.
20 Commissioner, 1501 what?

21 MR. ECKENWILER: The reference is C, like Charlie,
22 1502.1, Subsection C. This section is captioned Penthouse
23 Setbacks.

24 CHAIRMAN HILL: Okay, thanks.

25 MR. ECKENWILER: Mr. LeGrant, do you see, in

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1 1502.1(c), where the regulation requires, quote, a distance
2 equal to its height from the side building wall?

3 MR. LEGRANT: Yes.

4 MR. ECKENWILER: Do you also see, in the prefatory
5 language, so going up before Subsection A, the very
6 introduction in 1502.1, where it says, quote, any guard rail
7 on a roof?

8 MR. LEGRANT: Yes.

9 MR. ECKENWILER: So your testimony earlier,
10 though, was that there was not a setback requirement in this
11 particular case. Can you explain why, in light of the text
12 of the regulation?

13 MR. LEGRANT: Sure. As I noted, I've interpreted
14 that provision to mean when the guard rail is at the roof
15 edge, on the roof edge or parallel with the roof edge, that
16 it is subject to setback. I will note that when it's, in
17 this case -- and I've done this in other cases, as well --
18 that it's perpendicular, and it's a guard rail for life
19 safety purposes, I have said that particular aspect is not
20 subject to the setback.

21 MR. ECKENWILER: Can you point me to any language
22 here in the regulation that draws that distinction?

23 MR. LEGRANT: That's my interpretation.

24 MR. ECKENWILER: So your answer is no?

25 MR. LEGRANT: Right, there's not specific language

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1 in the regulation.

2 MR. ECKENWILER: So there's no distinction drawn
3 on the face of the regulation between a railing that's
4 parallel to the side building and a railing that is
5 perpendicular to the side building wall?

6 MR. LEGRANT: That's correct.

7 MR. ECKENWILER: Turning to the issue of the
8 cornice -- let me go back here for a moment. Let's go back
9 to April of earlier this year, the application for the first
10 revised permit. The original permit had already been issued.
11 There was a pending appeal. The property owner submitted to
12 DCRA and, therefore, review came through your office for this
13 first revised permit. Do you remember receiving an email
14 from Shawn Gibbs about this question of whether or not the
15 feature on the front of 1125 7th Street was a cornice or
16 applied trim?

17 MR. LEGRANT: As you presented, there is an email
18 in the record about this --

19 MR. ECKENWILER: I'm just asking if you remember
20 getting that email.

21 MR. LEGRANT: I do.

22 MR. ECKENWILER: Do you remember having any
23 conversations with Mr. Gibbs about that question?

24 MR. LEGRANT: I did with both Mr. Gibbs and Mr.
25 Dow.

1 MR. ECKENWILER: Mr. Gibbs was seeking your
2 guidance on this question, was he not?

3 MR. LEGRANT: Yes, he was.

4 MR. ECKENWILER: What guidance did you provide Mr.
5 Gibbs?

6 MR. LEGRANT: After I spoke with Mr. Gibbs and Mr.
7 Dow about the issues they raised, I, as in the case of many
8 issues that my staff bring to my attention, I had to make a
9 determination. I appreciated their analysis, and I made my
10 decision.

11 MR. ECKENWILER: I'm asking what was your
12 decision?

13 MR. LEGRANT: My decision was that the cornice in
14 this particular case was not subject to the regulation,
15 E-206.1.

16 MR. ECKENWILER: Let me clarify my question. Did
17 you determine that the feature in question was, in fact, a
18 cornice?

19 MR. LEGRANT: There was a discussion as to whether
20 it would qualify as a cornice or not. I know that there is
21 different views in my staff as to whether it was a cornice
22 or not a cornice. At the end of the day, whether -- in that
23 internal discussion as to whether it was a feature that
24 deemed as to be a protected -- A, was it a feature that would
25 be subject to that provision; and B, was it subject to the

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1 E-26.1 as it affected that point in time, I concluded that
2 it was not a -- that the removal of that cornice --

3 MR. ECKENWILER: Hold on, because I really want
4 to divide this into two separate questions. The first one
5 is just a simple labeling question.

6 CHAIRMAN HILL: Commissioner Eckenwiler?

7 MR. ECKENWILER: Yes.

8 CHAIRMAN HILL: I'm not trying to -- I think he's
9 answered it, in that he made his own determination as to what
10 he thought.

11 MR. ECKENWILER: Well, Mr. Chairman, with respect,
12 I don't think Mr. LeGrant is because he keeps sliding over
13 into saying well, it wasn't protected because of some vesting
14 rule. I do want to come to that, but I think there's two
15 separate issues here. One, whether or not Mr. LeGrant found
16 that the feature in question was a cornice, and then we can
17 come --

18 CHAIRMAN HILL: I believe Mr. LeGrant though found
19 that the feature in part did not need to be protected.

20 MR. ECKENWILER: Well, the reason I'm asking these
21 questions at the official record, the reviewer notes for Mr.
22 Gibbs used the term "cornice."

23 CHAIRMAN HILL: So your question, again, to Mr.
24 LeGrant, is whether or not he thought it was a cornice.

25 MR. ECKENWILER: Yes.

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1 CHAIRMAN HILL: Okay, Mr. LeGrant, do you think
2 it's a cornice?

3 MR. LEGRANT: No.

4 CHAIRMAN HILL: Okay.

5 MR. ECKENWILER: So Mr. LeGrant, going then to the
6 -- actually, let's hold on that for a moment. If you can
7 look at Exhibit 46-E, these are -- I'll represent to you
8 these are the reviewer notes for the first revised permit.
9 If you'll turn to Page 4, the fourth page on the printout,
10 you'll see some notes there that were made by Shawn Gibbs.
11 That's visible at the bottom of Page 3, the preceding page,
12 dated April 18th. About two thirds of the way down the first
13 paragraph at the top, all in caps there, you'll see that the
14 word cornice is used. Do you see that?

15 MS. LORD-SORENSEN: Where are you?

16 MR. ECKENWILER: I'm looking on -- this is Page
17 4 of Exhibit 46-E. There's a block of text at the top.

18 MS. LORD-SORENSEN: Is there a particular tab?

19 MR. ECKENWILER: I think I just said E, 46-E.

20 VICE CHAIR HART: What we're trying to do, Mr.
21 Eckenwiler, is that DCRA -- it may not have been Mr. LeGrant,
22 but DCRA called it a cornice, and in this case, they said the
23 removal of the cornice is permitted, as the original
24 application predates ZC-1411. That's what you're talking
25 about.

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1 MR. ECKENWILER: Right.

2 VICE CHAIR HART: So you're saying they called it
3 a cornice, so they should --

4 MR. ECKENWILER: They called it a cornice.

5 VICE CHAIR HART: They're considering it a
6 cornice, but they're just saying no.

7 MR. ECKENWILER: That's right. They made a
8 determination. After they got an argument from the property
9 owner, they decided it was a cornice. The reviewer notes
10 made in the official record by Shawn Gibbs reflect that
11 determination.

12 VICE CHAIR HART: You're asking the DCRA to -- why
13 DCRA, in their comments, call it a cornice, when Mr. LeGrant
14 is not calling it a cornice?

15 MR. ECKENWILER: Precisely.

16 MR. LEGRANT: Mr. Gibbs, as well as many of my
17 staff worked for me, and sometimes they bring issues to me
18 which I disagree and I overrule their initial comment or
19 determination.

20 MR. ECKENWILER: That was the case with Mr. Daw's
21 comments on this, that this was a cornice that could not be
22 removed absent special exception relief, and you can see his
23 notes in the same exhibit, on Page 2.

24 MS. LORD-SORENSEN: Chairman Hill, I'm going to
25 object because Mr. LeGrant has already testified -- he

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1 testified repeatedly that he's made the final decision. His
2 staff came to him, and he decided it was not a protected
3 element.

4 CHAIRMAN HILL: Okay, I was just waiting for Mr.
5 -- I think, Commissioner Eckenwiler, you've done a great job,
6 and we've got a lot of things to talk about in terms of the
7 cornice. I think that Mr. LeGrant is being pretty clear, in
8 terms of he overruled his staff on those two independent
9 issues.

10 MR. ECKENWILER: Mr. Chairman, I'm happy to move
11 on.

12 CHAIRMAN HILL: Okay.

13 MR. ECKENWILER: Moving on, then, to the vesting
14 provision. Mr. LeGrant, you're undoubtedly familiar with
15 Section A-301.4, which I'll represent to you that says that
16 any amendment of a permit shall comply with the provisions
17 of this title in effect on the date the permit is amended.
18 That's correct, right?

19 MR. LEGRANT: Yes.

20 MR. ECKENWILER: Except, of course, if there is
21 an explicit vesting provision that exempts a permit amendment
22 from the operation of that rule, correct?

23 MR. LEGRANT: Correct.

24 MR. ECKENWILER: Can you point me to the
25 particular provision that would exempt a permit amendment

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1 from the E-206 rooftop architectural element rule?

2 MR. LEGRANT: As I believe I testified, the key
3 aspect, we have to read on in A-301.4 to A-304(b). I'll just
4 read this, A-304. Except as provided in Subtitle A-301.1.9
5 through 301.13, any construction authorized in this permit
6 may be carried to completion, pursuant to the provisions of
7 this title in effect the date the permit is issued, subject
8 to the following conditions: a) the permit holder shall
9 begin construction work within two years of the date of which
10 the permit is issued; and b) any amendment to the permit
11 shall comply with the revisions of this title in effect on
12 the date the permit is amended.

13 MR. ECKENWILER: So the word "cornices" was
14 inserted into Section E-206, effective April 28, 2017,
15 correct?

16 MR. LEGRANT: Yes.

17 MR. ECKENWILER: The permit in this case was
18 amended not once, but twice, in 2018, so both times
19 subsequent to the date that language was added to E-206,
20 correct?

21 MR. LEGRANT: Yes.

22 MR. ECKENWILER: And therefore, under 301.4(b),
23 any amendment, those amendments to the permit were subject
24 to the new language of E-206, correct?

25 MR. LEGRANT: I'll take issue with that. The way

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1 I read the zoning regulations is the changes to the permit
2 changes that, A, are substantial changes to the overall
3 permit that I noted previously; and B, are they germane to
4 -- did the revised permit change something that would have
5 been, quote/unquote, caught by the new regulation. In this
6 case, I determined that the original permit included both the
7 removal -- included the removal of the cornice and,
8 therefore, is not subject to -- it was vested prior to
9 1411(b)'s effective date of adding that to --

10 CHAIRMAN HILL: Commissioner Eckenwiler? I'm just
11 going to ask do you know how many questions -- I understand
12 that we're going to have to, as the Board, figure out the
13 vesting issues and whether or not things have changed to the
14 point where the other rules are going to come in to apply.
15 I'm asking because we're going to have to take a break. How
16 many more questions do you have?

17 MR. ECKENWILER: I have a number of questions,
18 honestly, Mr. Chairman.

19 CHAIRMAN HILL: Okay, but Commissioner Eckenwiler,
20 I'm going to take a break, and then we're going to see how
21 long the cross is going to go on because basically, you've
22 given your presentation. The DCRA has given his
23 presentation. Your crossing against all of the things that
24 they're presenting upon, which basically is saying all of the
25 things they're presenting upon, you disagree with. I'm just

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1 trying to get a timeline here. Then the property owner's
2 going to have to do their presentation, as well. What I
3 would think that's in the benefit of the ANC, for the
4 appellant, is to clarify the things that you want us to focus
5 on, I suppose, in cross. I'll let you go ahead and -- I'm
6 going to talk to OAG and see how long cross goes on, as well.
7 We're going to take a quick break, okay?

8 MR. ECKENWILER: Mr. Chairman, if I may just
9 respond, and I'll do it briefly. I only get one opportunity
10 to cross-examine Mr. LeGrant. This is it.

11 CHAIRMAN HILL: You've done appeals and such
12 before. I always get a little -- and the Board can totally
13 chime in. If they're getting information from this, this is
14 helpful -- I'm just trying to speed it up, in getting to
15 where it's helpful for us. I think you've raised a lot of
16 issues that we're going through, and there's a lot of
17 information in the record.

18 At least for me, as well -- when there's a lot of
19 different regulations thrown around, a lot of different
20 things thrown around, it's kind of hard to follow, unless
21 we've been doing this full time, all the time. What I'm
22 trying to get at is I think it's better if the Board has an
23 opportunity to ask its questions and hear the whole thing
24 more fluidly than we're currently doing. But at the same
25 time, you're going to have another opportunity for rebuttal.

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1 I'm just trying to also see -- we're now in -- 9:30, 10:30,
2 11:30 -- three hours.

3 MR. ECKENWILER: Mr. Chairman, I'll try to go
4 faster when we come back from the break.

5 CHAIRMAN HILL: Sure, that would be great.

6 MR. ECKENWILER: If that would please --

7 CHAIRMAN HILL: Because I'm going to find out from
8 OAG -- I'm going to talk to OAG and find out how long this
9 is supposed to go on, and then I'm going to talk to the mayor
10 and see if I can figure out whether this was a good idea for
11 me or not. We're going to take a ten-minute break.

12 (Whereupon, the above-entitled matter went off the
13 record at 12:16 p.m. and resumed at 12:24 p.m.)

14 CHAIRMAN HILL: Okay, Mr. Moy.

15 MR. MOY: Thank you, Mr. Chair. The hearing's
16 back in session, and the time is 12:24 p.m.

17 CHAIRMAN HILL: Commissioner Eckenwiler, I guess
18 what I'm just trying to get at, again -- and I really -- I
19 appreciate everything that you're trying to do.

20 MR. ECKENWILER: Mr. Chairman, you want me to move
21 it along?

22 CHAIRMAN HILL: No, I can't say -- I thought that
23 the presentation -- and it's a very complicated presentation
24 -- was done very well on the ANC's part, and I appreciate the
25 ANC very much. I remember everything that was going on.

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1 It's getting a little convoluted. So if you can just try to
2 just succinctly hit whatever the crosses are that you want,
3 and whatever the answer is that you get, if you don't like
4 the answer, we're listening, and then we'll believe it or not
5 believe or then ask our questions. I appreciate you trying
6 to move it along. Thank you. Please continue.

7 MR. ECKENWILER: Mr. LeGrant, going back to the
8 issue of the cornice and the supposed vesting, I just want
9 to understand, are you relying, for this vesting exception
10 to the rule in A-301.4, are you relying on 301.14?

11 MR. LEGRANT: Can you say that again?

12 MR. ECKENWILER: I'm asking if Mr. LeGrant, who
13 says that there is a vesting provision that allows the
14 removal of what I'm calling the cornice -- I'm trying to
15 ascertain whether the specific provision of text that he's
16 relying on is A-301.14 that would take this outside the rule.
17 Whenever you amend a permit, you've got to apply with the
18 rules in effect at the time of the amendment.

19 MR. LEGRANT: I'm relying on the totality of the
20 zoning rules together. I look at A-304, A-301.4, and
21 A-301.14 together to come to a conclusion that this -- in my
22 view, the application is deemed vested in the rules prior to
23 1411(b).

24 CHAIRMAN HILL: Okay.

25 MR. ECKENWILER: I have no further questions on

1 the cornice. Mr. LeGrant, going then to the one building
2 versus two buildings question, I just want to understand.
3 We heard a lot of testimony about the fourth prong of the
4 test, under B-309.1, so that's 309.1(d). I want to
5 understand, do you believe that the connector in this case
6 satisfies both (d)(1), the shared space, and (d)(2), the
7 unrestricted access prong, or is it only one of those two
8 that you think is satisfied?

9 MR. LEGRANT: I believe an argument can be made
10 for both prongs, but I rely on the first prong, the common
11 space shared by users of the building, as the definitive
12 prong.

13 MR. ECKENWILER: Okay. Thank you.

14 CHAIRMAN HILL: Shockingly, Commissioner
15 Eckenwiler, I'm with you. I'm totally here.

16 MR. ECKENWILER: Okay, great. I'm going to move
17 on, then, to the last issue, which is the more than ten foot
18 rear addition question. Mr. LeGrant, I understood you to
19 testify that the application, the original permit application
20 in this case was accepted by DCRA on March 24, 2017. Is that
21 correct?

22 MR. LEGRANT: That's correct.

23 MR. ECKENWILER: I'd like you to look at Exhibit
24 59-A -- excuse me, I beg your pardon. Give me a moment here.
25 I beg your pardon; I misspoke, Exhibit 47-E. That is the

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1 building permit application history.

2 PARTICIPANT: Which document?

3 MR. ECKENWILER: I'm sorry; I -- this is Exhibit
4 47-E. That's the property owner's prehearing statement in
5 opposition. Does that make it clear?

6 CHAIRMAN HILL: I'm at 47-E. I'm still trying to
7 -- we're at 47-E.

8 MR. ECKENWILER: Directing your attention, Mr.
9 LeGrant, to --

10 MR. LEGRANT: Give me a moment to locate that.

11 MR. ECKENWILER: Sure.

12 CHAIRMAN HILL: Commissioner Eckenwiler, you're
13 asking questions in this case, in cross, concerning the
14 vesting?

15 MR. ECKENWILER: Correct. I want to talk about
16 the -- because the vesting provision, recall, has two
17 requirements in it. One is a timing issue, and then the
18 other one is whether or not the application is substantially
19 changed.

20 CHAIRMAN HILL: Mm-hm.

21 MR. ECKENWILER: At the moment, I'm just focusing
22 on the first of those two.

23 CHAIRMAN HILL: Okay.

24 MR. LEGRANT: Commissioner, can you just show us
25 exactly --

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1 MR. ECKENWILER: Sure. I'm going to hand you
2 Exhibit 47-E and direct your attention to the second page of
3 that, toward the bottom. There's an entry here for Permit
4 Application B1706219, so the bottom section on that page.

5 MR. LEGRANT: Okay, we're trying to locate a
6 comparable document. This is Page 2 of 4, dated, at the
7 bottom, is July 11, 2018. It's the permit status depiction.
8 I'm looking at --

9 MR. ECKENWILER: I'll represent to you it's the
10 -- you don't need to read the whole thing. I'm directing
11 your attention to the block of text at the bottom dealing
12 with what we're referring to as the original permit. What
13 acceptance date does that show there?

14 MR. LEGRANT: There's two dates. One is the plan
15 review -- under the plan review coordinator, Project Docs
16 accepted --

17 MR. ECKENWILER: For Project Docs accepted, it
18 says March 23rd, doesn't it?

19 MR. LEGRANT: Right, and then the -- yes.

20 MR. ECKENWILER: Why would that date be different
21 from the date that you gave?

22 MR. LEGRANT: There's two systems that DCRA uses.
23 This is the Project Docs. Then we also have Acela. Acela
24 is our permit application tracking software. They work in
25 concert to one another, but if it was one entry in one

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1 system, then it can go into another system. I'm speculating
2 -- I'm not 100 percent sure. I'm speculating that the plans
3 in Project Docs were accepted on March 23rd, and then that
4 was transmitted to the permit operations division for --

5 CHAIRMAN HILL: Okay, I understand. Commissioner.

6 MR. ECKENWILER: Yes. Directing your attention,
7 then, Mr. LeGrant, to -- this is the email from Max Tondro.
8 That is Exhibit 46-H. That's a September 12, 2017 email from
9 Max Tondro to you and to Paul Goldstein.

10 CHAIRMAN HILL: What does it say, Mr.
11 Commissioner?

12 MR. ECKENWILER: I'm sorry?

13 CHAIRMAN HILL: What does it say?

14 MR. ECKENWILER: What it says -- let me wait until
15 Mr. LeGrant has the document in front of him, if I may, Mr.
16 Chairman.

17 CHAIRMAN HILL: That's okay. I'm just trying to
18 understand why you're asking it.

19 MR. LEGRANT: Likewise, once you -- I've seen this
20 before, but why don't you slide it over to show exactly.
21 This is the redacted email from --

22 MR. ECKENWILER: This is the redacted email. I'll
23 represent to you that what Mr. Tondro says in his email to
24 you is that in this case, the original permit application,
25 quote, was not accepted as completed until March 29th. I'm

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1 just curious; did you know Mr. Tondro to be an untruthful or
2 an unreliable person?

3 CHAIRMAN HILL: I don't know about that, anyway,
4 Mr. Commissioner.

5 MR. ECKENWILER: I'm curious. I don't -- this is
6 --

7 CHAIRMAN HILL: It doesn't matter. Your question
8 is that he submitted something saying that it was incomplete.
9 Repeat your question again.

10 MR. ECKENWILER: No, my question was -- if I may,
11 Mr. Chairman, I'm going to the fact that we have documentary
12 evidence here from Mr. Tondro. I want to know if Mr. LeGrant
13 thinks that Mr. Tondro had any reason to be untruthful here,
14 or if Mr. Tondro is not reliable.

15 CHAIRMAN HILL: But what does that have to do with
16 -- I don't understand.

17 MR. ECKENWILER: Because this says that the
18 application was not accepted as completed until March 29th.

19 CHAIRMAN HILL: Okay, so you're back to the timing
20 again.

21 MR. ECKENWILER: On the timing issue, exactly.

22 CHAIRMAN HILL: So we've moved off of -- where
23 were we? You were on -- what point were you on?

24 MR. ECKENWILER: We're still -- we've been on --

25 VICE CHAIR HART: What you're trying to look at,

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1 Commissioner Eckenwiler, was the exact date of the
2 application being accepted --

3 MR. ECKENWILER: Accepted as complete.

4 VICE CHAIR HART: -- accepted as complete, and
5 what you're saying is that there are differences inside of
6 DCRA that have differences of dates for when that has been
7 accepted as complete.

8 MR. ECKENWILER: By my count, at least three
9 different dates, so far, Vice Chair Hart.

10 VICE CHAIR HART: So what you're trying to find
11 out from Mr. LeGrant is which date is the true one and why
12 is that date the true one, and the other ones are not true?

13 MR. ECKENWILER: I'd like to know specifically why
14 Mr. Tondro's email can't be relied upon.

15 MR. LEGRANT: As with other internal
16 deliberations, I treat this, Mr. Tondro's, as information
17 that he asserted at that point in time. Following that
18 communication, looking at all the information available, I
19 concluded it was a different date than Mr. Tondro initially
20 indicated in that email.

21 CHAIRMAN HILL: Okay. Commissioner Eckenwiler,
22 how much more time do you need?

23 MR. ECKENWILER: I just have a couple more
24 questions, Mr. Chairman. We can go to the -- so the second
25 prong of the vesting rule, A-301.14, requires that in order

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1 to benefit from vesting and not be subject to the ten-foot
2 restriction on a rear addition, the application must not have
3 substantially changed.

4 CHAIRMAN HILL: You question -- do you question
5 that it has substantially changed? I am curious of this.
6 Where do you think that it substantially changed?

7 MR. ECKENWILER: I would like to direct Mr.
8 LeGrant's attention to Exhibit 59-A. That is our ANC 6C's
9 reply. It's a set of the plan drawings.

10 CHAIRMAN HILL: Okay.

11 MR. ECKENWILER: We can start at Drawing A-1.1.
12 That's ANC 6C's reply, Exhibit 59-A. These are the plan
13 drawings.

14 CHAIRMAN HILL: Yes, got to A-1.1.

15 MR. ECKENWILER: A-1.1. Do you have that before
16 you, Mr. LeGrant?

17 MR. LEGRANT: Yes, I do.

18 MR. ECKENWILER: Do you see all these -- I don't
19 know what to call them, these sort of cloud -- these
20 notations here flagging numerous areas on the drawing?

21 MR. LEGRANT: They're termed "bubbles," the
22 bubbles around certain features.

23 MR. ECKENWILER: Right. Those bubbles reflect
24 changes to an application, do they not?

25 MR. LEGRANT: I believe in this case, that's

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1 correct, that they do indicate -- showing areas that were
2 subject to changes from the previous iteration of plans.

3 MR. ECKENWILER: If you turn the page and look at
4 A-2.1, you see additional bubbles showing further changes,
5 correct?

6 MR. LEGRANT: Correct.

7 MR. ECKENWILER: If you look at A-4.3, you can see
8 that there are further changes, bubbles, correct?

9 MR. LEGRANT: Yes.

10 MR. ECKENWILER: The same thing, also, you would
11 say is true for A-5.2 and A-5.3?

12 MR. LEGRANT: Yes.

13 MR. ECKENWILER: No further questions, Mr.
14 Chairman.

15 CHAIRMAN HILL: Okay, great. Just so I can follow
16 through with what I think the question -- so I just
17 understand, Mr. LeGrant, you don't think of any of those
18 changes changed the project significantly enough that these
19 other things -- it would change the vesting issue.

20 MR. LEGRANT: That's correct.

21 CHAIRMAN HILL: All right. Now, we're going to
22 turn over to the property owner.

23 MR. CUMMINS: Sorry, do I have an opportunity to
24 cross?

25 CHAIRMAN HILL: Oh, sorry, Mr. Cummins. Yes,

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1 please, go ahead.

2 MR. CUMMINS: I'll try to be brief, but I am a
3 non-lawyer, so I'll try to speak plainly, as well, to the
4 zoning regulations. Mr. LeGrant, I have a question about
5 changes -- you stated that the changes were not significant
6 and, therefore, didn't affect whether it would be -- the
7 vesting would apply or not. I wanted to call -- you brought
8 up Sheet 84.2, I believe, in your presentation, in your
9 PowerPoint slide. Could you bring that up again?

10 MR. LEGRANT: Give us a moment.

11 MR. CUMMINS: It was the only slide that you
12 presented the plan.

13 VICE CHAIR HART: Is that an elevation?

14 MR. CUMMINS: It's the side elevation.

15 VICE CHAIR HART: Right-side elevation.

16 MR. LEGRANT: Is that it?

17 MR. CUMMINS: 84.2.

18 PARTICIPANT: No, I don't have 84.2.

19 MR. CUMMINS: Which was the slide you pulled up
20 when you presented to the Board earlier?

21 MR. LEGRANT: Was it the plan view?

22 MR. CUMMINS: It was a plan view. There, that's
23 it.

24 MR. LEGRANT: That's a section.

25 MR. CUMMINS: Building section, excuse me, 85.2.

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1 There is a bubble circling lobby and the connector, and
2 there's an area that says vented crawl space in between the
3 two buildings. Do you see that?

4 MR. LEGRANT: Yes.

5 MR. CUMMINS: Does that indicate a change from
6 Permit B1706219?

7 MR. LEGRANT: It indicates that there was some
8 changes to that portion of the building.

9 MR. CUMMINS: Is this connection fully above
10 grade?

11 MR. LEGRANT: Yes.

12 MR. CUMMINS: Was the connection in B1706219 fully
13 above grade?

14 MR. LEGRANT: I would have to look back. I
15 believe it was.

16 MR. CUMMINS: I'd like to draw the Board's
17 attention to the ANC's statement, Exhibit 3, that clearly
18 shows that it's not above grade, and noting that this area
19 -- that one of the changes from the breezeway to the lobby
20 was a change from making the area that was below grade here
21 into vented crawl space. If it were --

22 CHAIRMAN HILL: Hold on, give me one second. Ms.
23 Lord-Sorenson, I don't know what we're going to end up with
24 here at the end, but it probably is going to be with -- I'm
25 trying to -- the Board will try to figure out -- there's a

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1 lot of stuff, in terms of timing and the vesting period, so
2 we're going to have to come up with some timeline, at some
3 point. I'm just going to ask of that. Then also, what I'd
4 like to know, again, is the changes that have happened over
5 the different permits that might have kicked this into where
6 it would no longer be vested and how, maybe, you got to the
7 decision that you got to.

8 Because I understand the arguments, and also the
9 cross that is being presented, which is also helpful, in that
10 changes significant -- the appellant believes that
11 significant changes have taken place, so that this would no
12 longer be allowed. It doesn't qualify for the vesting
13 period.

14 MR. CUMMINS: That's not quite my question,
15 actually. The B1706219 permit did not meet the zoning
16 regulations.

17 CHAIRMAN HILL: Technically, I wasn't trying to
18 ask your question. I was just trying to clarify, for me,
19 what I wanted to know later, maybe, just because I'm a little
20 -- this seems to be kind of what we're talking about. The
21 last question you had was that was this above grade in the
22 previous design, right? I would like to see whatever the
23 previous design was, and whether it was above grade. Mr.
24 Cummins, please --

25 MR. CUMMINS: If the connection, the lobby, as

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1 it's described here, were not fully above grade, would it
2 meet the rezoning regulations requirement?

3 MR. LEGRANT: I would have to look at the
4 specifics of that drawing to be able to tell you.

5 MR. CUMMINS: Just hypothetically, is it not the
6 requirement of B-309, I believe, that the connection be fully
7 above grade?

8 MR. LEGRANT: You're correct. The requirements
9 of B-309 is that the connection be fully above grade.

10 MR. CUMMINS: And your testimony is that B1706219
11 was fully above grade?

12 MR. LEGRANT: Yes.

13 CHAIRMAN HILL: Whoa, slow down.

14 MR. CUMMINS: Sorry, the permit in the plans in
15 the original permit.

16 CHAIRMAN HILL: Okay, that's fine. Thanks, great.

17 MR. CUMMINS: The vented crawl space, why is that
18 change indicated on this sheet here? If there's no change
19 in the grade, why is that a vented crawl space?

20 MR. LEGRANT: I do not know why there is a change
21 to a vented crawl space. That might be a question for the
22 applicant.

23 MR. CUMMINS: Okay, I'll move on. I'm trying to
24 be respectful of everyone's time. There's also a bubble
25 around the front building, in this case, showing a bay

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1 projection into the public space on the right side of the
2 sheet. Do you see that?

3 MR. LEGRANT: I do.

4 MR. CUMMINS: Is that bay projection the same
5 height as it's depicted in the original permit, B1706219?

6 MR. LEGRANT: I think there was testimony earlier,
7 and my recollection is it was not, that they added -- the bay
8 feature added a portion from the top of the second to the top
9 of the third.

10 MR. CUMMINS: Was there a balcony projection in
11 B1706219, where there's now a third-floor enclosed bay
12 window?

13 MR. LEGRANT: I don't --

14 (Simultaneous Speaking.)

15 MR. LEGRANT: I don't recall.

16 MR. CUMMINS: Would that be a change to the
17 building envelope or the zoning envelope between the original
18 permit and the revised permit?

19 MR. LEGRANT: I would say it is a change to that
20 portion of the façade, yes.

21 MR. CUMMINS: Would this change in the bay
22 projection be considered a significant amendment to a permit?

23 MR. LEGRANT: I don't believe so.

24 MR. CUMMINS: Okay, I have no further questions.

25 CHAIRMAN HILL: Okay, thanks, Mr. Cummins.

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1 MR. BROWN: Not to belabor it, could I follow up
2 real quickly? I didn't get to cross-examine. Two questions,
3 quickly, Mr. LeGrant.

4 CHAIRMAN HILL: Mr. Brown, I didn't even get to
5 say yes.

6 MR. BROWN: I thought --

7 CHAIRMAN HILL: I was looking over at OAG for a
8 second. I just got confused. That's okay.

9 MR. BROWN: I thought you were nodding. My
10 apologies.

11 CHAIRMAN HILL: No, that's all right. That's
12 okay. Please go ahead. I'm not trying to be flippant. I
13 just was, I guess, making a joke. Okay.

14 MR. BROWN: Mr. LeGrant, DCRA's position is the
15 original permit was accepted on what date as complete?

16 MR. LEGRANT: March 24th.

17 MR. BROWN: Of 2017?

18 MR. LEGRANT: 2017.

19 MR. BROWN: The last question from Mr. Cummins,
20 the bay window projection, that's located in public space,
21 correct?

22 MR. LEGRANT: That's correct.

23 MR. BROWN: Public space is not subject to the
24 zoning regulations. That is separately permitted, correct?

25 MR. LEGRANT: The projection into public space is

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1 subject to a separate approval from the public space
2 management administration of DDOT.

3 MR. BROWN: So you don't view the change in that
4 as a zoning event.

5 MR. LEGRANT: In this particular case, in terms
6 of the vesting, no.

7 MR. BROWN: Thank you.

8 CHAIRMAN HILL: Okay, so back to, again, Ms.
9 Lord-Sorenson. The March 24th date, I guess I keep coming
10 -- I'm kind of coming back to it. Eventually -- and I don't
11 even know if this is going to be whatever the eventual
12 question ends up being, but I would be curious as to what was
13 allowed in March 24, 2017, and then what things have changed
14 since then to this. I don't know yet what I'm asking. That
15 wasn't particularly helpful, probably.

16 MS. LORD-SORENSEN: Quick question, Chairman Hill.
17 Are you trying to obtain the previous designs, or just a
18 list?

19 CHAIRMAN HILL: I guess I was trying to more make
20 a mental note that March 24th is going to be important. I'm
21 going to move on for a second.

22 MEMBER JOHN: Mr. Chairman.

23 CHAIRMAN HILL: Yes, sure, please.

24 MEMBER JOHN: I have a question for DCRA. This
25 concerns Exhibit 47-E. That is the -- I don't know what

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1 page, Page 2 of 4.

2 MR. ECKENWILER: I'm sorry; I didn't quite catch
3 what you're referring to.

4 MEMBER JOHN: 47-E. I'm trying to get Exhibit E.
5 I think that was up before, and there was some discussion.
6 Scrolling down to Page 2 of 4, at the end of that page,
7 there's a notation -- I lost my page. There's a notation
8 that --

9 PARTICIPANT: This one?

10 MEMBER JOHN: Yes, B1706219 was accepted into
11 Project Docs on March 23, 2017. Can you explain what that
12 means? Then immediately below that, there was another date
13 that said under review, March 29th.

14 MR. LEGRANT: Right. So, again, as I testified,
15 the two systems were this Project Docs, and we have Acela.
16 The Project Docs, which is the software for managing planned
17 submissions. The Project Docs accepted on March 23rd is sort
18 of the initial submission. I do not construe the words
19 Project Docs accepted as the same as complete for processing.

20 The next date under there, it says Project Docs
21 under review. March 29th is when the plans were deemed ready
22 for review under the Project Docs system. I testified in the
23 intervening point, in the Acela system, the March 24th is the
24 date was deemed sufficiently complete for review, and then
25 that was the date that is important, in terms of the vesting

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1 date.

2 MEMBER JOHN: Thank you.

3 VICE CHAIR HART: So you're saying that it took
4 a day between the time that you got it, and then you've
5 accepted it for review? Am I understanding that correctly?

6 MR. LEGRANT: Yes.

7 VICE CHAIR HART: Is that typical? Because it
8 seems like the other ones, they last for a couple of months
9 sometimes.

10 MR. LEGRANT: It varies.

11 VICE CHAIR HART: You've done -- you've had cases
12 where there are -- there's a lot of moving parts here. So
13 you're saying within a day, there was enough time to be able
14 to get it, and then be okay with that within that 24-hour
15 period? Because that's really quick to me. That seems
16 really quick.

17 MR. LEGRANT: Yes, and my experience is it varies,
18 depending upon the completeness and robustness of the
19 information submitted. Some applicants submit information
20 that is not complete, and there's a back and forth to get to
21 that point where it's deemed sufficiently complete for
22 processing. In this case, the one day, it does occur. I
23 won't say it's the common time frame, but it does occur,
24 where an application is then deemed to have enough
25 information, in that time frame, to be complete.

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1 VICE CHAIR HART: Okay.

2 MEMBER TURNBULL: Mr. LeGrant, also, on Page 4,
3 we see this thing repeated again. We find the date 4/04 for
4 Project Docs accepted, and then we find one later on --

5 MR. LEGRANT: This is the same exhibit? I'm
6 sorry, Commissioner.

7 MEMBER TURNBULL: The same exhibit, but Page 4,
8 continuing on. It looks like there's further reviews. We
9 have later dates. Are these all revisions, then? The last
10 one I'm looking at a plan review coordinator, Project Docs,
11 accepted 9/18/2018.

12 MR. LEGRANT: I believe those reflect the
13 revisions that we had discussed.

14 MEMBER TURNBULL: Those are the revision dates.

15 MR. LEGRANT: Yes.

16 MEMBER TURNBULL: If there's such a difference
17 between these, what we're looking at here, and your Acela
18 thing, can we see -- can you provide us the Acela documents
19 to find out what dates are really accepted and what they're
20 not accepted?

21 MR. LEGRANT: One moment, here. I'd like to look
22 at the exhibit again, if you may, Commissioner.

23 MEMBER TURNBULL: Oh, sure, apologies.

24 MR. LEGRANT: Commissioner Turnbull, what I hear
25 you saying is you'd like to also see the information on the

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1 Acela system?

2 MEMBER TURNBULL: Yes.

3 MR. LEGRANT: Yes, we could provide that, yes.

4 MEMBER TURNBULL: I'm just curious as to -- if
5 you've got two systems, how does anybody really know what's
6 the real date?

7 VICE CHAIR HART: Actually, just to kind of
8 piggy-back on that, it seems as though what Commissioner
9 Eckenwiler has provided is a -- I think that's his exhibit,
10 this Exhibit 47-E. In the exhibit, it actually -- in one of
11 the highlighted parts for this particular project, it says
12 consolidation of permit applications, and it gives a list of
13 three different applications, renovation of existing
14 single-family dwelling unit to a two-unit townhouse, and then
15 some other things with that.

16 But there are some other dates that are kind of
17 preceding this, that lead up to this. So it wasn't like this
18 was the first time that this has actually been before this
19 -- at least permits for this particular house have been
20 before the -- or property have been before the -- excuse me,
21 been before the ZA, the DCRA. Am I reading that correctly?
22 There have been other permits that were before 2017.

23 MR. LEGRANT: Right; I believe that's correct.
24 I would have to look at the particular permits. Sometimes,
25 in projects, an applicant may secure a preliminary permit to

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1 do some demolition or site work or something for that
2 address. That, ultimately, is related to the overall
3 project. Here, I'd have to look at the specific and so we
4 could provide what those specific permits were and how they
5 related to the original and revised permits.

6 VICE CHAIR HART: I appreciate that. The reason
7 I bring that up, also, is because something that Commissioner
8 Eckenwiler brought forward to our attention, also, was
9 Exhibit 46-H, which is this email that was from Mr. Tondro.
10 In it, it says there is a technical issue -- and I'm kind of
11 reading verbatim -- there is a technical issue that -- in it
12 that was used as a revision to two applications that have
13 been canceled five months earlier.

14 To me, that means that there's something that has
15 gone prior to this permit, that was approved in March,
16 whatever the date was, March -- I can't think of the date now
17 -- 24th, 29th, 24th. There were things that preceded this
18 to get us to this point. That's why I was trying to figure
19 out what were the -- the date.

20 The ability for DCRA to review a case within a day
21 seems really hard, if this is the first time you've seen it,
22 but it may be different if you've actually been looking at
23 this for months, and this is the culmination of that. I
24 don't know what that is, but it would be helpful to actually
25 understand that. I think this goes to what Chairman Hill

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1 also brought up, which is this timeline that talks about some
2 of this stuff. There's a lot of dates being thrown about.
3 I want to make sure we get that correct.

4 MR. BROWN: Mr. Hart, we can certainly address
5 that from our end, given that we have a history.

6 VICE CHAIR HART: And you haven't presented yet.

7 CHAIRMAN HILL: All right. Just to let everybody
8 else know who's here, we're going to have presentation by the
9 property owner, then we're going to get to do cross again.
10 Then after cross is finished, we're going to have rebuttal
11 by the appellant, and then the other members will be able to
12 do cross of that rebuttal. Then we're going to go to
13 conclusions or a closing argument, which we may or may not
14 ask for in written form.

15 We'll have to see how it goes. To let you all
16 know -- and I asked the Office of the Attorney General if
17 there was a more efficient way that I could do this, and
18 there's not. There's just a lot information. There's
19 nothing to do about it. I kept thinking this one was going
20 to go away. It was like every single time you all showed up,
21 you're like we're working on it. It'll all work out. Then
22 you all are here. Finally, it's the building owner's turn.
23 I believe, Mr. Brown, you were about to say something.

24 MR. BROWN: Yes, but we need a second to get the
25 computer back. We have a PowerPoint presentation. I

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1 submitted hard copies to the Board secretary and copies to
2 the parties here. What I'd like to do is I'd like the
3 property owner to say brief words, and then I'd like to have
4 my expert -- my witnesses join me up here at the table.
5 We'll go through each of the four issues one by one and have
6 them all simultaneously. Let's see if we can get this to
7 work.

8 MR. TAWED: Good afternoon.

9 CHAIRMAN HILL: Thanks so much. Mr. Moy, if you
10 could start that clock for me? Thank you. Go ahead.

11 MR. TAWED: Sure, good afternoon -- it's no longer
12 morning -- Mr. Chairman, members of the Board. I'm the
13 property owner at 1125 7th Street Northeast. Thank you for
14 the opportunity to speak. I'll keep it short because it's
15 already been a long morning already. We purchased the
16 property in June of 2015. It was a vacant property. There
17 was nothing going on there. It had been sitting there.

18 We pretty quickly submitted plans in September of
19 2015, to answer Mr. Hart's question earlier about timeline.
20 In September of 2015 we submit for a foundation permit. In
21 April of the following year we submit for a main building
22 permit. We're actively engaging with DCRA, answering
23 questions, comments, and the permit application gets canceled
24 in October of 2016. When we bought this, our intent,
25 particularly under the old regulation, we had a matter of

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1 right project, where we could have done a massive addition
2 in the rear. This pop back that everybody talks about, by
3 right, we could have done nearly a 40-foot addition in the
4 rear. We chose not to, really, for two reasons. One, we
5 think it's a more thoughtfully designed project, where you're
6 getting more light and air for both units on our property,
7 and it actually preserves the light and air of both of our
8 neighbors.

9 We actually reduced the existing building by a few
10 feet, and then set the rear unit further back. Our goal all
11 along has been to comply. We have never once tried to make
12 this difficult, really, for anyone. If there were any
13 comments, if there was anything that we could do to
14 facilitate the process, we did.

15 It's unfortunate that it took so long, but mostly
16 it was out of our control. It was a building code issue that
17 wasn't generated by us. Let's put it that way. It was
18 generated elsewhere, and that had to get resolved at OAH.
19 Ultimately, we believe that it resolved in our favor.

20 It was really up until that, to bring us here,
21 where we can finally get whatever the zoning code issues are
22 resolved to both Mr. Eckenwiler and Mr. Cummins' satisfaction
23 and, ultimately, yours, as well. That's really it. Two and
24 a half minutes, not bad.

25 CHAIRMAN HILL: Oh, you're part of this whole

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1 thing. You get credit, sir, for all of this. All right, Mr.
2 Brown.

3 MR. BROWN: I want to spend a few minutes just
4 laying the background a little. One, and I have the slide
5 up here, this is RF-1. There have been four issues raised,
6 but in all other respects, the typical RF-1 zoning is in
7 compliance. Two units flat is permitted. The building meets
8 the height, lot occupancy, rear yard pervious surface,
9 off-street parking, so that I just want to start with that
10 baseline, notwithstanding the four outstanding issues we
11 have.

12 I'll respond to those. In here, this slide, the
13 permit history. At the top, you'll see the three -- original
14 permit for March of 2017, the revised permit April of 2018,
15 and the second revised permit of August of 2018. Mr. Hart,
16 to your question about prior permits, if you look at the
17 left-hand column, below original permit, you'll see
18 description there.

19 There were two permits separately filed, one for
20 excavation underpinning, and the other for the actual
21 addition work referenced there, both submitted previously,
22 that were canceled by DCRA. When it came time -- when that
23 occurred -- you can respond to this more fully -- the
24 applicant, the property owner, went to DCRA and said why did
25 you cancel my permits? They engaged in a discussion about

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1 resubmitting those permits in the system. The advantage that
2 occurred -- and I've provided documentation in my filings --
3 both those earlier permits that were canceled were then
4 incorporated into the original permit application. Both
5 those permits have been extensively reviewed, one for six
6 months, one for nine-plus months. They weren't starting from
7 scratch, but the original permit was created out of whole
8 cloth, a single complete stand-alone permit that incorporated
9 the substance of the two earlier permits.

10 I think, one, that was done in conjunction with
11 DCRA, and two, the product that was submitted had been battle
12 tested through the system and was of a higher caliber, as far
13 as completeness and preparation for processing. With that
14 --

15 VICE CHAIR HART: Mr. Brown, just a quick
16 question.

17 MR. BROWN: Yes.

18 VICE CHAIR HART: Why did you say they were
19 canceled by DCRA? Do you have -- let me ask it this way.
20 I don't remember seeing this -- could you point me to where
21 this is written, so I could actually get a little bit more
22 background on this?

23 MR. BROWN: It's showed in the permit tracking,
24 where you see the permits were canceled. I wasn't involved
25 at the time, but Mr. Jawed could --

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1 MR. JAWED: I can answer that. We were never
2 given a reason. We asked multiple times.

3 VICE CHAIR HART: Okay, that's fine. I just
4 didn't know if there was --

5 MR. JAWED: We were just stonewalled, nothing
6 given.

7 MR. BROWN: It was unilateral and surprising, I
8 think.

9 MR. JAWED: And without warning. Just one day --
10 not even an email.

11 VICE CHAIR HART: I hear you. Okay.

12 MR. BROWN: I'd like to just quickly, just so that
13 we have a baseline, a starting point, here is the footprint,
14 the surveyors plat that was part of all the applications,
15 showing 7th Street and the rear parking. You have the front
16 unit and the rear unit connected through that connection,
17 just to give you that background. With that, I'd like to
18 invite Mariah and Will. If we could, once again, introduce
19 themselves.

20 CHAIRMAN HILL: Yes, if you could introduce
21 yourselves, please.

22 MS. RIPPE: I'm Mariah Rippe. I was the designer
23 on this project.

24 MR. TEASS: Good afternoon. My name is Will
25 Teass. I'm a principal with Teass Warren Architects. I've

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1 been brought in for a peer review on this project.

2 CHAIRMAN HILL: Mr. Teass, are you here just for
3 this case?

4 MR. TEASS: I am not. I have another case before
5 the Board today.

6 CHAIRMAN HILL: All right, please go ahead.

7 MR. BROWN: Also, Mr. Bello. I've submitted
8 resumes for Mr. Bello. Also, actually, one more, Vince Ford.
9 Vince Ford is the retired chief building inspector for DCRA.
10 I've submitted his resume. I'd like Mr. Bello to be an
11 expert witness in zoning purposes.

12 He's the former Zoning Administrator and has been
13 accepted repeatedly in that context before. Mr. Teass I
14 would like to have submitted, and his resume's in the record,
15 as an expert in architecture. Then Mr. Ford as an expert,
16 his resume is also attached, in building permits
17 applications. He has been also recognized as an expert here,
18 and at OAH, in permitting matters.

19 CHAIRMAN HILL: Right, so everybody's already in
20 the book.

21 MR. BROWN: Mr. Teass is in the book, aren't you,
22 and Mr. Bello, and I believe Mr. Ford has also -- because
23 he's been in your book.

24 CHAIRMAN HILL: I'm sorry; what's your name again?

25 MS. RIPPE: My name's Mariah Rippe. We were the

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1 firm hired to do the drawings.

2 CHAIRMAN HILL: So you're here as an expert in?

3 MS. RIPPE: The drawings on the project, itself.

4 MR. BROWN: She's more of a fact witness.

5 CHAIRMAN HILL: I'm just trying to understand
6 whether we have to evaluate her expertise to include her into
7 the book. You're saying you're just going to use her as a
8 fact witness.

9 MEMBER TURNBULL: Yes, I don't think we have a
10 category for a fact witness as an expert. I'm sorry.

11 CHAIRMAN HILL: Has her resume been submitted?

12 MR. BROWN: It has.

13 CHAIRMAN HILL: Where is it submitted?

14 MR. BROWN: It's attached to my prehearing
15 statement, 47, starting with J-1, 2, 3.

16 CHAIRMAN HILL: I'm sorry to do this to you.
17 What's your name, again?

18 MS. RIPPE: Mariah Rippe.

19 CHAIRMAN HILL: Could you please tell us how
20 you're an expert?

21 MS. RIPPE: I'm the one who produced the drawings
22 and worked through this project with the client.

23 CHAIRMAN HILL: You're an architect?

24 MS. RIPPE: I'm not a licensed architect. I work
25 at a firm where we have licensed architects and engineers.

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1 MEMBER TURNBULL: Well you can't be qualified as
2 an architect, then.

3 MR. BROWN: We're not calling her as an architect.
4 We're calling her as somebody who was involved in the
5 preparation --

6 MEMBER TURNBULL: We don't have a category. What
7 do we call this person? You say a fact finder. I don't --

8 MR. BROWN: A fact witness.

9 CHAIRMAN HILL: She's just a witness.

10 (Simultaneous Speaking.)

11 CHAIRMAN HILL: She's not an expert. That's fine.
12 You're a witness. We'll move on. All right, Mr. Brown, go
13 ahead.

14 MR. BROWN: Mr. Bello, Mr. Teass, and Mr. Ford are
15 in the book.

16 CHAIRMAN HILL: Okay, I got all that.

17 MR. BROWN: What I'd like to do is, briefly, with
18 Ms. Rippe, she can give us just a brief description of the
19 permits -- and I think one of the things the Board wanted to
20 know is the changes that occurred from the original permits
21 to the subsequent permits. If I could, perhaps the most
22 efficient -- do you want me -- I'll ask you questions?

23 MS. RIPPE: (Off-mic comment.)

24 MR. BROWN: The original permit, which were
25 1706219, which was issued March 31, 2017, that permit

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1 included the removal of the façade trim or cornice or rooftop
2 embellishment that --

3 MS. RIPPE: Correct.

4 MR. BROWN: It also provided for the rear
5 addition.

6 MS. RIPPE: Correct, yes.

7 MR. BROWN: And an above-grade connection --

8 MS. RIPPE: Correct.

9 MR. BROWN: -- between the front and the rear.
10 You were also responsible for the revision of that permit
11 that was issued in April of 2018.

12 MS. RIPPE: Correct.

13 MR. BROWN: You made changes to the above-grade
14 connection, but did not change the footprint of it.

15 MS. RIPPE: Correct. The footprint has not
16 changed throughout the entire process.

17 MR. BROWN: Were there changes in the rear
18 addition?

19 MS. RIPPE: No.

20 MR. BROWN: Were there changes in the overall
21 footprint of the building, including the front connection and
22 rear?

23 MS. RIPPE: There's not been any changes in the
24 overall footprint, height, use of the building.

25 MR. BROWN: The roof hatch was changed in the

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1 second permit.

2 MS. RIPPE: Correct.

3 MR. BROWN: Going back to the original permit,
4 important, it showed the perpendicular guard rail that's on
5 the current permit.

6 MS. RIPPE: Correct.

7 MR. BROWN: In the second revised permit, and
8 again, was there change made to the footprint of the
9 building?

10 MS. RIPPE: No.

11 MR. BROWN: Was there change made to the
12 connection?

13 MS. RIPPE: No.

14 MR. BROWN: Was there a change made to the removal
15 of the, quote, cornice?

16 MS. RIPPE: No.

17 MR. BROWN: Was there -- there was a change to
18 show the newly constructed addition at 1127 7th Street.

19 MS. RIPPE: Correct. During the process of this
20 permit, the neighboring structure to the left, which was 1127
21 7th Street, constructed -- had a permit and constructed their
22 structure. Our permit drawings did not reflect that from our
23 original permit because it was not constructed during the
24 time of our initial site visit and construction and original
25 permit. Therefore, we modified our drawings to reflect that

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1 new structure.

2 MEMBER TURNBULL: How did you modify them?

3 MS. RIPPE: We showed the neighboring structure.
4 It wasn't there before, but we showed that neighboring
5 structure on our drawings. It extended beyond what was there
6 previously, and we showed how its footings interacted with
7 our footings and how its structure interacted with our
8 proposed structure.

9 MR. BROWN: All right, no questions about the
10 permit history? What I'd like to do is start one by one
11 through the issues. We'll start first with the guard rail.
12 Ms. Rippe, the point you made is that the guard rail has been
13 shown consistently in all the permit iterations?

14 MS. RIPPE: Correct.

15 MR. BROWN: If I could, Mr. Ford -- I'm going to
16 surrender my seat. If you could -- and this goes back to
17 your career at DCRA -- could you tell us the origin of the
18 guard rail requirement?

19 MR. FORD: The guard rail requirement came into
20 the codes back in the late 1990s. I had it placed in the
21 code, the D.C. supplemental code. I was on a building and
22 was almost blown off, so I had placed in the code that any
23 walking surface within six feet of the edge of the building
24 would have to have a guard rail. Thus, it was placed in the
25 code. Now, that did not pertain to buildings that had

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1 parapet walls that would act as a guard because parapet walls
2 are about 30 inches up from the roof, so that acted as a
3 guard. But if it's across the face or opening of the
4 building edge, then that's a life safety issue. I had it
5 placed in the code. It's still there.

6 MR. BROWN: The guard rail that's running
7 perpendicular to the party wall, it's there to meet that code
8 requirement.

9 MR. FORD: That's correct. The main reason I put
10 it there, because if there's equipment on the building and
11 equipment has to be serviced, I don't want a workman being
12 blown off the building.

13 MR. BROWN: Any -- Mr. Teass, on the guard rail,
14 please tell the Board your experience on this particular type
15 of guard rail, perpendicular to the party wall.

16 MR. TEASS: I think that the key issue here -- and
17 it was discussed earlier -- is that there's a section of the
18 railing that's parallel to the property line, and that's
19 subject to the zoning setback. There is -- and in
20 conversations we've had with the Zoning Administrator on
21 other projects, when a portion of the guard rail is related
22 to life safety, as Mr. Ford indicated, the setback didn't
23 apply in that case.

24 In this case, the piece of guard rail is serving
25 solely to provide a life safety function. I think it's

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1 important to note that visually, that guard rail is entirely
2 below or at the same height, and thus not visible, due to the
3 parapet wall. The parapet wall extends around the
4 circumference of the roof to provide fall protection for
5 anyone who's on the roof.

6 MR. BROWN: The parapet wall is taller than the
7 --

8 MR. TEASS: That's correct.

9 MR. BROWN: As it relates to being set back from
10 the rear or the front of the roof, as the case may be, it's
11 set back one to one, or in excess of one to one.

12 MR. TEASS: My understanding, yes, is that the
13 railing, the perpendicular piece of railing that's shown in
14 the illustration, which is parallel to the front and the back
15 building face, meets or exceeds the one-to-one setback
16 relationship.

17 MR. BROWN: Mr. Bello, in your experience, both
18 as a Zoning Administrator, would this perpendicular guard
19 rail be subject to a setback requirement?

20 MR. BELLO: Just to underscore the testimony
21 that's been given so far, the setback would be applicable to
22 the wall that it's parallel to, which would be the front wall
23 of the building. In this particular case, what would have
24 been a requirement for a guard rail is set by the party wall,
25 the parapet wall. So there, in fact, is no guard rail on the

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1 side.

2 MR. BROWN: If there are no questions, I'd like
3 to move on to the --

4 VICE CHAIR HART: If you were trying to -- if you
5 were subject to the setback -- I don't know if Mr. Toye or
6 Mr. Brown wants to answer it -- then what happens to the --
7 how would you solve that? Do you have to -- if you were
8 subject to it, you'd have to change something, so what would
9 that do to the design? I don't know.

10 MR. BELLO: What we're saying here is that the
11 purpose of the guard rail is served by the parapet wall. You
12 will note that there isn't any walking space, per se, between
13 the roof hatch and the side wall, so the height of the
14 parapet wall actually serves the purpose of --

15 VICE CHAIR HART: It's not that I don't understand
16 the purpose of the guard rail. What I'm saying is if this
17 were required to actually be set back, how would you go about
18 doing that? It may be you; it may be the architects, Mr.
19 Teass. I don't know.

20 MR. BELLO: I think I'll let the architect answer
21 that.

22 MR. TEASS: As it's currently shown, the guard
23 rail is providing protection for the entirety of the roof
24 surface, which is also protected by the parapet. I think an
25 alternate design solution would be to restrict, so instead

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1 of the full roof area being accessible, you would only limit,
2 and you would place the mechanical units, which you see in
3 the illustration, within a, if you would imagine, a square
4 within a square or a rectangle within a rectangle, where all
5 portions of that guard rail were basically -- served to
6 protect an occupant from falling down the opening that's
7 created when the doors open.

8 VICE CHAIR HART: So you would move that
9 perpendicular portion of the rail to go to the back, and then
10 put the air handling units -- move them out of the way?

11 MR. TEASS: I don't know if there's a slide of the
12 roof. I think I could communicate it best in a drawing form,
13 but I think if you were to think about the -- instead of that
14 railing being from the piece of parallel railing to
15 transitioning to a perpendicular railing that extends to the
16 property line, if you were to almost reverse that condition
17 and extend the railing to what is the plan north of this
18 sheet, encompass around the mechanical units, encompass on
19 any other relevant portion of roof, I think that would be one
20 way to look at it as a way to have that comply with the
21 setback.

22 VICE CHAIR HART: Okay.

23 CHAIRMAN HILL: Mr. Hart, did you understand that?

24 VICE CHAIR HART: It looks like they're doing a
25 lot more than what I would think they would want to do, but

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1 --

2 MEMBER TURNBULL: Mr. Teass, if you want, there
3 is a laptop computer screen over there. If you click -- if
4 you go over that, you can draw on it, and it will show up on
5 the drawing. If you click red or black and use your finger
6 on the screen, you can draw or sketch what you're talking
7 about.

8 MR. TEASS: Can you switch the slide to an overall
9 roof plan, or an overall -- even the building footprint would
10 be sufficient. That would be sufficient. Here, the red line
11 -- right now, that roof structure occurs approximately in
12 that portion of the front building, that portion of the
13 building, and then there's a similar condition at the rear
14 portion of the building. Right now, the guard rail extends
15 from the property line, and then it takes a right angle and
16 extends down the length of the hatch. If that hatch were
17 reconsidered, so that you actually --

18 PARTICIPANT: Here's an eraser.

19 MR. TEASS: If we erased those portions here and
20 we created a space on the roof that conforms -- so you're
21 addressing the setback in front from both sides and from the
22 rear. Again, the whole roof is protected from somebody
23 falling off the roof by the parapet. I think that would be
24 one option, an alternate design strategy to create a solution
25 that conforms to both the building code and the zoning code,

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1 if need be. Hopefully that was reasonably clear.

2 VICE CHAIR HART: I understood that.

3 CHAIRMAN HILL: Mr. LeGrant, this is where I get
4 a little confused in some of this stuff that's going on. If
5 that were to happen, they would need a new permit again, and
6 that wouldn't be considered a change that would have kicked
7 them into any of the new issues.

8 MR. LEGRANT: Well --

9 CHAIRMAN HILL: It's not a substantial change.

10 MR. LEGRANT: Right.

11 CHAIRMAN HILL: It's not a substantial change.

12 MR. LEGRANT: I don't believe it would be a
13 substantial change. It might be a revision. It might be a
14 change that would trigger a building permit revision. My
15 limited understanding of the authority of an inspector under
16 the building code is they are given some authority to make
17 changes in the field that don't rise to the level of needing
18 an actual revision to the building permit. As to whether
19 this alternate proposal would do that, I do not know.

20 CHAIRMAN HILL: All right, thank you. Anybody
21 else? Okay, Mr. Brown.

22 MR. BROWN: I'm going to move on to the cornice
23 issue. I'm using that as a shorthand. I'm not acknowledging
24 that this is -- in fact, deny vehemently it's a cornice.
25 I've got a picture here, a picture of -- an actual picture

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1 and a drawing. Again, Ms. Rippe, in the original permit and
2 all the subsequent permits, there were no changes from the
3 removal of that façade element.

4 MS. RIPPE: Correct, no changes.

5 MR. BROWN: The first permit was issued March 31,
6 2017.

7 MS. RIPPE: Correct.

8 MR. BROWN: Which was before the cornice provision
9 was enacted.

10 MS. RIPPE: Of April 28th, correct.

11 MR. BROWN: Mr. Teass, for a moment, we're
12 considering this as a rooftop architectural element, not
13 including the definition of cornice. Please explain your
14 conclusion about why this isn't a rooftop element.

15 MR. TEASS: Can you advance to Slide 17, please?

16 MR. BROWN: Which one?

17 MR. TEASS: It's the definition with the graphic
18 and entablature.

19 MR. BROWN: That one?

20 PARTICIPANT: No, the next one down.

21 MR. TEASS: There we go. I think that this
22 diagram and the definition from Webster's Dictionary speaks
23 to the -- our understanding of a cornice, and that it's not
24 the entire assembly, which I think would be viewed as an
25 entablature. It's actually the cornice, which is just the

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1 top-most portion. In this particular case, if you go to the
2 previous slide, which shows the photograph, you can see that
3 there's actually several elements that form the crown or the
4 entablature of the building. The top-most piece is the
5 cornice. There's probably -- it's a little bit difficult to
6 see in this picture, but my recollection is there's somewhere
7 between three and four courses of brick, and then there's an
8 applied architectural element that sits below that. Overall,
9 you could consider the entire assemblage an entablature, but
10 I would postulate that only the top-most portion would be
11 considered a cornice, as per the definition and graphic.

12 MR. BROWN: So you wouldn't consider that façade
13 trim element as a rooftop?

14 MR. TEASS: Not according to my understanding of
15 what zoning defines as a rooftop architectural element.

16 MR. BROWN: Similarly, you don't consider it a
17 cornice.

18 MR. TEASS: Not the portion that sits below the
19 brick.

20 VICE CHAIR HART: Just a question, not the portion
21 that sits below the brick?

22 MR. TEASS: If I might, on the screen here -- I
23 don't know if there's a way to enlarge that photograph at
24 all, two more slides down.

25 PARTICIPANT: Is there?

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1 VICE CHAIR HART: Yes, but --

2 PARTICIPANT: Which one are you --

3 MR. TEASS: Actually, this works, right?

4 VICE CHAIR HART: Yes.

5 MR. TEASS: Here, the cornice is really just this
6 top --

7 CHAIRMAN HILL: Are you speaking into one of the
8 microphones? Sorry, Mr. Teass.

9 MR. TEASS: I'm sorry. The cornice, in this case,
10 is the portion of that overall assemblage. It's at the very
11 top. There is an existing masonry section of wall below the
12 cornice, and then there is a piece of façade trim or
13 architectural, basically, ornamentation that sits below that
14 brick. In my understanding and my view of that would be that
15 the top-most piece is the cornice. The pieces below,
16 overall, they might compose an entablature, but it's only the
17 top-most portion that's the cornice.

18 VICE CHAIR HART: Going along that line of
19 thinking, you're also saying because it doesn't, in your
20 mind, meet the definition -- yes, meet the definition of what
21 a cornice is, then it is just a -- some ornamental piece that
22 is not protected by the zoning regulations.

23 MR. TEASS: I would characterize it as a piece of
24 architectural ornamentation that had not previously been --
25 that had not been previously protected. I think under the

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1 revised definition that came out after the building permit
2 was issued, that would be a conversation I'd want to have
3 with the Zoning Administrator if we were to look at this for
4 a future project.

5 MEMBER TURNBULL: Mr. Hart, I think the intent of
6 the new regs is that there's a certain character to a
7 building like this that we're trying to protect. I think
8 that's where the discussion would come up with the Zoning
9 Administrator, as far as the cornice of the architectural
10 ornament.

11 VICE CHAIR HART: But isn't there also a certain
12 character of the neighborhood that you want to --

13 MEMBER TURNBULL: Of the neighborhood, right --
14 (Simultaneous Speaking)

15 VICE CHAIR HART: So if you have buildings that
16 are -- and this line is being kept for the row houses to the
17 north and south or east or west or wherever, but that are
18 adjacent to it, and you have a line of them, you're trying
19 to maintain that -- that's what the zoning regulations would
20 be doing, Commissioner Turnbull.

21 MEMBER TURNBULL: You're correct. The current
22 plan does nothing to enhance or to blend in with the
23 elevation of the street.

24 VICE CHAIR HART: I'm sorry I'm asking
25 Commissioner Turnbull all this, but the intent, also, was to

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1 be inclusive of different types of -- it would be hard to say
2 every name. In the language, it's always kind of such as
3 this, but were you really trying to be inclusive of all
4 types, or was it more trying to focus it on turrets and the
5 list of things that are actually -- that are currently
6 included in the language?

7 MEMBER TURNBULL: I think we were trying to do
8 that. I think the whole thing was that there was an aspect
9 to -- we were concerned, I think, as Mr. LeGrant was getting
10 to, trying to protect those elements that heretofore had not
11 been protected. I think we were trying to include those
12 elements that we thought were important for a structure to
13 maintain.

14 VICE CHAIR HART: Thank you.

15 CHAIRMAN HILL: Okay, Mr. Brown.

16 MR. BELLO: If I might just add, with all due
17 respect to Mr. Turnbull, I think these provisions were passed
18 as a part of the pop-up regulations, which were specifically
19 focused on restricting the ability of these kind of buildings
20 to convert to three or more units with massive additions on
21 them.

22 The Zoning Administrator, even right now,
23 interprets buildings that have turrets or some other rooftop
24 elements of being able to construct those additions if the
25 addition is set back three feet from those turrets. So these

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1 additions are still possible, but elimination of those
2 turrets are not. This seems to be more of an architectural
3 embellishment of the façade of the building.

4 CHAIRMAN HILL: Mr. Brown.

5 MR. BROWN: Yes. If there are no other cornice
6 questions ---

7 CHAIRMAN HILL: No, I think you can move on.

8 MR. BROWN: Okay. If I could -- my apologies.
9 I would like to focus in on the question raised about
10 whether, in fact, this is a single building. I've put up the
11 definition. I think we've all conceded that fully above
12 grade, enclosed, heated, and artificially lit has been
13 satisfied, so we focus our attention on Subsection D and the
14 either one or two and focus in on, first, common space. Mr.
15 Teass, you tell me which drawing you'd like for purposes of
16 common space.

17 MR. TEASS: If you could put up, yes, this slide,
18 I think, is helpful to understand how the overall building
19 operates. This structure, on the right-hand side here is the
20 street, on the left-hand side is the alleyway.

21 VICE CHAIR HART: Can we make this a little bit
22 larger? If you go down to the bottom -- anyhow, just make
23 it like it's a slide. That's the one. Thank you.

24 MR. TEASS: What you're seeing here is both the
25 cellar level and the first floor or the ground floor level

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1 of the building. Again, the street is to the right-hand
2 side. The two parking spaces that are accessed from the
3 alleyway are on the left-hand side, or to the east. What
4 we've tried to do is highlight some of the circulation paths
5 as to how these different portions of the building would be
6 used. I think one thing to note is that essentially, a row
7 house has two front doors. It has a front door to the
8 street, and then there's a front door to a yard, court,
9 alley.

10 You use that second front door as a way to get to
11 your parking space. You use it as a way to take your trash
12 out, to let your kids get to their bikes, etc. I think here,
13 it's important to understand how the building operates. I'm
14 going to try to utilize the drawing tools here to talk about
15 the resident of Unit A, the front portion of the building,
16 so they would come in off the street, be able to come into
17 their unit here.

18 They would also have a second front door that
19 takes them out, down into the common passageway into the
20 courtyard, and then traveling out. Then underneath the rear
21 portion here, by doing so, it allows them access to their
22 parking, as well as their trash and any other features they
23 would like to have in the rear portion of their yard.

24 Similarly, if you imagine the resident of the rear
25 portion of the building, they're actually accessing the front

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1 stairs coming down underneath a portion of the front
2 building, coming up into the shared courtyard, and then
3 entering their unit through that common area into one of the
4 two front doors for that unit. They have the ability to then
5 exit that unit and go out to grade, again, for the purposes
6 of utilizing their automobile or taking out the trash or any
7 number of other things that people do in their backyards.

8 I think, inherently, the area that's created
9 between the two buildings, there's a shared courtyard, which
10 I think the applicant spoke to earlier, in terms of the
11 design intent of providing light not just to these units, but
12 also to the neighbors, but also, inherently, there's a
13 pragmatic function, in that it connects the front unit to the
14 courtyard and to the rear parking space, as well as the rear
15 unit to the street, and also to that shared courtyard. It's
16 very much an integral part of this. I just don't see how it
17 could be viewed any other way.

18 MR. BROWN: Question?

19 CHAIRMAN HILL: I guess you can keep going.

20 MR. BROWN: Pardon?

21 CHAIRMAN HILL: You can keep going.

22 MR. BROWN: Mr. Bello, if you could, and if you
23 want to continue with this drawing, the connection --
24 discuss, in your view, from the zoning analysis standpoint,
25 the common use element.

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1 MR. BELLO: Whether you call that connector a
2 lobby or a corridor, I think it's without dispute that it is
3 common space that's accessible to the two occupants of the
4 building, and it does connect the two halves of the single
5 building. It also provides unrestricted passageway between
6 the two separate portions of the building, in the sense of
7 each occupant not only has access to that connector, they
8 also have unrestricted access to access the rear of the
9 property without hindrance. I think that the connection
10 actually complies with both of those provisions,
11 notwithstanding that you only need to provide -- comply with
12 one.

13 MR. BROWN: The definition of single building also
14 provides that the maintenance of the doors, locked doors to
15 each of the units is acceptable.

16 MR. BELLO: Section 309.2 states that
17 notwithstanding Subtitle B-309.1, a single building shall or
18 may contain multiple units or dwelling units that do not
19 share access. The code did anticipate this kind of design,
20 and the access that's simply not shared is the private access
21 to those two dwelling units.

22 MR. BROWN: Does this building exist, physically
23 and functionally, as a single building for purposes of
24 zoning?

25 MR. BELLO: Absolutely, it does.

1 MR. BROWN: I spoke earlier about the RF-1
2 compliance. There are no restrictions in the RF-1 that would
3 prevent a single building two flat?

4 MR. BELLO: Not that I'm aware of, no.

5 MR. BINETTE: Questions?

6 CHAIRMAN HILL: Anyone? No, I think we'll have
7 questions at the end, Mr. Brown, so go ahead.

8 MR. BROWN: If we could, then, the final issue is
9 the ten-foot rear addition. I think we've had sufficient
10 testimony that the original permit, which included the rear
11 addition, was permitted March 31, 2017. That was prior to
12 the Zoning Commission enacting, on April 28th, the ten-foot
13 restriction. The subsequent permits -- and Ms. Rippe
14 testified to it and can answer any questions -- made no
15 change, ever, to the rear addition. It maintained the same,
16 so that there was no event that subsequently triggered the
17 ten-foot setback rule.

18 The other point that I think came up in DCRA's
19 testimony that was also in one of my prehearing statements
20 was the vesting provision, very specific, that was added by
21 the Zoning Commission later, that for permits that were
22 accepted prior to March 27, 2017, that were complete, that
23 those permits would be allowed to be processed to completion,
24 not subject to the ten-foot setback restriction. Mr. LeGrant
25 testified, and he's going to provide documentation that the

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1 original permit was accepted on March 24, 2017, which would
2 be subject to the vesting provision. But more importantly,
3 you've got a double vesting because vested as of March 24,
4 2017, but also vested because the original permit was issued
5 before the ten-foot setback rule ever existed, and no changes
6 were ever made to that. I think the question of vesting is
7 well established in the record. If I could ask Mr. Bello --
8 and this goes to both the cornice and the ten-foot setback
9 rule -- please describe the application of the vesting rule
10 to the -- based on the original permit and the subsequent
11 revisions.

12 MR. BELLO: Going by the Board's most recent
13 interpretation of the vesting rules, a property vests two
14 ways, one that they have filed before an amendment to the
15 zoning regulations, and that that permit be issued prior to
16 the final adoption of the amendment. This is the case here.
17 Not only was this permit filed before the adoption of the
18 amendment to the zoning regulations, a permit was issued to
19 the property.

20 Secondly, I think one has to take a look at the
21 practical applicability of these provisions. I would give
22 an example. If the owner of this property had proceeded to
23 construct on this property without any issues, and they had
24 constructed the ten foot beyond the adjacent property, they
25 had constructed their foundation walls on the first-floor

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1 level, and they decide to amend something about that zoning
2 regulations, the appellant's case would be that the Zoning
3 Administrator gets the opportunity to revisit all of the
4 zoning issues, which would be completely impractical because
5 this building would be halfway completed onsite. The point
6 is that not all revisions, per se, can be revisited in
7 totality. A revision has to have significance to the zoning
8 provisions in effect at the time that revision is applied
9 for, and there has to be a substantial deviation from what
10 was already approved.

11 CHAIRMAN HILL: Okay. Mr. Brown, we've gone --
12 I know we took up some of your time, in terms of questions,
13 but we're starting to get a little bit over.

14 MR. BROWN: Yes so.

15 CHAIRMAN HILL: Your microphone is not on. I'm
16 sorry.

17 MR. BROWN: My apologies. I think subject to
18 questions, we'll conclude.

19 CHAIRMAN HILL: Okay. I do have some questions.
20 Maybe we'll do this. The Board will have its questions.
21 Then we'll take a quick break. Then we'll do rebuttal, okay?
22 Then, we'll go through everything that we're going through.
23 This is great. It's so polite, hands and everything. Just
24 give me one second. Then afterwards, just let everybody else
25 -- I hate to tell you all this, but we're going to go to

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1 lunch.

2 MR. ECKENWILER: We can resolve the case in your
3 absence, Mr. Chairman.

4 CHAIRMAN HILL: I wish that were so true. I'm
5 sorry, Mr. Brown, you were about to say something.

6 MR. BROWN: Maybe, by rebuttal, you meant
7 cross-examination, but --

8 CHAIRMAN HILL: I wish.

9 MR. BROWN: We raced through my folks, so they're
10 all subject --

11 CHAIRMAN HILL: Rebuttal from -- not rebuttal,
12 cross from the other side, and that's going to happen. Then
13 we'll do rebuttal, and then you'll get to do cross on the
14 rebuttal, and then we're going to do the conclusions. This
15 is like a murder trial. To Mr. Cummins, he -- it's a murder
16 trial to him.

17 MR. CUMMINS: I'm here to kill this permit.

18 CHAIRMAN HILL: Right. That's good. We're all
19 having fun before lunch. Mr. Brown, my questions were really
20 kind of to the breezeway thing, so if the architect wants to
21 come up to whatever it was. I think it's 35.

22 PARTICIPANT: One of the slides?

23 CHAIRMAN HILL: Exhibit 35-C. It's the ANC's
24 prehearing statement.

25 MR. ECKENWILER: Mr. Chairman, our second revised,

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1 so really the operative prehearing statement is Exhibit 46.

2 CHAIRMAN HILL: I'm just trying to look at the
3 thing that says breezeway, and then has stairs going down.

4 MR. ECKENWILER: That would be Exhibit 35 was the
5 one addressing the original -- that's our first revised PHS,
6 and that addressed the original permit, when it was
7 characterized as a breezeway. That's correct.

8 CHAIRMAN HILL: All right, give me a second, then.
9 So I'm at the right place? If somebody could pull it up,
10 that would be great, 35-C, ANC 6's prehearing statement, Tab
11 C, plans.

12 PARTICIPANT: Is that --

13 CHAIRMAN HILL: No.

14 MR. ECKENWILER: Mr. Chairman, if I may, if you're
15 looking for the original permit plans, I submit that the more
16 convenient place to look is in the attachments to Exhibit 46.
17 I apologize. It's either 46-B or 46-D. If that's what
18 you're looking for, the place where it talks about breezeway
19 and shows what that connector used to look like --

20 CHAIRMAN HILL: Where are you saying, 46 --

21 MR. ECKENWILER: Yes, let me just get my hands on
22 that because, for convenience, every time I resubmitted a
23 PHS, I tried to put everything into it, so it'll all be in
24 one place.

25 CHAIRMAN HILL: That's all right. I can just ask

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1 about it. I can also ask about it. For me -- and this is
2 to the applicant -- again, the lobby and how the lobby is
3 being used. Mr. Teass, you had showed us how this -- people
4 would come in and out of their unit. What I'm just confused
5 about -- this might take longer, and maybe this will happen
6 after the break, but I'm kind of curious what's around --
7 either side of this building is another building, right? So
8 originally, I was trying to understand how this lobby was
9 going to be used.

10 That's what I'm trying to still get at. Even
11 beyond that, then, there was whether or not the grade had
12 changed at some point when it was determined to be called a
13 lobby, as opposed to a breezeway. I'm just kind of sticking
14 with this common connection thing to understand a little bit
15 more. You can show me whatever you want to show me that
16 shows what's on either side of this and how it's a lobby.

17 MR. TEASS: When you're referring to what's on
18 either side, do you mean the row house to the north and the
19 row house to the south?

20 CHAIRMAN HILL: That's one part, yes.

21 MR. TEASS: This is an attached row house. It has
22 a two-story structure to the south, and now a three-story
23 structure to the north, so there's no way to get to that
24 shared closed court without traversing one of the two
25 corridors that's located at the cellar level. Here, at the

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1 front, there is a below-ground --

2 CHAIRMAN HILL: Sorry; that's where I got
3 confused. It is a closed court?

4 MR. TEASS: It is a closed court. My
5 understanding that it meets the size and area requirements
6 for a closed court.

7 CHAIRMAN HILL: Sure as hell hope so. Walk me
8 through this again.

9 MR. TEASS: I think that I may have gone through
10 it a little bit quickly the first time, but on the lower
11 portion, the lower plan shown here is the cellar. The cellar
12 has two corridors that lead -- one leads from the street
13 down, underneath the front portion of the building, up into
14 -- there's a set of stairs, so you go down, and then you go
15 up to get to that closed court here.

16 There is a second set of stairs that you go down,
17 and then underneath the rear portion of the building here,
18 and another set of stairs that take you up to get you out to
19 the building. So at the cellar level, there is a corridor
20 that runs from the front of the property to the rear of the
21 property.

22 That corridor is interrupted by stairs that go
23 down at the street, come up into the courtyard, go back down
24 again under the other building, and then come back again to
25 get into the rear yard. That's how, at the cellar level, how

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1 the circulation works. When you move to the ground floor,
2 the first floor here, you're within, already, in that closed
3 court, so you have the opportunity -- a resident or a visitor
4 has the opportunity to enter in and come up the set of stairs
5 into the closed court and either go into Unit A, or they also
6 have the opportunity to go into Unit B. I would say
7 conversely, if the occupant of Unit B or the occupant of Unit
8 B -- sorry, the occupant of Unit A wanted to take their trash
9 out or go to their car, they would exit and go down
10 underneath the building.

11 VICE CHAIR HART: Yes, the hard part about this
12 is that because you have different levels that you're talking
13 about, it is a little bit hard because you are going down,
14 and then going back up to get to the same level that you
15 started at. At the street level, you are at zero elevation,
16 then you're going down eight feet, and then you have to go
17 back up to zero elevation at the closed court, and then you
18 have to go back down if you want to go out of the building.

19 That's the part that is a little bit -- kind of
20 confusing. Because you're doing this moving up and down.
21 It's hard to see it on the plan because -- it's maybe a
22 little easier to see in an elevation or a section, I guess,
23 but it is somewhat hard to follow if you're just looking at
24 it at a plan. I appreciate the colors, I think, because they
25 do help you understand what the path is. What you're just

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1 saying is the blue path on the bottom is kind of how you're
2 going from the street level down, and you're going through
3 the cellar, and then you're going back up to the same level
4 as the street in the courtyard, the closed court, and then
5 you can enter into the building.

6 MR. TEASS: Correct.

7 VICE CHAIR HART: The second building.

8 MR. TEASS: Correct. So I think that the blue
9 that you're seeing here reflects the occupant or the visitor
10 to Unit B, and the red is the circulation path to an occupant
11 or a visitor to Unit A.

12 VICE CHAIR HART: It's a long path for B to get
13 to their front door because they're having to go underneath
14 Unit A to get to their building.

15 MR. TEASS: Yes, I would agree.

16 VICE CHAIR HART: Which is just an unusual case
17 because you typically would be getting into your building
18 when you go down. That would be the entrance. This is an
19 entranceway to the building that -- to the portion of the
20 structure that's -- I don't -- I've got to say it is really
21 hard, when you're flipping this building and trying to
22 understand which direction you're going because some of the
23 drawings have the front of the building on the left-hand
24 side, some of them have the right. You're talking about east
25 and west being what you would consider north and south on a

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1 drawing, so it's made it really confusing as to where all of
2 this stuff is going. I'm following it because I'm
3 understanding where you're starting from, but that's not a
4 -- it's not optimal to go through plans and it's flipping
5 that way. I'm just saying, just in general.

6 MR. TEASS: Noted.

7 MEMBER TURNBULL: In the original breezeway, did
8 it still serve both buildings, or did it only have an exit
9 going down to the corridor?

10 MR. TEASS: My understanding is the original
11 permit that was approved had -- there was a courtyard, and
12 there was a connection. I think that the tunnel underneath
13 the front building -- and I'll look to Ms. Rippe for some
14 clarification on this, as well, but that corridor was only
15 serving the rear unit. In a sense, the corridor was still
16 serving the rear unit in both the original iteration and the
17 revised iteration.

18 MEMBER TURNBULL: I'm looking at Exhibit 35-C.
19 I sort of see this breezeway, and I see the stair coming
20 down. It looks like it goes to that cellar corridor, but it
21 only serves one unit. You really can't get to two units from
22 that breezeway.

23 MR. TEASS: I think in the original configuration,
24 there was a passage that went underneath the front building,
25 came up to an intermediate landing, so you could go out into

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1 the courtyard and presumably access Unit A, and then you
2 could also continue up into Unit B. That was one of the
3 things that was clarified in the revision to the permit.

4 MEMBER TURNBULL: Could you provide us with
5 something that shows what that looked like.

6 MR. TEASS: I don't have access to that right this
7 moment.

8 MEMBER TURNBULL: Okay. For the record, could we
9 get something that sort of shows the major change on the
10 breezeway as to what it really looked like?

11 MR. TEASS: We could certainly prepare an exhibit
12 that showed the two side by side.

13 MEMBER TURNBULL: Yes.

14 CHAIRMAN HILL: Okay, Ms. White.

15 MEMBER WHITE: Mr. Teass, did I pronounce that
16 correctly?

17 MR. TEASS: Thank you very much. Yes, you did.

18 MEMBER WHITE: Did you actually do the design for
19 these passageways?

20 MR. TEASS: We did not. We were brought in after
21 the project was permitted to understand -- both as an
22 independent peer review, to understand what the spatial
23 configuration was, and to understand any potential issues
24 that came out of it.

25 MEMBER WHITE: One of the issues on appeal is

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1 whether or not it's a single building. The appellant made
2 some arguments with respect to why it isn't a single
3 building. One of the issues had to do with the fact that you
4 don't have free and open access, some of it is locked. It's
5 not easily maneuverable from one part of the building to the
6 other part of the building. I'm trying to remember some of
7 his exact words. Basically said it's a restricted passage
8 that's locked. I just wanted to get your opinion on whether
9 or not that is the case with respect to that particular issue
10 on appeal.

11 MR. TEASS: Sure. I think if you were to think
12 about this not in this particular case, but if you were to
13 think about another type of building that you had two
14 portions of the building and a common lobby that connected
15 the two, you would still have a way for someone to get in off
16 the street, into the building. You would still have a lobby
17 that would be under some degree of security, but once you're
18 within, there's an area of common circulation.

19 That common circulation is open to everyone who's
20 coming to either lives or visit the building, but that you
21 still have a lock on your unit door. I think the way to
22 think about this is that you would have -- in this case,
23 there's a door here that goes into Unit B, and a door here
24 that goes into Unit A. Both of those doors would be locked,
25 but the intent is that the door in the middle that serves the

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1 courtyard would not be locked, so that it would allow that
2 free and unencumbered access from either Unit A or Unit B or
3 visitors to either of those units to come and go. My
4 understanding is, just to continue in that line of thought
5 for a moment, originally, where you were -- the idea about
6 this locked door, that you would have this -- in name only,
7 but operationally, those doors would be locked on a
8 consistent basis to prevent people come in and really use
9 that space. I think that's not the case here.

10 (Off-mic comment.)

11 MR. TEASS: Correct, it is not the case.

12 CHAIRMAN HILL: Okay, so Mr. Teass, you weren't
13 the original architect?

14 MR. TEASS: That's correct. We did not undertake
15 the design of this. We only undertook this as a peer review.

16 CHAIRMAN HILL: Got it. The original architect's
17 not here, is he, she as far as you know?

18 MR. TEASS: My understanding is that Mariah was
19 the project designer, who was working under the guidance of
20 a registered engineer, who reviewed this.

21 CHAIRMAN HILL: I got you. Okay. I'm going to
22 need a little bit more clarification as to this area.
23 Whenever we come back -- because we're coming back because
24 I still don't know how we're going to get to a decision, yet,
25 at this point. What I want to know, again -- I'm just stuck

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1 on the 309.1 part. Again, what I'm having difficulty
2 visualizing, because I'm not an architect, is the fully above
3 grade, the enclosed, the heating and artificially lit, and
4 either -- I understand, it's one or or -- either the one, the
5 common space shared by users of all portions of the building,
6 such as lobby, rec room, loading dock, or service bay, or
7 space that is designated and used to provide free and
8 unrestricted passage. You guys aren't the -- you're not
9 doing the two. You're just doing the No. 1, right? That's
10 what I understand.

11 MR. BROWN: No, I think we --

12 CHAIRMAN HILL: You're arguing both.

13 MR. BROWN: We're arguing both, but we --

14 CHAIRMAN HILL: Okay, fine. Then you can show me
15 in more clearly -- how I can clearly understand how you're
16 arguing both. Because now, I guess now that I'm thinking
17 about it a little bit more, you're just arguing the access
18 to the courtyard. Because in the drawings that we saw -- and
19 there's just so much stuff in the record, but of all the
20 stuff that we've seen, we just see a side view of something
21 that says lobby, so it's confusing to see how people are
22 accessing that.

23 It's a closed court. People are all coming in
24 from the front doors. If you can provide further clarity for
25 me, at least, to 309.1, and you can even think about it while

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1 we continue to go through this, if you want to, but it's just
2 harder for me to visualize how you're meeting 309.1. Thank
3 you. Anybody else got any questions?

4 MEMBER TURNBULL: Just following up on what you
5 said, the drawing that we have in front of us, showing the
6 exit way, I would like to see that on the original version
7 of the breezeway, somehow, how that worked on the original
8 drawings. I think you were going to get to that anyway.

9 MR. TEASS: Yes, I think that it's now common
10 practice by the Zoning Administrator's office to provide a
11 graphic example of before and after, and I think that we can
12 utilize that format to present an exhibit to the Board that's
13 more illustrative.

14 MEMBER TURNBULL: Okay, thank you.

15 MR. BROWN: Mr. Hill, in your focus on 309.1, but
16 you're not challenging or concerned about the above-grade,
17 heated, unlit/lit elements. I think we've moved beyond that.

18 CHAIRMAN HILL: I'm sorry. I'd like to see
19 something that is easier to understand, in terms of the fully
20 above grade, enclosed, heated and artificially lit. I'm
21 going to go back and look and find it. I'm sure it's all in
22 here, as well. But if you can help me out and show me where
23 it is, again, because I'm just having a hard time visualizing
24 it. Maybe that's because I haven't had anything to eat in
25 hours. Does anybody have any more questions before we take

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1 a quick break before we go to rebuttal -- not rebuttal,
2 cross.

3 MR. ECKENWILER: Mr. Chairman, if it helps -- I
4 don't know if it will -- I have exactly one question on
5 cross.

6 CHAIRMAN HILL: Oh, then let's do cross now. Go
7 ahead.

8 MR. ECKENWILER: If Mr. Brown is done. I just
9 want to make sure --

10 MR. BROWN: Yes, I'm --

11 (Simultaneous Speaking)

12 CHAIRMAN HILL: Mr. Brown, are you finished?

13 (Simultaneous Speaking.)

14 CHAIRMAN HILL: Okay.

15 MR. ECKENWILER: My question is for Mr. Teass.
16 Mr. Teass, if you can put before you Exhibit 46, this is ANC
17 6C's second revised prehearing statement. Starting on Page
18 6, there's a series of photographs.

19 CHAIRMAN HILL: Which one are you in again? Tell
20 us again. I'm sorry.

21 MR. ECKENWILER: This is 46. This is our most
22 recent prehearing statement, not in the attachments, but
23 rather in the body, there's a series of photographs, starting
24 on Page 6.

25 CHAIRMAN HILL: Forty-six.

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1 MR. ECKENWILER: I think you're looking at the
2 reply, Pat.

3 MR. BROWN: What are you looking --

4 MR. ECKENWILER: It's the second prehearing
5 statement.

6 CHAIRMAN HILL: Which page are you on of your --

7 MR. ECKENWILER: Page 6. There's some big photos
8 there. You'll know it when you see it. There we go. Mr.
9 Teass, if you can just take a look through those, I'll
10 represent to you that the captions on those are all correct.
11 These are all row houses in that same block, with the
12 addresses indicated under each photo.

13 My question for you, since you're here as an
14 expert, as a licensed architect, is to the person standing
15 on that sidewalk in front of these buildings, that lower
16 element, I think you, in your earlier testimony, said that
17 the larger projecting band, you considered that part of the
18 entablature, but not a cornice, per se, is that correct?

19 MR. TEASS: Yes, that's correct.

20 MR. ECKENWILER: But speaking from the standpoint
21 of someone standing on the sidewalk, looking up at this
22 building, isn't the visual experience for the average
23 passer-by who looks up at this the same as if -- it
24 functions, visually, as a cornice, from that point of view?

25 MR. TEASS: I think the first image you have on

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1 Page 6, in the upper left-hand corner, I think, speaks to the
2 condition that we're referring to, in that there's a
3 separation between the cornice and the trim below. What
4 you're seeing there is -- I believe that to be the subject
5 property, and that you're seeing there's a gap between the
6 two. I think it depends on your vantage point, but if you
7 were to look -- I would argue that yes, it's, overall,
8 compositionally an entablature, but I would not argue that
9 it would be viewed as a cornice.

10 MR. ECKENWILER: Nothing further, Mr. Chairman.

11 CHAIRMAN HILL: Okay, thanks. Mr. Cummins, just
12 give me one second. Does anybody have any questions? Okay.
13 All right, Mr. Cummins.

14 MR. CUMMINS: Yes, I just have a couple questions,
15 try to be very brief, and hopefully the responses can be,
16 too. For the design professional, the unlicensed -- Ms.
17 Rippe, did the original permit, B1706219, did that provide
18 20 percent pervious surfaces, as required by the zoning
19 regulations?

20 MS. RIPPE: From what I recall, yes, the 60
21 percent, we've never exceeded that, or we've stuck within
22 that real for the lot coverage, and the same with the
23 permeable spots. We have not changed that.

24 MR. CUMMINS: So there were no changes in the
25 design between the original permit and the revised permit to

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1 reflect the provided pervious surface?

2 MS. RIPPE: From what I recall, no.

3 MR. CUMMINS: I observe that does not appear to
4 be the case in the record, in terms of the permanent
5 drawings, where that was something that was in the original
6 ANC appeal that's a change between B1706219 and the second
7 revised permit before us today. But moving on, the
8 connection breezeway that became a lobby in the revised
9 permit, was that connection fully above grade in B1706219,
10 the original permit?

11 MS. RIPPE: Correct, the space was fully above
12 grade.

13 MR. CUMMINS: In B1706219, the original permit,
14 was the lobby breezeway connection fully above grade?

15 MS. RIPPE: Correct, there were stairs that went
16 down to the corridor, as well, but the lobby breezeway
17 section was fully above grade.

18 MR. CUMMINS: So was the connection, that entire
19 space between the two buildings, was that fully above grade,
20 the stairs that were -- were there stairs below grade within
21 the connection?

22 MS. RIPPE: There were stairs that went down to
23 the corridor, yes, but the lobby, itself, and the stairs
24 going to the unit was above grade.

25 MR. CUMMINS: Sorry, a new distinction between the

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1 lobby versus breezeway. The piece of the building -- if we
2 can go to -- if you look here, where it says -- on the
3 current plan, it says -- or if you look at the site plan as
4 being easier, the area, the connection between the two
5 buildings, there, that space where it says breezeway common
6 entrance, that entire rectangle that's there, that was
7 entirely, fully above grade?

8 MS. RIPPE: Correct, and then there was foundation
9 that was below grade.

10 MR. CUMMINS: I'm sorry; so there did exist --
11 there was --

12 MS. RIPPE: Foundation, yes, below grade.

13 MR. CUMMINS: So the connection was not fully
14 above grade.

15 MS. RIPPE: The connection is fully above grade,
16 but there's foundation supporting that connection which is
17 below grade.

18 MR. CUMMINS: When you enter -- I didn't mean this
19 to be a long question. We can maybe come --

20 VICE CHAIR HART: I think what you're getting to
21 is that Ms. Rippe is saying that the breezeway, itself, is
22 above grade, but the other part of it is not above grade.
23 There is a foundation part that's below grade. There's
24 stairs, also, that connect. I don't know what else the
25 question is. I understand that you're just trying to say

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1 that there is a portion that's below grade.

2 MR. CUMMINS: That is the question I have. It
3 does appear to be below grade on the plans.

4 (Simultaneous Speaking.)

5 MR. CUMMINS: The building section -- we can refer
6 to that later.

7 (Simultaneous Speaking.)

8 MR. CUMMINS: I don't want to belabor it. That's
9 something to look at in the plans. If this was a fully
10 compliant, fully functional, fully above grade connection
11 between the two buildings, why was it changed -- the entrance
12 changed from -- sorry, why is there now a covered walk space
13 underneath the lobby? What is the functional purpose of the
14 covered walk space -- sorry, crawl space, excuse me?

15 MS. RIPPE: The crawl space?

16 MR. CUMMINS: Yes.

17 MS. RIPPE: The crawl space is -- we raised the
18 footings up and made it a condition crawl space, versus
19 having the footings go down to the grade of the other
20 footings.

21 MR. CUMMINS: Were there stairs located in there,
22 where there's now crawl space?

23 MS. RIPPE: There were, to the corridor.

24 MR. CUMMINS: Did the entryway from the front
25 public street, 7th Street, was that on the -- it's currently

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1 depicted on the north side -- sorry, for the person who lives
2 in Unit 2, the rear tower -- the drawing you showed -- sorry,
3 Mr. Brown, if you could maybe just scan down to Slide, I
4 think it was 16. There, sorry -- is that 11? Apologies.
5 The passageway that's depicted here in blue, in the lower
6 drawing on Slide 11, was that corridor there approve in the
7 permit, B1706219?

8 MS. RIPPE: No, the front unit, we flipped the
9 interiors of that unit. We did not change the footprint of
10 the unit, we just flipped the interior aspects of that unit.

11 MR. CUMMINS: Did the corridor exist along the
12 north? It's currently depicted on the south side of the
13 property. Was that on the north side of the property?

14 MS. RIPPE: Correct.

15 MR. CUMMINS: So one would enter through the --
16 underneath the front door on the north side and go straight
17 through to what is now vented crawl space to access the
18 building?

19 MS. RIPPE: Correct.

20 MR. CUMMINS: So that was another change to the
21 permit between B1706219 and the revised permits?

22 MS. RIPPE: Correct.

23 MR. CUMMINS: Okay. Was there an area way in the
24 front of the building, on the south side, where there's now
25 an entryway? Did that area way exist in B1706219?

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1 MS. RIPPE: It flipped. We flipped the front of
2 the building. So yes, it did, it just was on the other side.

3 MR. CUMMINS: And with the door that's depicted
4 at that area way currently, would that be a locked door or
5 an open door, where anybody from the public could use to
6 access the lobby?

7 MS. RIPPE: It could be open.

8 MR. CUMMINS: So there would be no door there?

9 MS. RIPPE: No, there's a door, it's just not
10 locked.

11 MR. CUMMINS: Okay.

12 CHAIRMAN HILL: Okay.

13 MR. CUMMINS: That's all.

14 CHAIRMAN HILL: That's okay. Can you point me out
15 where the door is that's not locked? And by the way, can you
16 guys turn off your microphones? When more than one mic's on
17 at a time, it feeds back. Thank you.

18 MR. TEASS: I can answer that question here. So
19 what you're seeing here is the door at the cellar level.
20 It's really more of a gate that you would see, where you're
21 actually -- it's not a completely solid door, but it's a gate
22 that would be -- it would allow passage from both the
23 occupant of Unit B or a visitor to Unit B, or even, quite
24 frankly, the occupant of Unit A to come through that opening.

25 CHAIRMAN HILL: Okay. All right. Are you done?

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1 Are we good? Okay. Do you guys have any cross?

2 MS. LORD-SORENSEN: No.

3 CHAIRMAN HILL: Okay. We're going to take a quick
4 break. We're going to come back. We're going to take a
5 quick break.

6 (Whereupon, the above-entitled matter went off the
7 record at 2:10 p.m. and resumed at 2:25 p.m.)

8 CHAIRMAN HILL: Okay, we're going to get started
9 here again. We have a little bit of a different plan. What
10 we're going to do is we're going to have rebuttal from the
11 appellant, and then have an opportunity to cross the
12 rebuttal. Again, as efficiently as possible during the
13 rebuttal, please. Then we're going to probably continue this
14 because we're going to have a lot of questions now.

15 I'm sorry to let everybody know, but there's a lot
16 of questions that we're going to have, so there's going to
17 be information that we're going to request of everyone. And
18 then we're going to continue this, and then come back to do
19 the conclusions. That's the plan. Then we are going to take
20 a lunch break.

21 We have ordered lunch, so we're going to be able
22 to eat it out there, so it'll be faster, meaning we'll
23 probably get to -- well, we are going to get through
24 everybody, unless -- we're going to get through everybody.
25 That turns to rebuttal from the appellant. You can begin

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1 whenever you like.

2 MR. ECKENWILER: Thank you, Mr. Chairman. To
3 begin with, just sort of working through the --

4 CHAIRMAN HILL: Mr. Commissioner, I'm sorry; how
5 long do you think you're going to need for rebuttal?

6 MR. ECKENWILER: It's hard to say.

7 CHAIRMAN HILL: Okay. Ten minutes?

8 MR. ECKENWILER: I'm going to try and keep it
9 short. I know we've been here a long time.

10 CHAIRMAN HILL: Go ahead and start. I'm just
11 trying to put -- go ahead and start.

12 MR. ECKENWILER: With respect to the rooftop
13 railing, there is nothing in the text of the regulations to
14 support the distinction that was drawn in Mr. LeGrant's
15 testimony or the testimony that was offered on behalf of the
16 property owner. It doesn't say anything in there -- and I
17 think that's Section 1502.1(c).

18 It doesn't say anything about life or safety.
19 It's very clear. You need to have setbacks, under A, from
20 the front edge of the roof, B, the rear edge, C deals with
21 the side edge. It says one to one. Now, there's always room
22 for interpretation. I think we can all agree on that. But
23 when a regulation is clear on its face, the Board should
24 reject this attempt to sort of make up new arbitrary rules
25 that simply are not supported by the text of the regulation.

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1 Second, I want to anticipate, a little bit,
2 something that Mr. Brown went into earlier in his questioning
3 about the fact that the railing setback defect was not raised
4 in our initial appeal. That's true. I anticipate that Mr.
5 Brown's going to argue later that we're time barred with
6 that, and I just want to remind the Board that when we went
7 through the initial motion to incorporate, so that was the
8 first revised permit, ANC 6C thought that was not the proper
9 way to proceed. We thought that the appropriate way to
10 proceed was simply for us to file a new appeal because that
11 starts the clock all over again.

12 It truly is a brand-new permit. I'm just going
13 to say I hope you will reject the suggestion that we're time
14 barred. Every time they keep revising this permit, that
15 opens it up again for us to raise those issues. That's all
16 that I'll say on the railing.

17 CHAIRMAN HILL: I'll agree with you. Okay.

18 MR. ECKENWILER: With respect to the cornice, one,
19 this is not rebuttal. I think it's remarkable that Mr. Teass
20 admitted that there is a cornice on the front of this
21 building, and the plans show -- now he says it's a different
22 thing from what we've alleged. We've alleged it's that great
23 big band. He says it's that smaller band that does, in fact,
24 sit at the top of the parapet wall.

25 I'm happy -- if that's what he wants to argue,

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1 then we're fully in support of that. I really think the
2 whole thing is, if not a cornice, in the nature of a cornice.
3 But the point is there's a concession here now that that's
4 a cornice at the top of the parapet wall, that smaller
5 projecting band. That would likewise be removed under the
6 permit, the second revised permit. It sort of doesn't matter
7 which one you pick, that's a violation of E-206. Just to be
8 clear, again, here, Mr. LeGrant testified -- he couldn't
9 point to any specific provision in the zoning regulations
10 that would vest, or to use Vice Chair Hart's term,
11 grandfather that cornice removal.

12 The truth is, there isn't one, and you can't wave
13 your hands and say I'm just going to rely on the totality of
14 the zoning regulations because, again, it's very clear.
15 A-301.4 says when you amend a permit, you comply with the
16 regs in effect at the time of amendment, unless there's an
17 explicit exception. It has a cross-reference to those
18 various exceptions.

19 None of those applies. If you look at 301.14,
20 which was added under ZC 14-11, there is no reference -- it
21 references a bunch of other provisions, all of which have to
22 do with rear yards and depth of addition. It does not
23 reference E-206, and you cannot read it into there, and you
24 cannot invent some other non-existent subsection that vests
25 the cornice. It simply does not exist.

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1 There was also a suggestion from DCRA, both
2 written, and then I think it was implied in some of the
3 testimony, that we're time barred on this removal of cornice
4 objection, as well. As we said in our reply, Mr. Chairman,
5 that is frivolous because the language respecting cornices
6 was not in existence when the original permit was issued.
7 It was triggered -- its relevance to this proceeding was
8 triggered when the first revised permit was issued. That was
9 after cornices was added to E-206. And at the first
10 opportunity after that happened, we raised that objection.

11 There's really nothing more to say on that, except
12 that's frivolous. I have nothing more to say on the cornice
13 point. On the connector, Mr. Teass confirmed what I had
14 surmised from the drawings. The doors at either end of it
15 are locked. Mr. LeGrant has now conceded you can't have two
16 principal buildings, so he agrees with ANC 6C's position on
17 that point. Mr. LeGrant says that he relied on the common
18 space prong of B-309.1. He's not -- at least he did not
19 grant the permit on the basis of unrestricted passage.

20 The simplest way to think about this, Mr. Chairman
21 and members of the Board, really just sort of clear away the
22 underbrush. Let's forget about all the different
23 subprovisions and subparagraphs. Look at this backyard.
24 Frankly, we've got the drawing up here right now. This is
25 a Rube Goldberg arrangement, but I want you to think about

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1 an alternative universe, in which that connector is not
2 there.

3 What do you do if you're an occupant of one of
4 those two units? You can still walk down -- you have a set
5 of stairs leading from your unit, front or back, into that
6 interior courtyard. If you wanted to go the other direction,
7 so this sort of crisscross thing, you'd still walk across
8 that interior courtyard, go through the subterranean
9 corridor, come out the other side, basically going under the
10 other person's unit. That tells you why this connector is
11 a fig leaf.

12 It's not doing anything, other than trying to
13 weave together these two masses. It serves no function,
14 other than to attempt to circumvent the zoning regulations.
15 You could have no connector there at all. You could have two
16 L-shaped connectors that come out with separate doorways into
17 the backyard, and the function would be exactly the same.

18 You've still got to go outside. You're still
19 going to get rained on or snowed on or whatever. It's not
20 doing any of those things mentioned in 309.1(d)(1) or (2).
21 It's just a Rube Goldberg device to circumvent, and that's
22 all. Bear with me one moment. Frankly, Vice Chair Hart, I
23 think you expressed a number of concerns that there was a
24 lack of clarity of the function of why it's this way.

25 It is that way because it really does not make

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1 sense. You can conceive of someone building dwelling units,
2 but put aside the zoning regulations, just in terms of the
3 function of having two units on this lot, people can come in
4 and go out. You don't need to have that corridor there. So
5 I'll leave that. I have nothing further there on the
6 connector and the fact that there are two buildings.

7 And then finally, with respect to the ten-foot pop
8 back rule, Mr. LeGrant actually testified a couple different
9 things. One of the things he said was that the plans were
10 ready for review on March 29th.

11 I think the implication, and there is testimony,
12 is that they weren't ready for review before that date. He
13 said, at various points -- and I think this is also in DCRA's
14 written submission -- that they have deemed this application
15 to be accepted on March 24, 2017. And actually, that was
16 even in Max Tondro's email that I showed you earlier. I
17 think it was one of the exhibits to 46. It might be 46-H.

18 Deeming is just another way of saying I'm going
19 to call something what it isn't. I'm going to pretend that
20 the truth is something other than what it actually is. And
21 Mr. Tondro's email tells you what really happened is that
22 this application was accepted as complete on March 29th. No
23 amount of hand waving and deeming changes that fact.

24 I can say if my grandmother had wheels, she'd be
25 a bicycle, but she's not a bicycle. The truth is, this

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1 deeming is -- it's not real. So that goes to the timing and
2 the lack of entitlement for this deep rear addition, even
3 assuming it is a single building, to the benefit of the
4 vesting provision in A-301.14.

5 However, there's a second prong. So even if you
6 decide that this was timely filed and accepted as complete,
7 it has to have not substantially changed. Now, I walked
8 through with Mr. LeGrant. You saw, in the attachment, all
9 the exhibits -- all the sheets, excuse me, to Exhibit 59-A.
10 Those were all the drawings that were submitted in support
11 of the current permit, the second revised.

12 We looked at the bubbles, and the bubbles within
13 bubbles. There are literally dozens of changes that are
14 shown there. Various of the witnesses today have tried to
15 argue -- they have argued that the phrase substantially
16 changed in A-301.14 is somehow further constrained.

17 There was an argument that well, the rear addition
18 didn't really change, or the changes weren't really
19 significant with respect to the zoning regulations. They
20 didn't expand the building envelope. Again, that's not what
21 the text says. It says substantially change. It doesn't say
22 substantially change with respect to the zoning regs. It
23 doesn't say substantially change in that rear portion that
24 goes back more than ten feet.

25 The language is much broader than has been argued

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1 to you. Furthermore, as I detailed earlier, several of those
2 changes that have happened since the original permit
3 application do, in fact, go directly to zoning issues. Bear
4 with me one moment. So remember, we had this back and forth
5 where they added that really tall daylighter penthouse, and
6 then once I pointed out that was a mistake and violated the
7 regulations, it went away again. Then we went to a third
8 kind of hatch. That had zoning implications, in terms of the
9 setback, in terms of height.

10 The breezeway -- and I'm puzzled by this. Ms.
11 Rippe insisted, repeatedly, in her testimony and in response
12 to the cross from Mr. Cummins, that the original connector
13 was above grade. And that's just not so. If you look at
14 Exhibit 46, that's our second revised prehearing statement,
15 in the last section, where there are all the documented
16 changes between the original permit and the first revised.
17 If you look at Page 19, this is -- it cannot be more clear.

18 Looking at Page 19, Exhibit 46, Page 19 of that
19 exhibit, there are two extracts from the respective sheets
20 A-5.2. One of them shows that breezeway, it's below grade.
21 There are stairs going down to the subterranean corridor that
22 used to be on the north side of the property. It later got
23 flipped to the south side.

24 As contrasted with what you see on the bottom half
25 of Page 19, again, this change was made only after we pointed

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1 out that this failed the completely above grade prong of the
2 regulations. So not only is that a change, that's a change
3 that had zoning significance. They knew they'd messed up,
4 and they're trying to fix it here. So even if you buy this
5 argument, which is not a good argument, that substantially
6 changed only means substantially changed with respect to the
7 zoning regs, this changed with respect to the zoning regs in
8 meaningful, material ways. I mentioned before, you can go
9 back to our first revised prehearing statement.

10 There were separate kitchen facilities originally
11 in the front and rear cellars that created what appeared to
12 be third and fourth units, both of which would be illegal.
13 There's a two unit maximum, RF-1 zone, so you can only do a
14 flat here. Again, those have been taken out. So that is not
15 only a change, it's a meaningful change within the scope of
16 the zoning regulations, if you have a narrower lens on what
17 substantially changed means.

18 They put in pervious surface. Previously, as we
19 showed in both our original PHS and the first revised, they
20 claimed they had 40 percent pervious surface, and that was
21 just flat out not true. There are big concrete drains
22 leading into pipes. That's not pervious surface, so the 40
23 percent number was a fiction.

24 By our calculations, I think it was something like
25 5 percent or 6 percent tops. They've fixed that now, so

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1 that's no longer a basis for appeal in and of itself, but
2 it's a change from the original application. It's a
3 meaningful change, in terms of the zoning regulations.
4 That's all I have on rebuttal, Mr. Chairman.

5 CHAIRMAN HILL: Okay, great. Mr. Brown, do you
6 have any cross for the commissioner?

7 MR. BROWN: Mercifully, no.

8 CHAIRMAN HILL: Mr. Cummins?

9 MR. CUMMINS: Just would like to briefly add, if
10 I may. I'll be as brief as I can.

11 CHAIRMAN HILL: This is cross-examination. You're
12 not adding anything. You're just --

13 MR. CUMMINS: Okay, I have a couple quick
14 questions.

15 CHAIRMAN HILL: I don't know what you're doing.
16 Sure.

17 MR. CUMMINS: Commissioner Eckenwiler, did the
18 original -- Mr. Brown stated that the original permit,
19 B1706219, revised two earlier permits. Did those two earlier
20 permits actually exist, or were those only permit
21 applications that never resulted in a permit?

22 MR. ECKENWILER: If you --

23 CHAIRMAN HILL: Mr. Brown's trying to say
24 something, but I'm just kind of confused what Mr. Brown's
25 trying to say or whatever. Okay, go on. What's -- you were

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1 going to object to something.

2 MR. BROWN: I object, one, it's beyond the scope
3 of his testimony, and two, he's misquoting my testimony.

4 CHAIRMAN HILL: Okay, but that's okay. What was
5 your question, again, Mr. Cummins?

6 MR. CUMMINS: Mr. Brown describing Permit
7 B1706219, I believe in response to Commissioner Hart's
8 question about how did this come up earlier? How could they
9 have approved it -- seen it one day and approved it in eight
10 days? It says in the permit description that it revises two
11 earlier permits, but that's not correct.

12 It's clearly, and the permit's tracking status
13 shows, there were earlier permit applications that never
14 resulted in permits. Those permit applications were
15 canceled. But then somehow, B1706219 was issued in eight
16 days as a "revision" to two earlier permits that do not
17 exist.

18 CHAIRMAN HILL: Now, I'm just trying to
19 understand. What are you asking?

20 MR. CUMMINS: I'd like to clarify because at
21 multiple points, it may have just been that he misspoke in
22 describing the earlier permit applications.

23 CHAIRMAN HILL: No, that's okay. You're crossing
24 --

25 MR. CUMMINS: So I wanted to ask Commissioner

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1 Eckenwiler if he --

2 CHAIRMAN HILL: I'm just trying to understand.
3 You're cross-examining -- I'm just trying to understand the
4 question. You're cross-examining Commissioner Eckenwiler,
5 and the question again is what?

6 MR. CUMMINS: Is he aware that B1706219 did not
7 revise earlier permits, but as was stated earlier, it was not
8 a revision to any earlier permit.

9 CHAIRMAN HILL: All right, Mr. Eckenwiler.

10 MR. ECKENWILER: If the Board will look to Exhibit
11 59 --

12 CHAIRMAN HILL: You guys have got to turn off your
13 microphones so just one of you is on. Mr. Brown, if you
14 could turn yours off, too, please.

15 MR. ECKENWILER: If the board will refer to
16 Exhibit 59-B, like Bravo, those are the attachments to ANC
17 6C's reply, you can see two sheets -- these were both
18 produced to me back in May, under FOIA -- that show, with
19 respect to two prior permit applications, that those were
20 canceled on October 3, 2016. Mr. Brown has just put up one
21 of his slides. There was, as we detailed -- I'm not going
22 to --

23 (Simultaneous Speaking)

24 CHAIRMAN HILL: That's all right; I'm just trying
25 to understand, what is your answer to his question? I'm just

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1 trying to understand.

2 MR. ECKENWILER: The answer is yes and no. There
3 were two prior applications that were -- at the time, they
4 were canceled in October of 2016. Since then, and during the
5 pendency of this appeal, they were magically resurrected and
6 somehow incorporated into the original permit that ANC 6C
7 filed an appeal against.

8 CHAIRMAN HILL: Okay.

9 MR. ECKENWILER: So the permit records were
10 altered, and we go into detail on that in our reply.

11 CHAIRMAN HILL: Did you get your question
12 answered?

13 MR. CUMMINS: Thank you. I realize everyone wants
14 to move on. There's a wealth of information in the written
15 record.

16 CHAIRMAN HILL: Okay. The point of this -- I'm
17 just -- anyway, the point of cross is, again, to help the
18 Board find clarity in what was just spoken about, not to
19 provide new testimony, go over old testimony. So do you have
20 any more questions for the -- what just happened with the
21 commissioner?

22 MR. CUMMINS: No.

23 CHAIRMAN HILL: Does the Board have any more
24 questions of anybody? I do think we're going to need stuff.
25 Can you all start to think about whatever you're going to

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1 need? I do have a couple of questions, I guess. Can you
2 start to articulate what you might need? Now, what we're
3 going to do is we're going to have this continued. We're
4 going to ask things of people to provide clarity to us.
5 Everyone will then have an opportunity to respond to those
6 things that we ask for. Then we'll come back here and
7 provide -- and then just do conclusions, really. We'll give
8 a lot of testimony. Everything's been done. You're just
9 going to have an opportunity to do a conclusion and answer
10 questions of us from all the things that we're going to ask
11 from you.

12 I do have one question for the zoning
13 administrator. In the item that the appellant had brought
14 up -- and I know it's just Page 19. That's the only thing
15 I can find right here, which is Exhibit 46, thank you --
16 Exhibit 46, Page 19, where, again, they're speaking of this
17 change from the breezeway to the lobby and the above grade
18 or -- was there a change to -- you don't see anything with
19 this change that's going forth that would have affected your
20 decision?

21 MR. LEGRANT: No, and I'll just note that the top
22 image breezeway does not appear to show the grade, where the
23 bottom image does show -- there's a dotted line that says
24 exterior existing grade.

25 CHAIRMAN HILL: Okay, so I would like -- all

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1 right, does anybody know -- because I've got to figure this
2 out, this part, before we come back again.

3 MR. ECKENWILER: Mr. Chairman, you can, of course,
4 refer to the full permit drawings, so Sheet A-5.2, for the
5 various iterations of the permit will show that in context,
6 including a grade datum, if that's what you're looking for.

7 CHAIRMAN HILL: Okay. Does anybody know what they
8 want to ask?

9 VICE CHAIR HART: I'd requested earlier some
10 information about the cornices. Really, it was just trying
11 to understand an example of when you would have seen this as
12 being a cornice, or what you would consider that. I'd asked
13 it earlier, and I think we've gone a little bit too far.
14 We've gone a little bit longer than I originally thought this
15 was going to last, but that's fine. I was just trying to
16 understand how you -- another instance where you would have
17 said oh, yes, that's a cornice, so we have an example of what
18 that is. Right now, I just --

19 MR. LEGRANT: Right, I understand. Prior to the
20 addition of the language that specified cornices, there are
21 examples of my office treating, nonetheless, cornices as
22 protected rooftop architectural features, so I will look into
23 my records, see if we find an example.

24 VICE CHAIR HART: I appreciate that. I'm kind of
25 looking for no more than ten of them, if you can find ten.

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1 I'm trying not to make this be exhaustive, so that we have
2 hundreds of these things. I just need to have a few examples
3 of that.

4 MR. LEGRANT: I'll be lucky to find ten.

5 VICE CHAIR HART: I just have to -- I wanted to
6 make sure that we were limiting it to something. I think
7 we've also asked for a timeline, as well. It's just there's
8 a lot of different moving parts here. Commissioner
9 Eckenwiler, I do appreciate your stepping us through this.

10 Mr. Brown, you've also provided a -- I think we
11 have pieces of all this, and it would be helpful for us to
12 hear that I guess I'm asking for DCRA to do that, since you
13 all have that. As part of that, could you state where you
14 have made the determination that it is a -- the permit has
15 been -- it's a completed permit? Because I think that's part
16 of the --

17 MR. LEGRANT: Yes, I understand.

18 VICE CHAIR HART: Because there's a completed
19 permit, and there's also a permit issuance, which are not
20 necessarily the same two dates. Because there were some
21 things that Mr. Brown described as the permits being issued,
22 and those were a couple of days after you all said that the
23 permit was complete.

24 MR. LEGRANT: Right, we'll provide a full timeline
25 for the sited permits, the permit review history, including

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1 when they were submitted, when they were accepted as
2 complete, and when they were issued.

3 VICE CHAIR HART: I know this is -- that's a lot,
4 but it's helpful to see that sequence.

5 MEMBER TURNBULL: I think Mr. LeGrant was going
6 to provide some information on the alternate tracking data
7 on the case, the other system.

8 MR. LEGRANT: Yes.

9 MEMBER TURNBULL: I think the owner was going to
10 provide some drawings showing the breezeway plan and some
11 more clarification on how that really worked, some better
12 drawings on that.

13 MR. JAWED: Yes, we understand what the Board is
14 looking for and will provide that.

15 CHAIRMAN HILL: Okay, is that it? All right.
16 Again, just to reiterate what Commissioner Turnbull just
17 mentioned again, for me, again, I'm kind of just wrapping my
18 head around the 309.1. I saw there was -- again, I'm just
19 trying to understand what's fully above grade, what's
20 enclosed, what's heated and artificially lit, and then how
21 that common space is shared by -- you can do them all, if you
22 want to.

23 Apparently, I thought the zoning administrator
24 seems to be only concerned with D(1), but both of you seem
25 to be saying that D(1) and (2) are there, so if you could

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1 just provide something that's easier to understand, that
2 would be helpful. That being the case, when do you think you
3 might be able to provide all of this to us -- actually, Mr.
4 Moy, I'm just going to turn it to you, then, because then
5 everyone has to have a chance to respond. Then we come back
6 for a continued hearing.

7 MR. MOY: Let me work backwards a little bit, Mr.
8 Chair. Looking at the docket, staff would suggest that in
9 terms of open dates, I'm basing it primarily on the fact that
10 the next several hearings approaching, we have appeal cases,
11 so avoiding those dates, then the available dates we could
12 use would be -- for a continued hearing could be October 3rd
13 or October 24th, but I don't know if you want to go that far
14 out.

15 PARTICIPANT: That's a pretty tight time frame to
16 submit and --

17 (Simultaneous Speaking)

18 MR. MOY: Working from those dates, then, would
19 be from -- asking of DCRA, the property owner, I guess, in
20 this case, it would be Will Teass -- I don't recall if the
21 Board asked for any information from the appellant -- when
22 those filings can be submitted into the record.

23 CHAIRMAN HILL: We didn't ask anything from the
24 appellant. The appellant, I'm sure, will have commentary on
25 what is submitted by DCRA and as what's going to be submitted

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1 by the property owner, so they'll be the ones that will be
2 submitting that. Then I guess I forget how this circle ends.
3 Then there's another seven days that they'll have to respond
4 back to that?

5 MR. MOY: -- response time, which I think the
6 Board should allow at least a week, minimum, but that's up
7 to the Board -- to respond to the filings.

8 CHAIRMAN HILL: Okay.

9 MR. MOY: So again, when DCRA can provide
10 requested information, and then when the property owner can
11 provide their filing.

12 MR. ECKENWILER: Mr. Chairman, I'm going to insert
13 myself into this, just to offer a suggestion, see if that's
14 agreeable to everyone. I think October 3rd is probably too
15 soon. I don't presume to speak for DCRA, but I think some
16 of this may take a little time to pull together, and I know
17 they have other responsibilities.

18 I would propose we continue this to October 24th,
19 have the filings from appellee, the property, and DCRA due
20 on October 10th, have the response from ANC 6C due October
21 17th, one week later, and then that gives the Board a full
22 week to have --

23 CHAIRMAN HILL: October what? We'd be back here
24 on the 17th.

25 MR. ECKENWILER: No, Mr. Moy, I thought, had

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1 proposed October 24th as the next hearing date.

2 CHAIRMAN HILL: Right.

3 MR. BROWN: Let me jump in. I have a personal
4 conflict.

5 CHAIRMAN HILL: That's okay; I'm not here the
6 24th, and neither is Ms. White. Are we going to have a
7 quorum just with the --

8 MR. ECKENWILER: Are you saying you want to miss
9 a moment of this?

10 CHAIRMAN HILL: That'd be perfect for Halloween.

11 MR. MOY: Does that work?

12 CHAIRMAN HILL: Okay, so we'll come back here on
13 the 31st, so let's work back from the 31st. We'll come back
14 here on Halloween, unless you've all got young kids. You
15 should trick or treat the day before, then.

16 MR. ECKENWILER: Mr. Chairman, you could put this
17 on earlier.

18 (Simultaneous Speaking.)

19 CHAIRMAN HILL: It's okay. We'll figure it out.
20 The 31st. If we work backwards from the 31st, Mr. Moy.

21 MR. MOY: Okay, for point of discussion, continued
22 hearing on October 31st, responses, let's say, a week before,
23 so that would be October 17th -- let's say October 24th. We
24 can make that October 24th for responses. Let's say for
25 filings from DCRA and the property owner, we can make that

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1 October 10th. Would that be enough time for responses, two
2 weeks?

3 MS. LORD-SORENSEN: Is it possible to move it to
4 October 12th?

5 PARTICIPANT: It's up to the Board.

6 MS. LORD-SORENSEN: It's just a Friday.

7 MR. ECKENWILER: No objection from appellant.

8 PARTICIPANT: That's fine.

9 MR. MOY: Mr. Chair, filings on October 12th,
10 which is a Friday.

11 CHAIRMAN HILL: Sure.

12 MR. MOY: Then responses October 24th, okay?

13 CHAIRMAN HILL: Sure.

14 MR. MOY: Then we see everyone back Wednesday,
15 October 31st.

16 MR. BROWN: On the 31st, is that for testimony on
17 the material that's submitted? What do you envision?

18 CHAIRMAN HILL: I'm going to look to OAG or
19 whatever. I'm done with testimony. We just have some
20 clarification as to what we wanted to hear. Then I suppose
21 there would be a conclusion. We wouldn't take new testimony.
22 We would just be taking a conclusion from, I guess, the order
23 that I remember it going. Appellant goes first, then the
24 property owner, then DCRA, in terms of your conclusions. Is
25 that correct?

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1 PARTICIPANT: Do you anticipate the Board having
2 any questions of the witnesses on the new material?

3 CHAIRMAN HILL: I do.

4 PARTICIPANT: Then it would be a continued
5 hearing.

6 CHAIRMAN HILL: No, it's going to be a continued
7 hearing. The question from over there was whether or not
8 there would be testimony. The Board's not asking for
9 testimony.

10 PARTICIPANT: Well, there would be responses to
11 the Board's questions.

12 CHAIRMAN HILL: There would be responses to the
13 Board's questions. Is that clear?

14 MR. BROWN: Yes, it is, but not testimony --
15 (Simultaneous Speaking)

16 CHAIRMAN HILL: Not testimony. You guys aren't
17 come and give us anything new. Everything that we're getting
18 from you is what we may or may not have questions for you,
19 and we might not have any questions for you. I don't know.
20 But then you'll do your conclusions. Are we done?

21 MR. MOY: I believe so.

22 CHAIRMAN HILL: Okay, so we're going to break for
23 lunch, and nice seeing you guys. See you on Halloween.

24 (Whereupon, the above-entitled matter went off the
25 record at 3:00 p.m. and resumed at 3:38 p.m.)

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