

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 31, 2018

See yellow highlights on pages 216 230 238-239 240 258 264

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

ZONING COMMISSION MEMBERS PRESENT:

- MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- MARY NAGELHOUT, ESQ.
- MAXIMILIAN TONDRO, ESQ.

1 for the proposed new deck along the east wall of the  
2 building.

3 MS. NAGELHOUT: And otherwise to approve the  
4 application.

5 VICE CHAIR HART: And otherwise to approve the  
6 rest of the application.

7 CHAIRMAN HILL: Second. The motion made and  
8 seconded. All those in favor say aye.

9 (Chorus of aye.)

10 CHAIRMAN HILL: All those opposed? Motion  
11 passed. Mr. Moy?

12 SECRETARY MOY: Staff would record the vote  
13 then as 5:0:0. This is on the motion of Vice Chair Hart.  
14 Seconded by Chairman Hill. Also in support Ms. White, Ms.  
15 John, and Mr. Turnbull.

16 CHAIRMAN HILL: Okay, we're going to take a  
17 quick break before our last -- before our appeal.

18 (Whereupon, the above-entitled matter went off  
19 the record at 3:37 p.m. and resumed at 3:51 p.m.)

20 CHAIRMAN HILL: Okay, Mr. Moy.

21 SECRETARY MOY: Thank you, Mr. Chairman. The  
22 time is about 3:52; the board's reconvening after a break  
23 or recess. And the last action for the Board here is  
24 Appeal No. 19550 of ANC6C as amended in the appeal from  
25 the decision made on March 31st, 2017 by the zoning

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1 administrator, Department of Consumer and Regulatory  
2 Affairs to issue Building Permit No. B17006219 as revised  
3 by B1805207 to permit the renovation of a one-family  
4 dwelling to two separate one-family dwelling units RF-1  
5 Zone at premises 125 7th Street, N.E., Square 886, Lot 35.  
6 As the Board will recall, this was last convened and heard  
7 at a public hearing at its September 19th, 2018 hearing,  
8 and where the Board completed its hearing procedure and  
9 requested supplemental information from the property owner  
10 and from DC area and that is filed in the case record.

11 CHAIRMAN HILL: Okay, great. I think some  
12 people need to be sworn in, correct? Whoever needs to be  
13 sworn in, if you can please stand and take the oath  
14 administered by the secretary to the left.

15 SECRETARY MOY: Do you solemnly swear or affirm  
16 that the testimony you're about to present in this  
17 proceeding is the truth, whole truth and nothing but the  
18 truth?

19 Thank you; you may be seated.

20 CHAIRMAN HILL: Okay. All right, welcome back,  
21 everyone; whole table's full. Happy Halloween and let's  
22 go ahead and introduce ourselves from right to left,  
23 please.

24 MS. LORD-SORENSEN: Good afternoon. Adrienne  
25 Lord-Sorensen, Assistant General Counsel with the D.C.

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1 Department of Consumer and Regulatory Affairs.

2 MR. LE GRANT: Matthew Le Grant, Zoning  
3 Administrator DCRA.

4 MR. CUMMINS: Kevin Cummins, intervener; I'm  
5 the adjoining property owner at 1123 7th Street, N.E.

6 MR. ECKENWILER: Mark Eckenwiler, Vice Chair  
7 ANC6C.

8 MR. BROWN: Patrick Brown from Greenstein,  
9 DeLorme & Luchs on behalf of the property owner, Atlas  
10 Squared.

11 MR. TEASS: Will Teass, a principal with Teass  
12 Warren Architects here on behalf of the property owner.

13 MR. JAWED: Tarique Jawed, property owner of  
14 1125 7th Street, N.E.

15 MS. RIPPE: Mariah Rippe, residential designer  
16 and worked on the project, the drawings at Moment  
17 Engineering + Design.

18 CHAIRMAN HILL: Okay, sir. I'm sorry; can you  
19 spell your name for me as the property owner?

20 MR. JAWED: Sure, it's Tarique which is T-A-R-  
21 I-Q-U-E, the last name is Jawed, J-A-W-E-D.

22 CHAIRMAN HILL: Okay, great. So, we had a very  
23 full hearing the last time and there was a lot of  
24 questions that we had from everybody in terms of further  
25 clarification, for things that the Board wanted to look

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1 at. We did get all of the things that we asked for and I  
2 wanted to just kind of go over how I think we're going to  
3 move forward with this so that everybody knows and the  
4 Board also knows. So, I was going to -- so, this is my  
5 initial plan -- and you'll forgive me, I've kind of  
6 mentioned this already -- I'm kind of going through -- I  
7 just got back from overseas so I'm a little slower. And  
8 so I just want to walk through what I think we're going to  
9 try to do, which is that I'd be interested in -- the Board  
10 can tell me what you all's thoughts are on this -- but I'd  
11 be interested in kind of hearing a little bit of a summary  
12 of what we ask for of the appellant/intervener, DCRA, and  
13 the building owner. Then I thought we could ask questions  
14 of everyone, and so we'll just go ahead and ask our  
15 questions. We might try to ask them in the order of DCRA,  
16 intervener, appellant, and then property owner, or -- yes,  
17 that would be kind of my thought -- and then the different  
18 parties can cross each other's answers to the questions  
19 that we give. And the order that I was planning on going  
20 was the same way that the conclusion is at the end, which  
21 in the regulation says appellant, intervener, DCRA and the  
22 property owner. And I love that Commissioner Eckenwiler  
23 is nodding so I know that I'm following along correctly.  
24 And so that's the way that I had hoped to do the cross.  
25 And then after the cross there will be an opportunity for

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1 rebuttal from the appellant on everything because the  
2 appellant hasn't had an opportunity yet to rebut anything.  
3 Then there will be cross of the rebuttal from the other  
4 parties, and then there will be conclusions in the way  
5 that I went forward with all that.

6           So, does anybody have any questions either from  
7 the parties here or the Board as to what I had thought we  
8 would do with this last portion of the hearing?

9           MR. ECKENWILER: Mr. Chairman, just one process  
10 question; I had understood OAG to say at the last hearing  
11 that this was not to be testimony, it was only going to be  
12 the Board asking questions of the parties about what had  
13 been filed, but that we weren't going to be presenting  
14 additional testimony.

15           CHAIRMAN HILL: And that's fine. I should  
16 clarify where I'm at; I'm not asking for testimony. I  
17 guess I would just like to hear from -- and this is just  
18 now I guess asking the Board -- I would just like  
19 clarification as to what the parties thought we had asked  
20 for and what they had submitted. So that's not  
21 necessarily testimony; it's clarification as to what you  
22 thought we had asked for and what you submitted. So  
23 that's -- I'm not asking for testimony; I'm just asking  
24 for clarification as to what everybody thought was  
25 happening, right. So, that is not testimony; you're

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1 correct. And then there would be the questions, and so  
2 then the answers to the questions is what we would be  
3 providing cross, and then you, Commissioner, would get an  
4 opportunity to have rebuttal on everything because you  
5 haven't had that opportunity yet. Did that answer that  
6 question?

7 MR. ECKENWILER: I'll try to follow as we go  
8 along.

9 CHAIRMAN HILL: Okay, good. Does the Board  
10 have any questions or thoughts on what I just said?

11 Okay, so in that order, if the appellant could  
12 just kind of clarify what you thought we had asked for and  
13 then what you submitted, and then the same goes for then  
14 the intervener, DCRA, and finally the appellant. And I  
15 just want clarification; I just want what you submitted,  
16 that kind of thing because we have looked at everything,  
17 and it is quite extensive, as to what you had submitted  
18 since the last hearing. And so then we'll get into  
19 questions, so I just want clarification. So to start with  
20 you Commissioner Eckenwiler, if you could just again  
21 clarify what you thought the Board asked for of you and  
22 what you submitted.

23 MR. ECKENWILER: Our understanding was that the  
24 Board did not ask directly for anything from ANC6C; rather  
25 that we were merely afforded an opportunity to respond to

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1 what was requested, and our understanding of what was  
2 requested of the other parties, specifically DCRA and the  
3 property owner, is laid out on Page 1 of our supplemental  
4 statement; that's Case Exhibit 66. I can summarize that  
5 if you want orally.

6 CHAIRMAN HILL: Sure, that'd be great, just  
7 while I look at it.

8 MR. ECKENWILER: Okay, so our understanding was  
9 that there were three specific areas of coverage; the  
10 first was cornices that Vice Chair Hart asked DCRA to  
11 provide "An example of when you would have seen this as  
12 being a cornice or what you would consider that" adding  
13 from more than ten examples.

14 CHAIRMAN HILL: I'm sorry, Commissioner  
15 Eckenwiler; you don't have to read through it all again.

16 MR. ECKENWILER: I'm sorry.

17 CHAIRMAN HILL: That's okay. I do see exactly  
18 what you're talking about.

19 MR. ECKENWILER: I'll just rest on that.

20 CHAIRMAN HILL: Okay, that's fine. Mr.  
21 Cummins, what, again for your position, did you think we  
22 asked of you and/or submitted, or that you submitted?

23 MR. CUMMINS: No, I don't believe any specific  
24 information was asked of me, but I was not also barred  
25 from responding to the material that was submitted by DCRA

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1 and the property owner. So I submitted a response  
2 reacting to DCRA and the property owner and I included two  
3 exhibits along with that.

4 CHAIRMAN HILL: Okay. Ms. Lord-Sorensen, same  
5 question.

6 MS. LORD-SORENSEN: Yes, hi. When we were here  
7 last on September 19th there were four items that the  
8 Board asked DCRA to respond to; the first being they  
9 wanted DCRA to create a time line of the permits, which we  
10 submitted; we also included the cancelled permits. So  
11 everything that we have for 1125 7th Street we created a  
12 list and we provided that to the Board. Also, the Board  
13 asked us to identify changes which occurred between each  
14 revision, because the last time we were here, there was  
15 discussion about whether changes were substantial or not.  
16 And so we provided a copy of the original plans and if  
17 there were subsequent revisions we provided the relevant  
18 provisions and I circled all of the, every single change  
19 that was made between each revision where applicable. And  
20 the next there was a question about identifying when each  
21 permit was issued, submitted and completed. The Zoning  
22 Administrator had testified to the Board back in September  
23 that there were two tracking systems; there's Acela and  
24 ProjectDox. So what I provided to the Board I provided  
25 the ProjectDox work flow routing slip for building permit

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1 ending in 219 as well as some of the other building  
2 permits at issue here, as well as the Acela spreadsheet  
3 showing when items were accepted in ProjectDox versus when  
4 the permit was accepted according to Acela. And the last  
5 item the Zoning Administrator was asked to provide some  
6 cases, not an exhaustive list, but some cases where the  
7 cornice was protected and there is a little table that was  
8 provided to the Board identifying about four or five  
9 properties where the cornice was either allowed to be  
10 removed or was protected.

11 CHAIRMAN HILL: Okay. Mr. Brown?

12 MR. BROWN: Yes, and --

13 CHAIRMAN HILL: You need to push your button.

14 MR. BROWN: Sorry.

15 CHAIRMAN HILL: To some extent our ask for  
16 paralleled DCRA; we provided additional time line  
17 information; we also provided comparison of the permits  
18 basically before and after the various versions of the  
19 permits. And most importantly, and I think going to Mr.  
20 Turnbull's request and the overall Board, more detail,  
21 including a video simulation of the actual operation of  
22 the above-grade connection. And then we provided some  
23 additional cornice information and also prepared to  
24 provide some additional cornice information responsive to  
25 what DCRA filed that may or may not be helpful to the

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1 Board, but we have it available.

2 CHAIRMAN HILL: All right, so here we go. So  
3 who has questions and who'd like to start?

4 VICE CHAIR HART: So, this is question for, I  
5 guess this is Mr. Eckenwiler; you noted in your post-  
6 hearing statement that you -- I'm sorry; let me start this  
7 over again -- the owner noted in their post-hearing  
8 statement, Exhibit 63, that you have added additional ZA  
9 errors in the appeal that were not part of the initial  
10 appeal filing that you did originally, and they've noted  
11 that these added copies should not have been included  
12 really here because they are untimely. I know that you  
13 did discuss this in your Exhibit 66, but I wanted to hear  
14 some of this from you in testimony; and you have also kind  
15 of countered and said that the applicant didn't raise this  
16 in the hearing, or earlier, but waited until after the  
17 hearing to bring this up. So if you could just talk a  
18 little bit about that, not long, but just kind of what are  
19 your thoughts on that.

20 MR. ECKENWILER: Sure, and I plan to cover this  
21 in closing argument, too, but as to cornices the reason  
22 that the argument there is fundamentally frivolous is that  
23 the original permit was issued on March 31st, 2017; at  
24 that time and therefore in the regulations with which that  
25 permit was required to comply, the word "cornices" did not

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1 appear in Section E206, which is the architectural rooftop  
2 element provision at issue here; it was a month later on  
3 April 28th when that text officially came into effect in  
4 that regulation, and it was at that point that cornices or  
5 architectural features in the nature of cornices came with  
6 the protection of Section E206. So it wasn't at issue for  
7 the first permit, and frankly if we had argued then, Mr.  
8 Brown would be arguing the exact opposite; he'd be saying  
9 well they were trying to get us to comply with the  
10 regulation that hadn't yet come into effect. What does  
11 make it relevant is that subsequently the original permit  
12 was amended not just once, as in Mr. Moy's summary, but  
13 recall we're now on the second revised permit that was  
14 issued on August 2nd this year; that's B1811245. And  
15 under the regulations, I believe it's A301.4, every time  
16 you amend a permit you have to comply with the regulations  
17 that are in effect at the time of the amendment, unless  
18 there's an exception, and there is this list of exceptions  
19 in A301. There is no such exception applicable to the  
20 cornice provision, E206, which requires a special  
21 exception to remove any of those listed features, and  
22 therefore the argument really just didn't withstand  
23 scrutiny. A somewhat similar argument on the guard rail  
24 issue; as I pointed out -- I think this may have been in  
25 rebuttal on September 19th -- every time the permit gets

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1 amended, that's a brand new permit. And I mentioned in a  
2 colloquy with Chairman Hill, that we had actually opposed  
3 the incorporation of that first revised permit into this  
4 appeal because it meant that we weren't going to be able  
5 to start over; if we had started over, we filed a brand  
6 new appeal, the same timing requirements and we would have  
7 raised in that new appeal this objection. We, instead,  
8 raised in the, I want to say it was during the second  
9 revised pre-hearing statement --

10 VICE CHAIR HART: The fact that you have to  
11 kind of think about that makes it -- I know that it's  
12 hard; that's what I'm saying; there's a lot of -- you've  
13 provided a lot of information to us which I appreciate  
14 because it's very thorough. I know that it gets hard to  
15 try to figure out kind of when did this actually happen in  
16 this sequence because of the amount of changes that we've  
17 had to deal with over time, but I appreciate it. And yes,  
18 I don't know what Mr. Brown would or would not say to the  
19 cornice thing; you may be correct on it, but -- so you're  
20 basically saying that this is really because of some of  
21 the timing of where we have -- where some of the zoning  
22 regulations have changed, and with respect to where the  
23 permit, what stage the permit was in at that point. You  
24 couldn't have raised an issue because it was premature in  
25 some cases.

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1 MR. ECKENWILER: Vice Chair Hart, I think I  
2 might turn that around a little bit and say that all of  
3 these are triggered by the fact that the original permit  
4 was amended not once but twice, and in the case of the  
5 cornice you have the additional factor that there was an  
6 intervening amendment to the relevant regulation, and we  
7 raised that objection at the first available opportunity  
8 after becoming aware of the issuance of the first revised  
9 permit. That was the first permit amendment after that  
10 text change.

11 VICE CHAIR HART: I appreciate the  
12 clarification, and that's very helpful for me. Thank you.

13 CHAIRMAN HILL: Wait a minute; I'm just trying  
14 -- so I know Mr. Brown wanted to say something and now Mr.  
15 Cummins wants to say something. So I'm trying to figure  
16 out how we're going to get through this in an efficient  
17 manner.

18 It's okay, Mr. Cummins.

19 So, I suppose we can go ahead and ask questions  
20 and have cross of all those, each individual question,  
21 because then at least it provides more clarity I suppose,  
22 right, because we'll remember it, or we can try to ask all  
23 of our questions and have cross of all of our questions.  
24 What does the Board think?

25 MEMBER JOHN: Mr. Chairman, the issuance of the

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1 cornice is quite important. So it would help to sort of  
2 drill down for a minute or two; it might get rid of some  
3 of the cross-examination later.

4 CHAIRMAN HILL: Okay. So then Mr. Commissioner  
5 -- the commissioner has just asked a question -- so in  
6 terms of the order of cross it would have been Mr.  
7 Cummins, you have any questions for, or cross I should say  
8 concerning the testimony that was just given?

9 MR. CUMMINS: I have a fact on the record to  
10 point out that's directly relevant to Mr. Hart, so then I  
11 can pose that in the form of a question to Mr. Eckenwiler.

12 CHAIRMAN HILL: Pose it in the form of a  
13 question to Mr. Eckenwiler.

14 MR. CUMMINS: Commissioner Eckenwiler, are you  
15 aware that the intervener's first pre-hearing statement  
16 did raise the issue of the cornice protection and that in  
17 the response by Mr. Brown on behalf of Atlas, he did in  
18 fact raise an objection that it was not timely at that  
19 time?

20 MR. ECKENWILER: I do recall that it was raised  
21 in your initial filing; I don't recall what Mr. Brown's  
22 response was to that.

23 CHAIRMAN HILL: So Mr. Brown, do you have any  
24 cross questions for Mr. Eckenwiler, or do you have a point  
25 that you'd also like to make in the form of a question?

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1           You need to push the button.

2           MR. BROWN: Yes. Commissioner Eckenwiler, the  
3 original permit issued March 31st, 2017, you have  
4 characterized that in several points in your briefs as  
5 providing for the total removal of the front facade,  
6 correct?

7           MR. ECKENWILER: Yes.

8           MR. BROWN: And that permit, in your own words,  
9 approved the total removal of the front facade, including  
10 the facade trim or what you later want to call a cornice,  
11 that was all authorized to be removed?

12           MR. ECKENWILER: Yes, I think we covered all  
13 this on September 19th, but yes.

14           MR. BROWN: And at the time of the original  
15 permit -- well, let me back up -- you've also attempted to  
16 argue that the facade removal was at that time pre-cornice  
17 rule, also an illegal removal of a rooftop architectural  
18 element; is that correct?

19           MR. ECKENWILER: I'm not sure I understand your  
20 question. So let me see --

21           CHAIRMAN HILL: Give me a second; even I don't  
22 understand the question. So, Mr. Brown, what I'm trying  
23 to get at is, so there will be an opportunity for  
24 everybody to give a conclusion and there will be an  
25 opportunity -- anyway, my point was I'm trying to

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1 understand your question based upon the testimony that  
2 Commissioner Eckenwiler gave in a response to a question  
3 that Vice Chair Hart asked. So again, ask your question.

4 MR. BROWN: When the original permit was issued  
5 and it authorized total removal of the front facade, using  
6 your own words, did you consider that a violation of the  
7 existing rule having to do with the removal of "rooftop  
8 architectural elements"?

9 MR. ECKENWILER: No, and that's why it was not  
10 raised in the initial appeal because the development  
11 language was not yet in the regulation.

12 CHAIRMAN HILL: Okay. All right. Okay, we're  
13 good?

14 MR. BROWN: One last follow-up.

15 CHAIRMAN HILL: Sure.

16 MR. BROWN: The original permit was revised and  
17 then revised again. Did any of those revisions change the  
18 approved fact that the original permit authorized total  
19 removal of the front facade?

20 MR. ECKENWILER: No, but it did so in a  
21 different legal environment.

22 CHAIRMAN HILL: That's okay. Can you say that  
23 again, Mr. Brown?

24 MR. BROWN: The question I asked was, did the  
25 original permit authorize the total removal of the front

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1 facade, which Mr. Eckenwiler has acknowledged. And I  
2 asked him the question, did the second -- did the first  
3 revised permit or the second revised permit in any way  
4 alter or change the previously approved total removal of  
5 the front facade; and his answer was that those permits  
6 did not change the authorized total removal of the front  
7 facade.

8 CHAIRMAN HILL: Commissioner Eckenwiler, was  
9 that your answer?

10 MR. ECKENWILER: I'd say all three permits --  
11 let me just recharacterize it because I think I agree with  
12 what Mr. Brown said -- all three permits from the original  
13 through the second revised have authorized, or currently  
14 authorized the removal, the total removal of the front  
15 facade.

16 CHAIRMAN HILL: Okay. All right, so it was one  
17 question.

18 MR. BROWN: Mr. Chairman, can I share --

19 CHAIRMAN HILL: Yes, sure.

20 MR. BROWN: One, I'm not a big fan of cross-  
21 examination.

22 CHAIRMAN HILL: I've already said that a  
23 thousand times, Mr. Brown.

24 MR. BROWN: So you and I are --

25 CHAIRMAN HILL: But it doesn't matter what I

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1 think.

2 MR. BROWN: Yes, but I think the Board asking  
3 questions is critical, and I don't want to cut that off.  
4 But the cross-examination after it, in my view -- and I'll  
5 ask others -- is really unnecessary, because again, the  
6 Board's asking --

7 CHAIRMAN HILL: That's okay. Mr. Brown, I  
8 appreciate your comment and I guess I haven't been here  
9 long -- or actually I've been here now relatively long --  
10 four years -- no, I'm just saying -- not for this case --  
11 I've been here relatively long, right, and what I'm saying  
12 is that I have had a difficult time in general trying to  
13 understand cross-examination; however, as it's been told  
14 to me many times, this is the process and the Office of  
15 the Attorney General has already pointed this out to me  
16 that this is the process. So I'm going to do my best to  
17 make sure that we can be as clear as possible during the  
18 cross, so we're just asking questions about the answer  
19 that was given and not try to provide further testimony,  
20 because what's really going to happen here today and I'll  
21 let you guys know, we're not going to make a decision  
22 today, there's just so much stuff on the record and  
23 there's so many things going on, and it is I think  
24 necessary or important for the Board to be able answer  
25 questions kind of freely without having to worry about how

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1 much longer each question is going to add on. Because  
2 believe it or not, probably there's a bunch of mental math  
3 going on up here; which is like okay if I ask five  
4 questions we're here until 7:00, if I ask no questions,  
5 we're leaving right away. And I don't know if that helps  
6 anybody. So I'm just kind of throwing that out, for the  
7 more that you all keep this going, the less clarity might  
8 happen, okay?

9 So, Mr. Eckenwiler?

10 MR. ECKENWILER: I just want to say I agree  
11 with the spirit of what I understand Mr. Brown to be  
12 saying, which is neither assessing objection with the  
13 Board asking questions whatever questions the Board wants  
14 to ask; it's the interplay across the parties that I think  
15 will consume --

16 CHAIRMAN HILL: It is -- so I'm going to try my  
17 best, okay, and we're going to try this in a different way  
18 now, I guess. We're going to ask our questions, okay, and  
19 we're going to go back to what I thought was my initial  
20 concept, which is that everybody is going to go through  
21 cross of all the answers, okay, and we're just going to  
22 do it in one big bunch. And so we'll see how that goes,  
23 okay, because I want to get our questions answered, okay?

24 So let's go ahead and just ask questions, okay?  
25 So, who would like to go next?

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1           MEMBER WHITE: I just have one question  
2 regarding the cornice, to the commissioner. What evidence  
3 do you provide on the record that the removal of the  
4 cornice was improper?

5           MR. ECKENWILER: Ms. White, the answer lies in  
6 the date of the issuance of the first and second revised  
7 permit. So that language came into effect on April 28th  
8 of 2017; it says that certain architectural features, and  
9 on April 28th, 2017, that list of features which was  
10 amended to explicitly include cornices, specifically  
11 features such as cornices as it's worded; and subsequent  
12 to that the permit was amended, and under the regulations  
13 8301.4, every time you amend a permit you have to comply  
14 with the regulations in effect at the time of amendment.  
15 That's the default rule; you don't get to go back to what  
16 was before. There are exceptions, and those are laid out  
17 explicitly in the text of 8301. There is no relevant  
18 exception applicable to cornice removal, which means that  
19 at the time of the first and second revised permits were  
20 issued, the applicant had an obligation to comply with  
21 E206 which says you can't remove these features unless you  
22 get special exception relief, and no such special  
23 exception relief had been granted. So I hope that answers  
24 your question.

25           MEMBER WHITE: Okay, thank you. That's my

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1 question.

2 CHAIRMAN HILL: Okay, sure. Go ahead,  
3 Commissioner Turnbull.

4 COMMISSIONER TURNBULL: Commissioner Eckenwiler,  
5 Mr. Brown will argue the definition of "cornice" and talk  
6 about an architectural embellishment or a feature, and we  
7 can argue that this definition, you can make a case  
8 whether the thing on top is a coping and down below is the  
9 cornice. His idea -- I don't want to put words in Mr.  
10 Brown's mouth, believe me -- but I think he refers to it  
11 as an architectural embellishment or a feature, not a  
12 cornice.

13 MR. ECKENWILER: I think the testimony was that  
14 it's applied trim; I think that was the phrase of choice.

15 COMMISSIONER TURNBULL: Right, in your  
16 viewpoint, though, does that matter whether his term is  
17 not a cornice or not? Are we going to argue -- have we  
18 come to a place in a point of this hearing that we can  
19 somehow agree on the term "cornice"? Maybe we're not  
20 going to; I don't know.

21 MR. ECKENWILER: As I'll cover in closing  
22 argument, frankly I think that everybody at this table has  
23 conceded that there is a cornice under the terms of the  
24 regulation at some point in either their testimony or  
25 their filings. One of the points that I made on September

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1 19th, and I'll re-raise this one to get to a closing  
2 argument, is the language of the regulation it says -- and  
3 I don't have the full text in front of me -- but it says  
4 features such as, and then there's a long list of things,  
5 so it's turrets, dormers and so on -- it says "such as  
6 cornices," so it includes not only things that are agreed  
7 to be cornices, turrets and so on, but my argument is  
8 things that are in the nature. So you might say it's  
9 really close to a turret; it's not technically a turret,  
10 but boy is it really -- like its half-brother -- but that  
11 would be protected as well. It doesn't mean that  
12 everything under the sun is protected, but things that are  
13 similar in nature to those enumerated features, as well as  
14 those enumerated features themselves. So that's the  
15 fallback argument. I'll say it again, I said it on  
16 September 19th and I'll repeat here; I don't think the  
17 Board will really need to reach that in this case and I'm  
18 prepared to cite to various items in the record that I  
19 think pretty clearly establish that there's agreement at  
20 this table, even if some people don't want to admit it.

21 COMMISSIONER TURNBULL: Okay, thank you.

22 CHAIRMAN HILL: Okay. Now I think we are  
23 putting words in people's mouths, just a little bit.

24 Like, I don't know if Mr. Brown agrees with you that he  
25 has come up with the same definition that you have, but

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1 that's what cross is for. So, next question.

2 MEMBER JOHN: Mr. Chairman, I have a question  
3 for Mr. Le Grant. So, I'm going to try to see if I can  
4 come up with an example; so if I have a permit for  
5 alteration and repair and I can remove my front steps and  
6 put in something different -- I don't know what that is --  
7 and the regulation changes and I can no longer remove my  
8 front steps, and that's the only thing I'm asking for --  
9 or no, I'm asking for something unrelated to the relief I  
10 got initially -- would it be your opinion that because the  
11 regulations changed, what I was already allowed to do  
12 under the previous regulations I could no longer do, even  
13 though the relief I was asking for had no connection to  
14 that permission I was first granted? And that's what has  
15 confused me during this entire conversation; every time a  
16 permit is revised, do we start over from the beginning and  
17 revise everything that was in that permit? Where does it  
18 end?

19 MR. LE GRANT: So, excellent question. And so  
20 I appreciate that. And to speak to what A301.4 says, and  
21 my approach; so if a permit is issued that permits that  
22 the regulations at the point that permit was issued  
23 allowed that, as a matter-of-right.

24 CHAIRMAN HILL: Can you start again? I'm  
25 sorry.

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1 MR. LE GRANT: Okay, so looking at A304.1 --  
2 A301.4, excuse me -- the question is, and I'll call it  
3 generally vesting, okay -- if you have a permit that was  
4 issued under a certain rule, and then the rules changed  
5 after that permit was granted, the question is -- first of  
6 all, it's not an issue that you may be allowed to continue  
7 that construction because you're vested under that rule.  
8 If, however, you come back and say we're revising the  
9 permit now, we're going to -- to use your example -- I was  
10 going to remove some steps and the rule changed that you  
11 can't remove the steps, but I'm going to add a rooftop  
12 penthouse or something, and let's say the rule change was  
13 you cannot do a rooftop penthouse as a matter-of-right;  
14 then the way I would say, even though you're vested in  
15 that original permit that's allowed you to remove the  
16 stairs and now you want to revise the permit to add a  
17 penthouse removal, I have to look to the new rule, the  
18 rules in effect that would apply to the revised permit.  
19 Oh, you want to remove a penthouse; wait a second, we have  
20 a rule that says you can't remove a penthouse. Therefore,  
21 you have no authority, you have no right to erect a  
22 penthouse that's now under the rules in effect today that  
23 prevent you, but that looks at that rule that also said  
24 you can't remove steps, but that you're vested in and you  
25 have a right to continue. That's been my long-standing

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1 interpretation, the application of A301.4 in the example  
2 that you proffered.

3 MEMBER JOHN: Thank you.

4 CHAIRMAN HILL: I've got a bunch, so I'm just  
5 waiting until the end. Okay.

6 All right, so Mr. Le Grant, the one that I've  
7 been kind of struggling with for the examples is just,  
8 again, the 309.1, right, and I'm just, again, the  
9 structures that are separated from the ground up by common  
10 division walls or contain multiple sections separated  
11 horizontally such as wings or additions or separate  
12 buildings, structures or sections shall be considered  
13 parts of a single building if they are joined by a  
14 connection that is, A, fully above-grade; B, enclosed; C,  
15 heated and artificially lit, and either, one, common space  
16 shared by all users -- common space shared by users of all  
17 portions of the building such as a lobby or recreation  
18 room, loading dock or service bay, or space that is  
19 designed and used to provide free and unrestricted passage  
20 between separate portions of the building such as an  
21 unrestricted doorway or walkway. So that's the one that  
22 I've been having a little bit more of a discussion about.  
23 And I remember -- I'm kind of looking for even  
24 historically how things -- like what do you think the --  
25 well, I guess a bunch of questions I have about this is

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1 that one of them is historically how do you think -- when  
2 this regulation was put into effect, what do you think the  
3 purpose of it was -- in other words, I remember when there  
4 was like trellises, right, and trellises were making a  
5 connection and the trellis was a piece of wood that was  
6 not covered, that were above you, and that was the  
7 meaningful connection. So, what was the whole point of  
8 the -- what do you think -- here are the two questions --  
9 what do you think the whole point of the meaningful  
10 connection was in the beginning when it was put forth;  
11 that's my first question.

12 MR. LE GRANT: Okay, so I'll give you my  
13 impression and my office's dealing with the building  
14 connection issue. Going back historically to ZR58,  
15 because it changed in ZR16 in September 2016, so you're  
16 right in the ZR58 days there was minimal guidance in the  
17 zoning regulations about what constituted a separate  
18 portions of a single building, or the general term was  
19 "meaningful connection." And it had been established even  
20 prior to my tenure, but during my tenure up until  
21 September 2016 that certain connections, such as a  
22 trellis, was permissible as a meaningful connection to  
23 connect separate portions to make a single building. The  
24 commission said we need something different and they put  
25 in B309 that set forth specific criteria, that you've now

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1 noted -- the first one's there's fully above-grade and  
2 enclosed, heated and artificially lit, for the most part  
3 those are less contentious. The last section, Subsection  
4 B309.1D says either common space, and that can be the  
5 whole thing, or space is designed to provide free and  
6 unrestricted passage. So here I believe the commission  
7 said to be a meaningful connection, to use the colloquial  
8 term, or to have portions of a single building, this is  
9 the criteria they have to meet. Therefore, going forward  
10 from that, and in this case my office has to apply that  
11 test when we look at is this a single building or not, and  
12 that's sort of the background to how I approach the  
13 meaningful connection issue. I don't know if that speaks  
14 to your question?

15           CHAIRMAN HILL: Yes, it kind of does. I'm  
16 sorry; that's the one that I'm kind of struggling with,  
17 right. And -- okay, so I'll maybe come back to it -- so  
18 the property owner, again, as I was looking through your  
19 animation that you did -- and -- yes, and however this  
20 ends up working out one way or the other, I appreciate all  
21 the time and energy that has gone into this. I wish that  
22 there wasn't somebody who was going to actually lose in  
23 this, but there has been a lot of time and energy and the  
24 animation was there, and as I was looking through the  
25 animation there was like a wall, right, and I wasn't clear

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1 as to what was kind of all around this property. And I  
2 don't need the animation from you shown, but if there was  
3 something you can show me, if you can -- like, I wasn't  
4 clear, again, what was all around the property. I mean,  
5 there was like, the meaningful connection was up against  
6 the wall it look like, right, so there's another building  
7 next door to this property, and is there another building  
8 on the other side that creates this closed court at that  
9 high level. It seems like -- I'm unclear as to what's on  
10 the other side, I suppose.

11 MR. BROWN: Well, I'm trying to think if we --  
12 I don't want to talk without a drawing.

13 CHAIRMAN HILL: Sure. I mean, if there's an  
14 exhibit you can point me to again, or you know.

15 MR. BROWN: On your -- oh, and our PowerPoint I  
16 have hard copies that are right there by Mr. Moy's --

17 CHAIRMAN HILL: Mr. Moy, you've got the hard  
18 copies of the PowerPoint that -- which exhibit?

19 SECRETARY MOY: It hasn't been --

20 CHAIRMAN HILL: Oh, this is today if we had  
21 gotten to this?

22 SECRETARY MOY: Yes.

23 CHAIRMAN HILL: Okay. Did you provide one of  
24 these to commissioner and intervener?

25 MR. BROWN: Absolutely.

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1 CHAIRMAN HILL: Okay, and also DCRA?

2 MR. BROWN: Page 22. And I did double side to  
3 be somewhat green friendly. If you look at 22, yes let  
4 the architect --

5 CHAIRMAN HILL: I got you; I'm at 22. Okay,  
6 the architect can speak. I didn't mean it that way; I'm  
7 just saying you can go ahead and begin.

8 MR. TEASS: So on Page 22 you're looking at a  
9 diagram that shows really the permit in 2017 and permit in  
10 2018. In regards to your question, there's a property to  
11 the north that has been improved with a new structure that  
12 extends back, and so there is, the red portion is what  
13 we're referring to as that common entrance, the connection  
14 between the two; behind that is the three-story wall of  
15 the adjacent property to the north, the adjacent property  
16 to the south is the intervener's property.

17 CHAIRMAN HILL: Okay. Now, Mr. Le Grant, I'm a  
18 little ignorant of this, I guess, to -- what I was trying  
19 to ask, I suppose, and I'm not saying whether or not I  
20 think that you have made an error in this meaningful  
21 connection or not; that's not what I'm really kind of  
22 asking. I'm just curious more along the lines is that  
23 when this was proposed and this concept developed, I mean  
24 is that kind of -- the meaningful connection -- what am I  
25 trying to say -- the meaningful connection, the whole

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1 concept was the -- do you think the regulation was put  
2 forward so this type of development could take place? Or  
3 was it like a carriage house that they were thinking about  
4 was going to --? I don't know how to ask my question  
5 fully and I'm kind of confused in my question, but I think  
6 if I throw out the carriage house as an example, what do  
7 you think the intent of the meaningful connection was?

8 MR. LE GRANT: Sure, okay. Well, I will say  
9 that neither the commissioner or the Office of Planning  
10 solicited my opinion about this provision in the  
11 production of ZR16. I believe that the intent was that,  
12 as we noted earlier, there was some approvals from my  
13 office, and I believe there may have been cases before the  
14 Board that you could have a trellis between two portions  
15 of a single building, maybe one you could call a carriage  
16 house, but because of a door, a walkway underneath, and a  
17 trellis that allowed passage, that was deemed at the point  
18 previously, historically, as a meaningful connection. I  
19 think the commission said, "We're not going to do that  
20 anymore. It can't be that is not sufficient." And that's  
21 why the specific criteria in B309 were set, it has to be  
22 closed and it has to be heated and above-grade, and these  
23 criteria, D1 and D2 has a commonality or D1, the common  
24 space, D2 the space is designed to provide unrestricted  
25 passage. So I believe the intent was no more trellises;

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1 you got to have a more substantial connection. That being  
2 said, was this intended -- is this project contrary to  
3 that; and of course my office believes it does not. The  
4 test is does it meet the criteria or not. This project,  
5 as well as others, come up with all sorts of interesting  
6 ways to comply, but does it meet the test or not is  
7 something my office has to look at.

8 CHAIRMAN HILL: No, I appreciate that and I  
9 understand that what you look at is what you're supposed  
10 to look at. So I appreciate the answer.

11 Let's see -- so Mr. Cummins, you're the house  
12 right next door to this, right. You're the house right  
13 next door to this. So, all right, anybody else?

14 COMMISSIONER TURNBULL: Mr. Chair, just to help  
15 you get back to your question about the meaningful  
16 connection; and Mr. Le Grant's right, we had a lot of  
17 issues on BZA cases before where second floors were being  
18 added onto garages and carriage house situation, and the  
19 convenient way to do it was to put a trellis between the  
20 main house and the garage. It got to the point where we  
21 said, no, it can't just be a trellis, it has to be a  
22 connected trellis; the trellis has to be connected at both  
23 ends. And we still found a lot of ANC's, a lot of  
24 neighborhoods were really getting upset by the fact that  
25 all these developments were going on, and they felt that

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1 they were out of the loop, that there was no control over  
2 these extra dwelling units being added. So after going  
3 through six, eight years of ZR16, the language that was  
4 finally agreed upon is the one that's in there now, not  
5 imagining we'd have anything like this. I mean, still,  
6 the meaningful connection is still another one of those  
7 terms as to what that really -- I guess if you look back  
8 on it now, it's just should we have put in more  
9 clarification on that, but it happened with a lot of  
10 developments on garages.

11 CHAIRMAN HILL: And just to kind of have some  
12 discussions going on here; the regulations are what they  
13 are and what is now there is now there, right. And so  
14 people buy property, they develop things, they assume  
15 they're going to get to do something or not based upon how  
16 they determine they're fitting in with the regulations.  
17 And so, again, we're having an extemporaneous conversation  
18 to a certain extent, which is again, I was kind of trying  
19 to understand what the zoning commission might have had in  
20 mind when they were putting this together, and whether or  
21 not this is or isn't what they had in mind is not really  
22 what is before us right now, I suppose, but I am getting  
23 some further clarity as to what they might have thought  
24 they were getting into when they were writing these  
25 regulations.

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1           Okay, so I've asked my question. Who has  
2 anything else?

3           MEMBER JOHN: Just one brief question for the  
4 property owner. So I looked at the video and as I was  
5 watching it, I said this looks sort of contrived to me,  
6 and wouldn't an atrium or a one-level lobby serve the same  
7 purpose? I don't know. And was there a reason to connect  
8 the parking -- I didn't understand why we needed to have  
9 this long corridor in the back; it just didn't make a lot  
10 of sense to me. So maybe there's a good technical reason  
11 for that.

12           MR. TEASS: Sure, I'd be happy to answer the  
13 question. So, the current design solution is with the  
14 understanding that there needs to be access from both  
15 units to the street and to the parking area, and that  
16 could be in the way we've chosen, or the designer here has  
17 chosen to represent it is that it's going through it at  
18 the lower level. Certainly it could have been done at the  
19 ground level but in our opinion we felt that it was  
20 appropriate and legal use to make that connection  
21 underneath the front portion of the front building in the  
22 lower portion of the rear building.

23           MEMBER JOHN: Okay, so maybe I missed that. So  
24 the reason for that tunnel is to accommodate the parking  
25 in the back?

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1 MR. TEASS: The reason for the front area,  
2 front tunnel so to speak, is for access to the rear unit,  
3 the portion of the rear tunnel, so to speak, is for  
4 providing access from the front unit to get to parking and  
5 to trash at the rear.

6 MEMBER JOHN: Okay, thank you.

7 MR. BROWN: Ms. John, if I could interject; if  
8 you're in the rear unit and you want to go to the street,  
9 7th Street, this allows you, rather than going out in the  
10 alley and walking around the block, it allows you to walk  
11 from your unit and access 7th Street; it also allows you  
12 to come from 7th Street and enter in your property without  
13 going around the rear should you be a pedestrian. The  
14 same is true reciprocally for the front unit. So it's not  
15 contrived. For the people who live there and from a  
16 design perspective -- I don't have my license for  
17 architecture -- is it's an important feature for this  
18 property, for both the front and the rear unit. And a  
19 simple thing, and I live in a -- never mind -- I live in  
20 the district -- but this above-grade connection, and  
21 everybody's looking at it from a different perspective,  
22 the simplest way to look at it is that you have a way for  
23 the owner of the front unit to go within this above-grade,  
24 lit, enclosed, enclosure, and go knock on the rear unit's  
25 owner to borrow a cup of sugar, to go to dinner, and vice

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1 versa. And that's -- I mean, it's a hallway between two  
2 units which you put in the context of others is really not  
3 unusual.

4 CHAIRMAN HILL: So, the -- how do you say your  
5 name again, sir? I'm sorry.

6 MR. JAWED: Tarique.

7 CHAIRMAN HILL: Tarique. No, your last name?

8 MR. JAWED: Jawed.

9 CHAIRMAN HILL: So Mr. Jawed, how long have you  
10 had this property now?

11 MR. JAWED: Three and a half years.

12 CHAIRMAN HILL: I've had some longer than that;  
13 I don't feel so bad now. So three and a half years. And  
14 was this the original -- this was what your original kind  
15 of concept was or thoughts were when you found this; this  
16 is kind of something that your architect came up with --  
17 I'm just asking -- and this was something that you thought  
18 would be the best way to develop the property?

19 MR. JAWED: Mr. Chairman, that's correct. When  
20 we looked at this and we said matter-of-right, we could do  
21 what our neighbor to the north did, which is build this  
22 huge structure not taking into account air and light. We  
23 said if we sort of created this courtyard in between, it  
24 allows air and light to the intervener's property and we  
25 think it ultimately produces a better product that's five

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1 bedrooms, that's designed for families.

2 CHAIRMAN HILL: Let me interject. So at the  
3 time, again, when you bought it, and so you're saying that  
4 the person to the left developed it under the old  
5 regulations, so you could have done it the same way,  
6 right?

7 MR. JAWED: We could have. We were before  
8 ZR16.

9 CHAIRMAN HILL: Pardon me?

10 MR. JAWED: We were before ZR16.

11 CHAIRMAN HILL: No, I know. I'm saying you  
12 probably should have done that.

13 MR. JAWED: We tried.

14 CHAIRMAN HILL: You tried.

15 MR. JAWED: If you look at the time line, we  
16 were under review forever. I mean, we submitted, and it's  
17 in the record, but we submitted for permit in September of  
18 2015.

19 CHAIRMAN HILL: Okay. All right, so that's  
20 that. So, Commissioner Eckenwiler, so this popped up in  
21 the ANC's radar when? Can you just tell me again how you  
22 found about this?

23 MR. ECKENWILER: I think Mr. Cummins and I had  
24 a conversation at some point, it was certainly prior to  
25 2017.

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1           CHAIRMAN HILL: No, I'm just saying the design;  
2 you were aware of this design?

3           MR. ECKENWILER: I honestly couldn't tell you  
4 when I first became aware of the design.

5           CHAIRMAN HILL: Okay, because the reason I'm  
6 asking is that, again, had under ZR58, had everybody on  
7 this block done this, you would have this kind of  
8 configuration perhaps the whole way down the row.

9           MR. ECKENWILER: Mr. Chairman, with respect, I  
10 don't think it makes any difference. The regs are what  
11 they are at the time you get --

12           CHAIRMAN HILL: No, I agree. I guess I'm just  
13 kind of asking questions and I'm going to take this  
14 opportunity to just kind of clarify as best I can through  
15 the whole way. And I'm not trying to be combative; I'm  
16 saying that I think that we are trying to understand --  
17 like whether or not I like this and whether or not I think  
18 this is a good thing -- I mean, I think I understand why  
19 this connection is there, I understand why the design is  
20 there, and for me it's just kind of understanding whether  
21 within the regulations the zoning administrator's hands  
22 were tied or whatever. He's just determining whether or  
23 not this is what the regulations say. As I've been  
24 talking with the zoning commissioner again, like if you're  
25 trying to build a room above a carriage house, that's one

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1 thing, and if that's what they were trying to do; if they  
2 were trying to like build two buildings on a lot, that's  
3 another thing. Whether or not I like it has nothing to do  
4 with the fact as to whether or not the regulations say you  
5 can do it. So I was just having a hypothetical which is  
6 like when did the ANC kind of find out about it. And so  
7 it doesn't matter. I mean, you found out about it at some  
8 point, then realized that this was something that was  
9 going to be this larger structure at the end of this lot.  
10 And so I understand why you're here. You don't have to  
11 worry; I understand why you're here. And I appreciate why  
12 you're here, and so I'm just -- again, what we're charged  
13 for, and I'll stop at this, what I'm charged for is  
14 whether or not I like it and whether or not I think the ZA  
15 erred. And if I live next to this, if I was Mr. Cummins,  
16 I'd be sitting down there with Mr. Cummins. But I don't  
17 know whether or not -- it doesn't matter whether or not I  
18 think, Mr. Cummins, I agree with you or not, or I can  
19 agree with you or not. So you'll have an opportunity to -  
20 - I'm just kind of trying to understand this design. And  
21 Mr. Brown, thank you, this slide is helpful, and so it's  
22 helpful to kind of understand.

23           Before you ask your question or answer whatever  
24 it is this rambling on that I just did, does anybody have  
25 any further questions about the line that I was going down

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1 here?

2 COMMISSIONER TURNBULL: No, the one question I  
3 had on -- we just had this PowerPoint on No. 25, Drawing  
4 25 -- this cellar connection that pops up in the  
5 courtyard, you do that to simply tie into your "meaningful  
6 connection," the lobby.

7 MR. TEASS: I mean, the circulation path that's  
8 shown on Page 25 illustrates that there's a connection  
9 from the courtyard to the street and the courtyard to the  
10 rear. And it's an essential connection -

11 COMMISSIONER TURNBULL: Right. I mean, it  
12 would have been easier for both buildings if you didn't  
13 have those stairs, if they simply went straight through.  
14 Except you need to get up --

15 MR. TEASS: You're referring to the stairs  
16 going down and then coming back up, if we had done a  
17 complete at-grade.

18 COMMISSIONER TURNBULL: That's correct.

19 MR. TEASS: It arguably would have been easier,  
20 but I think it also would have had an impact on the  
21 interior layouts.

22 COMMISSIONER TURNBULL: I mean, so one way it's  
23 a pain in the neck for someone getting trash from Unit A  
24 back to the garage then, I guess.

25 MR. TEASS: I mean, I think if you -- I

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1 wouldn't characterize it as that necessarily. I think  
2 that you're in a situation that I would concede is a  
3 relatively unique way of circulating in the building, but  
4 I don't think it's particularly onerous -- I mean, if you  
5 lived in an apartment building, for example, you would  
6 have a fairly long path from your front door to your unit,  
7 and potentially from your unit to your trash. I think if  
8 you look at it in the context of two dwelling units on the  
9 property.

10 COMMISSIONER TURNBULL: Okay. And the main  
11 entrance to Unit B is in that connection?

12 MR. TEASS: It's at the east side of that  
13 connection, yes.

14 COMMISSIONER TURNBULL: Okay.

15 MR. BROWN: Mr. Hill?

16 CHAIRMAN HILL: Yes. One second, I'm sorry.  
17 Ms. White had a question.

18 MEMBER WHITE: Is there any case law that kind  
19 of addresses this meaningful connection issue in terms of  
20 what constitutes a meaningful connection, providing  
21 examples of maybe buildings, developments in the city that  
22 didn't meet that test, or those that did? I couldn't  
23 remember if that was supplied in the record, but it's just  
24 a fascinating issue, but I just wondered if there's case  
25 law going either way?

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1 MR. BROWN: There really isn't going under what  
2 ZR16 created, at least when you cite case law, not in the  
3 courts the ultimate decision-makers. Under the ZR58,  
4 there were cases, but I don't think in this context they  
5 were helpful. The one thing I would point out, and it's  
6 in my slides which we'll get to, the Board has seen this  
7 type of above-grade connection in another contemporaneous  
8 case with what was going on in this case. And it's  
9 certainly having listened to the video tape of the  
10 decision and hearing, an order hasn't been issued, it  
11 certainly didn't shock the conscience of the Board. And  
12 in fact, I think everybody but Ms. John and Mr. Turnbull  
13 sat on that case where they --

14 CHAIRMAN HILL: That's us here in the middle,  
15 we're lost. That's us.

16 MR. BROWN: I was having trouble remembering.

17 CHAIRMAN HILL: No, that's okay. I'm just  
18 trying to point out.

19 MR. BROWN: That case, which we'll get to, very  
20 similar design. The Board appraised the design --

21 CHAIRMAN HILL: Mr. Brown, I got you. We read  
22 the record, we know the case you're talking about. That  
23 case was different, and you can go ahead and point it out,  
24 and I want you to because it just provides further clarity  
25 on it. here was no objection from the ANC, there was no

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1 objection from anyone; everyone liked the design. And not  
2 that that has anything to do with it, but that was  
3 something that made it easier for us to understand the  
4 meaningful connection. That's okay, you can talk about it  
5 when you get to it; I'm just saying for the three of us  
6 that were here, we were here. And so appreciate that.

7 MR. BROWN: Yes. Can I just make one point?

8 CHAIRMAN HILL: Yes -- what I talked about  
9 earlier.

10 MR. BROWN: You made a statement that left the  
11 impression, at least with me -- perhaps I didn't  
12 understand it -- that somehow this building is larger as a  
13 result of the use of this above-grade connection. And  
14 I've pointed this out previously, but whether there's an  
15 above-grade connection or it's just a straight addition,  
16 like 1123, the building next door, this building -- our  
17 building didn't get any bigger as a result of this; it's  
18 still subject to the 60 percent lot occupancy, and all the  
19 other measures that are applicable. So it didn't get any  
20 bigger. It's designed differently, but there's no size  
21 advantage from this above-grade connection.

22 CHAIRMAN HILL: Okay. No, I appreciate you  
23 clarifying that, Mr. Brown. I didn't mean that it got any  
24 bigger. I guess what I'm confused about -- or I shouldn't  
25 say confused -- to the property owner's comment, I know

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1 that there was -- I mean, before I got here, or even just  
2 kind of when I got here, I suppose, you could have gone  
3 back further, you could have built up higher, and that's  
4 how that property got built next door, right? That was  
5 under the 58 regs. And so I believe --

6 MR. BROWN: I don't think so. No, because it  
7 was permitted and built after our original permit was  
8 issued.

9 MR. CUMMINS: That's not correct.

10 CHAIRMAN HILL: Excuse me, one second.

11 MR. CUMMINS: Sorry, that's not actually  
12 correct.

13 CHAIRMAN HILL: Hold on, just one second. What  
14 were you saying, Mr. Brown?

15 MR. BROWN: Well, we're talking about 1123 7th  
16 Street, which is the building on the opposite side.

17 CHAIRMAN HILL: The building that has the big  
18 wall, right. And what was your statement that Mr. Cummins  
19 was denying?

20 MR. BROWN: That building was not built under  
21 ZR58, it was built under ZR16 prior to the enactment of  
22 the --

23 CHAIRMAN HILL: 1411.

24 MR. BROWN: The 10 -- well, so --

25 CHAIRMAN HILL: Yes, so that's fine.

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1 MR. BROWN: Yes, so the rear addition could be  
2 built --

3 CHAIRMAN HILL: I got you. So what I'm saying,  
4 at one point you could have done that, and you can't do it  
5 now, right?

6 MR. BROWN: That's correct.

7 CHAIRMAN HILL: And so I understand when that  
8 came about because I was here for when that did come  
9 about, because there was a lot of discussion of that with  
10 the Zoning Commission and with the public how that  
11 happened. So -- okay, I got lost -- you clarified, right,  
12 that it wasn't -- I wasn't even necessarily saying that it  
13 was any bigger -- I'm saying the design pushes it back  
14 further than it would the neighboring property, the one  
15 that's right next door -- if I can go back, I can go back  
16 to your other slide, which is whatever slide it was that  
17 at least I'm trying to think about here.

18 MR. BROWN: Well, it pushes it back but it also  
19 creates an open space --

20 CHAIRMAN HILL: I don't necessarily disagree  
21 with that comment, which is perhaps Mr. Cummins gets more  
22 light and air because of that courtyard, as opposed to if  
23 it was just as big as -- what's the property next door, is  
24 it to the north?

25 PARTICIPANT: Yes, 127.

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1           CHAIRMAN HILL: So at one point, you could have  
2 possibly built something just as big next to Mr. Cummins  
3 and -- I don't know whether he thinks that that creates  
4 more light and air for him or not -- but -- okay, now Mr.  
5 Cummins, you were excited about something, but you wanted  
6 to -- I think we've gotten clarification on it.

7           MR. CUMMINS: That's fine.

8           CHAIRMAN HILL: All right, who's next?

9           I have one comment before the who's next, if  
10 there is any who's next. I think perhaps we're going to  
11 end up asking for a Findings of Fact and Conclusions of  
12 Law from everyone just to have some kind of clarity as for  
13 us to kind of look at. And I know that, at least from the  
14 Zoning Administrator, it'll be very helpful to kind of  
15 like speak -- well, not that you're going to -- but speak  
16 to each one of the points that are addressed by the  
17 appellant. But the ones that, again, as we drill down on  
18 this whole cornice thing and the timing of things, as you  
19 were using that example with the front steps, again, just  
20 talk about that in terms of when the permit, how that  
21 cornice could continue to be removed, right, and how these  
22 permits kind of developed, how you could still have  
23 removed the cornice or whatever you want to talk about,  
24 embellishment.

25           So, does anyone have any more questions? And

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1 we might have more questions as we go along, but I'm going  
2 to now kind of move forward unless we have more questions.

3 MR. BROWN: Mr. Hill, could I just --?

4 CHAIRMAN HILL: Sure.

5 MR. BROWN: Ms. Rippe has to leave now.

6 CHAIRMAN HILL: Okay.

7 MR. BROWN: So it doesn't appear that you had  
8 any questions.

9 CHAIRMAN HILL: That's okay. Ms. Rippe, do you  
10 have children? Are you trying to go trick or treating?

11 That's okay; you don't have to answer that.

12 Okay, does the Board have any questions for Mr.  
13 Rippe?

14 No, all right. Thank you.

15 Let's see -- okay. All right, does the Board  
16 have any more questions for anybody?

17 Okay, so we're going to go to cross now based  
18 upon what testimony was just taken, and the order in  
19 which we're going to do it is the same order we're going  
20 to do conclusions, which is the ANC commissioner, the  
21 intervener, DCRA, and then finally the building owner in  
22 terms of cross, okay? So I'm going to try to just keep  
23 people as focused as possible -- and I really don't mean  
24 this in any other way than the way that I'm stating it  
25 which is that the purpose of the cross is to help clarify

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1 to the Board -- I guess you're clarifying your position,  
2 so therefore you're continuing to try to sell your  
3 argument, but it's just based upon the testimony that was  
4 given. So, Mr. Commissioner, is there cross for any of  
5 the parties on the testimony was given? And if so, just  
6 tell me who and we'll go down the line.

7 MR. LE GRANT: No questions, Mr. Chairman.

8 CHAIRMAN HILL: Oh, okay. Mr. Cummins, do you  
9 have any questions on cross?

10 MR. CUMMINS: Yes, I have a question and the  
11 purpose is really to try to clarify that Mr. Turnbull's  
12 question about the cellar level connection and below-grade  
13 stairs.

14 CHAIRMAN HILL: Okay, who would you like to ask  
15 the question to?

16 MR. CUMMINS: I believe Mr. Teass --

17 CHAIRMAN HILL: Teass. Okay, what's your  
18 question?

19 MR. CUMMINS: So, the design was changed -- in  
20 B1706219 the connection --

21 CHAIRMAN HILL: So in B1706219 --

22 MR. CUMMINS: Right, in the original permit  
23 that was brought up before.

24 CHAIRMAN HILL: You know it that fast?

25 MR. CUMMINS: But that was not a fully above-

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1 grade connection, and the stairs that are depicted -- I'm  
2 on Page 25 of the PowerPoints.

3 CHAIRMAN HILL: Right, so you're saying that  
4 the first permit didn't have the stairs coming up to the  
5 courtyard?

6 MR. CUMMINS: Correct. They were inside, they  
7 were below-grade and inside the breezeway/lobby/courtyard.

8 CHAIRMAN HILL: Okay, and your question is?

9 MR. CUMMINS: So it appears that they were  
10 removed specifically as a result of this appeal. In order  
11 to meet the connector above-grade, they have to put the  
12 stairs on the other side of the property, and that's why  
13 the design was flipped and the interior layout was  
14 flipped. So it appears that this change from B1706, the  
15 original permit, to the subsequent revised permits appear  
16 to have been directly as a result to address the zoning  
17 violation contained in the original permit. So that's the  
18 gist of the whole significant changes. And Commissioner  
19 Turnbull asked why are the stairs over here, it'd be  
20 easier if you just walked up the stairs and went directly  
21 to your door and you didn't turn left, go across a  
22 courtway, open a door and turn right again and go up  
23 another staircase. It seems -- that's the question I  
24 have, really, is didn't you move the stairs over here so  
25 you could redesign a meaningful connection?

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1           CHAIRMAN HILL: So your question is, was it --  
2 and I'll be interested to hear the answer and how this  
3 answer gets given -- your question is was the design  
4 change made to further the argument for the meaningful  
5 connection?

6           MR. CUMMINS: I guess more specific to that,  
7 was the design change made in order to move the non --  
8 excuse me, I just want to ask why was that design change  
9 made? And did it have anything to do with the non-  
10 compliance of the connector being not fully above-grade  
11 before, whereas now it's like there's a vented crawlspace  
12 where the stairs used to be.

13           CHAIRMAN HILL: Okay, I understand the  
14 question.

15           MR. CUMMINS: Okay. Again, I don't -- explain  
16 it to me.

17           CHAIRMAN HILL: That's fine; I think it's a  
18 fair question. Mr. Teass?

19           MR. TEASS: So we were brought on about the  
20 time of the, during this process. Yes, the location of  
21 that corridor was revised as part of the second provision;  
22 that was actually something that we suggested, our office  
23 suggested to improve the quality of that circulation, so  
24 that instead of coming into a long corridor and then  
25 coming up -- we just felt that coming into a courtyard was

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1 a more pleasant experience coming into the building.

2 CHAIRMAN HILL: Okay, talk me through that a  
3 little bit. How was it before and why is it better now?

4 MR. TEASS: If I could actually direct you to  
5 another exhibit here and do a side-by-side comparison,  
6 it'd be helpful for the Board.

7 CHAIRMAN HILL: Sure.

8 MR. CUMMINS: I'd like to point out that this  
9 is in the record. These documents are not in the record,  
10 and it's actually the permit file would be the appropriate  
11 place to look at the design and not the PowerPoint or the  
12 video which has inaccuracies or do not conform exactly  
13 with the plans as approved by the Zoning Commission.

14 CHAIRMAN HILL: Okay, let's do this first; let  
15 him answer where we are. So Mr. Teass, where were you  
16 taking us?

17 MR. TEASS: So on Page 12, which is also  
18 submitted as a previous exhibit, is an illustration on the  
19 bottom row -- there's a top row and a bottom row, the top  
20 row is an excerpt from the approved permit drawing in  
21 March of 2017.

22 CHAIRMAN HILL: The bottom row?

23 MR. TEASS: The bottom row is the approved  
24 permit revision in April 2018, and so what we've done is  
25 highlight the change that you're seeing there. So the

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1 original design has to be corridor on the north side of  
2 the building, and so you came down a set of stairs down  
3 the corridor up into the breezeway, substantial connection  
4 aspect, and then into the rear unit. And then what you're  
5 seeing below is what was revised so that the breezeway  
6 connection, or the substantial connection between the two  
7 buildings, we've moved the lower level corridor to the  
8 south side, and that way it gave you an opportunity for  
9 the rear unit to use the -- the courtyard being part of  
10 the entry sequence for the rear unit.

11 CHAIRMAN HILL: Okay, so Mr. Cummins, I don't  
12 know whether you believe him or not; that's what he's  
13 saying they made the change for. Did you get your  
14 question answered?

15 MR. CUMMINS: I'm trying to economize time, so  
16 as long as I have the time to bring this up in closing,  
17 that particular point.

18 CHAIRMAN HILL: Okay.

19 MR. CUMMINS: The other change I want to ask  
20 about is the pervious surface requirement was clearly not  
21 met in B1706219, the first permit; they claimed that there  
22 were 40 percent pervious surfaces when there clearly were  
23 not.

24 CHAIRMAN HILL: Whoa, whoa, whoa. Now this is  
25 a question on testimony that was given now, so I'm just

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1 trying to understand what your question is. What are you  
2 asking a question of?

3 MR. CUMMINS: About changes to the permit, so  
4 the original to the revised permits.

5 CHAIRMAN HILL: Did they testify on that today?

6 MR. CUMMINS: No.

7 CHAIRMAN HILL: Okay. I'll go ahead and let  
8 you answer the question because if he's got a quick answer  
9 for it. Your question is, again, tell me again.

10 MR. CUMMINS: Did changes to the courtyard  
11 appear to have been made between the original and revised  
12 permit, specifically to address the ANC's appeal?

13 CHAIRMAN HILL: So your question is are they  
14 making the change -- did they make the change to the  
15 permeable surfaces to --?

16 MR. CUMMINS: To address a matter brought up in  
17 the original, the appeal of B1706219, was that changed in  
18 order to address the zoning violation that existed in the  
19 original?

20 CHAIRMAN HILL: Okay, Mr. Teass?

21 MR. TEASS: Not to my knowledge.

22 CHAIRMAN HILL: Okay. All right, anything  
23 else, Mr. Cummins?

24 MR. CUMMINS: Well, I do want to economize  
25 time, so I'll try to bring it up and consolidate in my

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1 closing.

2 CHAIRMAN HILL: Okay. Does DCRA have any  
3 cross?

4 MS. LORD-SORENSEN: No.

5 CHAIRMAN HILL: Okay. Does the property owner  
6 have any cross?

7 MR. BROWN: If I could very quickly, Mr. Le  
8 Grant, when you were speaking about amendments to permits,  
9 the original permit was issued and it provided for the  
10 total removal of the front facade. Does the first revised  
11 permit and second revised permit made no change in that  
12 previously approved --

13 CHAIRMAN HILL: I'm sorry; Mr. Brown, can you  
14 repeat the question again?

15 MR. BROWN: The original permit provided for  
16 the total removal of the front facade. And then I'm  
17 asking Mr. Le Grant whether the second, the first revised  
18 permit or the second revised permit made any change  
19 related to the total removal of the front facade that had  
20 been previously approved?

21 MR. LE GRANT: It did not.

22 MR. BROWN: And based on that there was no  
23 reason to apply the after-the-fact enacted cornice rule?

24 MR. LE GRANT: Yes, it's been my position that  
25 the original permit which allowed changing of the facade

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1 and removal of that element which was characterized as a  
2 cornice was vested prior to the enactment of the new  
3 regulation that explicitly allowed removal of all  
4 cornices.

5 MR. BROWN: And going back to the original  
6 permit, it provided for a guard rail --

7 CHAIRMAN HILL: Hey, Mr. Brown? I'm sorry;  
8 that's starting to feel like testimony to me. What's the  
9 question?

10 MR. BROWN: That the original permit approved a  
11 guard rail running perpendicular to the side parapet wall.  
12 Correct?

13 MR. LE GRANT: That's my recollection, yes.

14 MR. BROWN: And all the subsequent permits  
15 provide the same type of perpendicular guard rail?

16 MR. LE GRANT: Yes.

17 CHAIRMAN HILL: Okay, great. We didn't even  
18 get to the whole guard rail thing during today. So the --  
19 okay, so I'm going to lose some people here by the way;  
20 they're slowly going to peel away, and so they'll continue  
21 to watch as we move forward with this.

22 Okay, so now we're at rebuttal as I look to  
23 OIG.

24 Sure, please go ahead, Mr. Chairman.

25 COMMISSIONER TURNBULL: I just want to get back

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1 to what the intervener -- in the courtyard between the two  
2 buildings there's an entrance to Unit B and there's an  
3 exit from Unit A, but you don't really need -- you could  
4 had simply a nice brick stair or concrete stair going in  
5 from that courtyard up to the unit, meaning you'd come up  
6 out of this area way and you'd come into this nice  
7 courtyard; you could have had a nice brick stair on either  
8 case to go in and out of both units. The enclosure, the  
9 "meaningful connection" is not really -- I'm trying to see  
10 if it's necessary or nice to have. Is it necessary to  
11 have that enclosure, or could you just have had a brick  
12 stoop stairway going up into the unit?

13 MR. TEASS: In our opinion, it was necessary to  
14 have and it provides weather protection at the front door  
15 to the rear unit.

16 COMMISSION TURNBULL: Well, most units don't  
17 have -- I don't have a cover over my house going in -- I  
18 guess I'm trying to figure out necessary or nice to have.  
19 And to me somehow that might get into what "meaningful  
20 connection" is. Is it necessary to have that connection to  
21 go into one door to get to another door, or could you just  
22 have had a courtyard with a nice stairway going up into  
23 the unit as most other townhouses or row houses would  
24 have? So I'm struggling with necessary or nice to have.  
25 And I'm struggling with is it nice to have also to fulfill

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1 the purpose for a "meaningful connection"? And that's  
2 where I'm struggling, so it becomes a terminology/term, or  
3 it's a definition, but getting back to what the ZA would  
4 say there's "meaningful connection." Is the "meaningful  
5 connection" something that's necessary or can it also be  
6 simply nice to have, and that's what I'm struggling with.  
7 It's not really a question; it's just a point of my trying  
8 to point out where my mind is right now trying to figure  
9 out what this link really does. Is it necessary or is it  
10 nice to have. You're saying it's necessary, but I'm not  
11 convinced yet. To me it's like nice to have, but it also  
12 would have been nice to have coming to a nice beautiful  
13 courtyard with a nice staircase on either side and you go  
14 up and you knock on the door. Even if you're going for a  
15 cup of sugar, from one row house to another, you'd go  
16 outside and you'd do it. So that's what I'm struggling  
17 with right now.

18 MR. BROWN: Mr. Turnbull, and I understand your  
19 question, the whether nice to have or necessary, and  
20 that's perhaps in the eye of the viewer or beholder. But  
21 you go back to the same question: does it comply with the  
22 zoning regulations?

23 COMMISSIONER TURNBULL: It gets back to  
24 "meaningful connection."

25 MR. BROWN: Well, we don't use that term

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1 anymore.

2 COMMISSIONER TURNBULL: Right. But I mean, I'm  
3 just looking at this from the standpoint of how the ZA  
4 would -- the ZA thinks you've made a connection, you've  
5 made your case and I'm still struggling with that.

6 MR. BROWN: But going back to -- and again --  
7 I'll shut up.

8 CHAIRMAN HILL: Okay, let's see -- so -- right  
9 okay -- so we're at rebuttal. So commissioner, you have  
10 now the opportunity to provide rebuttal testimony, and  
11 then after the rebuttal testimony there'll be an  
12 opportunity to provide everyone's favorite, cross-  
13 examination of your rebuttal testimony. And then we're  
14 going to have conclusions. And so that is -- I'm just  
15 being a little bit light as we get here kind of at the end  
16 of the evening, but please don't let that stop you from  
17 providing as much rebuttal as you like. And so I'm going  
18 to go ahead and put ten minutes on the clock just so I  
19 know where we are, and you can go ahead and begin whenever  
20 you like.

21 MR. ECKENWILER: Mr. Chairman, I don't need any  
22 time for rebuttal. All the argument that I need I can do  
23 in closing argument because everything I want to say is  
24 already in the record.

25 CHAIRMAN HILL: Okay. All right, great. So

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1 that means there's no cross, and so we're now going to go  
2 to conclusions. And so I'm going to start with you,  
3 again, commissioner, and I guess, is ten minutes okay?

4 MR. ECKENWILER: Mr. Chairman, I think it's  
5 likely to take a little longer than that.

6 CHAIRMAN HILL: Okay, I'll give you 15 minutes.  
7 So everybody will get 15 and that gets to me an hour.  
8 Okay, so go ahead and begin, commissioner, whenever you'd  
9 like.

10 MR. ECKENWILER: Okay. Thank you, Chairman  
11 Hill and members of the Board. ANC6C's appeal is based on  
12 four different arguments: the improper setback of the roof  
13 railing; the permit improperly allows the removal of a  
14 protected architectural element, a cornice; third, it  
15 allows two principle structures impermissibly on one lot;  
16 and fourth and last it impermissibly allows a rear  
17 addition more than 10 feet past an adjacent dwelling. I  
18 was going to walk you through a time line, but in the  
19 interest of the economy of time, I'll just refer you to  
20 Tab B in Exhibit 66; that was our supplemental filing that  
21 walks through some of the key dates. I'll touch on those  
22 as I go through closing.

23 CHAIRMAN HILL: Can you say that again, please?  
24 I'm sorry.

25 MR. ECKENWILER: It's Case Exhibit 66, Tab B,

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1 that was our supplemental statement. So it's actually the  
2 very last thing.

3 CHAIRMAN HILL: Okay, got it.

4 MR. ECKENWILER: Prior to today, anyway. So,  
5 also because this is closing, I just want to sort of tell  
6 you what my intent is here going through. I understand  
7 this is closing; it's not that evidentiary part of the  
8 hearing; we already did that. So as I go along I will be  
9 calling out specific cites to the record.

10 I'm not expecting you to look at all those  
11 pictures and regulations and so on; I'm citing them so in  
12 the event you want to note that and then you can go back  
13 and look at it later during your deliberations, you'll  
14 have the benefit of that. But obviously if I'm going too  
15 fast, if you have questions please interrupt me, ask away.

16 So the first ground is the failure to provide a  
17 mandatory minimum setback for the rooftop guard rail;  
18 Section C like Charlie, 1502.1C requires a one-to-one  
19 setback from the edge of the roof in this zone. The  
20 drawings for the current permit, second revised, is  
21 showing a 36-inch railing with zero setback from the edge  
22 of the roof. You can see that both in detail at Exhibit  
23 59, Page 2, and also the full drawing, the permit drawing  
24 for that is at Exhibit 59A, Sheet A, 3.1. And the key  
25 thing to keep in mind here is the regulation is

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1 extraordinarily specific. It says any guard rail,  
2 literally, it is not unclear as to whether or not it  
3 applies to the element here in question. Mr. Le Grant  
4 testified at our September hearing that he had invented an  
5 exception to the explicit requirement of this regulation,  
6 the one-to-one setback requirement for "life safety  
7 issues." And when I asked Mr. Le Grant to point to some  
8 language in the regulation justifying his position, he  
9 admitted there is none, and you can see that in the  
10 transcript, Pages 84 to 86. The owner claims they were  
11 time-barred; we already addressed that, I covered a little  
12 bit earlier. I'll simply rest on Pages 4 to 5 of our  
13 supplemental statement; that's Case Exhibit 66. So, what  
14 I want to do for each of these bases, starting with the  
15 first one, there's a lot of regulations, a lot of  
16 citations. I think it's easy to lose the forest through  
17 the trees, so let's step back and think about the big  
18 picture here. DCRA's position is fundamentally  
19 inconsistent with the text of the regs, and not just that;  
20 it's an open invitation to abuse. When Mr. Le Grant says,  
21 "Well, I had to respond to this life safety condition,"  
22 this is not some immutable fact; this is not gravity, this  
23 is not the weather that we can't do anything about; this  
24 is in response to a specific application, a decision  
25 that's made by an applicant to create a condition that

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1 violates the regs, in this case by placing a hatch and  
2 therefore a falling hazard -- it's a hole in the roof and  
3 it's open -- immediately adjacent to the lot line. So Mr.  
4 Le Grant's invented rule effectively rewards applicants  
5 for placing a hazardous condition adjacent to the edge of  
6 the roof, and not in another location where required  
7 railings would be appropriately set back, like in the  
8 middle of the roof. The Board should not condone that.  
9 So just waving your hand and saying "life safety," this is  
10 not something over which the applicant has no control, the  
11 applicant could choose to comply with the regulation, but  
12 instead they don't and DCRA's invented exception, which is  
13 nowhere in the face of the regulations, violates that. So  
14 that's one reason why the permit should be revoked.

15           Second, with respect to the illegal removal of  
16 the cornice; so to recap here on the time line, DCRA  
17 issued the original permit on March 31st of 2017 and at  
18 that time Section E206 did not list cornices as one of the  
19 categories that protected rooftop elements. It wasn't  
20 until one month later, April 28th, when ZC Order 1411B  
21 took effect and E206 thereafter protected elements "such  
22 as cornices." And the impact of Section E206 is you  
23 cannot remove those elements in a RF Zone absent special  
24 exception relief. So, the original permit was not subject  
25 to this restriction, but both revisions which were made

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1 after April 28th, so after the amendment to the regulation  
2 came into effect, and therefore both of those revisions  
3 were subject to the new language. And you can find that  
4 explicitly under Section A301.4 -- let me just get the  
5 language here -- so A301.4B says, and I'm quoting here,  
6 "Any amendment of the permit shall comply with the  
7 provisions of this title in effect on the date the permit  
8 is amended." Now, there's some preparatory language that  
9 says there are certain enumerated exceptions in Subtitle  
10 A, but none of them refers either implicitly or explicitly  
11 to the cornice removal provision, and therefore there is  
12 no exception. So you can't just say, "Well, he was  
13 vested." That's right; if they had proceeded under the  
14 original permit and the original permit had been valid,  
15 yes it was vested at that time. Once they change it, it's  
16 no longer vested, unless there's a specific vesting  
17 provision, and that is what is lacking there.

18           So you can see the cornice on the structure, I  
19 included photographs of this and numerous other buildings  
20 on this same block have identical cornices, that's Exhibit  
21 46, Pages 6 through 8. And as Mr. Brown has been at pains  
22 to emphasize all the permits entail the removal of that  
23 element, of that cornice. So we can find a few questions  
24 here; the first one is, one, is it in fact a cornice? So  
25 let's start small, one of the arguments has been whether

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1 or not this is a rooftop element, and Mr. Le Grant wrongly  
2 testified -- this was at Page 74 of the transcript -- that  
3 the cornice was below the roof. In fact, that's patently  
4 false and in our reply statement I think that's Case  
5 Exhibit 59, where you shared a cross section, that  
6 actually does sit above the roof level. So, if you're  
7 looking for a technical measure of whether or not that's a  
8 rooftop element, you have that. But there's so much more  
9 here in the record. So DCRA determined in writing, this  
10 was when they did the first revised permit, if you look at  
11 Exhibits 46F, G and H -- excuse me, I think it's E, F and  
12 G -- the permit reviewer notes there was some internal  
13 traffic within the Office of the Zoning Administrator, and  
14 all of those end up with the conclusion in the reviewer's  
15 notes that this is a cornice. So DCRA made that finding  
16 in writing.

17 Now, Vice Chair Hart asked DCRA at the end of  
18 the September hearing to provide case examples of what it  
19 considers cornices, and as we pointed out one of the  
20 examples that they provided, they provided no detail; it  
21 was just a bare list of permit numbers and addresses. And  
22 what we illustrated in Exhibit 66 at Pages 2 and 3 is that  
23 one of the cases that they identified involved a  
24 projecting band that is below the top of the parapet wall.  
25 It's exactly what we have in this case, but by their own

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1 concession in their supplemental filing, they think that  
2 qualifies as a cornice. We also note on Page 3 of that  
3 same exhibit that HPRB's own guidance on this says you can  
4 have a cornice even if it's below the top of a parapet  
5 wall. I think Commissioner Turnbull earlier made  
6 reference to you've got the coping on top with the parapet  
7 wall and this parapet wall, the thing below that, that's a  
8 big projecting band, that's still a cornice, assuming that  
9 it's up there at the level of the roof. But the biggest  
10 giveaway here is that the property owner's own experts  
11 witness testified that there's a cornice on this property,  
12 and that witness, Mr. Teass, disagreed with us about which  
13 part of the entablature, as he referred to it, is in fact  
14 the cornice. We say it's that great big projecting part  
15 that's a little bit below the top of the parapet wall, but  
16 he said -- Mr. Teass testified not once, not twice, I  
17 count seven different times in the transcript from  
18 September where Mr. Teass says that the smaller band at  
19 the very top of the parapet wall is a cornice -- and you  
20 can find that on Pages 135 to 137, and then once more on  
21 Page 161. So whether you believe that it's the big part  
22 that we say is the cornice, or whether you think it's the  
23 little part, there's a cornice on the front of this  
24 building and the plans call for it to be removed, and  
25 that's incompatible with the regulation.

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1 I'll just briefly, there's the fallback  
2 argument, I mentioned this to Commissioner Turnbull  
3 earlier, even if you don't think that this is technically  
4 a cornice, you could still find that it's within the  
5 protection of E206 because it's in the nature of a  
6 cornice, it's very similar to a cornice, but I  
7 respectfully submit the Board does not have to go there.

8 So, again, DCRA has talked about the cornice  
9 removal being vested, and Mr. Le Grant testified rather  
10 vaguely at the September hearing about "the totality of  
11 the zoning rules." That was on Page 96. But he was  
12 unable to cite any specific provision, and that's because  
13 there isn't one, it does not exist. Their position is  
14 nonsensical. The text of A301.4 is unambiguous; you  
15 comply with the regs then in effect unless one of the  
16 listed exceptions applies, and none of those exceptions in  
17 A301 applies to cornice removal. So in their supplemental  
18 filing the property owner raised, for the first time, to  
19 claim ANC6C's claim regarding the cornice is time-barred.  
20 And Mr. Brown has repeated a number of times this evening  
21 that all the permits entail the full removal of the front  
22 facade, but the key thing -- you got to keep your eye on  
23 the ball here -- the key thing is when that first permit  
24 was issued that entailed the removal of the front facade  
25 and therefore the cornice, the regulations didn't protect

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1 the cornice. It's only when the permit is amended that  
2 that new provision in effect, at the time of both of those  
3 revisions, comes into effect. And that's why it doesn't  
4 matter that they're all the same in terms of what the  
5 plans do because the law changed in the meantime.

6           So, to again, back up a little bit, look at the  
7 big picture, Commissioner Turnbull has pointed out, he  
8 pointed out at the prior hearing, and this was on Page  
9 138, that the amendment to his E206 is intended to protect  
10 the character of historic buildings and protect these  
11 significant architectural features. The permit here  
12 detracts from that interest by illegally authorizing the  
13 removal of a protected architectural element. Our third  
14 argument is that there are two principle buildings on this  
15 lot. So the second revised permit, like its predecessors,  
16 authorizes not only the renovation of the existing row  
17 dwelling but also the construction of another three-story  
18 structure of essentially identical size in the rear yard.  
19 I'll call those the front and rear towers. The drawings  
20 for the second revised permit have that connector that  
21 we've talked about, but it does not meet the requirements  
22 of Section B309.1. And just to emphasize a point that was  
23 made earlier, what's at issue here is not whether there's  
24 a meaningful connection within the meaning of the old  
25 regs; we have to look to the language of B309.1D because

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1 the rules changed, the rules are now different. So you  
2 can meet that fourth prong in one of two ways; it can  
3 either be a common space, the connector can be a common  
4 space by users of all portions of the building, so it can  
5 be a lobby, a rec room, a loading dock or service bay, or  
6 in the alternative -- either one will suffice -- space  
7 design use to provide free and unrestricted passage  
8 between separate portions of the building which is an  
9 unrestricted doorway or walkway, that's B309.1D. So the  
10 connector here fails that; it does not satisfy either  
11 test.

12           So, one, it's a narrow structure; it's only 3  
13 foot 8 wide. It's not a rec room, loading dock or service  
14 bay, and so it does not function as common space. In  
15 fact, if you look at the drawing, the door opens inward.  
16 Second, Subsection D2 is equally unavailing; the test  
17 requires a qualifying connector provide free and  
18 unrestricted passage, and this bares repeated, the  
19 regulations use the word "unrestricted" twice; this was  
20 really, really important in ZR16. But the first floor  
21 plan here shows that what you have are doors that are  
22 locked to each of the two units, so if you look at either  
23 end of that breezeway, and Mr. Teass testified himself --  
24 this is on Page 155 of the transcript at Line 23 -- that  
25 both of those doors are to be locked. So, the consequence

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1 -- Mr. Chairman, I know I'm right at my time but if I can  
2 keep going.

3 CHAIRMAN HILL: Yes. I mean, how much longer?  
4 The only reason I'm stopping you -- well, there's a couple  
5 of reasons -- one is we are going to ask for Findings of  
6 Fact and Conclusions of Law, which is really where we the  
7 Board is going to boil down the most of, I think, at least  
8 helping to summarize and facilitate this, all this  
9 information, and then other -- I mean, at this point where  
10 everybody's going to get 15 minutes, we'll be here for an  
11 hour. And so I want it to be helpful as well. So how  
12 much more time you think you need?

13 MR. ECKENWILER: Probably another ten minutes.

14 MR. CUMMINS: If it helps the Board, I can  
15 reduce my time.

16 CHAIRMAN HILL: Okay, he's ceding some of your  
17 time. Great. Okay, there you go.

18 MR. ECKENWILER: Thank you. So, and just to be  
19 clear about why it matters if this connector does not  
20 satisfy the requirements of B309; the regulations don't  
21 allow a second principle building, so the only way that  
22 this new building in the back would be allowable if it's  
23 an accessory building and as we've explained in detail in  
24 Case Exhibit 46 -- I think that was our second revised  
25 pre-hearing statement -- it doesn't meet the technical

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1 requirements for what makes them think an accessory  
2 building is not small enough in some.

3           Now, on this issue of the breezeway and whether  
4 or not it converts these two towers into one building,  
5 DCRA's testimony was inconsistent. Mr. Le Grant initially  
6 claimed on Page 68 that both prongs were satisfied, but he  
7 later back-tracked on that. He admitted that there's no  
8 unrestricted access -- that's on Page 77 -- so he said the  
9 second prong doesn't work, he said he relied only on the  
10 first prong, that this is something like a lobby or a rec  
11 room, he says that on Page 97. Now, the owner tries to  
12 make a lot of this crisscross arrangement here with these  
13 underground tunnels and the parking, and the trash and so  
14 on. This misses the point of the regs; this is not about  
15 what's convenient and what's a clever way for you to get  
16 from the front tower to your car in the back. Keep your  
17 eye on the ball here, too. The issue is: are these two  
18 buildings functioning as two buildings, or does this  
19 breezeway so unify them -- in conformity with the  
20 standards under the regs -- that it makes them a single  
21 building. And it simply does not for the reason that  
22 Commissioner Turnbull mentioned. If you imagine the  
23 alternative in which this thing isn't there, all of the  
24 same stuff -- the very nice video that I think Mr. Teass  
25 prepared -- you can still do all of that stuff. The

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1 connector doesn't facilitate any of that. The only thing  
2 that the connector might do, and this is something that  
3 Vice Chair Hart and I had an exchange about in September,  
4 and this is an example that I think Mr. Brown gave earlier  
5 of: Unit 1 owner wants to walk over to Unit 2 and not get  
6 rained on or snowed on and stay toasty warm to borrow a  
7 cup of sugar. Well, that's great; so that's a passageway.  
8 But is it an unrestricted passageway; no, it's locked at  
9 both ends. So, if the theory is the function of this is  
10 to help Unit 1 owner go visit Unit 2 owner, yes it keeps  
11 you warm, but the test under the regs isn't if it keeps  
12 you warm. It's also is it an unrestricted passage, and  
13 it's not that; it is a fig leaf that's tacked on so  
14 functionally you can build two row houses on one lot;  
15 that's what we have here, two row houses, two principle  
16 buildings, and that's not allowable.

17           So don't be deceived; you can go off and chase  
18 the shiny object looking at the video which is very well  
19 done, but the point is not about access to the backyard or  
20 the trash or the parking; it's about how those two masses,  
21 those two structures relate to each other; are they a  
22 single building, and they are not under the terms of the  
23 regulations.

24           And then last with respect to the illegal rear  
25 addition, what we would call the pop-back, as you know

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1 E205.4 has a restriction, you can't pop back more than 10  
2 feet past an adjoining, principle, residential building.  
3 That's what happens here. And again, that was always the  
4 plan here, but remember that prohibition came into effect  
5 in April of -- excuse, the current text of it came into  
6 effect on August 25th, 2017. So, in any event, the second  
7 revised permit had to comply with this requirement, don't  
8 go back more than 10 feet unless an exception applies, and  
9 there was no exception that in fact applies. There is a  
10 potentially applicable exception, so A301.14 does allow  
11 for grandfathering for certain extensions more than 10  
12 feet, but you got to meet two conditions for that; the  
13 first is that the permit application was filed and  
14 accepted as complete by DCRA on or before March 27th; and  
15 second, that it was not substantially changed after  
16 filing. And you have to satisfy both conditions, not just  
17 one, but both. And in this case, neither one is  
18 satisfied, so to begin with, the original permit was not  
19 accepted on or before March 27th. At the last hearing, I  
20 testified about the email from Max Tondro in which he  
21 pointed out that it was not accepted as complete until  
22 March 29th; that's Exhibit 46H. DCRA's supplemental  
23 filing confirms the accuracy of what Mr. Tondro says in  
24 that email; as we explain in our filing, that's Exhibit  
25 66, Pages 1 and 2, the DCRA time line shows that the

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1 application documents, so the drawings and all that stuff  
2 got uploaded on March 23rd and into the wee hours of March  
3 24th. It was completed at 1:51 a.m. and 49 seconds. Two  
4 seconds later, 1:51 a.m. and 51 seconds, according to  
5 their own time line, the table that they provide, a new  
6 task is created in ProjectDox and that's for what's  
7 labeled the Pre-screen Review; that's the second row in  
8 their ProjectDox time line.

9           And what that shows is the task was created  
10 early in the morning when nobody was sitting around at  
11 DCRA, no human being was looking at things, let alone  
12 looking at them and completing a review in two seconds,  
13 that that task, the pre-screen review was not completed  
14 until the morning of March 29th. And that's the process  
15 that Mr. Le Grant testified about; last month he said on  
16 Page 72 when an application is submitted to DCRA, it goes  
17 through an initial vetting, that means a human being,  
18 right? That's not I uploaded some documents that say  
19 whatever they say, somebody vets it; an initial vetting to  
20 see if sufficient information exists in order to begin a  
21 review. And that vetting by a human being took place on  
22 March 29th and not before, according to DCRA's own time  
23 line. And therefore it's nonsensical for them to claim  
24 that the application was accepted as complete on March  
25 24th before any human being had laid eyes on it, let alone

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1 accepted it as complete. So failed the first prong two  
2 days too late; it wasn't accepted as complete until March  
3 29th; that's after March 27th, so the first prong fails.  
4 But for a second independent reason, the vesting provision  
5 in A301.14 does not apply because it also requires that  
6 the application not have been substantially changed after  
7 filing, in other words the regulation. So if you compare  
8 this to the original application, there's a series of  
9 revisions that shows extensive changes since then. I'm  
10 not going to walk you through all of them; we listed them  
11 all in our second revised pre-hearing statement, that's  
12 Exhibit 46 at Pages 14 to 21, and in our reply Exhibit 59,  
13 Pages 9 through 10.

14 I will just flag one thing; Mr. Cummins  
15 mentioned earlier this business about the connector. It  
16 was originally not fully above-grade, and all you need to  
17 do to see that is compare Exhibit 46D, Sheet 85.2 -- and  
18 that's the original permit plans -- to Exhibit 46B, Bravo,  
19 again the same sheet 85.2, and those are the first revised  
20 drawings. And both of those have on the right, there's a  
21 notation "BHMP," that's building height measuring point,  
22 that's the datum. And you can see that in the original  
23 drawings, a significant portion of that connector, that  
24 breezeway as it was styled then, is below-grade, it's  
25 underground, so it's not fully above-grade.

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1           CHAIRMAN HILL: Commissioner, how much time do  
2 you still need?

3           MR. ECKENWILER: I think I got probably about  
4 two minutes.

5           MR. CUMMINS: I can reserve the balance of my  
6 time and I'll conform.

7           CHAIRMAN HILL: Okay, thanks.

8           MR. ECKENWILER: So Mr. Chairman, the simplest  
9 illustration of the changes made are the bubbles on the  
10 drawing submitted for the second revised permit, and those  
11 are all the drawings that are Exhibit 59A. Mr. Le Grant  
12 testified at the last hearing that those literally dozens  
13 of bubbles represent changes, and you can see that  
14 discussion where we went through each of the drawings,  
15 that's on Pages 103 through 104 of the transcript. So  
16 taken together, these numerous differences reflect changes  
17 from the original permit so substantial as to disqualify  
18 the second revised permit application from the benefit of  
19 the A301.4 potential vesting rule. So let's just step  
20 back one last time here for this fourth claim; remember  
21 the reasons for this vesting provision and the criteria in  
22 it; not substantially changed is there to prevent the  
23 filing of a slap dash application that's riddled with  
24 errors just so you can put down a placeholder to beat a  
25 deadline, and that's what happened here; an application

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1 with obvious zoning defects like this breezeway that  
2 wasn't fully above-grade was rammed through DCRA --  
3 remember, it was accepted as complete on March 29th, they  
4 issue the permit two days later. Okay, so this thing was  
5 really rushed through. The applicant spent the next 16  
6 months, so from that point to the issuance of the second  
7 revised permit, trying unsuccessfully to fix all the  
8 errors, revising that permit multiple times, and this is  
9 precisely the kind of switch-a-roo the not substantially  
10 changed prong is meant to address. So not only was that  
11 application too late to benefit from vesting, instead it  
12 was complete two days too late, it also changed too much,  
13 and therefore it's subject to the 10-foot pop-back  
14 restriction, and it does not comply with that. So for all  
15 of those reasons, ANC6C respectfully urges the Board to  
16 find that the second revised permit and all the  
17 predecessors that underlie it violate the regs and/or the  
18 revocation.

19 CHAIRMAN HILL: Okay, great. Mr. Cummins?

20 MR. CUMMINS: I'll be brief. I support this  
21 appeal for a variety of reasons; one I'm the adjoining  
22 neighbor, I'm directly impacted by this project, but also  
23 in the city we have a real problem with DCRA issuing  
24 permits that clearly did not meet the building code and  
25 zoning regulations. I wanted to address as part of this

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1 the length of time they've had the property and not having  
2 a permit approved, had they submitted permit applications  
3 that met the building code requirements and zoning  
4 regulations, they could have had a permit and they could  
5 have built something quite massive under the rules, and  
6 neighbors or ANC nobody could say a peep. But that's not  
7 what they chose to do here, and I pointed out in my  
8 supplemental filing the original foundational level permit  
9 that they applied for says right on it they're one of  
10 those four units which is not allowed. And it also says  
11 they wanted to have a cellar level three stories plus a  
12 mezzanine, not allowed. So again, from the very beginning  
13 there was an intent here to try to build beyond what the  
14 rules allowed, and those rules as you pointed out and as  
15 the property owner pointed out were quite generous. But  
16 granting them -- sorry, nothing to point out here -- this  
17 is a revocation of a permit, it's not a special exemption  
18 request or a variance request; these were issued all of  
19 the permits, the original permit and the subsequent  
20 revisions were issued as matter-of-right permits, and they  
21 don't include inaccurate site plans, the plans submitted  
22 and the plans you're reviewing don't accurately depict  
23 property, and I discussed that in detail in my filings.  
24 That alone, DCRA should have had -- stop right there; you  
25 can't even accurately present -- again, this is building

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1 code issuance, it's a different matter before the OAH -  
2 but again, just looking at these plans you have to treat  
3 them as a little suspect knowing that there are  
4 inaccuracies in them. That includes the latest filing of  
5 the walk-through video which looks very slick, but if you  
6 look very carefully what the plan is -

7 CHAIRMAN HILL: I got -- I got -- we all need  
8 to take a break here. I have to take a break. I have to  
9 take a break, okay? So I got to just step back here. I'm  
10 watching, I listened a half an hour, or 25 minutes of  
11 conclusion and I understand that you're the next door  
12 neighbor, okay Mr. Cummins, and I understand that you're  
13 passionate about this, but the property owner is sitting  
14 over there and he's listening to you make accusations and  
15 everybody's telling him like DCRA is -- you're accusing  
16 DCRA of wild things, everyone is, okay? And so I just  
17 want to let you know this is a conclusion of six or seven  
18 hours of testimony, four or five hours that we've had to  
19 read stuff as board members, okay? And this is not a  
20 place where we're going to now accuse people of doing  
21 things and changing things and breaking the rules and  
22 conniving, so now I'm getting a little tired, okay. So  
23 I'm sorry that you happened to get at this point, I  
24 suppose, because I need to take a break now. I've been  
25 extremely patient, the Board has been extremely patient,

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1 and Mr. Cummins I know you live right next door to the  
2 property. I'm just saying like -- what I'm just trying to  
3 say is let's try not to make any accusations on what any  
4 intent was of anyone, just stick to the conclusions of  
5 your case.

6 MR. CUMMINS: I'll try to avoid any  
7 accusations, but I didn't respectfully, I didn't do  
8 rebuttal. I'll just include that in the closing, and I'm  
9 trying to be very brief.

10 CHAIRMAN HILL: Okay, that's fine. That's  
11 okay. Let's take a five-minute break, I want to take a  
12 five-minute break. We'll come back, Mr. Cummins, for your  
13 conclusion. Everybody, we're going to take a ten-minute  
14 break, okay?

15 (Whereupon, the above-entitled matter went off  
16 the record at 5:44 p.m. and resumed at 5:57 p.m.)

17 CHAIRPERSON HILL: Okay. Let's see. We're  
18 back, okay. So I want to make a couple of points if I  
19 could. What the Board has an opportunity to do and what  
20 we haven't done in the past, and what we don't do, is ask  
21 for conclusions in writing.

22 The reason why I don't like asking for  
23 conclusions in writing is because it's nice to hear them.  
24 Unfortunately, there's a lot of passion connected with  
25 conclusions so maybe, for those who might come back here

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1 again, we might go to conclusions in writing. I'm just  
2 making a comment.

3 Mr. Cummins, it is unfortunate that I kind of  
4 built this crescendo right here which is how I'm having --  
5 at your particular conclusion I'm having this rethinking  
6 of this. Again, it's not -- I'm just kind of point out  
7 things. It's really kind of we are trying to highlight  
8 things that the Board is trying to remember.

9 Unfortunately, if there's a lot of things that  
10 we're trying to remember, it's just going to end up in  
11 your conclusions of law and findings of facts that we  
12 actually might have an opportunity to really look at the  
13 things. In your conclusion it's not really so much  
14 rehashing what the argument was, not that's the way the  
15 commissioner did it.

16 I'm just saying if you could kind of go ahead  
17 and in your conclusion kind of tell things to the Board  
18 that you would like us to try to hold in our mind as we  
19 kind of go into this. Just I guess I don't know -- I mean,  
20 I have some thoughts at the end as to things that I would  
21 like to hear from everybody in terms of their findings of  
22 facts and conclusions of law which we will, I think, be  
23 better able to articulate our discussion when we come to  
24 deliberations.

25 Mr. Cummins, go ahead and I'm just going to

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1 listen to you and whenever you think you're done, let me  
2 know.

3 MR. CUMMINS: I'll try to be very brief.  
4 Again, thank you. It's been a very long day. It's not  
5 the process I wanted. I objected to several procedural  
6 points along the way that made this case more complicated  
7 and dragged it out and postponed it, but we are where we  
8 are and let's move forward.

9 To be clear, you know, a lot of the argument  
10 here to kind of draw the threads and what's important,  
11 there's this claim of having all these vesting rights  
12 based on the issuance of the original permit B1706219.  
13 That permit is the reason we're here. This appeal was to  
14 get that permit revoked because it clearly did not -- does  
15 not meet the zoning regulations.

16 Then instead of moving forward with that, we  
17 had postponements and then DCRA has since issued revised  
18 permits. Those didn't meet the zoning regulations either.  
19 Part of the arguments along the way here is like, well, we  
20 already had it approved under the original permit. Well,  
21 that original permit should have already been thrown out  
22 by now if things had gone my way in terms of hearing that  
23 individually before incorporating the other permits into  
24 this appeal.

25 We are where we are. Again, I think

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1 Commissioner Eckenwiler made points very accurately. I  
2 did want to respond earlier and I saved it from my  
3 rebuttal to the closing statement about some of the  
4 testimony submitted for today, or in the hearing record.  
5 The video, for example. One of the inaccuracies of the  
6 video is that the doorway in the middle of the connection,  
7 the lobby breezeway, in the video is represented as  
8 swinging out into the courtyard.

9           In reality in the plans that are approved by  
10 DCRA that swings inside the corridor. The corridor is so  
11 narrow that when you open the door, you've put up a wall  
12 and blocked passage. That's a minor point but I think  
13 it's important to look at the plans and not necessarily  
14 some of the representations since then.

15           The plans themselves are not accurate. Even  
16 the site plan. There is a 400-square-foot garage that was  
17 partially removed. It's not accurately depicted on the  
18 site plan. The neighbor's extension was there. It was  
19 not accurately depicted in the site plan in the revised  
20 permits.

21 It was started before they got their permit, too. It was  
22 approved and construction already started even if it  
23 hadn't been fully completed. Even just simple things like  
24 that.

25           The Board is looking for any excuse to give any

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1 kind of extra consideration of some sort of hardship the  
2 developers had. I would urge you to reject that. They  
3 could have had an issued permit that met the rules and  
4 allowed them to build a very large structure. It wouldn't  
5 matter what the neighbors or the ANC or anybody else  
6 thought. That's not what they chose to do here.

7           They tried to build beyond the rules. Again,  
8 that's clear. I referred earlier to my supplemental  
9 filing. I included the cover sheet of their very first  
10 permit application, the foundation-level permit, that says  
11 right on it that they want to build four units which,  
12 obviously, is allowed. And they want to build more  
13 stories than is allowed.

14           Again, I'll save things for writing but I do  
15 think it's important that the Board revoke this permit.  
16 Not just because clearly it does not meet the zoning  
17 regulations and that is well and good enough, but my  
18 feeling is that unless you take action, then there's  
19 really no hope for neighbors who expect the rules to be  
20 followed. There's just lots of problems all over the  
21 District. It's a matter obviously -- even in the current  
22 election that's one of the issues I noticed on a flyer  
23 from a candidate.

24           Again, I think it's an important matter here.  
25 Obviously rule on the record. There's a lot in the

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1 record, a lot more than I could touch on in this brief  
2 oral closing statement. Thank you again for hearing this  
3 appeal and I urge you to support the appeal of ANC 6C and  
4 order the revocation of B1706219 and the subsequent  
5 revised permits, all of them.

6 CHAIRPERSON HILL: Okay. Thank you, Mr.  
7 Cummins. I do want to make a comment just for the Board  
8 and everything, and people that are here. Again, for  
9 anybody, I've served here for a little bit of time now and  
10 I don't think -- I think statements that the city --  
11 people are getting away with things or the city is not  
12 following the regulations I don't think that is accurate.

13 I think you have presented a case and you have  
14 presented a case that the Zoning Administrator has erred  
15 in his issuing of the permit. To say that we're not going  
16 to follow the regulations, or that we don't follow the  
17 regulations, I don't think that's true because I have been  
18 here long enough to know that we do follow the  
19 regulations.

20 I don't know how this is going to go at all at  
21 this point. I just want to let you know that the way that  
22 I will be looking at this is exactly the regulations and  
23 whether or not the regulations are being adhered to. You  
24 can disagree with my interpretation of those but you can't  
25 deny, in my opinion, that I'm trying to make sure that the

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1 regulations are being followed. I just wanted to get that  
2 on the record as well.

3 Ms. Lord-Sorensen.

4 MS. LORD-SORENSEN: Good evening, Chairman  
5 Hill, and members of the Board. As you are aware, the  
6 Appellant has the burden of proof in this case. As I will  
7 outline shortly, Appellant has failed to meet his burden.

8 There are four issues pending before the Board.  
9 (1) Whether the guardrail must comply with the one-to-one  
10 setback; (2) removal of the cornice; (3) construction of  
11 the rear building; and (4) construction of the rear  
12 addition.

13 With respect to the guardrail, the Zoning  
14 Administrator clearly testified back in September that it  
15 was not subject to the one-to-one setback. The guardrail  
16 was not parallel to the lot line but, rather, was  
17 perpendicular to the lot line and there for life safety  
18 purposes.

19 Now, with respect to the second issue which  
20 deals with the cornice, the issue here was whether the  
21 existing cornice is a rooftop architectural element that  
22 cannot be removed from the property because it is  
23 prohibited supposedly from removal by 11(e) DCMR 206.1.

24 Now, here in this particular case the permit  
25 authorizing the removal of the cornice on the property was

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1 issued on March 31, 2017. Per the project docs work flow  
2 that I have submitted to the Board, the permit was deemed  
3 accepted on March 24, 2017.

4 On March 27, 2017, right before it was issued,  
5 the Zoning Commission Order No. 1411(b) added cornice to  
6 the enumerated list of protected features but it did not  
7 go into effect until April of 2017, so a month after their  
8 original permit was issued. Since the revised permits now  
9 do not include any amendments to the cornice, then it did  
10 not trigger the text amendment that went into effect in  
11 April of 2017.

12 The third issue, whether the rear tower of the  
13 townhouse is a second principle building on the property,  
14 the Zoning Administrator testified that the front and rear  
15 towers of the townhouse have a meaningful connection  
16 between them which makes it a single building under 11(b)  
17 DCMR 309.1.

18 We know this because back in September the  
19 Zoning Administrator went through the regulation and  
20 specifically explained how the connection at this  
21 particular property satisfies 309.1. He explained that it  
22 was fully above grade, enclosed, heated, and artificially  
23 lit.

24 Now, Mr. Eckenwiler is harping on (d)(2) spaces  
25 designed and used to provide free and unrestricted

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1 passage. The Zoning Administrator was clear back in  
2 September that he was looking at (d)(1), the common space.  
3 Specifically, it was a common space shared by the users of  
4 all portions of the building.

5           Based on his reading of the regulations, he  
6 found that the connection between the front and the rear  
7 towers satisfy all four zoning requirements. For those  
8 reasons, the Zoning Administrator correctly determined  
9 that the connection between the front and rear tower  
10 satisfied 309.1 and, thus, according to the regs using the  
11 specific language of the regs, the two towers shall be  
12 considered parts of a single building.

13           Now, the remaining issue was whether the rear  
14 tower of the townhouse exceeds the maximum depth  
15 permissible by the zoning regulations in effect on the  
16 date of the revised permit's issuance. Now, the permit  
17 authorized construction of the rear tower extending  
18 further than 10 feet beyond the farthest wall of the  
19 adjacent building because such construction was permitted  
20 under the zoning regulations in effect at the time that  
21 the permit was issued.

22           Now, 11(e) DCMR 205.4 prohibits buildings in an  
23 RF1 zone from having a rear extension farther than 10 feet  
24 beyond the farthest wall of an adjoining property. The  
25 permit authorizing construction of the rear tower in this

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1 case was approved on March 24, 2018, again according to  
2 the project docs work flow that was submitted to the  
3 Board, and was subsequently issued on March 31, 2017.

4 The Zoning Commission order 1411(b), which  
5 adopted the 10-foot limitation on new rear additions, did  
6 not become final and was not in effect until April 28,  
7 2017. Again, almost one month after the original issuance  
8 of the permit. We ask that you find that the Zoning  
9 Administrator did not err in the issuance of the permit  
10 and that you deny the appeal.

11 CHAIRPERSON HILL: Okay.

12 Mr. Brown.

13 MR. BROWN: I have a PowerPoint presentation --

14 CHAIRPERSON HILL: Turn on your mic, Mr. Brown.

15 MR. BROWN: I'm going to talk through it  
16 without stopping. I would like Mr. Teass and Mr. Bello to  
17 make several points that are better coming from them if  
18 that is acceptable to the Board.

19 CHAIRPERSON HILL: That's good. Was Mr. Bello  
20 testifying earlier?

21 MR. BROWN: Yeah, he was an expert witness in  
22 Zoning.

23 CHAIRPERSON HILL: Oh, that was back in the  
24 beginning?

25 MR. BROWN: September 19th.

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1 CHAIRPERSON HILL: Okay.

2 MR. BROWN: When we had the hearing.

3 CHAIRPERSON HILL: It doesn't matter. It looks  
4 like Commissioner Eckenwiler is going to object to it.

5 Is that correct, Commissioner Eckenwiler?

6 MR. ECKENWILER: Yes, Mr. Chairman. This is  
7 closing. This is not more testimony.

8 MR. BROWN: That's okay.

9 CHAIRPERSON HILL: Mr. Brown, just go ahead  
10 with your conclusions.

11 MR. BROWN: Yes. I want to quickly go through.  
12 There have been a lot of dates but there are a handful of  
13 critical dates. March 24, 2017 the original permit was  
14 accepted as complete by DCRA. They provided their  
15 internal records. Mr. Le Grant has testified under oath  
16 the permit was accepted on that date.

17 Speculation about the internal workings of the  
18 computer really is irrelevant. DCRA's records establish  
19 the permit accepted and complete on March 24, 2017. Even  
20 more important, the original permit was issued on March  
21 31, 2017.

22 That date is important because, one, it was  
23 before the cornice rule was adopted. It was before the  
24 10-foot setback rule was adopted under the accepted  
25 vesting practices. Once that permit was issued, the

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1 property owner had the right under 301.4 to take that work  
2 to completion under that permit.

3           As we'll go through, and why I've asked Mr.  
4 Teass to briefly compare the permits, nothing in the  
5 permits that were revised in any way impacts what was  
6 approved in the original permit. The total facade was  
7 removed, quoting Mr. Eckenwiler, and he's correct in this  
8 case, March 31 of 2017.

9           From that point on my client had the right to  
10 tally remove that facade and that's important because  
11 nothing that occurred in the first revised or second  
12 revised permit made any change to that provision and he  
13 should have the right to complete that work as vested.

14           The rear addition is the same case, occurring  
15 before the change and he had the right to complete that  
16 work to completion. Nothing in the permits that were  
17 issued subsequently changed that. The fact that there  
18 were internal renovations or revisions, the layout of the  
19 units, the fact that the units were flipped, all within  
20 the building envelope that was approved in the original  
21 permit does not trigger, and nobody could reasonably  
22 expect that to trigger, compliance with the subsequently  
23 enacted provision.

24           In that case even the most trivial revision --  
25 and most of the revisions were made were trivial. They

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1 removed this or reconfigured something. Ms. John, I  
2 think, hammered right to this point that every permit  
3 revision doesn't trigger compliance with the new zoning  
4 regulations. None of the changes that were made in any  
5 way impacted the front facade removal, the rear addition,  
6 depth, and all of those should remain vested.

7           Similarly, the first permit -- and this is  
8 important both for vesting purposes and timeliness of the  
9 appeal purposes -- the first permit and every permit after  
10 that clearly showed the allegedly violating guardrail  
11 perpendicular to the side parapet wall. It was shown in  
12 the plans.

13           Mr. Eckenwiler had the duty to file a timely  
14 appeal on that issue and didn't. The first time he raised  
15 that issue was 15 months later and 13 months after he  
16 filed this appeal. The Board's jurisdiction can be  
17 determined at any point. Quite frankly, if you don't have  
18 jurisdiction, you can't decide the case and that is  
19 certainly what the Court of Appeals has said.

20           The same is true for the removal of the front  
21 facade. At the early stage the front facade was being  
22 removed. At that point it was a roof-top architectural  
23 element. If Mr. Eckenwiler thought that was in violation,  
24 which he's indicated in various briefs, he should have  
25 filed an appeal then. He didn't first raise the cornice

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1 issue, again, until 15 months later after the permit was  
2 issued and his appeal is untimely and that work also is  
3 vested.

4           The first revised permit was April 18, 2018.  
5 It's important because the rear addition stayed the same,  
6 as I said before, the front facade removal stayed the  
7 same, and the guardrail was the same as originally  
8 approved. The same is true for the August 2, 2018 second  
9 revised permit. All those elements remain the same and  
10 were previously vested.

11           The vesting issue, again, which I've talked  
12 about, is critical. If you read 301.4, the most important  
13 language, "Any construction authorized by a permit may be  
14 carried to completion pursuant to the provisions of this  
15 title in effect on the date that permit is issued."  
16 Again, March 31, 2017 the rear addition was permitted and  
17 that work could be completed. Also the removal of the  
18 front facade was authorized at that time and could be  
19 completed so those provisions are vested.

20           What I would like to do, and it's better coming  
21 from Mr. Teass, in our PowerPoint we have an above and  
22 below comparison of the permits focusing in on the rear  
23 addition, the above-grade connection, the guardrail, and  
24 the removal of the front facade. You can see that in the  
25 context of the original permit and revisions that were

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1 made.

2 MR. TEASS: This is ground that we covered  
3 previously.

4 MR. ECKENWILER: Mr. Chairman, I have to  
5 object. This is testimony.

6 CHAIRPERSON HILL: This is testimony. So he's  
7 reviewing what he had given before. Right? I can ask OAG  
8 because I don't know when to draw the line on what  
9 testimony is. Mr. Eckenwiler, I'm just trying to get  
10 through this in the same manner that I got through yours  
11 which is I listen to everything that you said. Whether  
12 you were re-testifying on what you had given testimony on  
13 before, I didn't interrupt you and say, "You're  
14 testifying."

15 You are basically reiterating everything that  
16 you said before so now they are going to reiterate  
17 everything they said before. I suppose if it's a new  
18 slide or not a new slide, that might be new testimony.  
19 I'm just trying to get to where we can decide this. I  
20 guess, Mr. Teass, if you don't use slides and you want to  
21 go ahead and tell me whatever you think you want to tell  
22 me, I will consider that more a conclusion.

23 MR. TEASS: Without the use of --

24 CHAIRPERSON HILL: Without the slides. Just go  
25 ahead and tell us what you're trying to get across.

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1           MR. TEASS: I think really what we're trying to  
2 do is address the issue of what changed in the original  
3 permit in March of 2017 and what changed in April, and  
4 then there was a third iteration. I think the point we  
5 were trying to make in the exhibits that were submitted  
6 was that at the end of the day the zoning envelope did not  
7 change from 2017 to 2018.

8           I think this is confirmed by the zoning  
9 administrator's interpretations. We tried to portray that  
10 in the exhibits that we previously submitted. We have  
11 also gone through and done an exhaustive review. Grant  
12 you there were several changes that were made to the  
13 interior. I would argue that none of those changes have  
14 any impact to the permitted zoning envelope that was  
15 approved.

16           I would furthermore go on to say that the  
17 substantial connection is a necessary feature of the  
18 project. It has always been above ground. There has  
19 always been a roof over it. It has always been  
20 conditioned. It has always been accessible by both units  
21 and has always functioned according to the definitions  
22 that are laid out in the zoning regulations.

23           There were design revisions undertaken on the  
24 front facade. There were design revisions taken to the  
25 roof deck, roof deck access. There's been an evolving

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1 standard within DCRA as to the configuration of how one  
2 gets on the roof of an RF-1 building so we have attempted  
3 to make sure that as that standard has evolved we have  
4 been in compliance which is the result of the second  
5 revision.

6 I think in terms of -- really three of the  
7 issues that are raised by the Appellant; the guardrail,  
8 the cornice, and the pop-back, all relate to this issue of  
9 vesting which I think Mr. Brown has touched on that we  
10 would have been under the original permit and the original  
11 reading of the Zoning Regulation 301.4 that we would have  
12 been entitled to complete the project to completion.

13 I think that, in summary, the changes that  
14 we've illustrated in the exhibits that were submitted  
15 today, but also as a previous exhibit to both the Board  
16 and the Appellant that the changes are minor in nature.

17 CHAIRPERSON HILL: Okay.

18 Mr. Brown. Your microphone is not on.

19 MR. BROWN: Sorry. If I could, I'll spare the  
20 Board the one-minute-and-five-second video again unless  
21 you would like to see that with some commentary. I think  
22 the video gives you a better understanding of, one, there  
23 is common space there between the units that can be used  
24 by both owners or people coming to visit, both owners.  
25 And that there is free access between those two units.

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1 I've heard it said repeatedly that somehow the  
2 fact that the door to Unit A is locked and the door to  
3 Unit B is locked, that somehow that's dispositive if this  
4 not being common space or unrestricted access. The  
5 regulations clearly provide that is not a requirement. If  
6 you think about it, put it in the context of an apartment  
7 building, or even a two-unit apartment building, the fact  
8 that each individual unit has doors locked shouldn't be  
9 dispositive of anything.

10 The above-grade connection is common space,  
11 unrestricted access for both the owners to that space, and  
12 also providing access to other parts of the building which  
13 is important to their use of the building. Access to the  
14 street, the parking, the garbage, or each other and for  
15 their guests I think is important and it's unrestricted  
16 between the two properties.

17 We provided some very good, I think,  
18 comparisons in the video. The other thing is, Mr.  
19 Eckenwiler would like us to believe that this is something  
20 that is uncommon, Rube Goldberg. I think that is being  
21 unfair to the circumstances. The Board and Mr. Hill, I've  
22 mentioned this before, but in the case before was a case  
23 where they were seeking zoning relief, not for the above-  
24 grade connection. The Board praised the courtyard and the  
25 above-grade connection and the design and the family-sized

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1 units.

2           Certainly the Board would not have approved  
3 that for other zoning reasons if, in fact, I think they  
4 were uncomfortable with the above-grade connection which  
5 was the glue that held that plan together. I have  
6 provided drawings in the package about that.

7           The other thing is that -- and we've just  
8 provided one example of a permit that was issued in April  
9 2017 which had a very similar above-grade connection in  
10 RF-1 zone connecting a front and a rear portion of the  
11 building. That went through in a contemporaneous time  
12 frame. Not through the Board but through DCRA such that  
13 this is not an uncommon occurrence and we provided some  
14 detail on that.

15           Last the facade trim. When Mr. Le Grant's  
16 office approved the original permit the cornice didn't  
17 exist. It was judged under the rooftop architectural  
18 element and was authorized to be approved. That approval  
19 is vested and maintains in place, notwithstanding the  
20 protests about it.

21           I would also in the package just for some  
22 context DCRA provided several examples of where cornices  
23 weren't removed. I think, to be accurate, I have provided  
24 for 4000 14th Street you'll see the original facade of  
25 4000 14th Street.

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1           If you go to the next one, you'll see it under  
2 construction. Then here the final that was taken last  
3 week shows what occurred. You'll see that all those  
4 elements that could have been classified as cornice have  
5 all been removed in their entirety and replaced in  
6 different fashions not in kind. I don't think that  
7 information provides much for the Board's consideration.

8           Again, 210 P Street, N.W., original  
9 notwithstanding the fact the cornices not being removed.  
10 That's the final product. Then, again, 223 17th Street,  
11 S.E., the original and the facade not being removed.

12           I think it's important to realize, one, the  
13 facade was removed prior to the regulations and it's not a  
14 cornice. I've never acknowledged it was a cornice, and  
15 how it's distinct from being a cornice. Then, finally the  
16 guardrail.

17           Mr. Le Grant does an incredibly difficult job  
18 oftentimes without direct guidance from the regulations.  
19 He has established a well thought out policy that in this  
20 very specific case the guardrail running perpendicular to  
21 the side parapet wall is acceptable. That guardrail is 36  
22 inches high below the parapet wall and not visible and for  
23 life safety purposes. Mr. Le Grant in this case has made  
24 a sound policy and the Board owes him deference on that  
25 matter.

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1 I would point out in general, as well as  
2 specific to the guardrail issue or, for that matter, the  
3 front facade, if the Board found those minor issues were,  
4 in fact, violations of the zoning regulations, those  
5 matters can easily be changed. The guardrail can be  
6 moved. The front facade element can be retained and the  
7 substance of this permit be maintained which is the rear  
8 addition and the above-grade connection.

9 It goes back to people have tried to find fault  
10 on the permitting in this project. My client has worked  
11 very hard and at great length and expense to get through  
12 the permitting process. It has not always been a friendly  
13 process to him. In fact, it's been a very unfriendly  
14 process. His goal and his instructions to me and to those  
15 who have been involved is, "I want to comply."

16 Everything we've done in the context of this  
17 appeal has been about complying. In fact, if the  
18 guardrail was something that the Board thinks differently  
19 from Mr. Le Grant's judgment, that can be corrected  
20 easily. If the Board thinks that the front facade could  
21 be maintained, it will be maintained because, again, this  
22 process with my client is about compliance.

23 With that, you've heard way too much from me  
24 and I'm under my time limit. Thank you.

25 CHAIRPERSON HILL: Okay, great. All right. We

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1 are going to figure out a timeline here for findings of  
2 fact and conclusion of law and when we could get back  
3 here. However, before we do, I would like to let the  
4 remaining Board members if they have anything they would  
5 like to share, please share. We won't get a chance to  
6 speak with you all again. We will just deliberate.

7 I suppose after being here for however long  
8 we've been here, and this is not my first appeal. I've  
9 gone through this process many times, but this one  
10 actually has taken a lot of time and it has been fairly --  
11 not necessarily any more intense than others but it's been  
12 a little intense. I just want to share that -- again, I  
13 would like to have an opportunity to share a little bit  
14 which is, you know, we're going to sit here and we're  
15 going to deliberate what is going to happen.

16 The ANC has come forward with an appeal.  
17 Appeals in general tend to be a little difficult to win  
18 because it's something that you have to -- it's just a  
19 higher standard usually. That's not to say that it  
20 doesn't happen because I think Commissioner Eckenwiler has  
21 been both on the winning and losing side before, which is  
22 to say it does happen.

23 MR. ECKENWILER: Mr. Chairman, I've never gone  
24 to hearing on an appeal before this.

25 CHAIRPERSON HILL: Oh, really? Okay. I

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1 thought you had but that's all right. Commissioner  
2 Eckenwiler, I've seen you before. Let's put it that way,  
3 right? Okay. You've both won and lost I'm sure here. My  
4 point is, and I know the property owner has sat here and  
5 it's not -- it's very expensive. It takes a lot of time  
6 and I don't take -- I just want to again take this  
7 opportunity since we have been here together for so long  
8 and we won't have an opportunity to again, I want to kind  
9 of share my process as I'm thinking through this.

10 I don't take it lightly at all. I don't think  
11 any of our Board members do. It takes a lot of time for  
12 us just to get to this point in terms of reviewing the  
13 entire record so we'll just be looking at the regulations  
14 and it won't be whether or not we like the project or  
15 don't like the project because that is not how we do look  
16 at the regulations because I don't think -- I mean, I'm  
17 not getting into -- what is it? -- reading into how I  
18 think people have done things or do things.

19 I think that if you're allowed to do it under  
20 the regulations and you're following the regulations, you  
21 should have the opportunity to do it. I think that the  
22 meaningful connection is something that -- I was looking  
23 with the Zoning Commission and that is something I've been  
24 trying to understand while I've been here.

25 However, I do think, and I don't think there is

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1 anything wrong with this, that the meaningful connection  
2 is there to make it one building or whatever it is if  
3 you're following the regulation. I might not like what  
4 has happened from the regulations being followed but  
5 that's just the way it is. I'm not saying I'm agreeing  
6 with it. I'm just letting you know that is what I'm  
7 looking at.

8           As far as like the cornice and the railing, I'm  
9 not -- I don't disagree those are things we need to look  
10 at, the timings of the permit. For me I'm looking at the  
11 meaningful connection in terms of the building primarily.  
12 The intervener, you know, from what I understand, as well  
13 as the ANC, you know, and everyone can take -- again, I  
14 don't mean to imply anything like kind of the high road  
15 which is to say we are all here just to make sure the  
16 regulations are upheld.

17           I wouldn't want the building there. I would be  
18 fighting because I want a building to be next to me  
19 perhaps. The ANC doesn't want whatever the ANC doesn't  
20 want. I don't know. The property owner wants what the  
21 property owner wants because they want to develop. I  
22 guess what I'm trying to say is that I believe there's all  
23 -- everyone should understand the perspective that  
24 everybody is coming from and I'm just trying to kind of  
25 share with you how I'll be going through this when I'm

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1 going through this.

2           It is very unfortunate that somebody is going  
3 to lose here because a tremendous amount of time,  
4 tremendous amount of energy has gone into it, but somebody  
5 is going to lose here. I'm just throwing all that out  
6 there to just let everybody know.

7           Does the Board have anything they would like to  
8 share at the end?

9           MEMBER WHITE: I'm just going to share that I'm  
10 going to look at everything very carefully. I concur with  
11 what the Chairman has said. I'm going to listen to the  
12 tapes again. I'm going to give everybody the time that  
13 they deserve because everybody's got a lot of vested time,  
14 interest, and money in this.

15           I'm going to look at all the issues and  
16 meaningful connection. But I'm also going to look at the  
17 rules and the regulations and try to make a thoughtful  
18 decision on this. I respect everybody's time today. This  
19 was a very timely process. This is not our full-time job.  
20 At the same time, I think zoning is very critical to the  
21 city so I'm very respectful of the process. I promise you  
22 I'll be respectful in terms of looking at all of your  
23 arguments individually.

24           COMMISSIONER TURNBULL: I don't think I could  
25 add much more to what both of you have said. I think you

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1 covered everything very well. There is a lot to look at.  
2 We have a process that we go through and I think it's just  
3 going to take some time to review everything and look  
4 carefully at all sides.

5 CHAIRPERSON HILL: Okay. Let's try to get a  
6 time table here. So findings of fact and conclusion of  
7 law. How much time, Mr. Moy, do you think we need to put  
8 -- can you help me out with the timeline?

9 MR. MOY: Yes, sir. I'm going to propose two  
10 dates. The Board can let me know whether you want to add  
11 more time. Typically it takes 10 to 14 days to get a  
12 transcript into the record. If I go on that basis, I'm  
13 expecting to have the transcript in the record by November  
14 14th. If we allow two weeks for the parties to file draft  
15 findings of fact and conclusions of law, that would take  
16 us to their submission by November 28th. That's two  
17 weeks, unless you want to give them another week.

18 CHAIRPERSON HILL: I'm going to interrupt.

19 MR. MOY: Go ahead.

20 CHAIRPERSON HILL: How about another week  
21 because Thanksgiving is there.

22 MEMBER WHITE: Yes, please.

23 CHAIRPERSON HILL: Okay.

24 COMMISSIONER TURNBULL: No objection.

25 CHAIRPERSON HILL: Okay. All hail

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1 Thanksgiving. All right. That puts you when, Mr. Moy?

2 MR. MOY: Okay. That gives the submission by  
3 the parties by December 5th. The week after December 5th  
4 would be December 12th for decision. If the Board wants  
5 more than a week to review all the evidence, that would  
6 take me to the following week which then would be December  
7 19th.

8 CHAIRPERSON HILL: December 19th. I want to  
9 have kind of time if we wanted to consult with OAG or  
10 anything like that as well. Okay. So that gives two  
11 weeks after we get -- if we were to ask OAG for stuff or  
12 wanted to consult with them, do you think that's enough  
13 time for OAG?

14 MS. NAGELHOUT: I do.

15 CHAIRPERSON HILL: Okay. All right. Mr. Moy,  
16 we're doing this then for decision when again?

17 MR. MOY: Okay, sir. Decision making would be  
18 December 19th. Parties to submit draft findings of fact  
19 and conclusions of law by December 5th. As I said before,  
20 the transcript should be in the record by November 14th.

21 MR. ECKENWILER: Just one process question, Mr.  
22 Chairman. Is there any particular format you're looking  
23 for in terms of the -- I mean, I know what I can do. I  
24 don't need somebody to hand it to me but if there's a  
25 preference from the Board.

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1 CHAIRPERSON HILL: I don't think so.

2 MR. ECKENWILER: Okay. Great.

3 CHAIRPERSON HILL: I appreciate the question.  
4 I don't believe so, no.

5 Mr. Moy, I'm just curious. The 19th, is that  
6 our last hearing?

7 MR. MOY: Yes, sir. The next time the Board  
8 will be together would be 2019.

9 CHAIRPERSON HILL: Okay. All right. So you  
10 guys are going to be the end of the year.

11 Okay. Do you all have any questions and  
12 understand the dates? Okay. All right.

13 Thank you all and I wish you all the best. Mr.  
14 Moy do we have anything else?

15 MR. MOY: Surely not, sir.

16 CHAIRPERSON HILL: Thank God, then the Board  
17 stands adjourned.

18 (Whereupon, the above-entitled matter went off  
19 the record at 6:37 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: Board of Zoning Adjustment

Date: 10-31-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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