

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

See yellow highlights pages 8-9 14 19 21-23. 24-25

WEDNESDAY

DECEMBER 19, 2018

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The Regular Public Meeting 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)

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Public Meeting held on December 19, 2018.

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

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9:39 a.m.

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CHAIRPERSON HILL: Okay, if there's anybody here wishing to speak, sorry, if there's anybody here wishing to testify, if you wouldn't mind standing and taking the oath administered by the Secretary, to my left.

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

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(Witnesses Sworn.)

MR. MOY: Ladies and gentlemen, you may consider yourselves under oath.

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CHAIRPERSON HILL: All right, great. Well, welcome, everybody. We have a kind of full house today, glad you can all join us on our last meeting of the year. We will not be here next week, nor the week after that. And yeah, I guess we're all coming back in January.

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Let's see, we're all going to follow the, we are going to follow the agenda and everything that has been put forth, and so concerning the decisions as well as the cases. So that is something that we're going to do.

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Since I have the mic, I just want to kind of take the opportunity. Esther Bushman, who's the General Counsel for the Office of Zoning, is retiring. And I just wanted to,

1 you know, thank Ms. Bushman for her service.

2 And also personally for me, she is the person who
3 kind of helped me get oriented into this role, and really
4 appreciated all of the time that she spent helping me through
5 that. And then also all of the advice that she's given over
6 the years. And she's been serving here at the Office of
7 Zoning for, I think, over ten years now. And we definitely
8 wish her the best on her next chapter.

9 Was anyone wanting to add anything else?

10 MEMBER WHITE: I'll just add that, yeah, Esther
11 has been tremendous in terms of helping me to orient myself
12 in this role that I've been in over a year, I guess going
13 into the second year.

14 And sometimes it can be very challenging when you
15 also have full-time jobs as well, so she was very helpful in
16 terms of helping me present information promptly, and I wish
17 her the best. She's a tremendous lawyer, and she will be
18 missed.

19 COMMISSIONER TURNBULL: I would just add what we,
20 Chairman Hood of the Zoning Commission had spoken about
21 Esther on Monday night at our meeting. But yeah, I've known
22 Esther all the time that she's been here. She does,
23 interacts a lot with the Zoning Commission. She has, does
24 a lot of things for us.

25 And one of the things, such as ethics and telling

1 us to keep straight and narrow. But she's wonderful to work
2 with, and I just saw her a little while ago in the hallway
3 and I wished her enjoy now that she, and relax while she's
4 retired. But I'm sure she'll busy doing something.

5 CHAIRPERSON HILL: Okay, great, thank you. All
6 right, so Mr. Moy, we can go ahead and on that pleasant note,
7 move into our meeting case.

8 MR. MOY: Thank you, Mr. Chairman. As the Board's
9 aware, there are two cases for decision this morning, and
10 it's a public meeting session. The first is Appeal No.
11 19550.

12 This is ANC 6C, which is captioned and advertised
13 as amended from the, this is the appeal of the decision made
14 on March 31, 2017 by the Zoning Administrator, Department of
15 Consumer and Regulatory Affairs, to issue Building Permit No.
16 B17006219.

17 And as revised by Building Permit No. B1805207 and
18 B1811245, which would permit the renovation of a one-family
19 dwelling to a two separate one-family dwelling units, RF-1
20 zone, at premises 1125 7th St., NE, Square 886, Lot 35.

21 CHAIRPERSON HILL: Okay, great, thank you, Mr.
22 Moy. Is the Board ready to deliberate?

23 VICE CHAIRPERSON HART: Sure.

24 CHAIRPERSON HILL: Okay. Mr. Hart, you are
25 welcome to take the lead there. Thank you very much for

1 doing so.

2 VICE CHAIRPERSON HART: It's no problem. So after
3 reviewing the case and the fairly lengthy discussion or the
4 testimony that we've heard, I'd like to thank the appellant,
5 DCRA, and the owner for providing testimony and responding
6 to the questions that we had throughout this hearing.

7 I understand that it was, while there was some
8 complexity to it in terms of the timing and some of the kind
9 of moving pieces, it is fairly straightforward. And there
10 were kind of four issues that were kind of brought forward
11 to us.

12 So and I think it was also very helpful having the
13 guidance, as always, from OAG on this as well. So kind of
14 where do I stand on all of this? There was one permit that
15 the owner and DCRA stated was amended twice. This is one
16 point of contention, because the appellant states that the
17 amendments actually resulted in substantial changes and
18 should have been reviewed as completely new permits.

19 So I think this really boils down to what is a
20 substantial change and that should require a new permit. The
21 Oxford Dictionary define substantial as concerning the
22 essentials of something. So I kind of think about it like
23 this: only if the requested design changes result in an
24 essential alteration of the building, then it should be
25 considered a substantial change.

1 So it would be something like you're changing the
2 overall mass in your building, you're changing, adding a no
3 connection where no connection had existed. And though there
4 were a number of changes in the project, I did not see them
5 as substantial as defined by the Oxford Dictionary.

6 So this kind of gets us to the merits of the case.
7 And the appellant states that there are four overall errors.
8 One, that the, a railing on the rooftop was not set back
9 correctly. The removal of a rooftop architectural element
10 that was part of the project. Improper authorization of a
11 second principal building on a single-record lot. This goes
12 to the connection issue.

13 And that the permit allowed construction of an
14 illegally deep rear addition. So it was going back farther
15 than it should be allowed to have gone.

16 So the appellant, for the first issue, the
17 appellant raised this issue regarding whether the permit
18 improperly failed to require a one-to-one setback for a
19 rooftop guardrail. I actually think this is more of a
20 timeliness issue. Since the original permit was dated March
21 24, and was -- I'm sorry, the permit was dated March 31,
22 including them in the appeal should have included. Excuse
23 me, let me say that again.

24 Since the original permit was dated March 31, this
25 should have been raised after that original permit was dated.

1 And I stated that all of the revisions after this were part
2 of the original permit. So the original permit would have
3 vested in March of 2017.

4 So the issue itself wasn't raised until June 25
5 of 2018, which is more than a year later. Under Subtitle Y
6 302.5, a zoning appeal may only be taken from the first
7 writing that reflects the administrative decision. And I
8 believe that this untimely because that first action was in
9 March of 2017, again, a year earlier. So I think the
10 timeliness issue is the appropriate concern for that one.

11 The appellant raised the issue regarding whether
12 the permit improperly authorized the removal of a protected
13 rooftop architectural element. And there is a timeliness
14 issue here as well, since this wasn't an issue until November
15 2000 excuse me, November 24, 2017. The ANC appealed the
16 revised permit issue, which was issued in April of 2018.

17 I thought that this, while I thought that the
18 timeliness issue was important, I did think that the ANC
19 brought this at a timely fashion. The issue relies on the
20 ANC's assertion that the cornice was a protected element
21 following the November 24 zoning regulation change that
22 required these to be protected.

23 But unfortunately since the ZA stated the original
24 permit, which was dated in March, allowed the removal of the
25 entire front facade, including the cornice, and this was not

1 protected under the zoning rates at the time, I did not think
2 that this should be required, since there were not
3 substantial changes to the project. So again, the vesting
4 issue is that the project was vested in March of 2017. And
5 so that's kind of where I fell on it.

6 So I didn't believe that the ZA erred. This was
7 an original issue, this was an original design, part of the
8 design. And while I understand that there were some things
9 that kind of happened afterwards, the permit vested in March
10 of 2017. And the rules that were in place were the ones that
11 should be, should have prevailed for that one.

12 The third issue was whether the, the appellant
13 stated that the ZA improperly authorized a second principal
14 dwelling on the record lot. This issue really boils down to
15 the whether the project meets several criteria within
16 Subtitle, this, I don't know if it's C or not, 309.1. And
17 those, there are kind of five different criteria that are
18 there.

19 Is it above grade? I thought that it was above
20 grade. Is it enclosed? I thought it was enclosed. And is
21 it heated and artificially lit? And I kind of believed that
22 those two things were also not an issue. And it seems as
23 though the appellant and the owner and the DCRA are kind of
24 on the same page with all of those.

25 The last part of it, of this criteria was there

1 was kind of a two-parter, and this is where the disagreement
2 was. Whether it was, the zoning regs say that it has to be
3 a common space shared by all users of all portions of the
4 building, or that the space is designed and used to provide
5 free and unrestricted passage between the separate portions
6 of the building.

7 The appellant states that the only point of
8 contention, excuse me, that this is the only point of
9 contention. While I agree that the 309.1(d)(2) is somewhat
10 of a stretch, I do think that it is a, quote unquote, common
11 space used by all portions, all users of all portions of the
12 building. Both units would have access to the space and use
13 it to access the courtyard as well as their units.

14 So I understand, I do not think that the Zoning
15 Administrator erred in that case.

16 And then lastly, the appellant also stated that
17 the permit allows construction of an illegally deep rear
18 addition. The ZA testified that it accepted the application
19 as complete on March 24, 2017. That was testimony that the
20 ZA provided here.

21 While the appellant disagrees and states that the
22 date is actually March 29, as the acceptance of completion,
23 it seems that the, to me it seems that the DCRA Zoning
24 Administrator has a specific procedure. They described that.
25 And while I understand that there may be some confusion about

1 it, this was cleared up by the Zoning Administrator during
2 the hearing.

3 And I would, because this date is March 24, the
4 date, the reason the date is important is because March 27
5 is the kind of cut-off date when the new zoning regulations
6 that pertain to the ten-foot setback issue were vest, where
7 they were in effect. I felt that this kind of came before
8 that, and I did not think that the ZA erred in that case as
9 well.

10 So I think that kind of lays out where I see all
11 of this, and I'd like to also hear my fellow Board members.

12 MEMBER JOHN: So as Vice-Chair just said, this is
13 an appeal from a decision by the Zoning Administrator to
14 permit the renovation of a one-story dwelling into two
15 separate one-family dwellings in the RF-1 zone.

16 The appellant alleges that Permit No. B17006219,
17 as revised by B1805207 and B1811245, was improperly granted
18 and not in accordance with the regulation. This is a very
19 full record, including testimony at three hearings and
20 multiple filings by the applicant, the intervenor, the DCRA
21 property owner.

22 The preliminary issue for me is the issuance date
23 of the original permit. The property owner first applied for
24 a permit on October 5, 2016. From that time until March
25 2017, there were several revisions. And on March 23, the

1 property owner -- reviews, I'm sorry, there were a series of
2 reviews by DCRA.

3 And on March 23, 2017, the property owner uploaded
4 the application and project docs, and it was logged in as
5 complete on March 24 at 1:51 a.m.

6 DCRA accepted the application as complete on that
7 date, and issued the permit based on an expedited process on
8 March 29. So the dispute is whether or not the decision to
9 issue the permit was properly done and in accordance with the
10 regulations. I accept the filing and project docs as meeting
11 the terms of the regulation, which state that the application
12 must be accepted as complete in order to vest by, I believe
13 that was March 27.

14 And further, they should not be substantially
15 changed after filing. And we will discuss, I will discuss
16 that at a later date. And so I find that the issue, the
17 permit was properly issued.

18 In its proposed findings of fact and conclusions
19 of law, the appellant states or cites four main issues. The
20 rooftop guardrail requires a one-to-one setback under Section
21 C 1502.1. The permit improperly authorizes the removal of
22 a protected architectural element. Three, the permit
23 improperly authorizes two principal buildings on a single
24 lot. And four, the illegally deep rear addition should not
25 have been authorized.

1 With respect to the guardrail, DCRA asserts that
2 the guardrail in this instance is required for safety
3 purposes to comply with the construction code citing
4 Subsection C 1500.4. And that guardrails meeting the one-to-
5 one setback requirements are only necessary if the guardrail
6 in on the edge of the roof, parallel or running along the
7 edge of the roof.

8 The applicant and the intervenor disagree with
9 this interpretation based on a literal reading of Section
10 1502.1. The Zoning Administrator testified without
11 contradiction that his interpretation of 1500.4 is consistent
12 with prior custom. And I find that this interpretation is
13 not unreasonable.

14 Even if it could be interpreted that, let me see
15 where I am. So, even if it could be interpreted, so this is
16 why you shouldn't mix up your notes. So the next issue then
17 is whether not the issue of the guardrail should have been
18 raised within 60 days after the issuance of the first permit
19 in March 2017. And in my view, the requirement under the
20 regulation is that the appeal must be raised after the first
21 writing.

22 The guardrail was never changed in either of the
23 second or third revised permits. And these subsequent
24 revisions did not modify or reverse the original decision or
25 reflect a new decision regarding the guardrail, as required

1 by the relevant regulations. So, in my view, I would
2 conclude that the issue of the guardrail was not timely.

3 The next issue is whether or not the removal of
4 the facade trim was proper. There is disagreement between
5 the parties as to whether the band running one foot below the
6 rooftop is decorative trim or a cornice. However, even if
7 it is a cornice, under the regulations existing at the time
8 the permit was approved in March of 2017, the cornice was not
9 a protected architectural element under Subsection E 206.18.

10 Cornices were added on April 18, 2017. And under
11 Subsection A 301.4, the permit holder may carry out the
12 permitted work under the original permit, even if the
13 regulations change.

14 Appellant's challenge to the facade trim is also
15 untimely because it was not raised within 60 days of the
16 original permit issuance, and the removal of the facade trim
17 remained in all three revisions.

18 The third issue is the construction of two
19 principal buildings. And there, the question is whether the
20 connection allowed under Section B 309.1 is a single
21 building, creates a single building with two dwelling units.
22 The appellant alleges that the breezeway is too narrow. It
23 would have a locked door and would not unify the properties.

24 However, the property owner provided detailed
25 testimony in a video describing how the breezeway would be

1 used by the residents of both dwellings, and that would
2 include access to the rear and front portions of the row
3 house dwelling for parking and trash removal and use of the
4 interior courtyard.

5 Therefore, I agree with DCRA that the connection
6 satisfies the criteria in Subsections B 309.1 (a)-(c), and
7 both sections of 301(d). Because this criteria is met, there
8 is no need to consider whether the rear building is an
9 accessory structure.

10 The fourth issue raised by the appellant is that
11 the addition violates the ten-foot rule of E2055.4. Because
12 I concluded that the application, that the permit was -- I'm
13 sorry, because the application was filed before March 27,
14 2017, as stated earlier, the ten-foot rule does not apply.

15 And so the appellant makes the same claim here
16 that the permit was substantially changed after filing. And
17 I agree with DCRA and the property owner that the changes to
18 the permit were not substantial. There was no change to the
19 building envelope, for example. The property owner did not
20 seek any change in the rear addition that was previously
21 authorized.

22 The changes to move portions of the breezeway
23 above ground, in my view, were not substantial. And neither
24 were other minor changes to the interior configuration of the
25 building as described in Exhibit 68. I have not Intervenor's

1 allegation separately because Intervenor adopted ANC's
2 filings, as noted in Exhibit 65, and provides no new relevant
3 information.

4 The only other issue raised by the intervenor
5 that's worth mentioning is that the intervenor claimed that
6 the property owner obtained several revised permits during
7 the process. But that is not prohibited by the regulations.

8 And so, for all of these reasons, I conclude that
9 the approval of Building Permit B17006219 was not erroneous,
10 and I would support denial of the appeal.

11 MEMBER WHITE: Going last? Okay. Well, let me
12 just add some comments. Some of it, hopefully it's not too,
13 I'm not being too repetitive. But this is my thought
14 process.

15 So the decision on appeal involves building
16 permits issued for the conversion of a two-story attached
17 principal dwelling to a flat through the construction of a
18 third-floor addition connected to a third-story rear addition
19 through a common area.

20 Some of the dates that I looked at with respect
21 to analyzing the appeal, as we stated before, on March 23 of
22 2017, the property owner applied for a permit. The original
23 permit, DCRA said the application for the original permit was
24 accepted.

25 On March 24, DCRA accepted the application as

1 complete. The property owner indicated that on this date,
2 the original permit was vested. However, the ANC argued that
3 the application was not accepted on that date. And it was
4 not complete until after March 29 of that year.

5 On March 21, DCRA issued the original permit. The
6 property owner argues that the subsequent provisions to the
7 plans were not substantial, and therefore did not change the
8 vesting date. On April 28, which is another day I looked at,
9 2017, the ZC order 14-118 became effective, amending Subtitle
10 E 206.1(a) by adding the cornice to the list of protected
11 features.

12 And on March 30, 2017, the appeal was filed. On
13 September 20 of 2017, a request for intervenor status, as my
14 colleague mentioned, was filed by a Mr. Kevin Cummins,
15 alleging a number of violations that are in the record. One
16 November 24 of 2017, the Zoning Commission order 14-11(d)
17 became effective. In February 16 of 2018, the property owner
18 filed application to revise the original permit.

19 ANC argues that the appellant made substantial
20 changes, including making material modifications to the
21 breezeway connecting the front and rear structures and
22 eliminating the below-grade portion height of the projecting
23 area and eliminating the front and rear cellars.

24 Fast-forward into April 2018, DCRA issued a first
25 revised permit. The property owner argued no changes to the

1 previously approved vested rear addition, above-grade
2 connection footprint, no changes to the front facade and the
3 rooftop guardrail.

4 On April 28 of that year, the ZC order became
5 effective, 14-11(b), changing the zoning regulations
6 regarding the rear additions and including the prohibition
7 and removal of the cornices.

8 On May 9 of 2018, the first revised permit was
9 included in the appeal. And in June of that year, the ANC
10 filed a pre-hearing statement regarding the first revised
11 permit, alleging additional violations regarding the roof
12 hatch, the one-to-one setback requirements, the cornice
13 removal, the connector between the two structures, and the
14 rear addition.

15 However, in July, the property owner applied for
16 another revision, and DCRA, on the 11th of July, argued that
17 the original and the revised permits were valid under the
18 previous regulations in effect when the original permit was
19 issued. And in August, they issued a revised permit.

20 The property owner argued that the permits were
21 not subject to the order, the ZC order, since the revisions
22 did not include any substantial changes, as was mentioned
23 earlier, or deviations from what was originally approved.
24 And in September, the second revised permit was included in
25 the appeal.

1 So there are four issues, and I kind of ran
2 through those dates just to kind of get a sense of how I came
3 down on the various four issues that we were asked to
4 consider. The first one was whether the permit improperly
5 failed to require a one-to-one setback of the rooftop
6 guardrail.

7 The property owner says it's not, that it was not
8 timely. And DCRA explains why no setback is needed, and the
9 appellant does not agree. In this case, the guardrail is not
10 on the edge of the roof parallel or running along the edge
11 of the roof. The guardrail appears to be there for life
12 safety purposes and not subject to the one-to-one setback
13 rule. So I agree that the one-to-one setback does not apply
14 in this particular appeal.

15 The second issue is whether the permit improperly
16 authorizes the removal of the protected rooftop architectural
17 element. Subtitle A 301.4 provides that any construction
18 authorized by a permit may be carried to completion pursuant
19 to the zoning regs in effect on the date that the permit is
20 issued.

21 In this case, the original permit allowed the
22 removal of the facade cornice at the time when E206.1(a) did
23 not mention cornices. And that E206.1 should not be applied
24 retroactively.

25 With respect to the third issue, whether the

1 permit improperly authorized construction of two principal
2 buildings on a single record lot, under Subtitle B 309.1,
3 structures that are separated from the ground up by common
4 division walls or contain multiple section separate
5 horizontally, such as wings or additions, are separate
6 buildings. Structures are a single building if they are
7 joined by a connection.

8 So the criteria that you have to look at is
9 whether it was fully above-grade, whether it was enclosed,
10 heated, or artificially lit. And under the fourth part of
11 that criteria, I also found that it met the criteria of it
12 being a common space shared by users of all portions of a
13 building such as a lobby, recreation room, loading dock, or
14 service bay.

15 The fourth criteria, its common space should be
16 shared by users of all portions of the building by
17 functioning as a corridor and a doorway leading to the
18 interior courtyard. So with respect to the third issue, I
19 found that the permit was properly authorized under that
20 section.

21 And then finally, the question about whether the
22 permit allows construction of a illegally deep rear addition.
23 As you know, Subtitle E 205.4 states that a rear wall of a
24 attached building shall not be constructed to extend farther
25 than ten feet beyond the farthest rear wall of any adjoining

1 principal residential building on an adjoining property. A
2 special exception must approve. As you know, you have to
3 obtain a special exception in order to get approval for an
4 extension farther than ten feet.

5 But the exception is that if the building permit
6 application for such construction was filed and accepted as
7 complete by DCRA on or before March 27, 2017, and not
8 substantially changed after the filing, then it would be in
9 compliance. Because at that point in time, the rule had not
10 taken effect.

11 So with respect to the fourth issue, and I would
12 agree with DCR's position, and they testified that, to this
13 point that the project was accepted as complete on March 24,
14 2017, and therefore vested. And that the revised permit did
15 not have material changes.

16 So that is to say that with respect to the facts
17 in the record and the testimony, I'm at this point coming
18 down with the opinion that the permit was properly issued.

19 COMMISSIONER TURNBULL: Thank you, Mr. Chair. I'm
20 not going to go through this whole analysis. I think a
21 fourth time would be a little bit too much for everybody
22 here. I would agree with the members who have spoken so far.

23 I mean, a lot of their positions in this case, a
24 lot of it hinges on timeliness and the interpretation of when
25 things were filed. And I agree with all of the comments made

1 so far, and I appreciate OAG's help and analysis in going
2 through all of this.

3 And I think the whole issue of substantial
4 changes, again, is up for interpretation. But I would agree
5 with all of the comments that have been made so far. And
6 based upon the, mainly a lot of it on the timeliness issues,
7 I would deny the appeal.

8 But I have a new couple of comments. I would hope
9 that DCRA would go back and fine-tune their filing system,
10 and make it absolutely clear when something is entered into
11 the system and when it is accepted, when it is changed. And
12 somehow noting that there's no substantial changes. That it
13 becomes a clear document for us later on to go through this.
14 So I just wish that they would fine-tune all of that.

15 The only other issue that I have, and it's by the
16 strict definition that Ms. White has gone through and going
17 back, and you've all gone through it, regarding the
18 connection, the link. I think strictly following the
19 definition that's there, the building is fine. My only wish
20 is that the definition was a little bit different and more
21 to the point of what it should really be.

22 And maybe the ZA and the Office of Planning can
23 work on a better definition. Because if the link wasn't
24 there, those two buildings would still operate. And so the
25 question is the being integral into the structure totally.

1 So that was the issue I struggled with. But go back to the
2 definition and you see, no, it is what it is.

3 My only feeling is I wish you'd said, the
4 definition had said more as to the operation of the two
5 parts, that it was more, it was a tighter definition. That
6 although what we're looking at is technically correct, I just
7 feel that if some other language had been in there, it would
8 have been more difficult for this building to have been
9 built.

10 But I don't think we're going to run into that in
11 the future as we go forward with the new regulations in
12 place, but I wish this definition of the common space in the
13 link. I mean, it meets all the conditions, but there's
14 something to do about the integration that I thought was
15 lacking in there, which I hope the ZA will meet with the
16 Office of Planning and go through.

17 But I would agree with my colleagues' comments.

18 CHAIRPERSON HILL: Okay, all right, thank you all
19 very much. I don't really have any additional to add, I
20 suppose. I appreciate all of the time that we've taken for
21 this to provide the analysis. I also appreciate all the time
22 that the appellant, the intervenor, and the applicant have
23 had to go through.

24 I guess, I mean, I don't, again, have -- I will
25 agree with all of the comments that were made in terms of the

1 timeliness, in terms of, you know, how everyone has gotten
2 to their decision. Also, you know, concerning substantial
3 change, and I echo Commissioner Turnbull's comments about the
4 DCRA in terms of the filing system and how it might be a
5 little bit more clear.

6 I don't think that, you know, the ZA in the terms
7 of the timeliness, he described the procedures in terms of
8 why it was complete on March 24, and I don't think that he
9 is doing anything different than he has done in the past.
10 So you know in the regard, you know, the burden is upon the
11 applicant to, or I'm sorry, the appellant to show error.

12 The one thing that I did find really, and again,
13 I just kind of go back to mentioning this in terms of the
14 B309.1 with the connection, I mean, that's really where I was
15 kind of struggling the most. I mean, I completely empathize
16 with, you know, the neighbor in that, you know, I'd be like,
17 how can this thing get built next to my house, and so.

18 And then you're stuck, we are stuck up here to,
19 we're not stuck, we are going through the regulations and
20 trying to determine what the regulations allow. In terms of
21 a what I would want next to my house, you know, I mean,
22 personally, I would not want this right next to my house.
23 But that's now how this works, right.

24 And that's not to say that, I don't mean anything
25 against the building property, the developer, and what

1 they're doing. I mean, that's, you know, this is fully
2 within the regulations. And now this has been changed, I
3 guess.

4 You know, the thing that I kind of thought was
5 interesting in going through this analysis for myself was
6 that, you know, had this met the, you know, or if we thought
7 that due to timeliness this should have been before us again
8 for an exception to the ten-foot, rule, you know, we went
9 back to that, I went back and looked at the other case where
10 we approved something similar for the ten-foot rule.

11 And I again though that it, I thought that we came
12 to the correct decision. Even though they're completely
13 different cases and we look at each thing on an individual
14 basis, what I continue to caution myself against is whether
15 or not we're getting opposition. You know, there was no
16 opposition to that particular case, and so it made it all so
17 I guess, there was just no opposition.

18 And so, you know, it made kind of the analysis
19 possibly a little easier for us to go through. But I do
20 think we went through the analysis correctly in that case.

21 So I guess my point in that was that I struggled
22 with the connection issue, you know, I mean, I was like what
23 is the point of this connection. Why is this regulation in
24 there, what was this supposed to have done for the city, for
25 the community. And I still was kind of like stuck.

1 I didn't really understand historically how this
2 had been there, you know, or what was the point, you know.
3 And I so but as far as the, I did think that, you know, it's
4 fully above grade, it's enclosed, it's heated and
5 artificially lit. And as far as, you know, meeting common
6 space shared by users of all portions of the building, such
7 as a lobby or recreation room, I mean, I think that that is
8 true.

9 And then the or part, I mean, you know, the
10 unrestricted passage, I mean, you had to meet, you know, one
11 or the other, one or two. And I think they met one. And
12 whether I think it's a great regulation or not is not up to
13 me. So I'm agreeing with my colleagues.

14 So in that case, I'm going to go ahead and make
15 a motion to deny Appeal No. 19550 of ANC 6C, as read and
16 captioned by the Secretary, and ask for a second.

17 VICE CHAIRPERSON HART: Second.

18 CHAIRPERSON HILL: Motion made and seconded, all
19 those in favor say aye.

20 (Chorus of ayes.)

21 CHAIRPERSON HILL: All those opposed? Motion
22 passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as 5-0-0.
24 This is on the motion of Chairman Hill to deny the appeal.
25 Second of the motion, Vice-Chair Hart. Also in support Ms.

1 White, Ms. John, and Mr. Michael Turnbull. The motion
2 carries.

3 All right, Mr. Chairman, the second and last case
4 application for a decision is Application No. 19862 of
5 Heights Holding, LLC.

6 This application was captioned and advertised for
7 a special exceptions under Subtitle C, Section 703.2, from
8 the minimum parking requirements of Subtitle C, Section 701.5
9 and under Subtitle G, Sections 409 and 1201 from the rear
10 yard requirements of Subtitle G, Section 405.2, which would
11 construct a new 26-unit apartment house, MU-4 zone, at
12 premises 3331 and 3333 11th St., NW, and 1032 and 1034 Park
13 Rd., NW, Square 2841, lots 95 and 96, 98 and 99. This was
14 last heard at its hearing on December 5, 2018.

15 CHAIRPERSON HILL: Okay, thank you, Mr. Moy. Is
16 the Board ready to deliberate? Okay, I can start.

17 I guess, so we heard, we had a full hearing and
18 took all the testimony from the applicant and the Office of
19 Planning and members of the public. And I thought that, well
20 basically what, so I thought that the Office of Planning,
21 their analysis was accurate. I mean, I thought that what
22 they have shown in terms of the way that they've kind of come
23 to their decision I would agree with.

24 So what it kind of came down to for me was kind
25 of the conditions that, and the TDM plan, in terms of whether

1 or not I thought that the conditions in the TDM plan were
2 helping with any kind of adverse impact that the project
3 might have. I know that the Board requested that the
4 applicant go and have further discussions with the ANC about
5 how to best help the adverse impact from the request to
6 relieve.

7 Although they don't seem to have a formal approval
8 form from the ANC, I think that there was a good faith effort
9 that was put forth from the applicant showing that they've
10 met with the ANC. And I would be in agreement to the
11 additional changes to be made to the TDM plan, with the
12 additional conditions to help mitigate again adverse impact,
13 which in their Exhibit 57.

14 I did have one change to one of the TDM plans,
15 clarifications that I will mention again in a moment. They
16 also had revised conditions, or proposed conditions I should
17 say, in Exhibit B that I do think that the TDM plan and the
18 conditions match what DDOT had been requesting, as well as
19 what the applicant was looking for.

20 We had also some, I guess we had requested that
21 the applicant go and see if they could find ways to kind of
22 strengthen the monetary values or how to make it so that the
23 new tenants might come in and actually have, you know, get
24 to the point where they're encouraged to use different forms
25 of transportation as opposed to parking. And I think that

1 those conditions do do that.

2 If the Board agrees that the, yeah, so I agree,
3 as I was saying, that the TDM plans takes in the DDOT's and
4 also OP's concerns, as well as the ANC. And I'm satisfied
5 in terms of those adverse impacts, or I'm sorry, that those
6 are addressing the adverse impact.

7 With concerns of the TDM plan, the only real issue
8 or question I had was that in their item number five in their
9 TDM plan, it says the applicant and ANC. I was uncomfortable
10 like saying that the ANC should actually do something. So
11 I don't see how we could ask the ANC to do something in a
12 condition.

13 So I would say, you know, that the applicant shall
14 make a good faith effort to coordinate with the ANC and DDOT
15 regarding adding a pickup/dropoff space on either Park Rd.,
16 NW or 11th St., NW, provided that such space will not result
17 in the removal of any current legal parking spaces. So that
18 was the only kind of comment I had in terms of that.

19 They did, the applicant had requested, again, when
20 they were talking about kind of conditions, that we would
21 include something that would allow for some proposed changes.
22 We continue to kind of have discussions with the Office of
23 the Attorney General in terms of how some of those conditions
24 aren't necessary -- oh, I shouldn't say aren't necessary.
25 Aren't necessarily something that we should be putting in as

1 a condition.

2 However, you know, this has kind of been somewhat
3 of a, just kind of a moving target for me as to what I
4 necessarily feel about, you know, changes and things and
5 whether or not I think they should come back to us if there
6 are changes.

7 I think those, in this particular instance, I
8 would say that, you know, that when we were talking about the
9 interior location size of units and stairs or preliminary and
10 shown for illustration purposes, so they could adjust the
11 final layouts, design, and interior plans may vary to the
12 extent that such gradations do not require additional relief
13 from the zoning regulations, and such that the variations do
14 not change the external configuration or appearance of the
15 building.

16 As we kind of indicated during the last hearing,
17 I guess we were leaning towards agreeing with that being a
18 condition. And so at this state, I would be, again, continue
19 to be in agreement in doing that, but I don't know if I would
20 start, I mean, might change my opinion of this moving
21 forward.

22 So I would be, before we get to whatever you guys
23 want to say, I would be in favor of this application, with
24 the TDM plan as a condition in Exhibit 57A, 57A, as well as
25 the conditions that were in Exhibit B of their Exhibit 57,

1 with the changes that I mentioned in number five. And if we
2 get to approval vote, I'll reiterate that again, so. Would
3 my fellow Board members have anything they'd like to add?

4 MEMBER JOHN: Mr. Chairman, I believe you did a
5 very good analysis of the application. And I also support
6 your comment that the Office of Planning did a very good
7 analysis of the applicant's request for relief from the
8 parking requirement. And that I would support the
9 application based on OP's analysis.

10 And in particular, this is, there is no alley
11 behind this project, so it would be difficult for them to
12 meet the parking requirement. No, I want to say usable
13 alley. This is the one, I believe, with the very narrow
14 alley. So getting parking, you know, access from the rear
15 would have been difficult anyway. So I support all of that.

16 With respect to the conditions, I agree with the
17 ones that have been proposed. Perhaps we should maybe read
18 through them or just sort of clarify which ones. I don't
19 have in front of my the exhibit number. I have the
20 conditions, and I believe I'm looking at the right one.

21 So if it's the document that has the request for
22 flexibility at the end, then I would say I agree with those
23 conditions, except for the request for flexibility. I think
24 we get these requests from time to time, and to the extent
25 that these are minor changes that can approved through the

1 permitting process, I don't believe we should start granting
2 flexibility.

3 It's just kind of, for me it's a slippery slope
4 when, you know, where does it end. So that's just my two
5 cents, Mr. Chairman.

6 CHAIRPERSON HILL: Well, you get a vote, so.

7 MEMBER WHITE: So I just want to clarify
8 something. So there's Exhibit 57 and Exhibit 58. Exhibit
9 58 is, 57 says Applicant's Post-Hearing Submission.

10 And then Exhibit 58 is the updated TDM plan, which
11 I think you were referencing, with the fifth one having to
12 do with the modification that you made moving, just kind of
13 adjusting the ANC's responsibilities, where you said the
14 applicant shall make a good-faith effort to coordinate with
15 DDOT and the ANC regarding adding a pickup and dropoff space
16 on either Park Road or 11th Street, provided that such space
17 will not result in the removal of any current legal parking
18 spaces.

19 I just wanted to make sure that that was, this was
20 the right one that I'm, the most recent TDM plan that we're
21 referencing. But assuming that it is, I think these
22 conditions will mitigate adverse impacts in that area.

23 This neighborhood, obviously it's a urban
24 neighborhood, but I'm very familiar with it. Parking is a
25 major issue in that area. So I think with these conditions

1 and the monetary incentives that the applicant is providing
2 will be helpful in mitigating those parking impacts, negative
3 parking impacts that were testified to during the hearing.

4 CHAIRPERSON HILL: Okay, now, I'm just trying to
5 look at -- so what are your thoughts on the condition for
6 flexibility?

7 MEMBER WHITE: Which number is that?

8 CHAIRPERSON HILL: It says you recall we were
9 having a hearing. And during the hearing, there were three
10 proposed conditions for different types of flexibility, and
11 two of which the Board wasn't interested in entertaining.

12 And the discussion on this particular connection,
13 I'm sorry, condition, again, was that, as Ms. John has now
14 voted, that are things that can be done in permitting and do
15 not need to come back before us, and that this could start
16 to become a slippery slope, which we have been on before.
17 But apparently the slide is ending today if we go with Ms.
18 John.

19 MEMBER WHITE: Right. I would agree with Ms. John
20 on that, just to sort of avoid having recurrence of these
21 issues popping up before us. I would agree with her with
22 respect to that.

23 CHAIRPERSON HILL: Okay, so then, okay. So then
24 I'll agree with you guys. And so there we go with that.

25 So then in that case, there is no difference

1 between the conditions and the TDM plan, as far as I can
2 tell, so that the TDM plan itself will be the conditions.
3 And I'm just making sure of this.

4 Okay, so I'm going to go ahead then and make a
5 motion to approve Application No. 19862, as captioned and
6 read by the Secretary, including the TDM plan as conditions
7 in Exhibit 58, with the change to condition number five,
8 which will say, The applicant shall make a good-faith effort
9 to coordinate with the ANC and DDOT regarding adding a
10 pickup/dropoff space on either Park Rd., NW or 11th St., NW,
11 provided that such space will not result in the removal of
12 any current legal parking spaces, and ask for a second.

13 MEMBER WHITE: Second

14 CHAIRPERSON HILL: The motion made and seconded.
15 All those in favor say aye.

16 (Chorus of ayes.)

17 CHAIRPERSON HILL: All those opposed? The motion
18 passes, Mr. Moy.

19 MR. MOY: Mr. Chairman, before I read the vote
20 count, we do have an absentee ballot from another
21 participant, who is Mr. Anthony Hood. And his absentee
22 ballot vote is to approve the application, with such
23 conditions as the Board may impose.

24 So that would give a final vote of 4-0-1. This
25 is on the motion of Chairman Hill to approve and with the

1 conditions and you just cited. Second the motion Ms. White,
2 also support Ms. John. And Vice-Chair Hart not participating
3 on this applicant. So the motion carries.

4 CHAIRPERSON HILL: Okay, great, thank you, Mr.
5 Moy. I guess we'll just, okay, we'll do a quick, five-minute
6 break to get everybody back here. Thank you.

7 (Whereupon, the above-entitled matter went off the
8 record at 10:42 a.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 Meeting

Before: DCBZA

Date: 12-19-18

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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