

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 9, 2019

+ + + + +

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 10:22 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
SARA BENJAMIN BARDIN, Director
MATTHEW LEGRANT, Zoning Administrator
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS
BRANDICE ELLIOT

The transcript constitutes the minutes from the Public Hearing held on October 9th, 2019.

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

2 10:22 a.m.

3 CHAIRPERSON HILL: All right, Mr. Moy, you can
4 call our first hearing case when you have an opportunity.
5 I was actually not on -- I was not here that day for the
6 first one. I will let Mr. Hart run it.

7 MEMBER HART: You can call it whenever you'd like,
8 Mr. Moy.

9 MR. MOY: Thank you. This would be Case
10 Application No. 20004 of General Services, Inc., caption for
11 use variance from the use restrictions, Subtitle U, Section
12 201.1. This would construct a new three-story mixed-use
13 building with a ground floor office and storage space. This
14 is an R-2 zone. This is at 5415 through 5417 Eads Street --
15 that's E-A-D-S -- northeast square, 5231, Lots 16, 17, and
16 18. Participating is whom -- Vice Chair Hart, Ms. John, and
17 Zoning Commissioner Robert Miller.

18 VICE CHAIR HART: Is the Applicant here? Okay.
19 We have not received any information on this. I think it's
20 probably best to reschedule this at a time that Mr. Miller
21 will be here. There was information that we requested,
22 updated narrative, revised drawings, from the ANC, get an
23 updated ANC 7C report. We haven't received any of that. Mr.
24 Sullivan is coming to the table. Yes, sir, good morning, if
25 you could introduce yourself, please.

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1 MR. SULLIVAN: Good morning. Yes, Marty Sullivan,
2 from Sullivan & Barros, on behalf of the Applicant in 20004.
3 I had discussions with the secretary yesterday and informed
4 me that the case was going to be postponed due to Mr. Miller
5 being on a case. It was going to be postponed to next week,
6 but my client is out of the country next week, so then I
7 responded that we could do Mr. Miller's next meeting date or
8 hearing date.

9 VICE CHAIR HART: That's fine. Since I do have
10 you, will we be getting updated information by that --

21 VICE CHAIR HART: Yes, I recall.

22 MR. SULLIVAN: We don't think -- I'm not certain
23 about the ANC's position, but we don't think they would be
24 in favor of that, either. They really stressed that they
25 were happy about the proposed non-residential use.

1 VICE CHAIR HART: What you've submitted --

2 MR. SULLIVAN: I will submit something explaining
3 that.

4 VICE CHAIR HART: Yes, it would be helpful to
5 understand how you're looking at this. That would be helpful
6 before we get -- the project comes back to us. When does Mr.
7 Miller come back to us, Mr. Moy?

8 MR. MOY: Unfortunately, it would have been next
9 week, October 16, but in this case circumstance, Zoning
10 Commissioner Miller is back with the Board on November 20th.

11 VICE CHAIR HART: It looks like we're going to be
12 about a month and a half from now.

13 MR. SULLIVAN: Okay. That's fine.

14 VICE CHAIR HART: If we could reschedule for then,
15 Mr. Moy.

16 MR. MOY: Yes, sir.

17 VICE CHAIR HART: Thank you.

18 MR. SULLIVAN: Thank you.

19 VICE CHAIR HART: Thank you very much, Mr.
20 Sullivan. You can call the next case, Mr. Moy.

21 MR. MOY: If we can have parties to the table to
22 Application No. 20088 of GPD, LLC. This is a request for
23 special exceptions under Subtitle E, Section 5201, from the
24 lot occupancy requirements, Subtitle E, Section 304.1, and
25 from the rear yard requirements, Subtitle E, Section 306.1,

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1 to construct a two-story rear addition and to convert an
2 existing attached dwelling unit until a flat RF-1 zone. This
3 is at 1261 Owen Place, Northeast, Square 4060, Lot 197.

4 CHAIRPERSON HILL: Wait, Mr. Moy, because I think
5 you said both things. You read Application 20088 of GDP,
6 LLC, right?

7 MR. MOY: Yes.

8 CHAIRPERSON HILL: Then you said something about
9 Owen Place. Did you read that as well, no?

10 MR. MOY: That was the --

11 CHAIRPERSON HILL: Oh, I'm sorry.

12 MR. MOY: -- street.

13 CHAIRPERSON HILL: Oh, that's the street. Okay.
14 I'm confused with the next case.

15 MR. MOY: No, that's all right.

16 CHAIRPERSON HILL: That's right. You'll get a
17 chance. I understand. We took a look. We understand what's
18 going on. Go ahead and if you can please introduce
19 yourselves for the record from my right to left.

20 MR. FREEMAN: I'm Mark Freeman. I'm the architect
21 of record on the project for 1261 Owen Place, Northeast, as
22 well as 1263 Owen Place, Northeast.

23 MR. GROSSMAN: Graham Grossman, owner of both
24 projects, 1261 Owen Place and 1263 Owen Place.

25 MS. COLOMBAT: Virginie Colombat, part of the

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1 architecture team on both of these properties.

2 CHAIRPERSON HILL: Could you spell your last name
3 for me? I'm sorry.

4 MS. COLOMBAT: C-O-L-O-M-B-A-T.

5 CHAIRPERSON HILL: Okay, great, thank you. Who's
6 going to be presenting to us today?

7 MR. GROSSMAN: I can.

8 CHAIRPERSON HILL: All right, great. Mr. Freeman,
9 if you could turn off that microphone because I get some
10 feedback up here. Thank you. Mr. Grossman, I guess if you
11 could kind of walk us through what you're trying to do. I
12 understand that this one -- 1263 is attached to 1261. You're
13 basically asking for the same relief for both.

14 MR. GROSSMAN: Correct.

15 CHAIRPERSON HILL: I guess why don't you -- if
16 it's all right, I guess, with OAG, which I think it's okay
17 -- is OP on the same for both cases?

18 MS. BRANDICE ELLIOTT: Yes.

19 CHAIRPERSON HILL: I couldn't remember; sorry.
20 If you could just walk us through what you're trying to do.
21 I guess go ahead and walk us through what you're trying to
22 do on both cases, and we'll see what we need to do in terms
23 of if we get to a decision one way or the other, in terms of
24 how we need to announce that case. I think that -- why don't
25 you go ahead and start with that? Then --

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1 MR. MOY: Pardon me, Mr. Chairman.

2 CHAIRPERSON HILL: Sure, go ahead, Mr. Moy.

3 MR. MOY: While you're thinking that, I'd like to
4 read into the transcript that second case. That is Case
5 Application No. 20089 of Owen Place Development, LLC. This
6 is captioned for special exception under Subtitle E, Section
7 5201, for the lot occupancy requirements, Subtitle E, Section
8 304.1, and from the rear yard requirements, Subtitle E,
9 Section 306.1, to construct a two-story rear addition and to
10 convert an existing attached dwelling unit into a flat RF-1
11 zone, 1263 Owen Place, Northeast, Square 4060, Lot 198.

12 CHAIRPERSON HILL: Okay, thanks, Mr. Moy. Mr.
13 Grossman, if you can kind of walk us through, again, what
14 you're trying to do, and then if you could speak to the
15 standard with which you believe you can be granted this
16 relief.

17 Then, also, I guess, just for clarification, we
18 got one -- in terms of your public outreach, we did get ANC
19 support for 20089, but we didn't get anything for -- I'm
20 sorry; we didn't get anything for -- we got something for
21 20088, and we didn't get anything for 20089. I was just a
22 little confused on that. I'm going to put 15 minutes on the
23 clock, Mr. Moy, so I know where we are. You can begin
24 whenever you like.

25 MR. GROSSMAN: Thank you very much, Commissioners.

1 If there are nerves that are showing, it's because I'm a
2 little nervous, first time here. Stop me at any point, ask
3 questions. I've brought the professionals to answer the
4 technical questions that may arise. We think this is rather
5 straightforward.

6 We have two lots adjacent that we decided to
7 develop at the same time, as a matter of right under the
8 code. Working with neighbors, working with the ANC, a few
9 issues came up that we started to correct and address. A few
10 things came up that we needed to come before you guys for
11 your final approval.

12 Those three things, as you've probably seen in the
13 file, are the addition of another level of stair in the back
14 and consistent matching balconies on all levels, and then a
15 steel roll-up garage door at the rear lot line of the
16 property. This is a project we're proud of. We've, like I
17 said, talked to both neighbors on either side and gone, we
18 think, over and above in taking their concerns into account.

19 The main things we're trying to accomplish are
20 access from the upstairs units, from Level 2 of the property
21 to the rear for trash, for egress, for parking, more as a
22 security issue and safety issue than anything else. The same
23 goes with the rear roll-up steel garage door in the back of
24 the property. Then the final adding another balcony on the
25 third level is just to keep the project consistent with the

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1 rest of the neighborhood with each project. One thing I'll
2 mention is our outreach in the ANC. I think the oversight
3 from the ANC in not getting two letters for this project,
4 we've treated -- with them, with the neighbors, with
5 everybody --

6 CHAIRPERSON HILL: I was just told by the
7 secretary that we did get a letter for the other one from the
8 ANC.

9 MR. GROSSMAN: There we go. Okay.

10 CHAIRPERSON HILL: Yes, thank you.

11 MR. GROSSMAN: I think it might make the most
12 sense, this being, in my mind, such a straightforward project
13 from the renderings, if we could answer any questions that
14 the commissioners have or make any additions. My architect
15 here wants to --

16 MR. FREEMAN: In regards to the presentation and
17 the burden of proof, what we are specifically asking special
18 exception of is the lot occupancy from 60 to 64.2. When
19 adding the balcony over top of the main level balcony, that
20 now makes that a lot coverage issue. Prior to that, it would
21 be free and clear of lot coverage as its access from the rear
22 of the property to the main level. That drives us into a
23 special exception request. Then the same goes with the
24 stair. It is our understanding once the spiral stair's
25 covered over to the second level, it also intrudes further

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1 into the rear yard, which now lessens the rear yard
2 requirement. Both of those, we are asking for special
3 exception for and relief of. Based on 5201.3, the light and
4 air available to neighboring properties, we don't feel that
5 we adversely affect those.

6 The privacy and use and enjoyment of neighboring
7 properties should not also be unduly compromised. We feel
8 with the depth of the balconies that we are proposing, it's
9 not a place for persons to congregate. I also believe the
10 Office of Planning noted that, as well, in their report.

11 The addition or accessory structure, together with
12 the original building, as viewed from the street, alley or
13 public way, shall not substantially visually intrude upon the
14 character. We felt that the design, by keeping the balconies
15 materially congruent throughout the entire rear, that we meet
16 that requirement.

17 Then the Applicant shall use graphical
18 representations. We've provided existing photos, renderings,
19 as well as a light study that's part of the BZA burden of
20 proof. We are keeping the lot occupancy request under 70
21 percent, which is approvable through special exception by the
22 BZA. I believe that runs through our feeling of meeting the
23 burden of proof.

24 CHAIRPERSON HILL: All right, thank you. Just
25 real quick, I was curious about that matter of right option.

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1 The matter of right option, you didn't have the third
2 balcony, and then you didn't have the spiral stairs.

3 MR. FREEMAN: Yes, we didn't have the second
4 spiral stair or the second or third balcony. We just had the
5 main level balcony and spiral stair from the rear.

6 CHAIRPERSON HILL: Okay. Does the Board have any
7 questions for the Applicant?

8 VICE CHAIR HART: Just the rear yard, you have a
9 rear yard relief, as well?

10 MR. FREEMAN: We do. It's from 20 feet to 16
11 feet.

12 VICE CHAIR HART: That's because --

13 MR. FREEMAN: Because the spiral stair feeds into
14 that. Once it's covered, it, again, gets counted in the lot
15 occupancy and the rear yard setback.

16 MR. GROSSMAN: If I could clarify, Commissioner,
17 nothing that we are asking for is changing the footprint of
18 what's going to be existing as a matter of right. We're just
19 taking that one-level staircase up a second level and
20 matching the balcony on the first floor on the second and
21 third.

22 VICE CHAIR HART: Yes. No, I understand that.
23 There is a change in the -- if it was a matter of right, you
24 wouldn't be here. I just want to make sure that we're using
25 that -- that is a term that you use when you don't have to

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1 come here. There is something that you need to change. I
2 understand the footprint, itself, is -- I guess this spiral
3 stair is necessitating at least some of the relief, which is
4 fine, I just --

5 MR. FREEMAN: Yes, sir, that's correct.

6 COMMISSIONER MAY: Can I just ask one question?
7 You're talking about the -- does the spiral stair only go up
8 to the second floor?

9 MR. GROSSMAN: Correct. As we had approved, it's
10 from grade to the first floor. We're asking for up to the
11 second floor.

12 COMMISSIONER MAY: Then on the third floor, you
13 have a matching balcony, but it's not --

14 MR. GROSSMAN: Just for aesthetic --

15 COMMISSIONER MAY: It's not --

16 MR. GROSSMAN: -- material continuance.

17 COMMISSIONER MAY: Yes, that's fine.

18 CHAIRPERSON HILL: Anyone else? Okay, go ahead
19 and turn to the Office of Planning.

20 MS. BRANDICE ELLIOTT: Good morning, Mr. Chairman
21 and members of the Board. I'm Brandice Elliot, representing
22 the Office of Planning. We are recommending approval of the
23 relief that's been requested for lot occupancy and rear yard.
24 Just a quick note; the Applicant did mention a roll-up door
25 in the back. That's not something that we typically review.

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1 It certainly wasn't part of this application, doesn't really
2 need relief. I just wanted to make sure that was clear. We
3 are recommending approval of the balconies and spiral
4 staircase as proposed. I'm happy to answer any questions you
5 have.

6 CHAIRPERSON HILL: As far as that report goes,
7 that is also the same for 20089?

8 MS. BRANDICE ELLIOTT: Correct. They're pretty
9 much identical, except for the address.

10 CHAIRPERSON HILL: Okay, just want to be clear.
11 Does the Board have any questions of the Office of Planning?

12 Does the Applicant have any questions for the
13 Office of Planning?

14 Could you just say no in the microphone? Sorry.

15 MR. GROSSMAN: No, thanks.

16 CHAIRPERSON HILL: Is there anybody here who
17 wishes to speak in support?

18 Is there anyone here wishing to speak in
19 opposition?

20 Is there anything else you'd like to say at the
21 end?

22 MR. GROSSMAN: Thank you for your time and
23 consideration.

24 CHAIRPERSON HILL: Okay, thanks. I'm going to go
25 ahead and close the record. Is the Board ready to

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1 deliberate? I didn't particularly have any issues with
2 either one of these, either 20088 or 20089. I would agree
3 with the analysis that was provided by the Office of
4 Planning, in terms of how the criteria or standard is being
5 met to grant the relief requested.

6 I also am glad to see that the ANC is also in
7 support of the applications, both of them, and we have
8 another letter into the record for 20089. Also, DDOT has no
9 objection. Is there anything else the Board would like to
10 add?

11 (No response.)

12 CHAIRPERSON HILL: Then I'm going to make a
13 motion. I don't know how -- I guess I'll just make two
14 motions. I'll go ahead and make a motion to approve
15 Application No. 20088, as captioned and read by the
16 secretary, and ask for a second.

17 VICE CHAIR HART: Second.

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

20 (Chorus of ayes.)

21 CHAIRPERSON HILL: Opposed?

22 (No response.)

23 CHAIRPERSON HILL: That motion passes, Mr. Moy.

24 MR. MOY: Yes, let me read that, if I may, Mr.
25 Chair. Staff would record the vote as 4-0-1. This is on the

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1 motion of Chairman Hill to approve Application No. 20088 for
2 the relief being requested. Seconding the motion is Vice
3 Chair Hart, also in support, Ms. John and Zoning Commission
4 Peter May. No other Board members present.

5 CHAIRPERSON HILL: All right. Then I'm going to
6 go ahead and make a motion to approve Application No. 20089,
7 as captioned and read by the secretary, and ask for a second.

8 VICE CHAIR HART: Second.

9 CHAIRPERSON HILL: Motion made and seconded. All
10 those in favor say aye.

11 (Chorus of ayes.)

12 CHAIRPERSON HILL: All those opposed?

13 (No response.)

14 CHAIRPERSON HILL: That motion also passes, Mr.
15 Moy.

16 MR. MOY: Again, staff would record the vote as
17 4-0-1. This is on the motion of Chairman Hill to approve the
18 application for the relief requested. Seconding the motion,
19 Vice Chair Hart, also in support, Ms. John and Zoning
20 Commissioner Peter May. No other Board members.

21 CHAIRPERSON HILL: Okay, great, thank you. Thank
22 you all very much. Actually, we are going to take a break
23 real quick. We'll be back in ten minutes.

24 (Whereupon, the above-entitled matter went off the
25 record at 10:41 a.m. and resumed at 10:53 a.m.)

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1 CHAIRPERSON HILL: All right, Mr. Moy, you can
2 call our next case. We're going to move a couple of things
3 around. We're actually going to do next 20123, if you go
4 ahead and announce that for us, and then we will be back on
5 our regular schedule.

6 MR. MOY: Thank you, Mr. Chairman. The Board is
7 back in session. The time is at or about 10:56. If I can
8 have parties to the table to Case Application No. 20123 of
9 Darius, I'm going to pronounce it Arod, A-R-O-D, captioned
10 and advertised for a special exception under Subtitle D,
11 Section 5201, from the side yard requirements, Subtitle D,
12 Section 206.2, rear yard requirements, Subtitle D, Section
13 306.2, to construct a rear deck addition and rear porch
14 addition to a 2A detached principal dwelling in the R-3 zone,
15 at 1440 T Street, Southeast, Square 5605, Lot 835.

16 CHAIRPERSON HILL: Okay, great. Thanks, Mr. Moy.
17 Did you say the Court was back in session, Mr. Moy?

18 MR. MOY: I don't recall.

19 CHAIRPERSON HILL: If we're a Court, I don't think
20 I'm qualified, but under the current administration, I might
21 get a shot. If you could go ahead and introduce yourselves,
22 please, for the record.

23 MR. AROD: Darius Arod.

24 MR. MARTIN: Harry Martin, architect of record.

25 CHAIRPERSON HILL: Who's going to be presenting

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1 to us today? Mr. Martin? Okay. Mr. Martin, I guess, if you
2 could walk us through what you're proposing. I guess there
3 was some revised plans that we were -- we're jumping a little
4 bit, here, out of order, so I wasn't ready exactly. First
5 of all, if the revised plans had been supplied, that's
6 something that you can kind of speak to.

7 Then, again, letting us know what you're trying
8 to do, as well as how you believe you meet the criteria for
9 us to grant the relief requested. I'm going to put 15
10 minutes on the clock, as Mr. Moy has done on either side, and
11 you can begin whenever you like.

12 MR. MARTIN: All right, Harry Martin. This house
13 is a story and a half. It had a rear addition put on.

14 CHAIRPERSON HILL: Mr. Arod, could you turn off
15 your microphone? If there's more than one on, it gets
16 feedback. Thank you.

17 MR. MARTIN: Okay, got it. In a survey we got
18 performed in 1924, I guess, it says this rear addition was
19 built within 14 feet and some odd inches of the rear property
20 line. Then on the other relief, the house is 4.99 feet away
21 from the side property line. What Mr. Arod was hoping to do
22 was to replace a deck that had been on the -- I'm not sure
23 of the directions now, on the south side of the house.

24 That would not extend beyond the addition that was
25 put on the rear much earlier and would not encroach on the

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1 five-foot side yard. Then on the opposite or the north side,
2 just to put a landing for a staircase going down to where his
3 cars are parked, will be parked. We are not -- I guess go
4 to my letter.

5 The rear yard should be 20 feet, so I guess we're
6 asking for relief to build both the deck and the porch to
7 within 15 feet of the rear yard, which is one foot less than
8 the rear addition projects into the rear yard. The special
9 exemption, light and air will remain unchanged to the east
10 of the house.

11 The house to the east is 20 feet away, and the
12 house to the west is 23.5 feet away. The privacy and
13 use/enjoyment of the neighbors will not be unduly
14 compromised. The deck and side porch are both behind the
15 main facade of the house. They're not really visible from
16 the street. I think that's all.

17 CHAIRPERSON HILL: Okay, that's fine. Mr. Martin,
18 did you write up your burden of proof? Did you write up the
19 burden of proof? I'm just curious.

20 MR. MARTIN: Yes, I did.

21 CHAIRPERSON HILL: Okay, I was just curious. Does
22 anybody have any questions for -- yes, please, go ahead.

23 VICE CHAIR HART: Just a quick question for Mr.
24 Martin. I understand that it's very -- a few inches we're
25 talking about for the side yard relief. What I'm just

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1 looking for is really the drawings that show that because it
2 seems like both of the drawings that we have just show it
3 being -- the existing building -- the building that you have,
4 the house, is five feet from the -- it measures five feet
5 from the property line, but it seems as though the actual
6 distance is that 4.98 feet.

7 CHAIRPERSON HILL: You need to speak into the
8 microphone, Mr. Martin.

9 MR. MARTIN: Yes, I'm sorry. I received this 1924
10 plat earlier this week. My measurement --

11 VICE CHAIR HART: Is that something that you have
12 in the -- a drawing that you --

13 MR. MARTIN: Yes, someone -- it was sent to us by
14 --

15 (Off-microphone comments.)

16 MR. MARTIN: I'm sorry; it was sent to us. I
17 don't have the man's name here.

18 (Off-microphone comments.)

19 MR. MARTIN: Ernesto, I guess.

20 CHAIRPERSON HILL: You didn't put it into the
21 record is what they're trying to ask you.

22 MR. MARTIN: We're not really -- I would think
23 we're not asking for relief from the side yard because the
24 deck will not penetrate into the side yard.

25 VICE CHAIR HART: But you're extending an existing

1 non-conformity. I think that's the issue.

2 MR. MARTIN: Into the backyard, yes, sir. We're
3 not --

4 VICE CHAIR HART: Hold on a second. The project
5 that you're doing is on -- the side where you're putting in
6 the deck, not the side where you're going -- the stairs going
7 down to the cars, on the other side of the building, there's
8 a deck that you're putting in. That deck is being built at
9 the same line as where the line of the house is.

10 That side yard is needing relief. That's what we
11 have in the zoning -- that's what the zoning -- what is this
12 that -- the zoning administrator put into the record that
13 there are two aspects of relief that we're looking at, side
14 yard for -- rear yard and side yard relief. I'm just telling
15 you that's what the zoning administrator is telling us.

16 MR. MARTIN: Yes, sir, I read that, and I was --
17 but we're really -- the deck to the side yard will not be in
18 that five foot setback. The house is, but the deck will be
19 built behind the edge of the house. That's only a matter of
20 a quarter of an inch at that back corner.

21 VICE CHAIR HART: Hold on. What I'm also hearing
22 is that there are no other drawings to get. The drawings
23 that we have in the record are the drawings that we have.

24 MR. MARTIN: I've since revised -- the site plans
25 reflect this 1924 survey to show the house sitting 14 feet

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1 and a few inches from the rear property line, as well as the
2 house 4'11" and three-quarters' inch from the side yard.

3 VICE CHAIR HART: We can go on with -- I'm
4 finished with the line of questioning. I just wanted to
5 understand that a little bit more. I think I understand it.
6 I'll hand it back to the chairman.

7 MEMBER JOHN: Just to follow up on that, are those
8 revised drawings with the new survey in the record?

9 MR. MARTIN: No, they haven't.

10 MEMBER JOHN: They haven't.

11 MR. MARTIN: They have not been corrected and
12 submitted, no.

13 MEMBER JOHN: Is that what you plan to build to?

14 MR. MARTIN: We can do that, yes. I mean we will
15 do that, whatever is required. We're happy to do that.

16 CHAIRPERSON HILL: Mr. Martin, we're just trying
17 to figure out what you're actually trying to build. In terms
18 of the drawings that you're actually going to build, they're
19 not in the record. Is that what you're saying?

20 MR. MARTIN: They are. The deck and the side --
21 the deck is there and the side porch with the steps are both
22 in the drawing submitted. The dimensions were not based upon
23 the 1924 survey, which really doesn't affect the size of the
24 deck or the step and porch because they're both built within
25 the existing condition of the house, I guess.

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1 CHAIRPERSON HILL: Okay, Mr. Martin, I'm going to
2 turn to the Office of Planning.

3 MS. MYERS: Hello, Crystal Myers with the Office
4 of Planning. The Office of Planning -- I should back up and
5 say Maxine Brown is the one who reviewed this case. I'm
6 sitting in for her. Anyway, we recommended approval, but I
7 would note that we did not review the side yard for this
8 case. We only reviewed rear yard.

9 Our report, our analysis, was only for the rear
10 yard relief, even though the zoning administrator, I believe,
11 is saying that side yard is -- side yard was -- the relief
12 was withdrawn or the Applicant has asked to withdraw the side
13 yard relief, even though the plans weren't updated to show
14 that. You seem a little confused, so let me --

15 VICE CHAIR HART: I think the issue that we're
16 running into is that there were two OP reports. One said
17 that the side yard was not required. The second one said
18 that oh, actually it was. The supplemental, which was dated
19 October 7th, stated that the side yard is required because
20 it's, whatever, .02 feet from the side. I'm just trying to
21 get to what are the drawings that we have and are those
22 drawings reflected in the record? That's why we're kind of
23 like --

24 MS. MYERS: I've been told that there is a drawing
25 in the record that does show what the zoning administrator

1 is saying. I've been told that there is a drawing in the
2 record that reflects what the zoning administrator has
3 stated.

4 CHAIRPERSON HILL: But the Office of Planning has
5 not gave a --

6 MS. MYERS: I've just been told that there's a
7 second report, which you've mentioned, with the side yard
8 analysis.

9 MEMBER JOHN: There is a supplemental report. I
10 believe that the Applicant withdrew the request based on the
11 revised memorandum from the ZA at Exhibit 34. Then OP issued
12 a supplemental report at Exhibit 35. The drawing, as I
13 understand it, in the record is what is being requested,
14 which is the original relief of 5.94 feet for the rear yard
15 and .02 feet for the side yard.

16 COMMISSIONER MAY: I'm sorry; do you actually have
17 a drawing that has 4.98 feet on the side yard? I'm not
18 asking about the survey. I'm talking about your plans for
19 redoing the deck. I think that's all we need, if you can
20 give us that piece of paper. You can even take an existing
21 one that doesn't say five feet and cross it out and write
22 4.98 and put it in the record and I think we're okay. Why
23 don't you hand that to the secretary and we can take a look
24 at it.

25 MR. MARTIN: If I may, the house is built too

1 close, but the deck will not be built within the five-foot
2 side yard requirement.

3 The house is in there, but not the deck. That's
4 why we didn't want to include the side yard.

5 VICE CHAIR HART: This is the -- in some ways,
6 this is kind of a comedy of errors. The problem that we're
7 running into is that there is a dimension on both drawings
8 that we have submitted in the record that show that the house
9 is at five feet from the edge of the -- from the property
10 line. There isn't a drawing, except for the drawing that we
11 just received right now, that showed that the house was not
12 -- that the house was at that dimension. Because we didn't
13 have that drawing, then it becomes which one are we actually
14 looking at? Is it what we have in the record, or is it some
15 other drawing that we haven't received yet? We were looking
16 for that other drawing. It looks like we have gotten that
17 other drawing. I think this shows --

18 COMMISSIONER MAY: It's clear from that drawing
19 that you are not requesting relief from the side yard for the
20 deck. It's not -- you're not continuing that line out.

21 MR. MARTIN: Yes, that's correct.

22 COMMISSIONER MAY: I'm not sure why the existing
23 non-conformity requires relief at this moment because they're
24 not extending that.

25 VICE CHAIR HART: Yes, I don't understand it,

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1 either, because -- I'm not sure what the -- again, back to
2 the comedy of errors, I think the problem that we're really
3 looking at is that it's when were the drawings -- when were
4 which drawings shown to whom? It seems like OP had drawings
5 that were not what we're seeing in front of us.

6 It seems as though the zoning administrator did
7 not have these drawings, either, or else he wouldn't have put
8 a zoning -- their certification form that says that this side
9 yard is required. The problem that we have right now is that
10 what we have before us, the zoning administrator has said
11 that there are two aspects of zoning that are relief that's
12 required. What you're giving us is a drawing that shows
13 there's only one aspect of it that's required, which is the
14 rear yard. That's a problem that we're trying to grapple
15 with right now.

16 CHAIRPERSON HILL: I guess we can wait and see --
17 if we went and approved this without the side yard and the
18 zoning administrator thinks that they need the side yard,
19 then they're stuck. I would rather get a new recommendation
20 from the zoning administrator, have this put in the record,
21 and then -- have this put in the record, have the zoning
22 administrator let us know whether or not -- because if they
23 don't need the side yard, then why are we --

24 (Simultaneous speaking.)

25 CHAIRPERSON HILL: -- as the Office of Planning

1 also did.

2 COMMISSIONER MAY: Can I ask something of the
3 Office of Planning? You need to look at that drawing. The
4 drawing clearly shows that the deck will be built with a 5'5"
5 side yard. Does that -- because they are conforming to the
6 side yard requirement and they're not doing anything that
7 affects the non-conforming portion of the side yard, would
8 that deck require relief? I don't think it does. I'm
9 wondering if you agree.

10 MS. MYERS: Is the deck over four feet height
11 wise?

12 COMMISSIONER MAY: Is it more than four feet above
13 the ground?

14 MS. MYERS: Yes.

15 COMMISSIONER MAY: Yes.

16 MS. MYERS: I don't think it's going to need
17 relief.

18 COMMISSIONER MAY: Mr. Chairman, I would suggest
19 that we can go ahead and approve the requested relief for the
20 rear yard today, and then not take action on the side yard.
21 If, in fact, it is determined, after the fact, that --
22 further conversations with the zoning administrator that the
23 side yard relief is, in fact, not needed, then the rest of
24 the case goes away and we dispose of it. We don't have to
25 see it again.

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1 MS. NAGELHOUT: Mr. Chairman, the problem with
2 that is you would need -- we don't write orders until
3 applications are disposed of. If you wanted to vote on part
4 of it, you could grant part and dismiss part. Then if they
5 want to come back on reconsideration -- I don't know if they
6 would have time to come back on reconsideration. We can't
7 write an order if the application isn't disposed of one way
8 or the other.

9 COMMISSIONER MAY: But if we vote on part of it
10 and we hold the other part in abeyance and they withdraw that
11 relief or it's clarified that relief is not needed, that
12 doesn't dispose of the case, or do we have to take further
13 action?

14 MS. NAGELHOUT: I don't think we would write an
15 order, in that case, because the case isn't finished.

16 COMMISSIONER MAY: I know, but I think it's going
17 to get resolved in a week or so. I would guess you can get
18 to the zoning administrator and say look, this is the plan.
19 Does it need relief, yes or no?

20 MS. NAGELHOUT: Then you can do that. You can
21 approve part and hold the rest in abeyance and let them come
22 back or withdraw that aspect. There would not be an order.

23 COMMISSIONER MAY: Until it fully gets resolved.
24 I just want to get it off our time.

25 CHAIRPERSON HILL: No, I want to hang out here all

1 day. Ms. John was on my side for a moment and now I don't
2 know. Office of Planning has an opinion again.

3 MS. MYERS: Yes, we just want to bring up that the
4 zoning administrator says that they do need the side yard
5 relief.

6 COMMISSIONER MAY: I don't understand that.

7 MS. MYERS: And we support the side yard relief.

8 COMMISSIONER MAY: Then let's just grant it all.
9 The heck with it. I don't think it's needed because it's
10 within his 2 percent discretion, plus it's not extending an
11 existing non-conformity. It's a deck. It's not an addition
12 to the house. I often disagree with the zoning
13 administrator.

14 MEMBER JOHN: Mr. Chairman, we have in the record
15 something from the ZA that says he needs .02 feet. The
16 Applicant is here. There are drawings in the record that
17 support what the ZA is saying. We can approve the request
18 based on -- the ZA did not review this drawing. The ZA's
19 decision is based on what's in the record.

20 VICE CHAIR HART: But we don't have drawings that
21 -- this is the problem that I see with the drawings that we
22 have in the record and the drawings that we just got. The
23 drawings that we have in the record show five feet. That's
24 it. There's no less than five feet. It just shows five feet
25 for the deck and for the existing house. That is an error.

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1 That's one problem.

2 The drawings that we just received show 4'11" and
3 something, three-quarter inches, for the side yard and shows
4 the deck is not on -- is not at the same level as the --
5 actually, it shows 5'5" where the deck is. That wouldn't
6 require, as Mr. May has pointed out, and I think I've pointed
7 out, as well, that wouldn't require the side yard relief.

8 Either they require the side yard relief, and we
9 have drawings that show 4'11" for the deck and the house, or
10 we have drawings that show what we've got and no side yard
11 relief is required. But right now, we don't have either.
12 We have both, so it just is a little confusing.

13 COMMISSIONER MAY: I will try to clarify, so that
14 we can dispose of this, because I think we're spending more
15 time on this than we really have to. I believe that the
16 zoning administrator's accounting for -- their statement
17 about the need of relief is incorrect because it's showing
18 4.98 as what is provided by the proposed construction. It's
19 in the column that says provided by proposed construction.
20 It is not provided by the proposed construction. It is an
21 existing condition.

22 Regardless, we have a drawing that accurately
23 reflects what they want to build. If, because of this
24 mistake by the zoning administrator, the Board feels that we
25 must grant the side yard relief, then we should grant the

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1 side yard relief, and we should grant the rear yard relief,
2 if we are so inclined.

3 We haven't really even talked about that, which
4 actually is an issue. Here, we're just fussing about what's
5 on the drawings that we have in the record. We have a
6 drawing in the record that shows, accurately, what we are
7 dealing with. I think we should just move forward to a vote
8 and dispose of the whole thing.

9 CHAIRPERSON HILL: Now, I think Ms. John's with
10 me in that I'm just kind of uncomfortable, only because
11 there's just too many things flying around right now at me,
12 in terms of whether or not we're -- I'm also trying to be
13 efficient, but I'm just confused. It seems clear -- we
14 haven't gotten to deliberations about the rear yard, as you
15 mentioned. I'm just, as not an architect, not clear as to
16 what plans are in the record that we're approving that
17 they're building and what the Applicant has said is the plans
18 that they just put forward are the ones that they are
19 building. If I'm not -- no, I'm just -- and then if I
20 understand, the zoning administrator and the Office of
21 Planning reviewed plans that they're not actually building,
22 right? That's where I think it's cracked. I can ask the
23 Applicant. The plans that you just gave us are the plans
24 that you plan on building, correct?

25 MR. MARTIN: That's correct.

1 CHAIRPERSON HILL: That's not what the zoning
2 administrator reviewed.

3 MR. MARTIN: They have something that's very close
4 to that.

5 CHAIRPERSON HILL: It's very close. I understand.
6 We're only talking about a quarter of an inch.

7 MR. MARTIN: Right.

8 CHAIRPERSON HILL: But they reviewed the other
9 plans. It's okay, we're -- I'm just trying to make sure you
10 don't get messed up at permitting, as well.

11 MR. MARTIN: If I may --

12 CHAIRPERSON HILL: Sure, one second, Mr. Martin.
13 Ms. John, you had -- Mr. Martin, go ahead and say what you
14 want to say.

15 MR. MARTIN: The deck was never shown encroaching
16 within that five feet. That's why -- when I replied and
17 filled out the chart that I took the five-foot side yard off
18 because I didn't feel we needed relief for the deck for the
19 side yard. The house may encroach within that five-foot side
20 yard, but the deck does not or will not. This came out of
21 the blue.

22 CHAIRPERSON HILL: Okay, give me one second. Does
23 anybody have any discussion about the rear yard?

24 PARTICIPANT: I think the rear yard's fine.

25 CHAIRPERSON HILL: Does anybody have any question

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1 about the rear yard?

2 (No response.)

3 CHAIRPERSON HILL: I'm fine with the rear yard.
4 Now, about the side yard, the only thing I'm confused about,
5 again, is -- because I also don't, now, want to -- the only
6 way that this seems to happen -- also, Ms. John, I'm kind of
7 looking at you, as well -- is that now, if we take these
8 plans to the zoning administrator, then the Office of
9 Planning gives us a supplemental supplemental? I don't even
10 understand -- so I just don't want to prolong this, but it
11 does seem messy.

12 VICE CHAIR HART: Could I have a question for OAG?
13 If the ZA has put in their memo, can the Applicant do a
14 self-cert?

15 MS. NAGELHOUT: Yes, they can, if they meet the
16 requirements for self-cert, yes.

17 COMMISSIONER MAY: Hold on. That means them doing
18 more paperwork, right? Can we just disagree with the
19 certification that was provided by the zoning administrator?
20 Because I disagree with it.

21 MS. NAGELHOUT: Yes.

22 COMMISSIONER MAY: It's our discretion. That
23 doesn't mean he's going to get a permit, but it does mean --

24 MS. NAGELHOUT: Right, that would be the risk,
25 that if you think the relief is not needed and you vote to

1 dismiss that aspect of the application, and then he runs into
2 a snag at permitting.

3 COMMISSIONER MAY: We could also accept it on its
4 face and grant the relief, even if it's not needed.

5 MS. NAGELHOUT: Correct.

6 COMMISSIONER MAY: We can vote to grant relief on
7 both counts.

8 CHAIRPERSON HILL: I'm going to be with Ms. John.
9 Ms. John, where do you stand? You want to do what?

10 MEMBER JOHN: My suggestion is to have a brief
11 continuance and that we clarify what's being requested with
12 the ZA one last time and get the right records in the record.
13 So if there's no relief required, it's quite simple; we
14 approve the rear yard. That way, it is quite clear to you
15 and the ZA what you're building. I think that's the safest
16 course.

17 CHAIRPERSON HILL: Okay. Then that means that --
18 this is what I'm just trying to understand. That means
19 Office of Planning, OAG -- I don't know how the steps work
20 with this. Then, now, the Applicant has to go back to the
21 zoning administrator with the plans that we have on our table
22 here. He would have to write a new recommendation, and then
23 you would have to review that recommendation?

24 MS. MYERS: Correct.

25 CHAIRPERSON HILL: How fast can that happen?

1 MS. MYERS: In a week.

2 CHAIRPERSON HILL: Okay. Mr. Martin, then, if you
3 want to go -- I'm with -- you guys can tell me what you
4 think, as well. I'm with Ms. John right now, in that you go
5 to the zoning administrator. You clarify what it is you're
6 doing, in terms of what you're building. He will give you
7 a recommendation as to whether or not you do need the side
8 yard relief. Then we'd be back here again with the Office
9 of Planning as a decision case next week.

10 MS. MYERS: We're fine with that.

11 VICE CHAIR HART: I think a week is fine. I just
12 think that all of this is somewhat -- I'm supportive of this
13 case. That's the part that is really kind of annoying with
14 this. I think that it is -- it's more a series of
15 unfortunate events that have got us to this point. I guess
16 I'll say to Mr. Martin, you kind of understand where we are
17 with all of this and that while this isn't a huge issue, it's
18 more -- this is more procedurally because we haven't gotten
19 -- we have somewhat conflicting information, or maybe not
20 complete information, and it makes it a little bit harder to
21 just say oh, yes, sure.

22 Honestly, this case probably would have been less
23 than ten minutes. I think we've been about a half hour on
24 it. It's much longer than we would typically have taken on
25 it. I'm fine with a week. I don't think it's that long of

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1 a time frame. It would be a decision, which means that you
2 don't have to actually come to the meeting. It's just us
3 having a deliberation. That's it.

4 COMMISSIONER MAY: Mr. Chairman, if I may, I think
5 that we have sufficient facts in the record to be able to
6 decide the case. Granted, there may be some inconsistency
7 between what the zoning administrator reviewed and what he's
8 opined on as requiring relief, but I think that we can cover
9 that by granting the special exception for the rear yard and
10 the side yard, and we can rely on the drawing that we just
11 submitted as what we are approving to be built.

12 I don't think it's worth the extra -- the
13 Applicant is going to have to go back to the zoning
14 administrator and go back for permits and all that sort of
15 stuff, but we're sending him through an extra cycle of that.
16 It's a waste of the Applicant's time. It's a waste of the
17 zoning administrator's time. It's a waste of the Office of
18 Planning's time, and it's a waste of this Board's time. I
19 do not think it's worth it over a quarter of an inch when we
20 have sufficient information in the record. For that reason,
21 I would move that we approve the special exceptions for rear
22 yard and side yard relief and ask for a second.

23 CHAIRPERSON HILL: Let's not do this.

24 VICE CHAIR HART: There's a motion on the floor.
25 You have to act on it.

1 CHAIRPERSON HILL: Can I get a second.

2 VICE CHAIR HART: I'll second it, just so we --

3 CHAIRPERSON HILL: Okay, the motion's been made
4 and seconded. All those in favor say aye.

5 (Chorus of ayes.)

6 CHAIRPERSON HILL: All those opposed.

7 (Chorus of nos.)

8 CHAIRPERSON HILL: Motion doesn't pass. We're
9 going to go ahead and send you back, Mr. Martin. If you go
10 ahead -- the Office of Planning here will try to get you
11 fast, as quickly as they can through this, so that it's as
12 tidy as it is for us. We'll go ahead and have a decision
13 next week for you.

14 MR. MARTIN: Okay, thank you.

15 CHAIRPERSON HILL: Thank you. All right, Mr. Moy,
16 you can call our next carnival show.

17 MR. MOY: Okay, so back at the top of the batting
18 order. This would be Case Application No. 20114 of 3569
19 Warder, W-A-R-D-E-R, LLC, captioned and advertised for
20 special exception under the residential conversation
21 provision, Subtitle U, Section 320.2, with waivers from the
22 chimney and external vent requirement of Subtitle U, Section
23 320.2(f), and the rooftop architectural element requirements,
24 Subtitle U, Section 320.2(h), and the special exception under
25 Subtitle C, Section 703.2, from the minimum parking

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1 requirements, Subtitle U, Section 701.5, to convert an
2 existing two-story, semi-detached principal dwelling unit
3 into a five-unit semi-detached apartment building, RF-1 zone.
4 This is at 3569 Warder Street, Northwest, Square 3035, Lot
5 820.

6 CHAIRPERSON HILL: Okay, great, thank you, Mr.
7 Moy. If you could please introduce yourselves for the record
8 from my right to left.

9 MR. CROSS: Michael Cross, architect.

10 MR. LEE: Matthew Lee, architect.

11 CHAIRPERSON HILL: Mr. Cross, are you going to be
12 presenting to us?

13 MR. CROSS: I will.

14 CHAIRPERSON HILL: Okay. Mr. Cross, if you can
15 go ahead and kind of walk us through what it is you're trying
16 to propose, and also, then, speak to the criteria or the
17 standards with which we should grant the application. There
18 is, I guess -- I know that the waiver from the chimney is
19 something that we might end up putting in as a condition, in
20 terms of just making sure it gets done before the permitting
21 is done, but you can speak to the fact that you've actually
22 spoken to the person about raising the chimney.

23 Then as you know, unless something's changed, the
24 Office of Planning is opposed to you -- the waiver for the
25 architectural element, so you can speak to why you think that

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1 you meet the criteria for that. I'm going to put 15 minutes
2 on the clock, Mr. Moy, and you can begin whenever you like.

3 MR. CROSS: Appreciate that. Thanks for your time
4 this morning. We are seeking relief for a five-unit
5 conversion in the RF-1 zone, under 320.2. The project is
6 being proposed at 3569 Warder Street, Northwest. It's the
7 south side of the block, between Newton and Otis, across from
8 Bruce Monroe Elementary School.

9 In an effort to reduce the impact of the addition,
10 we're setting the entire addition back ten feet, in order to
11 preserve the original façade and massing of the home from the
12 street. We're also maintaining the detached nature of this
13 property. Currently, there's a side yard. We're maintaining
14 that side yard. We're providing an affordable housing unit
15 via the inclusionary zoning program. All units being offered
16 are family size, with a minimum of three bedrooms. They're
17 all multi-levels, and they all have private entrances via a
18 side yard mews.

19 We will be protecting and maintaining the tree
20 that's in the front yard, along the street. The proposed
21 construction is conforming with the requirements of 320.2
22 with two exceptions. We are seeking a waiver from the
23 architectural rooftop provision in order to provide a new
24 porch roof, which is being proposed in keeping with the
25 character of the original structure because the porch that

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1 is there today is not original to the building. We're
2 seeking parking relief so that we can provide three spaces
3 where only two would fit otherwise.

4 CHAIRPERSON HILL: Mr. Cross, just for
5 clarification, the photo that you have up again, it says the
6 existing front porch, and then what's the one to the right?

7 MR. CROSS: The one to the right is an image --
8 a precedent image that was provided to us by Commissioner
9 Base, who is both the commissioner of this ANC, as well as
10 for this actual SMD.

11 CHAIRPERSON HILL: Okay. Do you have any pictures
12 of the block? As you keep going through, if you have any
13 pictures of the block, that would be great.

14 MR. CROSS: I'd be happy to -- I'll pull it up
15 now. I think the best way to visualize this is to stand in
16 the front yard and -- sorry, the touchpad is a little hard
17 to use. These are the two structures side by side, ours
18 being the one in blue, the adjacent building, in green, being
19 of a similar age of construction.

20 You can see that both of them have some form of
21 front porch that may or may not have parts of the original
22 in it. They are the end. They back up to an alley. Then
23 down the -- on the other side, it's larger apartment
24 buildings that are void of porches.

25 Again, the proposal of the new porch roof is

1 largely at the request of Commissioner Base, who has done a
2 fair bit of research on this property, this area. He
3 provided this additional image. I think, actually, I have
4 it here. It's relatively large. We don't have good record
5 of what was there historically, but this image was provided
6 us by Commissioner Base. Again, struggling with the
7 touchpad. My apologies.

8 CHAIRPERSON HILL: That's all right, Mr. Cross.

9 MR. CROSS: It's not super clear, but in the
10 background of this picture, you can see the two porches of
11 those two houses back in 1924. You can see that the porch
12 roofs were, in fact, more ornate, as were the columns that
13 supported them. What the nature of the ornament was, we
14 can't be for sure, but I do believe that it is consistent
15 with the image provided in our presentation here, which is
16 the basis of our design, again, provided by Mr. Base as a
17 porch that he feels is more in keeping with the original
18 character of this home.

19 COMMISSIONER MAY: Sorry, the ANC commissioner is
20 providing this advice about the architectural style.

21 MR. CROSS: That is correct.

22 COMMISSIONER MAY: You've talked to the Office of
23 Planning and the Historic Preservation Office has a different
24 opinion.

25 MR. CROSS: We understand that.

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1 COMMISSIONER MAY: Who do you think has the
2 greater expertise in this area?

3 MR. CROSS: I would not question the expertise of
4 Historic. They are professionals. I guess we are here today
5 presenting the plan which was heavily coordinated and vetted
6 with the community. This is their desire. I think the porch
7 replacement is not coming at the request of my client. It's
8 just something that we worked with the community on.

9 COMMISSIONER MAY: If we don't agree with the ANC
10 with regard to the replacement of the porch roof, what would
11 be your proposal?

12 MR. CROSS: We very much would like the relief
13 requested. However, the project is still feasible if you
14 side with the OP report.

15 COMMISSIONER MAY: But that would require a
16 different design because you're still going to replace that
17 porch, right?

18 MR. CROSS: The existing porch could remain. We
19 were simply replacing it to make it more in character with
20 the --

21 COMMISSIONER MAY: Right, but you're replacing it
22 with something that's not from the same period, with a style
23 of design that is not the same period as the original house.
24 If you look carefully at the design of what was there
25 originally, it's a very typical Italianate porch with turned

1 columns. There are details to that. Did you discuss that
2 particular image with the Office of Planning?

3 MR. CROSS: We received this image last night
4 around 7:00 p.m.

5 COMMISSIONER MAY: I think if you actually talk
6 to the Office of Planning, they'll explain what those
7 differences are. You can see that the house next door has
8 turned columns. You see some notches in the column that
9 indicate this house had turned columns. I think that
10 actually would be an appropriate approach. The house next
11 door had a hipped roof. It still has a hipped roof. I think
12 that might be what was happening on this particular house,
13 but it was not a flat roof. Now it's gone away, so I can't
14 see that much of it. Looking at that image, you can sort of
15 see that there's a band below the roof structure, itself.
16 Typically, that would have been a series -- I'm not sure what
17 you call all these pieces, but vertical pieces in a banding
18 like a -- I'm blanking on the word for it. That kind of very
19 light detail is typical for a house of that period.

20 What you're showing us is a design that is, I
21 don't know, very heavy and craftsman-like. That's not really
22 what's appropriate for this house. I tend to think that the
23 Office of Planning and Historic Preservation Office is
24 absolutely correct about what the approach should be for a
25 house like this.

1 I would hope that what your reaction to this would
2 be, to try to figure that out with the Office of Planning and
3 the ANC and propose something that is appropriate.
4 Certainly, it makes sense to replace the ugly thing that's
5 there now, but what you've shown is not really the
6 appropriate replacement.

7 MR. LEE: I'm just pulling up the street view.
8 I just wanted to also add that -- I mentioned this to OP in
9 an email correspondence. The majority, if not all, of the
10 houses with porches on Warder Street, basically running the
11 entire length of Warder Street, have this style. So it is
12 not --

13 COMMISSIONER MAY: Right, but they're a completely
14 different period. The houses that you're dealing with there,
15 I mean they are classic Wardman-style brick-face townhouses
16 that have the detailing of the example that you show. But
17 the house that you're talking about is a completely different
18 -- the house that you want to renovate or build an addition
19 on is a completely different style of house.

20 MR. CROSS: I understand where you're coming from.
21 I think that it's a very good point. If we had had the image
22 that we received last night, we would have had more
23 information about what was there, and we could have
24 definitely worked to that. I think we still can work to
25 that, if that's the Board's decision.

1 COMMISSIONER MAY: Okay. It's certainly my
2 inclination, but of course, I'm just one member of the Board.

3 MR. CROSS: I guess the only other comments I had
4 is as mentioned in the comments about the porch, my client
5 has done multiple projects in this area. He used to live in
6 this area. All his projects are heavily vetted with the
7 community. We have worked with the ANC chair people, as well
8 as the community members, since inception, and have
9 subsequently received support from the ANC, as well as the
10 adjacent neighbor in the green house, the residential house
11 next door of a similar time period, two of the eight
12 residents from the apartment building next door, as
13 individuals, plus 20 signatures of residents within a
14 200-foot radius.

15 VICE CHAIR HART: Mr. Cross, just one question.
16 I understand that we were talking about the chimney issue and
17 the rooftop architectural element issue. I did have a
18 question about another aspect of the zoning that I'm having
19 -- trying to understand more fully. Under U-320.2(i), which
20 is any additional shall not have a substantial adverse effect
21 on the use or enjoyment of an abutting or adjacent dwelling
22 or property, No. 1 talks about the light and air available
23 to neighboring properties shall not be unduly affected.

24 Can you talk about that a little bit more, in
25 particular -- I'm glad you brought this up. I was going to

1 ask you about A, B, C -- 5-A, B, C, and D, the exhibits that
2 you -- the pages that you have in, I think it's Exhibit --
3 I don't remember which one it is -- Exhibit 35.

4 What I'm trying to understand is if you were doing
5 just an expansion of -- a by-right development on this, that
6 would have a particular impact on the -- for light and air,
7 shadows and stuff, on the adjoining properties. This seems
8 like you would have more of an impact than that. It seems
9 that there would be more impact than if you had a by-right
10 option. If you could talk to that a little bit for me
11 because I'm looking at the image that you have here, in
12 particular, and here, because it seems as though these are
13 actually pretty impactful for shade wise on the neighbor
14 that's to the north. The by-right option would have looked
15 at maybe something that was here, and it would have possibly
16 less impact on that neighbor. I'm just trying to understand
17 that, if you could speak to that a little.

18 MR. CROSS: Yes. I understand kind of the
19 concerns, but the shadow studies, as labeled here, the volume
20 we're proposing is actually matter of right. We are only
21 seeking relief for those five units. The mass here is
22 actually matter of right. It is conforming with lot
23 occupancy, rear yard setbacks, etc.

24 VICE CHAIR HART: Okay. I understand that.
25 You're looking at -- actually, I don't have any other

1 questions. Thank you.

2 MEMBER JOHN: I have a question about the parking.
3 Can you explain what parking relief you're requesting and how
4 you meet the criteria for relief?

5 MR. CROSS: Yes, the parking relief is kind of
6 interesting. For five units, we're required to have 2.5
7 parking spaces, which, under the rules of measurement, rounds
8 up to three spaces. This lot is, I think, one foot shy of
9 being able to provide three full-size spaces. In working
10 with the zoning administrator's office and outside counsel,
11 we found that there's actually not special exception relief
12 to provide a compact in lieu of a full, that we can only seek
13 relief for a whole space. That's what we're seeking relief
14 for here is relief for a whole space to allow us to provide
15 only two spaces for this project.

16 Fifty percent of required spaces can be compact,
17 so those two spaces could be satisfied by the full and
18 compact spaces shown here. As a result of that relief, if
19 approved, we would be allowed to provide a third space of a
20 compact size, ultimately hitting the intent of the code to
21 have three spaces, but only one of them would be full-size,
22 as opposed to two.

23 COMMISSIONER MAY: I doubted you at first, when
24 you started talking about how the parking case was going to
25 be interesting, but that really is interesting the way that

1 works out.

2 CHAIRPERSON HILL: Is it the builder's intent,
3 then, to do this, the two compact spots and the full?

4 MR. CROSS: Yes, sir.

5 CHAIRPERSON HILL: Does anyone have any more
6 questions?

7 All right, go ahead and turn to the Office of
8 Planning.

9 MS. MYERS: Hello, Crystal Myers, with the Office
10 of Planning. The Office of Planning is recommending approval
11 of the case, but does not support the waiver for the porch
12 roof. It's already been thoroughly discussed, but just to
13 reiterate, our main issue is that the Applicant's argument
14 for removing the porch roof is that the proposed porch roof
15 would be closer to what is historically, probably, on the
16 original porch roof.

17 The new porch roof would resemble what is likely
18 -- historically was there originally. When we looked at it
19 internally, we took a look at it with our design staff,
20 historic staff, our analysis reviewing it was that that
21 argument was not the case or we would not be able to support
22 that argument. It did not appear that the proposed roof
23 resembled the original or what was likely the original porch
24 roof.

25 We actually thought that the proposed porch roof

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1 was no better, or actually not as supportable as what is
2 currently there. We're not against -- if there was a better
3 porch roof proposed, we're not against a new porch roof, but
4 the one being proposed is no better than what is there now.
5 We'd rather the existing porch roof remain.

6 Otherwise, we recommend approval of the case and
7 stand on the record of the staff report. Just one thing I
8 should probably note, also. We talked about -- there was
9 some discussion about the shadow study. One of the reasons
10 why we were supportable is because the additional shadowing
11 or shadow cast on the neighbor to the north is on the parking
12 lot. We didn't think that the impact would be to an undue
13 level to that neighbor. As for the parking issue that we
14 were discussing here, the parking spaces, just another thing
15 I want to note is that DDOT was comfortable with the three
16 parking spaces because even though two were compact, it still
17 meets their three parking space requirement. With that, we
18 recommend approval of the staff report.

19 CHAIRPERSON HILL: Does the Board have any
20 questions for the Office of Planning?

21 (No response.)

22 CHAIRPERSON HILL: I've got a quick question for
23 the Applicant. Mr. Cross, again, the matter of right options
24 that you're speaking to, the massing is matter of right, but
25 how many -- just for clarification, how many units could you

1 do there?

2 MR. CROSS: As matter of right, the RF-1 zone only
3 allows two units. Any conversion above that would be subject
4 to relief.

5 CHAIRPERSON HILL: The fourth one, you're getting
6 the IZ unit, right?

7 MR. CROSS: The fourth one triggers an IZ unit.
8 That is being provided here. That unit is, like the others,
9 a full family-size unit.

10 CHAIRPERSON HILL: Okay, great.

11 COMMISSIONER MAY: Which one is it?

12 MR. LEE: It is the front unit.

13 CHAIRPERSON HILL: For the Office of Planning
14 again, when you were talking about the shadowing and the
15 shadowing going on in the parking lot, again, it being a
16 matter of right -- the massing is matter of right, but again,
17 the analysis that you're doing is because they're here before
18 us to get the conversion, correct?

19 MS. MYERS: Correct.

20 CHAIRPERSON HILL: Anybody else for the Office of
21 Planning?

22 (No response.)

23 CHAIRPERSON HILL: Mr. Cross, do you have anything
24 for the Office of Planning?

25 MR. CROSS: No, sir.

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1 CHAIRPERSON HILL: Is there anyone here wishing
2 to speak in support?

3 Is there anyone here wishing to speak in
4 opposition?

5 (No response.)

6 CHAIRPERSON HILL: All right, Mr. Cross, is there
7 anything you'd like to add? Actually, I guess we can talk
8 about this porch. I'm more in line with seeing what type of
9 options we could get wherein it'd be more in line with what
10 Commissioner May had just mentioned, and then also what the
11 Office of Planning had been speaking to. Again, HPRB and the
12 Office of Planning had different ideas as to what would be
13 something that would be good on the front of this building.
14 I can understand and empathize with the ANC, in terms of what
15 they believe is -- what they think, I guess, but I don't
16 necessarily think that their expertise is in this area.

17 I would be interested in actually seeing something
18 that would be more in line with, again, those that the Office
19 of Planning might be comfortable with before actually taking
20 a vote. In terms of the other aspects, I don't necessarily
21 have a whole lot of questions. I think I would be able to
22 deliberate on those, but I would be interested in seeing
23 something concerning the front porch. Do my colleagues have
24 anything they'd like to add?

25 COMMISSIONER MAY: I agree completely. I'd love

1 to see some further work on the porch design. I think that
2 in the end, what you can come up with working with the Office
3 of Planning and looking at other examples of houses from that
4 same period, or even looking at what's in that photo you
5 showed of the house next door, which I think is shown fairly
6 clearly, I think you can come up with something that would
7 be very pleasing and, I think, ultimately, the ANC would not
8 be unhappy with.

9 CHAIRPERSON HILL: Anyone else?

10 Okay. So the one question to you, Mr. Cross. Do
11 you know if the ANC, if their vote was determinate upon that
12 front porch at all or what their kind of overall -- when you
13 went through the process, how their feedback was towards the
14 project?

15 MR. CROSS: I couldn't speak for sure. My
16 understanding is it's not contingent upon that front porch,
17 but I do know that Commissioner Base, as an individual, is
18 quite concerned about the porch or has a vested interest in
19 the porch, I guess. But I don't think the ANC's approval of
20 the project, overall, was contingent upon that. That's not
21 my understanding.

22 CHAIRPERSON HILL: Depending upon how the Board
23 feels, I would be comfortable with seeing some design options
24 and also working with the Office of Planning in terms of that
25 front porch, and also, I guess, some photographs, as Mr. May

1 had mentioned, to be added into the record.

2 Then I suppose we could just have a decision, if
3 I could get some supplemental from the Office of Planning
4 again concerning the front porch aspect. If that were the
5 case, Mr. Cross, when do you think you can submit something
6 to the Office of Planning, and when does the Office of
7 Planning think they could get back around to us with their
8 recommendations?

9 MR. CROSS: I think that in terms of turning
10 around the drawings, we can probably do that in a week or so,
11 but because those drawings would need to be coordinated with
12 OP, anything less than two weeks is probably not achievable.
13 I would say two weeks, minimum.

14 CHAIRPERSON HILL: Then, OP, a week?

15 MS. MYERS: Yes, a week should be fine.

16 CHAIRPERSON HILL: Mr. May, when are you back with
17 us anyway?

18 COMMISSIONER MAY: The 6th of November.

19 CHAIRPERSON HILL: The 6th of November? Okay, Mr.
20 Moy, could you give us some dates for drawings/photographs,
21 and then also the supplemental from the Office of Planning?

22 MR. MOY: Working backwards, then, November 6th
23 is the first hearing in the month of November, so certainly
24 give Office of Planning time. OP supplemental, let's say --
25 I'll try and give you as much time as I can -- Friday,

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1 November 1st, OP?

2 MS. MYERS: Yes, that's perfectly fine.

3 MR. MOY: The Applicant, with their coordination,
4 as well, to make their filing would be October 23rd.

5 That works? I would also ask, too, Mr. Chair,
6 that the Applicant showed a black-and-white photograph.
7 Since that was shown for the record, I should have that as
8 evidence in the record.

9 MR. CROSS: Understood. We'll upload it later
10 today.

11 CHAIRPERSON HILL: All right, Mr. Cross. All
12 right, everybody, we're going to take a quick break again,
13 and we'll be back for our final two cases.

14 (Whereupon, the above-entitled matter went off the
15 record at 11:53 a.m. and resumed at 11:54 p.m.)

16 CHAIRPERSON HILL: All right, Mr. Moy, call our
17 next case when you get a chance.

18 MR. MOY: Thank you, Mr. Chairman. The Board is
19 back in session, and it's about 12:06. If we can call
20 parties to the table to Case No. 20119 of Eric F. Goldstein,
21 Trustee, and Katherine A. Douglass, Trustee, captioned and
22 advertised for special exception under Subtitle C, Section
23 1504, from the penthouse setback requirement, Subtitle C,
24 Section 1502.1. This would construct a new roof deck and
25 access stair on an existing detached accessory garage

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1 building, RF-1 zone. This is at 1800 Kenyon Street,
2 Northwest, Square 2598, Lot 46.

3 CHAIRPERSON HILL: Okay, if you could please
4 introduce yourself for the record, from my right to left.

5 MR. SULLIVAN: Thank you, Mr. Chairman, members
6 of the Board. My name is Marty Sullivan, with Sullivan &
7 Barros, on behalf of the Applicant.

8 MR. GOLDSTEIN: Good morning, Eric Goldstein,
9 owner of the home.

10 MS. DOUGLASS: Good morning, Katherine Douglass,
11 also an owner.

12 CHAIRPERSON HILL: All right, Mr. Sullivan, you're
13 going to walk us through this, I assume.

14 MR. SULLIVAN: Yes.

15 CHAIRPERSON HILL: If you could, again, just go
16 ahead and tell us about the project and what your client is
17 trying to achieve and how -- Mr. Goldstein, if you could turn
18 off your microphone there, just because of the feedback.
19 Thank you.

20 If you could walk us through, again, the standard
21 with which you believe we should grant the application. I
22 guess there was some conversations about HPRB and, I guess,
23 the railing, so kind of walk us through that, as well. I'm
24 going to put 15 minutes on the clock, and you can begin
25 whenever you like.

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1 MR. SULLIVAN: Thank you, Mr. Chairman and members
2 of the Board. This is for a property located at 1800 Kenyon
3 Street, Northwest. The request is for relief for penthouse
4 setbacks to provide a railing on an accessory building that's
5 three and a half feet high and to not have to set that
6 railing back three and a half feet from the sides of that
7 carriage house. You can see a picture of the existing
8 building here. Here's a view from the alley. You see
9 there's trees on both sides of this. Here's a view from
10 inside the yard. The relief being requested is from the
11 setback requirements of C-1502, due to the -- this does have
12 HPR concept approval.

19 There's a couple criteria which allows the Board
20 to approve the special exception -- these are noted in the
21 Office of Planning report, as well -- the first one being
22 that the strict application of the requirements would result
23 in construction that is unduly restrictive. We think we fall
24 under that because if we were to provide the setbacks, it
25 would make the roof deck unworkable.

1 It would also leave an unsafe portion of a roof
2 deck on the other side of that railing. This was due to HPRB
3 restrictions on providing a parapet, as noted. The other
4 criteria that we meet is that the relief requested would
5 result in a better design of the roof structure without
6 appearing to be an extension of the building wall because
7 it's in line with the HPRB approval. The relief requested
8 would result in a roof structure that is visually less
9 intrusive. We think, and the HPRB thought, that the roof
10 deck railings would be less visually intrusive than a parapet
11 wall.

12 The intent and purpose of this chapter in this
13 title is not materially impaired by the structure, and light
14 and air of adjacent buildings is not affected adversely, as
15 well. We do have unanimous support of the advisory
16 neighborhood commission and letters in support from neighbors
17 across the alley. If the Board has any questions, myself or
18 the owner is here to answer them. Thank you.

19 CHAIRPERSON HILL: Thank you, Mr. Sullivan. Does
20 the Board have any questions for the Applicant?

21 VICE CHAIR HART: Just a question. I understand
22 that the Applicant -- that you're looking to add this roof
23 deck. I understand that the building is also, I don't know,
24 16 by 21, I think, 16 and a half by 21. Could you explain
25 why -- I kind of understand not doing a setback on all three

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1 sides or one or two of the sides, but all four sides, I just
2 don't understand that aspect of it. You could have a roof
3 deck that was, what, 12 by 18 if you -- or 12 by 17, if you
4 had the setback along the alley and one along the -- you see
5 what I'm asking? I'm just trying to figure out why is it
6 that you don't have to have any of the setbacks on here? I
7 understand there's a loss in the amount of roof deck, but I'm
8 just trying to --

9 MR. SULLIVAN: Sure. Any loss of the roof deck
10 was a significant loss and makes doing the roof deck less
11 feasible. However, another concern is safety of having a
12 space over the other side of the railing. The desire was
13 also to have those railings -- they do have smaller children.
14 The desire would be to have those railings where they can be
15 and not have any incentive for somebody being on the other
16 side of the railing and then causing a potential safety
17 issue.

18 VICE CHAIR HART: Okay.

19 CHAIRPERSON HILL: All right, anyone else?

20 We're going to turn to the Office of Planning.

21 MS. THOMAS: Good morning, Mr. Chair, members of
22 the Board, Karen Thomas with the Office of Planning. We will
23 rest on the record of our report. We believe that the
24 Applicant has satisfied the requirements of both HRB and the
25 existing regulations under C-1502 for a special exception

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1 relief. Thank you.

2 CHAIRPERSON HILL: Thank you. Does anyone have
3 any questions for the Office of Planning?

4 Does the Applicant have any questions for the
5 Office of Planning?

6 MR. SULLIVAN: No, thank you.

7 CHAIRPERSON HILL: Is there anyone here wishing
8 to speak in support?

9 Is there anyone here wishing to speak in
10 opposition?

11 Mr. Sullivan, is there anything you'd like to add
12 at the end?

13 MR. SULLIVAN: No, thank you.

14 CHAIRPERSON HILL: Okay, I'm going to go ahead and
15 close the hearing. Is the Board ready to deliberate? I
16 don't particularly have an issue with this application. I
17 think that they meet the criteria with which we can grant it.

18 I would agree with the analysis provided by the
19 Office of Planning, as well as the support that they have
20 from neighbors, as well as that of the ANC, in terms of the
21 great weight that we give the ANC. I will be voting in favor
22 of this application. Is there anything else anyone would
23 like to add?

24 (No response.)

25 CHAIRPERSON HILL: Going to go ahead and make a

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1 motion to approve Application No. 20119, as captioned and
2 read by the secretary, and ask for a second.

3 VICE CHAIR HART: Second.

4 CHAIRPERSON HILL: Motion made and seconded. All
5 those in favor say aye.

6 (Chorus of ayes.)

7 CHAIRPERSON HILL: All those opposed?

8 (No response.)

9 CHAIRPERSON HILL: The motion passes. Mr. Moy.

10 MR. MOY: Staff would record the vote as 4-0-1.
11 This is on the motion of Chairman Hill to approve the
12 application for the relief requested. Seconding the motion
13 is Vice Chair Hart. Also in support, Ms. John and Zoning
14 Commissioner Peter May. No other Board members.

15 CHAIRPERSON HILL: All right, thank you, Mr. Moy.
16 Thank you all very much.

17 MR. MOY: If we could have parties to the table
18 to Appeal No. 20072 of Marybeth and Ken DeGrave,
19 D-E-G-R-A-V-E. This is an appeal from the decision made on
20 March 11, 2019, by the zoning administrator, Department of
21 Consumer and Regulatory Affairs, to issue Building Permit No.
22 B, that's B, as in Bravo, 1903685, revising Building Permit
23 No. B1803293, to construct a new three-story addition to an
24 existing attached principal dwelling unit, RF-1 zone. This
25 is at 2202 1st Street, Northwest, Square 3122, Lot 24.

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1 CHAIRPERSON HILL: Okay, great. Thank you. If
2 you could please introduce yourselves from my right to left
3 for the record.

4 MS. LORD-SORENSEN: Good afternoon, Chairman Hill
5 and members of the Board. Adrian Lord-Sorensen, assistant
6 general counsel with the D.C. Department of Consumer and
7 Regulatory Affairs.

8 MS. PATRICK: Gayle Patrick. I provided the
9 architectural documents.

10 MS. WRIGHT-GUISE: Good afternoon, Nicole
11 Wright-Guise, owner.

12 MR. GUISE: Lynwood Guise, owner of 2202 1st
13 Street, Northwest.

14 MR. DEGRAVE: Ken DeGrave, co-owner 2204 1st
15 Street, Northwest.

16 MS. DEGRAVE: Marybeth DeGrave, co-owner, 2204 1st
17 Street, Northwest.

18 CHAIRPERSON HILL: Okay, Ms. Lord-Sorensen, I
19 guess first off, as maybe even a preliminary matter, you guys
20 had a motion to add the second revised permit, is that
21 correct?

22 MS. LORD-SORENSEN: That is correct.

23 CHAIRPERSON HILL: Can you explain that a little
24 bit to us?

25 MS. LORD-SORENSEN: Certainly. We actually filed

1 two motions last week. One was a motion to -- for an
2 extension of time to late file our amended prehearing
3 statement, and then, of course, the motion to incorporate the
4 second revised building permit that was issued on October 2,
5 2019.

6 There are a couple of issues pending before this
7 Board, one of which is the proposed roof deck, Chairman Hill,
8 as well was the calculation of the BHMP for 2202 1st Street,
9 Northwest. If this Board decides to grant our motion to
10 incorporate the second revised permit, it will actually moot
11 one of the issues, specifically the roof deck, because I
12 proffered to this Board that we would present the revised
13 architectural plans that proposed the removal of the roof
14 deck.

15 There is no one-to-one setback argument because
16 it's now moot, since they no longer plan to build a roof
17 deck. Then also, as an aside, in Appellant's supplemental
18 information filing that was already late filed, they do argue
19 that the roof deck was on structural supports that exceeds
20 the height of -- it made the building exceed the height for
21 that particular zone. Again, if you incorporate the second
22 revised building permit, of course, it shows that the
23 proposed roof deck will no longer -- excuse me, they no
24 longer plan to build the proposed roof deck, so that other
25 issue is also mooted. It would actually benefit the Board

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1 because it will eliminate the number of issues. That's
2 number 1, with respect to the roof deck. With respect to the
3 BHMP, the revised plans actually contain the dimensions for
4 the area way at 2202 1st Street, so it will give the Board
5 sufficient information in order to understand why BHMP was
6 calculated grade rather than at the area way.

7 CHAIRPERSON HILL: Your motion to admit as late
8 filing, why was it late?

9 MS. LORD-SORENSEN: We needed to -- we were still
10 trying to gather information with respect to the revised
11 plans and making sure that we had sufficient information so
12 this Board will have all the information it needs in order
13 to make an adequate decision. It's in the Board's best
14 interests to grant DCRA's motion to late file and, of course,
15 to grant DCRA's motion to incorporate the second revised
16 building permit.

17 CHAIRPERSON HILL: Before we get to either one of
18 those motions, does the Board have any questions for DCRA
19 about either one of those motions?

20 MEMBER JOHN: I have a question.

21 CHAIRPERSON HILL: Please, go ahead.

22 MEMBER JOHN: Does the revised motion supersede
23 -- I'm sorry; permit supersede the first permit?

24 MS. LORD-SORENSEN: No, it doesn't supersede. We
25 have the parent permit, then we have a revised permit, and

1 then we have the second revised permit. The second revised
2 permit speaks specifically to the roof deck because it
3 proposes the removal of the roof deck, but the other proposed
4 changes to 2202 1st Street remains the same.

5 MEMBER JOHN: Say that again.

6 MS. LORD-SORENSEN: The other changes that were
7 found in the original permit, the parent permit for this
8 particular project, is unchanged.

9 MEMBER JOHN: Okay.

10 CHAIRPERSON HILL: Okay, so Mr. and Ms. Graves --
11 Grave -- do you guys understand what's being asked, in terms
12 of the preliminary matters?

13 MR. DEGRAVE: Yes, Chairman Hill, I believe we do.

14 CHAIRPERSON HILL: The one is the late filing.
15 It's kind of in benefit to all of us, in terms of being able
16 to see everything that they had. Did you have an opportunity
17 to take a look at that?

18 MR. DEGRAVE: Briefly. We just got it. We
19 strongly disagree with the motion to incorporate, if that's
20 what it is.

21 CHAIRPERSON HILL: First was the late filing.
22 That's the first one. Then the second one was the motion to
23 incorporate. Again, the motion to incorporate is what
24 they're saying is that some of the items that you're
25 appealing are going to be going away by the revised permit.

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1 However -- and that's fine -- you object to that revised
2 permit being incorporated.

3 MR. DEGRAVE: Correct. May I turn it over to --

4 CHAIRPERSON HILL: Sure, of course.

5 MR. DEGRAVE: Thank you.

6 MS. DEGRAVE: I have something prepared, written.

7 Are you ready --

8 CHAIRPERSON HILL: No, but you can pull that
9 microphone just a little bit closer. You can bend it down
10 a little bit there maybe. You have something prepared
11 concerning the preliminary matters?

12 MS. DEGRAVE: Just the motion to incorporate.

13 CHAIRPERSON HILL: Okay, sure.

14 MS. DEGRAVE: Again, we strongly disagree with the
15 motion to incorporate. We feel that the BHMP and roof deck
16 setbacks can and should be resolved in the first revised
17 permit, which we are more familiar with and that we paid to
18 appeal.

19 DCRA and the Applicant had our appeal since May
20 2019 and our supplemental since July 2019 and feel that
21 should have been ample time for them to defend or revoke that
22 first revised permit. Demolition and new construction is
23 well underway already. In contrast, we received very late
24 notice of the new permit and drawings, just last Thursday
25 evening, so only five days to review the new plans. We have

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1 day jobs, a child, and weekend commitments, and no staff.
2 We would appreciate a ruling on the permit. Otherwise, we
3 would like to request a refund of our appeal and believe that
4 we have 60 days from the new permit, the newest issued
5 permit, to consider whether to appeal it, as well.

6 The newly issued revised permit now appears to
7 include a second-floor rear extension that is almost three
8 feet larger or longer than in the first revised permit, the
9 one that we have appealed. That can be seen in Exhibit 38-E
10 in the second revised permit. This was only one of the
11 things that we were able to determine had changed in the five
12 days that we had to review it.

13 It's our belief that this longer extension was at
14 least part of the reason that a stop work order was issued
15 on the original permit, because the addition was to an
16 already existing, non-conforming structure, at approximately
17 66 percent. The new addition would make it closer to 68
18 percent over occupancy.

19 We feel that this project should be presented
20 today and see -- and go through the special exception
21 process. The three-foot extension now appears to be
22 reinstated and is most easily seen by comparing DCRA Exhibits
23 31-D, from March 2019, permit, which we are here to appeal,
24 and Exhibit 38-E on the newly issued October permit. I can
25 detail that out for you if you need me to explain more about

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1 that.

2 CHAIRPERSON HILL: That's okay.

3 MS. DEGRAVE: The new drawings that support this
4 new permit also appear to have some other changes, which
5 would change how we present our appeal. Our appeal was based
6 on the second permit, which seems to have been issued
7 erroneously.

8 We believe it was wrong in the calculation of the
9 roof deck setbacks and wrong in the height, and we still
10 believe it's wrong in the height of the building height
11 measuring point. It's a very ambitious three story, plus a
12 basement walkout, which is effectively a four story plan.
13 It's been deficient from the start, with inconsistent
14 drawings and --

15 CHAIRPERSON HILL: Okay, that's okay. I'm sorry;
16 I don't want you to get too much into testimony. I'm just
17 trying to understand, in terms of just this preliminary
18 issue. I understand what you're saying, and I hear your
19 objections.

20 MR. DEGRAVE: If I may, five or ten seconds.

21 CHAIRPERSON HILL: Sure.

22 MR. DEGRAVE: The biggest concern is the
23 three-foot addition that's been included. My wife described
24 it on the various pages. The second floor is three feet
25 longer under the new permit from last week.

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1 CHAIRPERSON HILL: Okay. Anyway, you're in
2 objection to incorporating the revised permit. DCRA is
3 trying to indicate to the Board that it would be something
4 that some of the issues from the appeal would go away. I
5 don't even necessarily know if we need to decide this right
6 now. You guys were here when we first heard this back on
7 July 24th, right?

8 What I really want to understand is the threshold
9 issue as to whether or not this thing's timely. That's
10 really what has been something that I had asked, or we had
11 asked DCRA to kind of write to and speak to a little bit
12 more. We didn't get a whole lot from them on the timeliness
13 issue. Also, we didn't get a whole lot from the Appellant
14 on the timeliness issue.

15 That is what we're first going to kind of walk
16 through. I'm going to kind of turn to DCRA, I suppose, to
17 -- actually, I'll go with the Appellant first. This is your
18 case. How this will go, in terms of the order, you will
19 present your -- at this point, we're just talking about the
20 timeliness issue. The first permit was issued on November
21 14, 2018. Then there was the revised permit that was on
22 March 11, 2019. Then the appeal was filed on May 10, 2019,
23 within the 60 days of the revised permit of what we're now
24 going to have a discussion as to whether or not it is a
25 revised permit. You now have to indicate to the Board why

1 you believe that this is timely, meaning you filed within the
2 60 -- you understand, I think, what I'm asking you. I'll go
3 ahead and just put ten minutes up there, just so I know where
4 we are, so you can kind of explain to us why you think it's
5 timely.

6 Then what happens is DCRA will have an opportunity
7 to question your testimony, and then they will also have an
8 opportunity to also testify in terms of the timeliness issue,
9 and then, also, the property owner will be able to do the
10 same thing, and everybody gets questions of everybody, just
11 so we kind of walk through the timeliness issue.

12 I see that the Zoning Administrator has arrived.
13 The Zoning Administrator, I assume, has not been sworn in,
14 correct?

15 MR. LEGRANT: That's correct.

16 CHAIRPERSON HILL: If you could please stand and
17 get sworn in by the secretary. Has anybody else missed being
18 sworn in?

19 All right, then please -- there you go.

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

23 (Witness sworn.)

24 MR. MOY: Thank you. You may be seated.

25 MR. LEGRANT: I apologize for my tardiness.

1 CHAIRPERSON HILL: Sure, no problem. Could you
2 please introduce yourself for the record?

3 MR. LEGRANT: Yes, Matthew LeGrant, Zoning
4 Administrator, DCRA.

5 CHAIRPERSON HILL: Okay, great. Again, for the
6 record, the preliminary matters, we're just kind of going to
7 hold those in abeyance to figure out whether or not we, as
8 a Board, believe this is timely or not. Mr. Graves or Ms.
9 Graves, whoever would like to go, please go ahead and
10 explain.

11 MR. DEGRAVE: Chairman Hill, it's DeGrave,
12 actually.

13 CHAIRPERSON HILL: Oh, I'm sorry. DeGrave, I'm
14 sorry.

15 MR. DEGRAVE: No worries, sir. The November 2018
16 permit was issued in error, according to the zoning
17 administrator. Specifically, he wrote me --

18 CHAIRPERSON HILL: Actually, Mr. DeGrave, why
19 don't you wait a minute? I lost one of my members. Sorry,
20 I don't know whether he was going away or not. You never
21 know. I just wanted to --

22 MR. DEGRAVE: Maybe the next reading will go more
23 smoothly.

24 CHAIRPERSON HILL: You can go ahead and start
25 again.

1 MR. DEGRAVE: The November 2018 permit was issued
2 in error, according to the zoning administrator.
3 Specifically, he wrote me that if it were issued in error,
4 which I put in quotes, DCRA would be able to take action.
5 Subsequently, DCRA issued a stop work order and informed the
6 Applicant that the plan did not conform to occupancy.

7 In addition, the plans for the November permit did
8 not indicate the building height measuring point, the top
9 measuring point of the planned addition, the size of the area
10 way. It is the responsibility of an applicant to provide
11 clear, complete, accurate, consistent, and zoning compliant
12 plans.

13 To accept the November permit, which was issued
14 in error, as first writing, rewards an applicant for errors
15 and missing information by creating a safe harbor situation
16 where no one would or could appeal the permit because the
17 contents of the revision were not available until more than
18 60 days after the issuance of the first permit. That's
19 basically it. In our mind, we thought it was revoked. That
20 was our understanding of it and that there was nothing there
21 to file an appeal on. In speaking --

22 CHAIRPERSON HILL: That's fine. I don't
23 understand; why did you think it was revoked? Can you
24 clarify that a little bit?

25 MR. DEGRAVE: When --

1 CHAIRPERSON HILL: Oh, because of the stop work
2 order.

3 MR. DEGRAVE: Stop work order, yes.

4 COMMISSIONER MAY: When was that issued?

5 MR. DEGRAVE: December 2018. I don't know the
6 date.

7 COMMISSIONER MAY: When was it lifted?

8 MR. DEGRAVE: I don't know.

9 COMMISSIONER MAY: You live next door, right?

10 MR. DEGRAVE: Right.

11 COMMISSIONER MAY: I'm over here. I'm the one
12 talking.

13 MR. DEGRAVE: Sorry.

14 COMMISSIONER MAY: Just so you know.

15 MR. DEGRAVE: Months and months and months later.

16 COMMISSIONER MAY: So it had a stop work on it
17 until --

18 MS. DEGRAVE: A new revised permit, I believe, was
19 issued, is when we realized that there was a permit
20 available. We filed freedom of information requests in order
21 to get those drawings for that permit, the first revised
22 permit.

23 COMMISSIONER MAY: Okay, but you think that -- but
24 the stop work order was on the property for months, so no
25 work was happening, and then the subsequent permit issued in

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1 March, around that time is when it -- the stop work order was
2 lifted?

3 MR. DEGRAVE: I think it was even later, but I
4 don't have a solid --

5 COMMISSIONER MAY: Right. Well, when it was
6 lifted and when it was actually removed from the property
7 might be a little different anyway.

8 MS. DEGRAVE: I'm not sure that we were notified
9 of any of that. They wanted the freedom of information
10 requests.

11 COMMISSIONER MAY: You knew about the stop work
12 order because it was posted on the property, right?

13 MS. DEGRAVE: Correct.

14 COMMISSIONER MAY: It remained there, so you
15 thought the whole thing was held in abeyance. I think I'd
16 be interested in hearing from DCRA what they understand the
17 timing of all this to have been.

18 CHAIRPERSON HILL: Okay -- sorry.

19 VICE CHAIR HART: Just a question for the
20 DeGraves. You noted that you had received something from the
21 neighbor, from your neighbor, about -- sometime in
22 February/March of 2018, just noting that there was going to
23 be a project that was coming forward. You had issues with
24 -- you had some issues then, you said, that were not
25 addressed by anyone, and then you kind of -- I guess you got

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1 the notice -- saw the notice for the permit, itself. That
2 didn't happen until months later, until November.

3 MS. DEGRAVE: That's correct.

4 VICE CHAIR HART: Were they the same issues that
5 you had with it? I'm just a little unclear as to --

6 MS. DEGRAVE: Some of the same issues still
7 existed. I believe a few of our original technical
8 objections after the neighbor notification forms -- our
9 responses were the technical objections. One or two of those
10 had been corrected, but there were still others. We only
11 were notified by the permitting process, and then had to file
12 a freedom of information request to see what those new --
13 that new plans were.

14 VICE CHAIR HART: The issues that you had from
15 February/March of 2018, some of them were the same issues
16 that you had in November 2018. They were still issues that
17 you had, or were they not -- I don't know if -- are we
18 talking about the same things that happened when you filed
19 in May of 2019, still some of the same issues?

20 MS. DEGRAVE: Yes, specifically the building
21 height measuring point.

22 VICE CHAIR HART: That was a consistent thing from
23 February/March 2018. Again, I know that was in the
24 neighborhood notification form. It wasn't actually a permit.
25 I'm just trying to understand the timeline in all of this.

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1 MS. DEGRAVE: That's my recollection, yes.

2 VICE CHAIR HART: Okay, thank you.

3 CHAIRPERSON HILL: I don't even know if we need
4 a whole lot of questions from them, but if you have any --
5 does DCRA have any questions for the Applicant?

6 MS. LORD-SORENSEN: No.

7 CHAIRPERSON HILL: I'm just trying to understand.
8 So DCRA and the zoning administrator are here. We've had a
9 lot of cases about building height measuring point. We'll
10 see if we get into that. But again, I guess, Ms.
11 Lord-Sorensen, I'll turn it over to you to try to explain the
12 difference between that initial permit, which was on November
13 14th, and then the -- which was 2018.

14 Then I guess you can speak to the stop work order.
15 Then also, again, I guess, the revised permit, in March 11,
16 2019, and try to understand -- or if the zoning administrator
17 can also help us understand why the first writing rule was
18 effective on November 14, 2018. I'll turn it over to you.

19 MS. LORD-SORENSEN: I'll start with the stop work
20 order. In general, when a stop work order is posted, the
21 agency would not issue a new permit. It's hard for me to
22 believe that the November 14, 2018 permit was issued while
23 a stop work order was posted on the property. Because
24 normally, DCRA is --

25 COMMISSIONER MAY: I don't think that's what was

1 alleged. I think it was after the permit was issued on
2 November 18 that they got -- that the stop work order was
3 placed.

4 MS. LORD-SORENSEN: I'm sorry; I thought the
5 Appellants said the stop work order was placed before the
6 issuance. I apologize.

7 COMMISSIONER MAY: No, I --

8 MS. DEGRAVE: That's what prompted us to email the
9 zoning administrator. We saw a permit had been issued and
10 we hadn't heard back from our technical objections.

11 COMMISSIONER MAY: Right. So the stop work
12 appeared after the November 14, 2018 permit was issued.

13 MR. DEGRAVE: The timing is correct, but we
14 believe --

15 COMMISSIONER MAY: It was a yes or no question.

16 MR. DEGRAVE: Yes.

17 MS. LORD-SORENSEN: The November 14, 2018 permit
18 was issued, and then it was brought to the agency's attention
19 that there was a bit of an overhang off of the second floor,
20 so they were ordered to correct that. They submitted a
21 revised application, which is found -- which was the revised
22 building permit that was issued in March of this year, which
23 should fix the overhang on the second floor. Then from
24 there, they were allowed to proceed accordingly.

25 COMMISSIONER MAY: Do you know when the stop work

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1 order was placed?

2 MS. LORD-SORENSEN: No, I do not.

3 COMMISSIONER MAY: I assume you don't know when
4 it was removed.

5 MR. LEGRANT: I also am not -- I do not have the
6 information about the timing of the placement and the lifting
7 of the stop work order here with me today.

8 COMMISSIONER MAY: Do you know that what would
9 have caused the lifting of the stop work order would have
10 been the issuance of the revised permit in March?

11 MS. LORD-SORENSEN: Normally, a stop work order
12 is lifted once a party has come into compliance. If we
13 noticed that there was some sort of error, for example the
14 overhang that I mentioned --

15 COMMISSIONER MAY: I don't need the general
16 description. I'm asking about the facts of this case. Do
17 we know that, in fact, the stop work order was lifted as a
18 result of the issuance of a revised permit?

19 MS. LORD-SORENSEN: I don't have a specific
20 answer.

21 CHAIRPERSON HILL: Okay, so again, just as I'm
22 going to repeat it again, the initial permit was issued
23 November 14, 2018. Then there was a stop work order at some
24 point, December, what have you, and then the -- maybe the
25 building owner could even speak to this -- but then the

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1 revised permit was issued on March 11, 2019. The first
2 question I have, and I guess we'll see whether we get an
3 answer to it or not and whether or not it's pertinent to the
4 timeliness issue, but is that if that revised permit did fix
5 this overhang -- so the revised permit did fix the overhang?

6 MS. LORD-SORENSEN: Yes.

7 CHAIRPERSON HILL: Can you tell me a little bit
8 more about -- just for me -- the overhang? What's the
9 difference between -- I just want to understand the
10 difference between the initial permit and the revised permit.

11 MR. GUISE: May I speak to that, homeowner?

12 CHAIRPERSON HILL: Actually, just wait one second.
13 We'll get to you, thank you. If you wouldn't mind turning
14 off your microphone, thank you. All right, Mr. Guise, you
15 can go ahead and take a shot.

16 MR. GUISE: The revised permit was only to address
17 the two-foot overhang of the second level. That was at the
18 direction of the Board of Zoning and DCRA.

19 CHAIRPERSON HILL: Not us.

20 MR. GUISE: Well, DCRA then.

21 CHAIRPERSON HILL: Zoning administrator.

22 MR. GUISE: Zoning administrator.

23 CHAIRPERSON HILL: Did you guys find the two-foot
24 overhang, or Mr. Zoning Administrator, can you explain the
25 two-foot overhang?

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1 MR. LEGRANT: The first permit had an overhang
2 that contributed to the lot occupancy. When it was
3 identified that -- a portion of the second floor was
4 cantilevered toward the rear. As a cantilevered feature, it
5 would count as lot occupancy. It was 2'9", so the corrected
6 permit pulled that cantilevered second floor projection back
7 to be flush with the rear wall at the first level, so as to
8 eliminate the overhang, and then cure the lot occupancy
9 issue.

10 CHAIRPERSON HILL: Was the overhang also on all
11 the above floors?

12 || MR. LEGRANT: No, it was only --

13 CHAIRPERSON HILL: Just on the second floor.

14 MR. LEGRANT: Correct.

15 CHAIRPERSON HILL: Okay, does anybody have any
16 questions for the DCRA?

17 MEMBER JOHN: Just to be clear, I always ask this
18 question. The first permit continued to be effective.

19 MR. LEGRANT: The first permit was effective, and
20 then construction was ceased with the stop work order. The
21 issuance of the revised permit -- I don't think we can speak
22 definitively as to whether that cured the stop work order
23 because the stop work order may have had other construction
24 code related issues. With the issuance of the revised
25 permit, it then would allow the construction to now

1 recommence.

2 MEMBER JOHN: With respect to timeliness, which
3 is what we're trying to determine, when would the 60 days
4 start? Anyone can answer.

5 MS. LORD-SORENSEN: Board Member John, in DCRA's
6 filing, we didn't argue the timeliness that was required to
7 -- that they were required to file from November, even though
8 11(y) 302.2 puts a six-day requirement from the date of the
9 writing.

10 We weren't sure what may have transpired during
11 that time frame, which may or may not have caused confusion
12 for the Appellants. When we did raise the timeliness
13 argument in our prehearing statement, the initial one back
14 in July, we just argued that the additional arguments that
15 they raised in their supplemental information filing was
16 untimely.

17 MEMBER JOHN: So you're effectively waiving that
18 issue.

19 MS. LORD-SORENSEN: With respect to the November
20 --

21 MEMBER JOHN: With respect to the November permit.

22 MS. LORD-SORENSEN: Yes.

23 MEMBER JOHN: Okay, thank you.

24 CHAIRPERSON HILL: Yes, I'm not waiving the issue.
25 I don't know what you guys think. I still don't understand.

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1 We've gone through this timeliness stuff over and over again,
2 over and over again. Now, I'm sorry, this is what we're
3 trying to understand. The whole thing -- I'm a little
4 surprised from DCRA -- I'm just confused.

5 We've done the first writing rule. We've gone
6 over and over the -- there was a-whole-nother case with
7 emails and what was considered the first writing and what was
8 whatever. I want to understand. I guess I want the Board
9 to understand. Then if we actually are all in agreement that
10 -- because I'm not.

11 If you're telling me -- from our experience, in
12 terms of the first writing rule, that, again, this was
13 written -- this was issued November 1, 2018. I guess my
14 fellow Board members can speak to whatever they want to speak
15 to. The only change that was -- there was a stop work order
16 because it was determined that this was two feet over on the
17 second story, which is going to lot occupancy.

18 It's not changing the stories. It's not changing
19 the rooms. It's not changing anything like that. It was
20 just changing this two feet. If that's the case, then I'm
21 confused because that, to me, then, seems that this was
22 untimely. This should have been filed 60 days after that
23 first permit. We can go into the discussion in terms of
24 there was a stop work order and that might have been more
25 confusing. But still, I'm of the mind that the -- if the

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1 second permit, again, all that did was change the two-foot
2 overhang, again, to lot occupancy, then I don't see how this
3 is timely. I'll let my fellow Board members speak to any of
4 that.

5 COMMISSIONER MAY: Mr. Chairman, ordinarily I
6 would tend to agree with you. I think there are some
7 extenuating circumstances here. I think the fact that --
8 first of all, when things like this happen, the people who
9 choose to appeal, the next-door neighbors or whatever group
10 it is, they don't do this for a living, so it's hard to
11 figure out what you're supposed to do when something is being
12 built next door and you have questions or issues.

13 It seems that they were making a diligent effort
14 to find out before they raised any immediate concerns. In
15 hindsight, maybe the thing they should have done, as soon as
16 it was issued, is file for an appeal, but there's costs
17 associated with that. You need to find information about it.

18 In the meantime, they discover there actually is
19 an issue with this and a stop work order was issued. It's
20 not unreasonable for them to think that the whole thing is
21 held in abeyance for the time being. Then when the revised
22 permit was issued, it's not unreasonable for them to be
23 thinking that the 60-day clock restarts. Add to that the
24 fact that the only timeliness issue that's being raised by
25 DCRA, at this point, has to do with a subsequent filing that

1 came into the record later on. I like to be strict about the
2 application of the 60-day rule, but it is dependent on there
3 being good information available to the Appellant and prompt
4 responses from DCRA. I don't think we have that in this
5 case. I think we have to hear the appeal.

6 CHAIRPERSON HILL: Okay. There we are. You guys?

7 VICE CHAIR HART: I kind of look at it -- I was
8 trying to understand whether or not these were issues that
9 were new issues that came up with new permits and new
10 drawings, or at least understanding that this is something
11 that's moving forward.

12 It seems as though there were very similar issues
13 that had been going on for -- between the time that this was
14 eventually filed, in May, and when the Appellant first had
15 knowledge about this, it seems as though this was over a
16 year.

17 I'm not saying that we should be counting the 60
18 days from when they got the neighborhood notification, the
19 neighbor notification, I'm just saying that these are
20 consistent -- it seems like they are consistent issues that
21 have been -- that were raised, from February/March of 2018
22 to May of 2019. The November, I understand there may have
23 been some confusion about that, but they were -- the
24 Appellant had already had some concerns that didn't seem to
25 have been addressed in the first permit and had not been

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1 addressed for months up until the permit. It seems like
2 there was some -- there were quite a number of -- quite a bit
3 of information and issues that were raised prior to the
4 November permit being issued.

5 I would look at it as this is 60 days from that
6 November time period. I understand that there may have been
7 some particular concerns or confusion by some of this, but
8 if there were some new issues that came in in May, I think
9 I would be more leaning towards okay, maybe this is -- we
10 could look at the March 2019 date as being the -- where we
11 start counting the 60 days from.

12 As you've said, we've done a number of these
13 issues over the -- the timeliness issue. We have been, I
14 think, fairly consistent in looking at when is the first
15 notice that the Appellant would have been aware of this
16 particular -- of any particular case. It seems to me that
17 would have been the first permit, which is November 2018,
18 which would then be 60 days from that or somewhere in January
19 2019.

20 MEMBER JOHN: We have been looking at the first
21 writing rule, and we have been fairly stringent about
22 determining when the first permit was issued and when the
23 appeal is filed. In this case -- and let me just say that's
24 consistent with the case law. The fact that the Appellant
25 was pursuing other administrative remedies does not excuse

1 not filing the permit. It's reasonable to file an appeal.

2 It's reasonable to file a FOIA request, but at the
3 same time, the 60-day clock is still running, even though
4 there are those other steps being taken. When I look at the
5 subject of the appeal, the issues raised are illegal
6 conversion to a flat, parking, interference with the
7 Appellant's vent, rear deck not meeting setback requirements,
8 expansion of the non-conforming structure, rear yard and lot
9 occupancy violations.

10 It seems to me that those issues would have been
11 present by reviewing that November 18 appeal. If, through
12 the FOIA, the Appellants received this -- the permit and
13 could understand it fully, the issues they raised in March,
14 it seems to me, in May 2019, would have been present back in
15 November/December of 2018. I think the appeal could have
16 been filed then because there was notice of what was in the
17 appeal. That's my thinking at the moment.

18 CHAIRPERSON HILL: Okay, hold on a second. Just
19 for further discussion again, the problem that -- I shouldn't
20 say the problem. We've gone through this a lot, in terms of
21 the timeliness issue. When I say that, I'm looking to the
22 Applicant, also. I don't know if feel bad is the right --
23 I understand, in terms of a stop work order and thinking that
24 maybe the permit has been revoked, but we have had, as Board
25 Member John has mentioned, established case law now that --

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1 I remember things that -- there was an email that came out.
2 We had a long discussion about an email. It wasn't even
3 something about a stop work order.

4 It was something that was way more where someone
5 should have known what was going on ahead of time and been
6 able to submit a timely appeal. I do understand, in the
7 position, also, that Mr. May has mentioned, that there --
8 people do not do this for a living.

9 However, I do think that we have had this
10 discussion over and over again already with the concern about
11 timeliness and the fact that Ms. John just went over all of
12 the issues that were actually part of the appeal. None of
13 those things necessarily changed to the revised permit.

14 I'm now of the -- still of the mind that I think
15 that this is untimely. I would be making a motion to dismiss
16 this as untimely or moot, due to timeliness. I think that's
17 what, at least, the majority of people believe here, but I
18 will let Commissioner May have another statement.

19 COMMISSIONER MAY: Sure. Actually, I have a
20 question first. We have this second permit -- or second
21 amendment to the permit or whatever that DCR would like to
22 incorporate with this. The Appellant has pointed out the
23 fact that it seems to have reinstated an increased
24 non-conformity. There's an extension that went away, and now
25 it's come back. If you look at the two drawings that they

1 submitted -- I haven't looked at this very carefully to know,
2 in fact, everything aligns, it seems like that may be the
3 case.

4 My question is if, in fact, there has been, in the
5 new permit, a new appealable issue, does the 60-day clock
6 restart on that new issue? I assume that's the case. If
7 there's a revised permit and it introduces some new issue or
8 an issue that went away but now has come back, they can
9 appeal again. But that does require them filing another
10 appeal, which requires more cost. I don't know. What did
11 the appeal fee cost?

12 MS. DEGRAVE: I think it was \$1,040.

13 COMMISSIONER MAY: So it's not insubstantial.

14 CHAIRPERSON HILL: Yes, that's fine. I understand
15 what you're saying. We can --

16 COMMISSIONER MAY: I understand, completely, the
17 arguments the rest of the Board. I may not vote with you,
18 but I'm not going to try to persuade you any further. I do
19 feel like that's still an open question.

20 CHAIRPERSON HILL: That's fine. What I was trying
21 to understand from OAG, again, was how that revised permit
22 can or can't be handled. I think that we can -- rather than
23 have the Applicant go back through this process again and
24 just end up at the same result, we can have a discussion now,
25 I suppose, about the revised permit. Meaning I don't think

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1 that -- again, this is my vote, again, in terms of
2 timeliness, I don't think that the first permit -- this is
3 where it's so disappointing for the Applicants not to know
4 all of the history that has gone on with all of these cases
5 that we've heard with timeliness and how -- what a revised
6 permit actually is or isn't, in terms of an appealable
7 revision. It's substantial, usually.

8 I guess, then, I would either -- I'm trying to
9 figure out whether we're going to take lunch, take a break,
10 understand, or just, then, hear the argument -- hear, then,
11 the argument for the second revised permit, and then
12 determine whether or not we think it brings up a timeliness
13 issue.

14 MEMBER JOHN: Just to the point of clarification,
15 the first revision removed the lot occupancy issue created
16 by the overhang, which would moot that argument. We're not
17 talking about that permit. We're talking about the later
18 permit, which was just issued, which is the one with the
19 addition. Is that the one we're now saying could be appealed
20 if it does not comply.

21 COMMISSIONER MAY: That's what I'm seeking clarity
22 of, right.

23 MEMBER JOHN: Okay.

24 COMMISSIONER MAY: I think it would be best to
25 have the zoning administrator address the two exhibits that

1 the Appellant had cited, 38-E and 31-D, because 38-E seems
2 to show increased lot occupancy. Again, I have not reviewed
3 it very carefully yet for that question.

4 MS. LORD-SORENSEN: I was going to pull it up on
5 the screen to make it easier.

6 COMMISSIONER MAY: That's good, yes.

7 MR. LEGRANT: This is Exhibit No. 6. This is a
8 section of the building, longitudinal section of the building
9 for the most recent permit, issued October 2, 2019.

10 COMMISSIONER MAY: I'm sorry; what number exhibit
11 are we looking at here?

12 VICE CHAIR HART: It looks like 38-E or F.

13 MR. LEGRANT: We just filed it, so we're not clear
14 on how the Office of Zoning labeled or numbered this
15 particular exhibit.

16 COMMISSIONER MAY: I think it's F.

17 MR. LEGRANT: 38-F?

18 COMMISSIONER MAY: Yes.

19 MR. LEGRANT: Okay.

20 MS. LORD-SORENSEN: It contradicts 38-E.

21 COMMISSIONER MAY: We understand that.

22 MR. LEGRANT: If I may, as I previously testified
23 as to the original November 2018 permit had the second-floor
24 overhang of the 2'9". This drawing, which is the most
25 recently approved permit, has no overhang. There is no

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1 second-floor overhang extension approved in the latest
2 permit.

3 COMMISSIONER MAY: Shown on this drawing. Can you
4 look at 38-E? Because in the plans, that 8'11" dimension at
5 the far left is longer than what's shown in the section.
6 Section shows 6'3", and the plan shows 8'11".

7 MR. LEGRANT: If there is a conflict, then, in my
8 view, the section will govern. There's no addition approved
9 in the latest permit. Maybe the Applicant's architect can
10 speak to the drawing, but when the -- I will just tell you
11 when it was initially submitted before October 2nd,
12 initially, the section did show the overhang, which was, I
13 think, an error going back to the November 2018 permit that
14 was -- the Applicant was -- the property owner was notified.
15 They immediately corrected it in section to conform. Perhaps
16 my office missed the plan view, the floorplan view of that,
17 but in my view, no extension's approved.

18 COMMISSIONER MAY: Okay, I guess, then, we need
19 to hear from the architect.

20 MS. PATRICK: No extensions have been approved.
21 We went through several drawings --

22 COMMISSIONER MAY: Can you explain why it shows
23 up this way in the drawings? Is that simply a mistake in
24 38-E?

25 MS. PATRICK: Is that the last permit?

1 PARTICIPANT: Yes.

2 MS. PATRICK: Then that's a mistake because that's
3 the wrong plan. There was six foot whatever it is.

4 COMMISSIONER MAY: 6'3".

5 MS. PATRICK: 6'3". We never changed that. That
6 drawing was asked to be changed to put some center lines on
7 the front. It's probably the wrong drawing. I have a ton
8 of drawings. We're going back and forth. It may not have
9 gotten wiped out. It's just an oversight. We're quickly
10 doing this stuff.

11 COMMISSIONER MAY: Right. You're quickly doing
12 it, and the Appellant is quickly having to review it, as
13 well.

14 MS. PATRICK: Right. We are not extending the
15 back because that's against --

16 COMMISSIONER MAY: That clarifies that issue.

17 CHAIRPERSON HILL: I'll speak out. I'll be happy
18 to just have an overall discussion. I'm kind of unclear as
19 to what to do. I feel as though the Appellant's at a bit of
20 a loss. Even the Board's at a bit of a loss, in terms of
21 trying to -- obviously, there's two architects on the Board.
22 Being able to read drawings quickly and understand one way
23 or another, if the zoning administrator and the property
24 owner are saying that the extension is not what it was
25 thought of, in terms of -- on one of the drawings, but it's

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1 actually the 6'3" that is being proposed, which is the same
2 as it was, I guess, before, then I guess that makes it
3 somewhat of a moot point.

4 I don't want to waste anybody's time, in terms of
5 whether or not that changes the timeliness issue. However,
6 if we also, as a Board, want to allow more time for people
7 to look at this, and then have the DCRA and the Appellant
8 understand, again, whether or not this is something that we
9 think arises to the level of timeliness from the revised
10 permit of November 14, 2018, then I'm also happy to do that.
11 I'll let my Board members speak.

12 MEMBER JOHN: Mr. Chairman, I would like to hear
13 the ZA's explanation of the difference between the current
14 permit that's been approved and the permit of -- the first
15 revised permit, which removed the two-foot overhang. I think
16 it's fairly clear that there is no two-foot overhang. As I
17 understand it from the homeowner, the drawing will be
18 corrected to remove that inconsistency. We're looking at
19 Exhibit 38-E that needs to be corrected. Is that -- that's
20 my understanding. Mr. ZA.

21 MR. LEGRANT: Yes.

22 MEMBER JOHN: Okay, so Mr. Chairman, I would be
23 interested in hearing what the difference is. As I reviewed
24 for today, it was difficult for me to understand and, I
25 imagine, for the homeowners, as well, what the differences

1 are between these two permits.

2 CHAIRPERSON HILL: The differences, I'm sorry,
3 between the revised -- the first revision on March 11, 2019
4 and the second one that was just passed.

5 MEMBER JOHN: That's correct.

6 MR. LEGRANT: I can speak to that. The major
7 change is that the roof deck, which was one of the issues
8 identified in the Appellant's issues with the permit, is
9 removed in the latest approval. In the rear of the third
10 floor, there's the third floor, which is being extended, and
11 that is the same as in the original permit and the latest --
12 we're talking about the March and October permits.

13 That extension's the same. What's been changed
14 is on that portion of the roof, which sits atop the second
15 floor now, there was going to be a deck. That deck is now
16 gone. The property owner has removed that, and they have
17 also -- there was going to be a door leading out to said
18 deck. At the face of the rear, the third-floor extension and
19 that has been replaced by a window. The primary change
20 between the two permits is the elimination of the deck.

21 MEMBER JOHN: Thank you.

22 CHAIRPERSON HILL: Okay. Mr. LeGrant, again, this
23 was issued with you guys as a matter of right project,
24 correct?

25 MR. LEGRANT: That's correct.

1 CHAIRPERSON HILL: Then the way that -- as
2 everyone in the community finds out about these things, if
3 there's a permit, you have to look up the permit and figure
4 out what you think of that permit if it's a matter of right,
5 correct?

6 MR. LEGRANT: Right. People typically -- either
7 when the permit -- construction commences and the permit's
8 posted on the property or the information's available online
9 with the list of permits.

10 CHAIRPERSON HILL: Right, but again the only
11 reason why I kind of ask is that it doesn't rise to the level
12 of the ANC. It's something that it's just -- not that it
13 should. I'm saying it's on the neighborhood to figure out
14 what's going on. It was just a comment. It's not really a
15 question. I'm still at a loss as to what the Board wants to
16 maybe do. Go ahead, Ms. John.

17 MEMBER JOHN: I just have another question.
18 You're saying it's not necessary to submit a FOIA request to
19 view the permit once the sign is posted on the property? Any
20 person can look up the permit online without needing to file
21 a FOIA request, and this was true back in November '18? I'm
22 not sure why there has to be a FOIA request.

23 MS. LORD-SORENSEN: Generally, you don't need to
24 do a FOIA request. You can come into the second floor of
25 DCRA and put in a request. You just identify what you want,

1 whether it's a building permit, electrical permit, excavation
2 permit. Whatever permit you want, you identify the address,
3 and they will pull the documents for you.

4 COMMISSIONER MAY: You can get the entire drawing
5 set at that point, or whatever drawings you need.

6 MS. LORD-SORENSEN: Whatever's requested.

7 MR. LEGRANT: Let me also add that -- yes, all
8 permit applications, materials, and plans are public record,
9 available to any person who wishes to see them. People often
10 utilize the FOIA process to expedite the process. Many
11 people, perhaps the DeGraves, just utilize the FOIA as a way
12 to access the information, but there's no requirement to use
13 FOIA.

14 COMMISSIONER MAY: That's because there's a
15 timeline associated with FOIA, where they have to surrender
16 -- you have to give up the documents within a certain number
17 of days.

18 MS. LORD-SORENSEN: That's correct.

19 COMMISSIONER MAY: Whereas, if they just went and
20 made the request on the second floor, it would take how long?

21 MS. LORD-SORENSEN: If it's in house, if it was
22 recently approved, it's generally in house. But if it's been
23 a couple of months, it may be off site, so it may take a week
24 or two. It depends on how old the plans are.

25 COMMISSIONER MAY: If it's within the 60 days,

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1 theoretically, it hasn't gone off site, right? How quickly
2 do they go off site?

3 MS. LORD-SORENSEN: I don't know the specific
4 length of time, but if it's recent, normally they're still
5 there, in house, and you can --

6 COMMISSIONER MAY: You understand how the
7 accessibility of those documents can affect -- can eat into
8 a lot of the 60 days that people have to review and file
9 appeals, right, but you think there's still plenty of time
10 for that to occur once there's notice of the permit.

11 CHAIRPERSON HILL: I'm going to let them think
12 about that opinion.

13 MR. GUISE: Excuse me. Based on legal precedent
14 --

15 COMMISSIONER MAY: No, I'm waiting for their
16 answer, please. I'm sorry. You may get a chance to talk.
17 That's the Chair's choice.

18 MR. LEGRANT: It's true that if the plans were
19 submitted in paper form, then as Ms. Lord-Sorensen mentioned,
20 then there's a protocol that the records office uses to --
21 has the plans on site, and then they can be shipped off site.
22 If, however -- as the latest submission was through the
23 DCRA's electronic plan processing system, called ProjectDox,
24 then there is no delay. It's just all electronic
25 information. Then there's no delay there because there's no

1 physical paper plan that one has to access.

2 COMMISSIONER MAY: But you don't know what the
3 protocol is in the records office for releasing paper plans,
4 the timeline.

5 MS. LORD-SORENSEN: I know, personally, I've
6 requested plans and have gotten them within a couple of days.

7 COMMISSIONER MAY: I think you might get a little
8 different treatment.

9 CHAIRPERSON HILL: Okay, so --

10 COMMISSIONER MAY: I'm sorry; just one last follow
11 up. Do we know whether the records -- whether the plans in
12 this case were submitted on paper or electronically?

13 MS. LORD-SORENSEN: It was uploaded through
14 ProjectDox.

15 COMMISSIONER MAY: So those were electronic
16 documents from the beginning, so they should have been
17 readily accessible, even back in November of '18.

18 MR. LEGRANT: Yes.

19 COMMISSIONER MAY: Okay.

20 CHAIRPERSON HILL: Before Ms. John asks her
21 questions, I'm just going to make a statement. I've been to
22 DCRA on the second floor. It's not easy. It's not easy if
23 you know what you're doing. I've hired people that know what
24 they're doing and -- I'm not making any comment other than
25 it's just not -- it's not something that people know how to

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1 do. I'm not saying that does not discount what we're still
2 discussing, which is this timeliness issue, which, currently,
3 I'm at where I'm trying to understand what I now thought was
4 kind of that the -- that this was untimely from at least that
5 first revised permit.

6 Now I'll let Ms. John ask her question. What
7 we're struggling, here, with -- I think what we're
8 struggling, here, with was I'm trying to understand how to
9 handle the second set of revised drawings. I don't want to
10 also -- I would be happy to find out what the Appellant would
11 like to do.

12 I'm not going to -- if they want to have an
13 opportunity to look through the revised drawings and see
14 whether or not they think there is any appealable decision
15 based off of -- from the first revised drawings to this
16 revised drawings, then I think that -- then they paid their
17 money for their appeal. Again, just to be clear, we haven't
18 even gotten to the merits of the appeal. I don't even know
19 if the appeal, itself, one way or the other, who knows how
20 that would go. Ms. John.

21 MEMBER JOHN: I have a question for the ZA on the
22 allegation, at this point, that there is an addition from the
23 Appellant, that the new drawing shows an addition that wasn't
24 in the first revised permit.

25 MR. LEGRANT: I'm not aware of any addition beyond

1 what was previously represented in the November -- the
2 original permit in November.

3 MEMBER JOHN: When you say the addition is by
4 right, are you saying that it is less than ten feet from the
5 rear? Perhaps you can clarify that issue.

6 MS. LORD-SORENSEN: This was already a
7 non-conforming structure. In the earlier plans, the plans
8 that were approved back in March, there was this proposed
9 addition right here, off of the third story, which was
10 already non-conforming. Then in the earlier version, there
11 was a roof deck. Now, on the revised plans for the permit
12 that was issued October 2nd, the proposed roof deck is now
13 removed. However, this addition is still the same. This
14 addition right here has not changed from the earlier permit.

15 MEMBER JOHN: Okay, thank you.

16 VICE CHAIR HART: Just so that I'm also clear, the
17 Appellants -- this is a question for DCRA. The Appellants
18 noted that there was a -- that there were questions that they
19 had or comments that they had early on in this process, but
20 those comments weren't addressed, or least weren't -- there
21 was no response to them. How does DCRA -- I don't know if
22 the ZA wants to weigh in on this -- how do you deal with
23 comments as they come in? It seems as though there some
24 things that were addressed, but there were other things that
25 were not. The Appellant has stated that they didn't really

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1 receive any information, at all, one way or the other, until
2 they saw the permit.

3 MS. LORD-SORENSEN: I'll have the ZA discuss any
4 sort of zoning related comments that the Appellants may have
5 submitted. I know earlier on, the Appellants mentioned that
6 they had submitted technical objections. That's more so on
7 the construction side.

8 The homeowners for 2202 1st Street, it's required
9 under 12(a) to provide those technical objections to DCRA,
10 and then the plan reviewer would look at those technical
11 objections and make a determination whether or not those
12 objections are valid or should be incorporated into the
13 proposed plans.

14 VICE CHAIR HART: Does that go along with the
15 permit documentation that there were some technical
16 objections or technical clarifications or whatever? Is that
17 in the system somewhere?

18 MS. LORD-SORENSEN: The technical objections
19 should have been uploaded to ProjectDox, the same electronic
20 system that Matt LeGrant just previously spoke to.

21 VICE CHAIR HART: I don't know if you'd have any
22 thoughts on this, Mr. LeGrant.

23 MR. LEGRANT: Other than -- I know in my back and
24 forth with Mr. and Ms. DeGraves that they raised questions.
25 I attempted to respond. Sometimes, my responses are not as

1 timely as they should be or as I would like them to be. I
2 don't know if there's a specific instance that they felt they
3 did not get a response, and then I would have to look at my
4 email back and forth to see exactly what that was.

5 VICE CHAIR HART: Thank you.

6 CHAIRPERSON HILL: Okay, this is kind of where I
7 am, in terms of -- we can, I guess, see what happens with my
8 other fellow Board members, and then also hear from the
9 Appellant as to what they'd like to do. First, I'm going to
10 just talk to my Board members here, and then you guys can
11 tell me what you think. I'm still of the -- and it's
12 unfortunate because I do not think it's easy.

13 I do not think it's an easy thing to do for the
14 next-door neighbors to necessarily understand, but again,
15 we've gone through this timeliness thing a bunch of times.
16 I don't need to go over it again, in terms of how we have
17 gone through this exercise and in a more even gray area, in
18 terms of how one has been made notice -- notified of
19 something that was going on.

20 I would be leaning towards that the first -- the
21 appeal of the first revision is untimely. That's where I am.
22 Now whether or not this is an appealable circumstance, on its
23 face, I would say it seems like it's not, so, therefore, it
24 would have possibly been incorporated into the appeal. I
25 would be inclined to make a motion to dismiss as untimely.

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1 However, I am not an architect, and I don't -- I know the
2 Applicants are not an architect.

3 If they would like to go back and take the time
4 to take a look at this and understand what actually is being
5 submitted in this revision and whether or not they think that
6 there is something appealable here that they would like to
7 continue to move forward with, then I would be open to that
8 discussion. Before I move to anyone else, in terms of the
9 people that are before us, what do my fellow Board members
10 think of what I just said?

11 VICE CHAIR HART: You're just saying give them
12 time to --

13 CHAIRPERSON HILL: Yes. I don't know. They could
14 go back -- the Appellants could go back and take a look at
15 the plans, determine, in a couple weeks, what they think,
16 whether or not this is still something they want to move
17 forward with in terms of this revised permit, the second
18 revision, and then we wouldn't be doing anything, really.
19 We wouldn't be making a motion to dismiss as moot the appeal
20 because we're still waiting to see whether or not this is or
21 isn't a timeliness issue concerning the second revised
22 permit.

23 VICE CHAIR HART: I would just add to that that
24 the -- I'm sorry if -- I was looking at something else, so
25 I don't know if I am repeating this. If the owner of the --

1 the permit holder, how about that? If they could provide,
2 or their architect could provide just the consistent drawings
3 for all of this. I understand that there was some time
4 constraints and whatnot. Mistakes do happen.

5 But it is helpful for us to understand that all
6 of the documents that have been approved are consistent, in
7 that there isn't a question as to is this a ten foot or eight
8 foot or six foot -- I think all of that needs to be
9 consistent, so that, then, the Appellant will know what it
10 is that they're looking at, and then being able to comment
11 on something that is fully updated.

12 I think that is some of the issue. Because the
13 Appellant raised an issue about there's an extra addition
14 that's being added that wasn't part of the project. I just
15 think that's -- it may be that it's just an architectural
16 drawing error. I'm not sure.

17 I just think that we need to have a set of
18 drawings that have all of the -- consistently have the
19 consistent dimensions on them, so that we know what it is
20 that we're looking at for the drawings, themselves. I don't
21 mind having whatever -- two week or whatever delay in
22 figuring that out.

23 MEMBER JOHN: Mr. Chairman, I'm fine with delaying
24 this to give the Appellants an opportunity to review the
25 latest drawings to see if there's anything that they can

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1 appeal. It's difficult to read these drawings if you're not
2 an architect. I can see where they would need more time.
3 I would just note, just to throw this out there, that the
4 roof deck has been removed. With the new drawings, the lot
5 occupancy issue will be addressed, as well. I'm not sure
6 what else there is, but I think the Appellants should take
7 a look at the plans again and see what else is there.

8 CHAIRPERSON HILL: Mr. and Ms. DeGrave, I know
9 you've heard a lot of stuff up here. Oh, sorry, Mr. May.

10 COMMISSIONER MAY: I appreciate the Board giving
11 the Appellant some more time to consider what's in the latest
12 set of drawings. I think that's appropriate to give them a
13 little bit of time to do that. I also think it's pretty
14 clear that there's not a sufficient majority of the Board,
15 at this point, who support hearing the appeal of the November
16 18th permit, that's it essentially -- the majority of the
17 Board has concluded that's not timely.

18 Really, the only question before the Appellant has
19 to do with the newest set of drawings. I think the Appellant
20 needs to take that into consideration in whatever further
21 action they take and whether you actually want to continue
22 the appeal, at this point, basically. Because if you don't
23 see objections in the latest set of drawings, I don't think
24 you're going to get very much of a hearing when we come back
25 in two weeks. That's just the reality of it.

1 CHAIRPERSON HILL: Okay, Mr. and Ms. DeGrave, do
2 you have comments?

3 MS. DEGRAVE: I guess the only two comments I have
4 would be that we, at least, need some time to discuss that,
5 but probably we would like to at least review them and have
6 the time to do that. It would be best if we had the updated
7 drawings that, I think, are -- you've requested to be
8 accurate and consistent among them. That would be helpful,
9 and then maybe two weeks from that time, once those are
10 received by us.

11 CHAIRPERSON HILL: Okay. In terms of the
12 drawings, the ones for the -- I'm a little unclear as to, Mr.
13 Hart, what, exactly, you're requesting with the Applicant.
14 I know that you're -- sure, go ahead.

15 VICE CHAIR HART: It's actually pretty clear. The
16 drawings that we have here show the porch enclosure being
17 8'11". However, the drawings that we saw -- I think if you
18 could -- thank you -- show a 6'3", which is the same area
19 that is being dimensioned, but those can't be -- those both
20 can't be true. The DCRA noted that there was a two-foot
21 extension. I think that two-foot extension was supposed to
22 be here. That's not included in here. That's not included
23 in these drawings, but it shows up in -- at least it looked
24 like it showed up in the plans, but then I wasn't sure if it
25 actually was an extension or a roof or if it was actually the

1 floor, itself, had gone down. I think the plans just need
2 to be updated to show that's the case, so that it is clear
3 that okay, I understand that.

4 It's funny because I'm almost thinking that it
5 would almost be helpful -- I didn't see if it was here, but
6 having overall dimensions of the building, because then you
7 can kind of understand that the building -- the entire
8 building has not gotten larger or smaller because that number
9 would be the same. I don't think that we have an overall
10 dimension of the building in any of the drawings.

11 I think that having all of that would be very
12 helpful. It's not a whole lot. It's just changing the --
13 I think it's just changing the dimension in that plan that
14 we saw earlier. If we don't have that, then it becomes
15 harder to make sure that we are all looking at the same
16 thing. Right now, we're not looking at the same thing. I
17 say that I'm only looking at these two drawings.

18 It could be that all of the drawings have some
19 change to them. I'm just saying make sure that there is
20 consistency that if you're looking at 6'3", that is actually
21 what is listed and identified and dimensioned on each of the
22 drawings that have been submitted as the drawing set because
23 it makes it a little bit confusing when the drawings are not
24 dimensioned appropriately or correctly.

25 CHAIRPERSON HILL: Okay, so does the building

1 owner understand and the DCRA understand what we're asking
2 for?

3 MS. LORD-SORENSEN: Yes.

4 CHAIRPERSON HILL: Okay. When do you think you
5 can submit those?

6 MS. PATRICK: What's today, Wednesday?

7 CHAIRPERSON HILL: Yes.

8 MS. PATRICK: We can have them to you -- actually,
9 I don't know the process, but I can do that today and have
10 it to you tomorrow. I just need time to look at this
11 carefully because I know that all of -- every time you change
12 something on a drawing, you've got to go back and find every
13 hole, every sheet. I know it's right on all the engine and
14 mechanically. That might be the only one, but I'd like to
15 take a very thorough look.

16 CHAIRPERSON HILL: Okay. Take a thorough look and
17 -- I'm sorry to interrupt you. Mr. LeGrant and Ms.
18 Lord-Sorensen, please make sure it's all clean. Let's get
19 whatever it is because you're going to have, then, both
20 architects looking at it. If there's, again, something
21 that's confusing, we'll be back here again. I guess, then,
22 that would mean that, then, the Appellant would have an
23 opportunity to look at those plans. I think it sounds like
24 it's going to take you a little bit more than tomorrow to
25 figure out what -- you all are on the same page. Let's say

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1 a week.

2 MS. LORD-SORENSEN: Chairman Hill, just to be
3 clear, if they submit corrected or revised plans, then the
4 next step would be to issue a subsequent revised permit.

5 CHAIRPERSON HILL: No, I thought you had the
6 revised permit right now.

7 MS. LORD-SORENSEN: Right, but I'm just not sure
8 if they would need to -- because they wouldn't be stamped.

9 MR. LEGRANT: Right. We know the Board has
10 identified at least one dimension issue that the Board has
11 asked to be looked at and corrected.

12 CHAIRPERSON HILL: I see. Therefore, you'd have
13 to revise that.

14 MR. LEGRANT: Normally, the process is, then --

15 CHAIRPERSON HILL: Another revised permit would
16 be to correct that correction or correct that mistake, that
17 error.

18 MR. LEGRANT: That's correct.

19 MS. LORD-SORENSEN: -- the motion to incorporate.

20 CHAIRPERSON HILL: What they're trying to explain
21 is that -- and this part, at least, I understand. They're
22 saying that one sheet is wrong. It has the wrong number on
23 it. It's better if you're looking at whatever it is they're
24 actually proposing. You guys go ahead and submit another
25 revised permit with the corrected plans with the removal of

1 the roof deck and whatever you think the extension is.

2 Then, yes, even I'd like to see if you could put
3 it in maybe a different exhibit -- I don't know -- whatever
4 the previous plans were, whatever the previous revisions
5 were, so a lay person, such as myself, would be easily -- we
6 would find it easier to look at the first revision versus,
7 now, what's going to be the third revision.

8 Then you're going to submit a motion, I guess, to
9 incorporate the third revision into the appeal. Then that
10 means that the Appellant would have an opportunity to look
11 at the third revision and determine whether or not there is
12 something appealable in there.

13 Then I guess if there's any way that -- I know
14 that it's -- I know for all parties, this is something that's
15 stressful, uncomfortable, and something that is
16 understandable for everyone because people live next door to
17 each other. I say all that, which is that Mr. and Ms.
18 DeGrave, if the zoning administrator can help you understand
19 anything, they're right here. Take the opportunity to just
20 try to understand, from the zoning administrator, what's
21 going on. Because leaving the room angry and all that is not
22 going to help you. You can leave later angry, but just at
23 least kind of understand the plans a little bit. It's just
24 confusing. Then if you have a chance to take a look at
25 everything, then you can determine what you want to do and

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1 we'll be back here again.

2 If that were a week, let's say, for you guys to
3 get the stuff in, and then you'd have a couple of weeks to
4 take a look at it -- by the way, I understand the property
5 owners are just stuck here, but you guys just submitted some
6 revised plans last week, so it sounds like you're also moving
7 forward with moving forward. You're just going to see what
8 happens. That means, then, Mr. Moy, we'd be back here maybe
9 in three weeks. I don't know when Mr. May is back.

10 COMMISSIONER MAY: Four weeks.

11 CHAIRPERSON HILL: He's back in four weeks.

12 MS. LORD-SORENSEN: That's a little ambitious for
13 it to go through the review process. We could definitely try
14 to make that happen, but I'm not overly optimistic.

15 COMMISSIONER MAY: Here's the thing is that your
16 process for issuing the permit can overlap with their review.
17 Because as soon as it's submitted, they can download that
18 from ProjectDox, right?

19 MS. LORD-SORENSEN: Until it's approved, they will
20 be able to look at, arguably, the draft drawings. They would
21 not be able to look at approved drawings.

22 COMMISSIONER MAY: Correct, right.

23 CHAIRPERSON HILL: In ProjectDox.

24 MS. LORD-SORENSEN: That should be the case.

25 CHAIRPERSON HILL: One second.

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1 MS. LORD-SORENSEN: That should be the case.

2 CHAIRPERSON HILL: Can you get it to them? How
3 can you get it to them?

4 MR. LEGRANT: We'd be happy to email -- as soon
5 as the receipt of the plans, I would email them to you. If
6 there's any changes between that time and the subsequent
7 approval and issuance, I would also email those to you.

8 CHAIRPERSON HILL: Okay. Then if you could -- Mr.
9 LeGrant, I don't know how this works, again, or Ms.
10 Lord-Sorensen, but if you can point out what those changes
11 are to make it easier for the DeGraves to understand, like
12 the roof deck's gone.

13 This is what -- now that you've done a revised
14 third permit, I guess you could go ahead and show them what's
15 happening from the second revised permit, in terms of there
16 was an error that you're fixing, so that people can
17 understand, apples to apples, what is happening. When I say
18 apples to apples, what's happening from the first revised
19 permit to the second revised permit.

20 MR. LEGRANT: Understood.

21 CHAIRPERSON HILL: Okay, thank you. You'll give
22 that to them whenever you get it, which hopefully is going
23 to be in a week, supposedly. Actually, no, it's going to be
24 a month because Mr. May's back here in four weeks, so might
25 as well just go ahead and do it.

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1 Then you guys could take two weeks to get all your
2 ducks in a row, and then they will have two weeks to take a
3 look at it, and then we'll be back here four weeks from now,
4 or we won't. Who knows? Mr. and Ms. DeGrave, do you have
5 any questions on anything that just happened?

6 MR. DEGRAVE: I have one question. I know it's
7 stepping back a bit, but it goes back to rule of first
8 writing. It's clear and consistent that even non-compliant
9 plans that were issued in error are established rule of first
10 writing. Is that what I'm hearing?

11 CHAIRPERSON HILL: What I understood of the rule
12 of first writing that we've been going back and forth on
13 quite a bit, not today, but in general, is that it did not
14 substantially change the plans. What was there and what was
15 called upon when the first writing, the November 14, 2018,
16 the March 11, 2019 revision did not substantially change the
17 plans enough that it would supersede the November 14th
18 drawings.

19 MR. DEGRAVE: No reasonable person would want to
20 file at that point with not having any sort of knowledge of
21 knowing what they were filing against.

22 CHAIRPERSON HILL: I won't disagree with how you
23 got to where you are now. I'm just saying we've kind of had
24 that discussion, in that the Board believes that -- at least
25 three of the members believe, and we're -- no offense to Mr.

1 May, we're here every week. We hear the timeliness things
2 every week. He hears them when he hears them, but he has an
3 opinion on it. We believe that this is untimely.

4 I've given you the reason why we believe it's
5 untimely, but I understand that you can have a different
6 opinion on that. But we haven't made a ruling yet, meaning
7 it's still out there. But still, what I think we're clearly
8 stating is that we want to understand what your concerns
9 might be with the third revised permit that's about to come
10 forth. Mr. May will be back here for a month to now. We'll
11 get everything to the DeGraves two weeks from now, correct?
12 That's the hope.

13 MR. LEGRANT: As soon as the property owner
14 submits, then, as I stated, we will transmit --

15 CHAIRPERSON HILL: Okay. The property owner,
16 again, you said you guys could do it in a week. In fact, you
17 said you could do it tomorrow, but I don't think that's a
18 good idea. Let's try to do it in a week or so, then get it
19 to them, so they'll have two weeks to review it before we're
20 back here in a month. A month from now, Mr. Moy, is when?

21 MR. MOY: Peter May is back with the Board on
22 November 6th. I don't know if we're going to be off by a
23 week or not.

24 CHAIRPERSON HILL: Okay, yes. November 6th, is
25 that a month, or is that not a month.

1 MR. MOY: Yes, it's a month.

2 CHAIRPERSON HILL: All right, great. You confused
3 me there for a second. Okay, we'll be back here on 11/6 for
4 a continued hearing.

5 MR. MOY: Yes. I don't think I need to state any
6 other timelines.

7 CHAIRPERSON HILL: No, I don't think so. We just
8 said -- you can state it again, if you need to state it for
9 the record. I don't know. Two weeks from now, the DeGraves
10 should get plans that clearly show what will now end up being
11 the third revised set and the differences between that and
12 the first revised set.

13 If you can bubble them or point out whatever the
14 differences are, so it's clear to a layman what those
15 revisions are, so that they can determine whether or not
16 there's something that they would like to continue with an
17 appeal on the third revised set.

18 MR. MOY: That's October 23rd.

19 CHAIRPERSON HILL: What's that?

20 MR. MOY: You said two weeks.

21 CHAIRPERSON HILL: Oh great, sure, right.

22 MR. MOY: Yes, that would be two weeks. Two weeks
23 after that takes us to November 6th.

24 CHAIRPERSON HILL: Great. October 23rd, the
25 DeGraves should get their package, or hopefully before then.

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1 Okay, does anybody have any questions for me?

2 (No response.)

3 CHAIRPERSON HILL: Thank you all for coming down.

4 Mr. Moy, anything else?

5 MR. MOY: Not from the staff, sir.

6 CHAIRPERSON HILL: All right, then the Board's
7 adjourned. Thank you, everyone.

8 (Whereupon, the above-entitled matter went off the
9 record at 1:34 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 10-09-19

Place: Washington, DC

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