

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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CASE NO. 20141
APPEAL OF ANC 7D

+ + + + +

WEDNESDAY

NOVEMBER 20, 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 4:35 p.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
ALEXANDRA CAIN, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
ANNE FOTHERGILL
ELISA VITALE
MATT JESICK
MAXINE BROWN-ROBERTS
CRYSTAL MYERS
KAREN THOMAS

The transcript constitutes the minutes from the
Public Hearing held on November 20, 2019.

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

9:43 a.m.

SECRETARY MOY: I would call the parties to the table to Appeal No. 20141 of ANC 7D, as captioned and advertised. This is the appeal from the determination made on October 16, 2018 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to allow a fire station as a matter of great use, R-2 Zone at premises 4409 Minnesota Ave., NE, Square 5097, Lot 846.

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

MR. GREEN: Good afternoon, Chairman, Hugh Green, G-R-E-E-N, attorney for the DC Department of Consumer and Regulatory Affairs.

MR. LEGRANT: Good afternoon, Matthew LeGrant, Zoning Administrator, DCRA.

MS. BROWN: Deborah Brown, Resident, 4404 Cain Place, NE.

MS. DOUGLAS: Good afternoon, Dorothy Douglas, ANC 7D, Single Member District 7D-03. I'm at 4401 Minnesota Ave., NE.

CHAIRMAN HILL: You need to push the button.

MS. ZARA: Jane Zara for, on behalf of and in relation to ANC 7D.

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1 CHAIRMAN HILL: Okay, could you spell your last
2 name for us.

3 MS. ZARA: Z-A-R-A.

4 CHAIRMAN HILL: Okay.

5 MR. DEBEAR: Eric DeBear for the Intervenor and
6 property owner, Valor Minnesota LLC.

7 CHAIRMAN HILL: Okay. Let's see, so it was Ms.
8 Brown? Ms. Brown? So Ms. Brown, are you here, and I just
9 got a little confused, and by the way just so we're sitting
10 down here. If you guys have more than one, I don't know if
11 you've heard this or not yet, but if you have more than one
12 microphone on at a time down there we get feedback, so let's
13 just try to have one microphone on at a time.

14 And did everybody get sworn in already? Okay, not
15 everyone's gotten sworn in? Okay, if you are sitting here
16 at the table and you haven't gotten sworn in, and/or if you
17 think you might testify at all, if you could please stand and
18 take the oath administered by the Secretary, to my left.

19 (Witnesses sworn.)

20 CHAIRMAN HILL: Okay. So I was just trying to
21 understand. So Ms. Brown, you were here earlier, got sworn
22 in earlier? Okay. And then you're here, you said resident,
23 are you here with the ANC, are you here with the -- you're
24 here as a witness, or?

25 MS. BROWN: A witness. I live in the area. I'm

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1 with the ANC.

2 CHAIRMAN HILL: Okay, no I'm saying are you a
3 Commissioner to the ANC?

4 MS. BROWN: No, sir.

5 CHAIRMAN HILL: Okay, right, so you're an
6 independent person.

7 MS. BROWN: Yes, sir.

8 CHAIRMAN HILL: That is here to help testify with
9 the Appellant.

10 MS. BROWN: Yes.

11 CHAIRMAN HILL: Correct, okay. And Ms. Zara, are
12 you with the ANC? You need to push the button, I'm sorry.

13 MS. ZARA: Sorry. No, your Honor, I was working
14 with the ANC and Ms. Brown and Ms. Douglas on this appeal.

15 CHAIRMAN HILL: Okay, so I'm just trying to
16 clarify again. Ms. Douglas, I guess now you're representing
17 the ANC, is that correct?

18 MS. DOUGLAS: That's correct.

19 CHAIRMAN HILL: Okay, but you are not a
20 Commissioner, is that correct?

21 MS. DOUGLAS: I am a Commissioner.

22 CHAIRMAN HILL: Oh, you are a Commissioner. Oh,
23 okay, great.

24 MS. DOUGLAS: Thank you.

25 CHAIRMAN HILL: No, that's what I was just trying

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1 to figure out. Okay, so all right, then I guess in terms of
2 who will be presenting first for the Appellant, will it be,
3 Commissioner Douglas, will it be you primarily doing the
4 presentation, or Ms. Zara?

5 MS. DOUGLAS: Let Ms. Zara do it and then I'll
6 follow behind.

7 CHAIRMAN HILL: Okay, all right. Okay, so we're
8 going to --

9 MR. DEBEAR: Commissioner Hill, if I may?

10 CHAIRMAN HILL: Sure.

11 MR. DEBEAR: This is an outstanding motion to
12 dismiss for lack of timeliness, which is, as the Board knows,
13 a jurisdictional issue. So that was filed by DCRA, and
14 certainly Valor joins with that. But I just wanted to point
15 that out as a preliminary matter.

16 CHAIRMAN HILL: Sure, and I appreciate that. I'm
17 just, and we're going to get to that next. I'm just trying
18 to get through who's who. So okay, so there's that. And
19 then as Mr. DeBear has just mentioned, that there are some
20 preliminary, or a preliminary matter concerning the
21 timeliness issue in terms of this appeal.

22 So there are I guess I can kind of just speak to
23 what I think. So under Y302 -- so Ms. Zara and Commissioner
24 Douglas and Ms. Brown, you're aware of the motion that's been
25 put forward for the timeliness issue, correct?

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1 MS. ZARA: Yes, your Honor, we are.

2 CHAIRMAN HILL: Okay. And, sure, Ms. Zara, you,
3 by the way, I wish I was an honor. I'm not your honor, I'm
4 just --

5 MS. ZARA: Oh, I --

6 CHAIRMAN HILL: That's okay, that's okay.

7 MS. ZARA: Yes, sir.

8 CHAIRMAN HILL: It's the closest thing I'm going
9 to get to it. You don't have to worry, you can call, you
10 know. But I just wanted to be clear on that.

11 MS. ZARA: All right.

12 CHAIRMAN HILL: The, so under Y302.2, a zoning
13 appeal shall be filed within 60 days from the date the person
14 appealing the administrative decision had notice or knowledge
15 of the decision complained of, or reasonably should have had
16 knowledge -- oh, I'm sorry, had notice or knowledge of the
17 decision complained of, whichever is earlier.

18 We, the Board, under Y302.6 can extend that 60-day
19 deadline for the filing of zoning appeals only if the
20 appellant demonstrates exceptional circumstances to how they
21 didn't know about that. The first, and this way I'm getting
22 kind of my numbers mixed up.

23 Ten months ago is when the Zoning Administrator
24 gave a, not a final decision. Thank you, a determination
25 letter, correct. It was the determination letter, now I'm

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1 asking the Zoning Administrator.

2 MR. LEGRANT: That's correct.

3 CHAIRMAN HILL: Okay, and the determination
4 letter, it's something that doesn't necessarily mean that you
5 can go get a -- it's not a building permit.

6 MR. LEGRANT: That's correct, it is not a building
7 permit.

8 CHAIRMAN HILL: Okay. And so I don't, and where
9 I'm trying to get here is I don't think we're going to, I
10 think this is actually timely, and I'll let my other Board
11 members weigh in.

12 Because they are submitting this appeal, or the
13 Appellant is submitting this appeal from when the building
14 permit was issued. And I don't see anything in the record
15 that shows that the Appellant would have known about the
16 determination letter any earlier than the building permit.
17 And you guys don't have anything in the record that shows
18 that they would have known about that prior to the building
19 permit, correct?

20 MR. DEBEAR: Well, there's several things to add,
21 Chair Hill. But I would say that in terms of the decision,
22 they, there's been active litigation on this case dating back
23 to February 2019 in DC Superior Court. I would say before
24 I get into the timeline of, and again, this goes to
25 reasonably should have known about the decision, before I get

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1 to that, I would say that the ANC has only appealed the
2 determination letter here. They have not appealed the
3 building permit.

4 This is an appeal, if you read the application
5 form, which is Exhibit 1 and 2, it says, Exhibit 2 in
6 particular, Form 125, from the administrative decision of,
7 that Matthew LeGrant made on October 16, 2018. If you read
8 their statement in support of the appeal, it references the
9 determination.

10 The building permit has not been appealed. You
11 cannot, as we know, amend the appeal to add any new issues
12 at this juncture. So I would certainly posit, one, that Mr.
13 LeGrant's determination is a decision that they reasonably
14 should have known, and that they were untimely based on the
15 October 2018 determination letter.

16 CHAIRMAN HILL: Mr. DeBear, where are you pointing
17 out the determination letter? I'm pulling up, I see the form
18 --

19 MR. DEBEAR: Exhibit 2 is Form 125. It says, An
20 appeal is hereby taken from the administrative decision of
21 Matthew LeGrant made on October 16, 2018, to the effect that
22 there's a matter of right to install an industrial facility
23 comprising a firehouse, etc., etc.

24 If you look at Exhibit 3, which is the statement
25 in support of the appeal, the very first sentence says, We're

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1 appealing the decision of Zoning Administrator Matthew
2 LeGrant's determination. So there isn't actually anywhere
3 in this appeal that they're appealing the building permit.

4 So I'm not sure how they can be timely appealing
5 the building permit if that's not what they're appealing.
6 And I don't want to confuse it, but in addition to that, I
7 would argue that under certain precedent, there is actually
8 a basis to say that Mr. LeGrant's determination is one that
9 is appealable, and they should have known about it well in
10 advance of the 60-day date.

11 COMMISSIONER MILLER: Mr. Chair, if I can make a
12 suggestion that we just hold this motion in abeyance and, due
13 to the lateness of the hour, and just hear the merits of the
14 case and decide on that whether we want to consider the
15 motion to dismiss after we hear the merits of the case. It's
16 a pretty straightforward case, and I think we just should get
17 to it. But that's just my suggestion. I think the OAG might
18 have suggested it too.

19 CHAIRMAN HILL: No, I'm smiling, because even if
20 we hold this in abeyance, we then have to have the discussion
21 about the timeliness issue before we get to whether or not
22 we have the deliberation on the merits of the appeal.

23 No, I mean, if we got to the, if I understand this
24 correctly, and this is more to now OAG, right, even if we
25 held this in abeyance, which we could, right, and so now

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1 we're going to have this discussion perhaps with the
2 timeliness issue, because I want to understand, right, is
3 that even if we held it in abeyance, then we would first have
4 to decide whether or not we thought it was timely, and then
5 we would go into deliberations with the appeal, correct? I'm
6 asking OAG.

7 Sure, go on. Sure, you can ask a question.

8 MEMBER JOHN: I mean, I have a question on Mr.
9 LeGrant, following along this discussion about timeliness,
10 if you're ready to hear the timeliness issue. And I sort of
11 agree with we should at least hear the --

12 CHAIRMAN HILL: Okay, let me get OAG to answer
13 that question first.

14 MS. CAIN: So just to clarify, you're saying if
15 you went and heard the merits of the appeal, you would then
16 have to come back and deliberate on this prior, like after
17 taking the decision or prior to taking?

18 CHAIRMAN HILL: What I'm trying to understand, and
19 I under what Commissioner Miller is proposing, which I don't
20 think is necessarily a bad proposal, I'm just trying to
21 understand if we're not saving ourselves any time. In other
22 words, we're going to still have to have the discussion as
23 to whether or not this is timely, then determine whether this
24 is timely.

25 If we determine this isn't timely, then we

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1 wouldn't, we would dismiss the appeal as being untimely,
2 right? And so if we hear the merits of the appeal at the end
3 of this, we are still going to have first determine whether
4 we think it's timely before we get to decide whether or not
5 we want to hear the merits of the appeal, correct? We're not
6 saving ourselves any time here is what I'm trying to
7 understand.

8 MS. CAIN: No, I don't think ultimately you would
9 be.

10 CHAIRMAN HILL: Okay, all right. So then okay.
11 All right, so then we are going to figure out this timeliness
12 issue. So what Mr. DeBear has mentioned so far, that we're
13 going to kind of take a look at and understand and let Ms.
14 John ask her questions, is that, and now I'm just going to
15 get point, look into the record exactly where Mr. DeBear is
16 saying.

17 Mr. DeBear, you're saying that the applicant
18 themselves has gone ahead and put forward an appeal based
19 upon the determination letter, correct?

20 MR. DEBEAR: Correct.

21 CHAIRMAN HILL: And I'm still trying to find the
22 determination letter part, which is in Section, which is the
23 --

24 MR. DEBEAR: Exhibit 2 and 3.

25 CHAIRMAN HILL: Exhibit 1-0 --

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1 MR. DEBEAR: At least based on my binder.

2 CHAIRMAN HILL: My, I think it's Exhibit 1.

3 MR. DEBEAR: Are we off by one? Okay.

4 CHAIRMAN HILL: Yeah. So --

5 MR. DEBEAR: Form 125.

6 CHAIRMAN HILL: Well, it says Form 125 on mine,
7 and yet it's number, right, okay. So again, your, just give
8 me one second, so your, again, in here that it is the
9 determination letter that the appeal is being put forward on,
10 okay. And if that's the case, and so there's a couple of
11 things that are going to be kind of discussed here.

12 It's whether or not that determination letter is
13 actually a, is the first writing, right. Or even if it's the
14 first writing, I don't necessarily know. I mean, they have
15 an appeal in here for the determination letter. So if that's
16 the case, then the determination letter was six months ago.
17 So I have to figure that out, we have to figure that out.
18 And we'll let everybody have a little bit of a discussion
19 about that.

20 So you guys have motions, so I'm going to let you
21 finish your motion now. We're going to hear this timeliness
22 issue first.

23 MR. DEBEAR: I don't want to step on DCRA's toes

24 --

25 CHAIRMAN HILL: So DCRA has a motion --

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1 MR. DEBEAR: It's Mr. Green's motion, but we do,
2 you know, we have additional information to add.

3 CHAIRMAN HILL: Okay. So Mr. Green, you have a
4 motion put forward that you believe that this appeal is
5 untimely. Could you please articulate that.

6 MR. GREEN: Yes, Chairman. It's very clear in
7 Exhibit 3 from the ANC's appeal, which Mr. DeBear had pointed
8 out and is also referenced in our pleading, is it's all based
9 on Mr. LeGrant's determination letter of October 16, 2018.
10 The ANC has filed a number of exhibits. Nevertheless, that's
11 been the core crux of this appeal when they filed it.

12 And so our argument in sum is that it's, this
13 appeal is not timely. It is far outside the scope of 302.2.
14 And they have not filed it within time. Not only that, in
15 addition to this, and of course it says knew or should have
16 known, the ANC has actively participated in every step of
17 this process to not have the fire station go in since at
18 least 2017.

19 And it's been very apparent the ANC has been
20 opposed to this. Therefore, it is not reasonable under the,
21 at least the interpretation of this, that they can now come
22 back and say we didn't know about it. They knew about the
23 fire station for quite some time. And we believe this
24 letter, which is the basis, and again, just to reiterate, the
25 basis of the entire appeal, is outside the time.

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1 And their own pleadings, they file a lot of
2 information, and I would urge the Board to consider it.
3 They, since 2017 and onward, the opposition to this, this
4 project going in. So that's why we believe the timeliness
5 issue is a critical point for consideration before we move
6 forward.

7 VICE CHAIR HART: Okay, so I heard that. My, the
8 question that I have with this is Exhibit 8, which is the
9 actual determination letter, at the very bottom it has a
10 disclaimer.

11 And part of that disclaimer says this letter is
12 not, underlined not and bolded, the word, underlining the
13 word not and also bolding the word not, a final writing, in
14 quotes, as used in Section Y302.5 of the zoning regs, nor a
15 final decision of the Zoning Administrator that may be
16 appealed under Section Y 302.1.

17 But is instead an advisory statement of how the
18 Zoning Administrator would rule on an application if
19 reviewed, blah, blah, blah, and all this other stuff. So I
20 mean, I feel like we're getting into this kind of circle,
21 like are you also saying that, that it is not appealable,
22 that it is not a final decision? It's not a document that
23 can be appealed.

24 MR. GREEN: I think for the purposes of this
25 appeal, the question was resting on this particular letter.

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1 This particular determination letter was the basis of the
2 appeal. And obviously there's a disclaimer underneath there.
3 Nevertheless, that's what is being asked by the Board to
4 review. And we are outside the time for that review.

5 So I don't, if an appellant is going to make a
6 basis for what the Board is being asked to review and this
7 is the limited scope of which they are asked to review, it's
8 outside the time. That's the position that, outside of the
9 disclaimer --

10 VICE CHAIR HART: I understand that, I understand
11 that.

12 MR. DEBEAR: And I can I just add that just to
13 piggyback on that, again, we can't look at this in a vacuum,
14 Board Member Hart. We have to consider kind of all the other
15 things that have gone on that Mr. Green alluded to. I, you
16 know, I understand the issue you're raising.

17 But not only leading up the determination letter
18 from July 2017 onward, and then the determination letter we
19 get in October 2018, after that we have numerous ANC meetings
20 about the fire station use. We have a lawsuit filed against
21 my client, against the Mayor, against Council members, trying
22 to, quote, stop the fire station.

23 We have temporary restraining order hearings,
24 preliminary injunction hearings in that lawsuit. And we have
25 a dismissal, and then finally, we get the building permit.

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1 So this been going, has been ongoing for months by the time
2 this appeal was filed. And again, I understand what's --

3 CHAIRMAN HILL: Hold on, Mr. DeBear, just give me
4 a second. Okay, so, so, right. And now I'm going to let the
5 Appellant give your, I'm just trying to talk this through,
6 Ms. Zara, as best we can, that the other thing that is
7 getting thrown into this that just happened recently even is
8 that, you know, no one -- and this is where I'm even looking
9 to OAG, like you can't change the appeal once you've made the
10 appeal, right.

11 So what I'm trying to understand even from a legal
12 perspective is that if their appeal is on the determination
13 letter and not the building permit, is that another problem?

14 MS. CAIN: So you are correct, you cannot add
15 additional issues to the appeal. And they did bring this
16 appeal on the basis of the determination letter.

17 One thing that I think it's worth clarifying is
18 the concept of the first writing rule. So the first writing
19 reflects the administrative decision complained of. So our
20 interpretation of this was, and to sort of keep the dates
21 clear, the Appellant is claiming that they only got a copy
22 of the determination letter in July of this year, I believe
23 it was July 11 of 2019, even though it was originally written
24 and sent out by the ZA back in October of 2018.

25 That determination letter, when they got it, no

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1 longer at that point no longer is the first writing. The
2 building permit, which is now public knowledge, which came
3 out in June, is that first writing, which reflects the
4 administrative decision, which was that determination letter
5 back in October. So we're sort of crossing a couple
6 timelines here.

7 But the building permit is the first sort of
8 public knowledge of that determination letter, and that is
9 sort of the basis of what the Appellant is arguing here. So
10 you're not really changing the appeal, per se, it's just --

11 CHAIRMAN HILL: And Ms. Zara, I'm going to turn
12 to you for a second and you can give us your impression of
13 things. I'm just trying to understand a variety of subjects
14 that are now being put forth. And one of them now is that
15 you're saying that you only got the determination letter on
16 July 11, 2019, right? And by the way, we are going to have
17 more discussion as to when you guys should have known about
18 things.

19 But so your appeal, and this is where it'll be
20 interesting in terms of OAG and that's the discussion with
21 the Board, you're basing your appeal on the determination
22 letter that you got on July 11?

23 MS. ZARA: Yes, sir.

24 CHAIRMAN HILL: Okay.

25 MS. ZARA: If I may, sir?

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1 CHAIRMAN HILL: Yeah, please, go.

2 MS. ZARA: So yes, there has been litigation going
3 on. But the ANC and concerned residents have been trying to
4 find out about this process which is going on and to oppose
5 it in a timely manner. It's like whack-a-mole.

6 Once we started investigating the pattern of
7 things, this land has gone through a lot of tumult. There
8 was a lot of transparency by the developer for a housing
9 development for seven years, and then it went abandoned for
10 three years. And then there were rumblings that there was
11 going to be a fire house.

12 And plaintiffs -- appellants were running around
13 trying to find out what was going on. And they were trying
14 legal counsel through the ANC to oppose whatever they could
15 find. Around December of last year, I started talking to
16 them because I knew some people, we had worked on other cases
17 like the Benning Library case.

18 And we started looking into the data and making
19 inquiries. And unless we went to court, we never found out
20 about any of the permits. There was no notice provided to
21 the ANC about this permit for a firehouse. We have
22 successfully brought to light and tried to oppose and gotten
23 some traction on -- okay, so this project involves an
24 industrial facility. It also involves roadway construction,
25 both on the --

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1 CHAIRMAN HILL: Okay, give me one second. Ms.
2 Zara --

3 MS. ZARA: It involves the spans of the permit.

4 CHAIRMAN HILL: No, that's fine. I'm just trying
5 to get to, I'm trying to get through the timeliness thing
6 first before we get to any, in terms of the substance, right.

7 MS. ZARA: Right.

8 CHAIRMAN HILL: So the -- hold on one second. So
9 you all filed for the appeal, and now I'm going to go to OAG
10 again for the timeline. When was the appeal filed?

11 MS. CAIN: This appeal was filed in I believe
12 August of this year.

13 CHAIRMAN HILL: You don't have a date?

14 MS. CAIN: August 16.

15 CHAIRMAN HILL: Okay.

16 MR. DEBEAR: And can I just clarify?

17 CHAIRMAN HILL: Give me one second, Mr. DeBear.

18 MR. DEBEAR: Okay, I just wanted to ask a question
19 about the filing date --

20 CHAIRMAN HILL: I got the microphone up here.
21 Okay, that's okay --

22 MR. DEBEAR: Because it looks it was --

23 CHAIRMAN HILL: I'm going to talk right over you,
24 Mr. DeBear, just give me a second. So August 16 is what you
25 have the date on.

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1 MS. CAIN: I'm being told by the Office that it
2 was August 15.

3 CHAIRMAN HILL: Okay, August 15. And when was the
4 permit issued?

5 MS. CAIN: The permit was issued on June 19 of
6 2019.

7 CHAIRMAN HILL: Okay. And then the July 11 is
8 supposedly when somewhere the --

9 MS. CAIN: That is when the Appellant is claiming
10 that they first obtained the determination letter.

11 CHAIRMAN HILL: The determination letter, okay.
12 All right, okay. Mr. DeBear, you had a comment?

13 MR. DEBEAR: No, I just wanted to clarify. If you
14 look at the docket, Chair, it says August 21. I don't want
15 to try to split hairs here. I'm not sure what date the
16 Office of Zoning uses to actually state that the application
17 was filed.

18 It is actually relevant here. I didn't count it
19 out, but June 19 for the building permit and August 21, I
20 mean, you're getting very close there. But again, that's
21 just a tangential point I just wanted to raise.

22 CHAIRMAN HILL: That's fine. No, I mean, because
23 I'm, and we're going I guess keep going round and round here
24 for a little while, because I'm just trying to figure out,
25 I'm trying to figure out whether or not it's the

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1 determination letter, and if the date that we're going to
2 claim the determination is is the date that they got the
3 determination letter, which is July 11, right. Or at least
4 that's what they're claiming.

5 And so I guess I turn to Ms. Zara and ask you,
6 like, you understand the discussion right now, which is that
7 in your appeal, you are citing the determination letter,
8 correct. And so I'm asking you when do you think that
9 determination letter was -- when do you think that
10 determination letter was issued?

11 MS. ZARA: Your Honor, I mean, sir --

12 CHAIRMAN HILL: That's okay.

13 MS. ZARA: The only evidence we have is when it
14 became known to the residents and Dorothy Douglas and the
15 ANC.

16 (Off-mic comments.)

17 MS. BROWN: What you all don't know, what's
18 actually is going on, we have to find things. They don't
19 give us anything. The way we found out about this letter,
20 we found out -- they don't give us, they don't provide any
21 information to anybody. They can't prove to us that they
22 even sent this copy to us.

23 Who did they send it to? They didn't send it to
24 the ANC. So that's another part of the mix that you all are
25 not aware of. Everything we get, we have to discover. They

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1 do not give us anything.

2 CHAIRMAN HILL: It's okay. So the building permit
3 is public record. So the building permit was issued on June
4 19, 2019, right. So that is when one clock starts, okay.
5 And so, and then we'll kind of look as to whether or not, and
6 I'll guess you can count the days as to whether August 21 is
7 60 days past June 19. I don't know, right, okay. Give me
8 one second, I'm just trying to explain everything, and then
9 you can speak.

10 Then, however, if, and this is where I'm kind of,
11 we're talking amongst ourselves up here as well, which is
12 that if it's somehow the July 11 date that we're going to
13 take, then you still might be timely, okay.

14 And what I'm confused by with OAG is that if the
15 determination letter really was, you know, from October 16,
16 2018 and they just found out about it on July 11, 2019, I
17 don't know what the date is that we're necessarily supposed
18 to go by, right.

19 And under the regulation, I know it says obviously
20 here, and then I'm going to let the Appellant have a
21 response, I'll let the property owner have a response, and
22 then I'm going to let DCRA have the final response, since
23 it's your motion. And again, it is had notice or knowledge
24 or reasonably should had notice or knowledge, okay.

25 So that's, we're just trying to find out

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1 timeliness, okay. And so in the regulation, again, Y302.2,
2 a zoning appeal shall be filed within 60 days from the date
3 the person appealing the administrative decision. So we're
4 going to try to figure out what that administrative decision
5 is, right, had notice or knowledge of the decision complained
6 of, or reasonably should had knowledge, had notice or
7 knowledge of the decision complained of, whichever is
8 earlier, okay.

9 So again, and I understand it's like whack-a-mole,
10 whatever it is, right. But we still have the regulations to
11 try to figure out whether or not you guys are timely, okay.

12 And if you did have notice, meaning you knew this
13 was going on, or the fire station knew what's going on, if
14 there's some way that you've been now in, you know, you've
15 already been in legal, you've already, you already have this
16 before the courts before one of these dates, then you had
17 knowledge and notice, okay.

18 So you knew there was -- and so I'm just trying
19 to tell you how I'm kind of -- you'll have a chance to speak.
20 So that it's part of the regulation, it's part of the
21 regulation. So before I, I'm going to ask the Appellant
22 again to give their thoughts as to why they believe they're
23 timely, okay, this appeal is timely.

24 Then I'm going to give the property owner an
25 opportunity to again say why they believe it's untimely. And

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1 since it's DCRA's motion, you guys can have the last shot at
2 this, trying to explain why you think it's untimely.

3 And before I let the Appellant go first, I'm just
4 kind of talking up here amongst ourselves a little bit. I'm
5 going to look and see if I can see Ms. John's face, like do
6 you have anything else, am I making myself somewhat clear as
7 to how we kind of going through this? Do you have anything
8 else to add, Ms. John, Commissioner Miller? You need to push
9 the button.

10 MEMBER JOHN: For me, the threshold question is
11 whether or not that letter of determination is appealable in
12 the first place. And the question I want answered is if
13 there's a disclaimer that says it's not appealable, as Mr.
14 Hart read, for purposes of Y302, or 302.1, then it's not
15 appealable. And so that's the question that I need answered.
16 Because this disclaimer has to mean something. What's the
17 purpose of the disclaimer?

18 CHAIRMAN HILL: Okay, so that's another issue that
19 we can talk through after we get to the timeliness. Because
20 if that's the case, and this is why, wow, this is going to
21 take way longer than I thought, if that's the case, then
22 again, if they're here with an appeal on the determination
23 letter and the determination letter is not appealable, then
24 we don't have an appeal.

25 MEMBER JOHN: Well, and then we get into is the,

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1 then we get into when they reasonably should have known that
2 the permit was issued, and whether the Board can waive, I
3 hope I'm saying this correctly, whether the Board can waive
4 the lack of timeliness if they filed an appeal. Because they
5 had no reason to know that that letter of determination was
6 not appealable.

7 VICE CHAIR HART: But the problem that we're
8 running into with, that we'd run into with that is that
9 they've already submitted something about the determination
10 letter. They have submitted nothing about the appeal, and
11 the appeal --

12 CHAIRMAN HILL: About the permit.

13 VICE CHAIR HART: About, excuse me, about the
14 permit. And the permit is, that time limit is now passed,
15 so.

16 MEMBER JOHN: I understand that, I understand
17 that.

18 CHAIRMAN HILL: But still can extend the 60-day
19 deadline. The Board is able to extend the 60-day deadline
20 under Y302.6.

21 MEMBER JOHN: Exactly.

22 CHAIRMAN HILL: But they'd have to be back before
23 us with an appeal to the permit.

24 MEMBER JOHN: Exactly. That's how I'm seeing
25 this.

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1 COMMISSIONER MILLER: And this is what I wanted
2 to avoid. I wanted to spend an hour on the merits of the
3 case and then deal with the merits, and just not deal with
4 the motion. And then deal with appeal. Because I think it's
5 a very straightforward case. But if we want to spend an hour
6 on all these procedural issues, I didn't think we really had
7 to deal with the motion to dismiss if we didn't want to.

8 Although I thought we did get maybe advice that
9 we had to deal with it, that was your question, that we
10 really had to deal with it. So that's why I thought it was
11 going to save time, because I thought we've got a
12 straightforward case about this fire station being permitted.
13 And we could avoid all these, but didn't have to really rule
14 on all these what's appealable and was it timely, and.

15 MEMBER JOHN: Okay, so it's a jurisdictional
16 matter. So may I just answer the question? I agree with you
17 and yes, the merits are fairly simple and we could dispose
18 of it in maybe ten minutes. But then the whole issue of
19 timeliness is a jurisdictional matter, so --

20 COMMISSIONER MILLER: Yeah, and I think maybe we
21 should have a session, a training session on that, as opposed
22 to having a case on it.

23 CHAIRMAN HILL: I'm not going to use the mallet on
24 my own little board here. So the, and now I'm just turning
25 to OAG even though you're right here.

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1 (Pause.)

2 CHAIRMAN HILL: Okay, so now I'm going to turn to
3 OAG again, and that if we hold it in abeyance and hear the
4 merits of the appeal, then we could actually just deliberate
5 on the merits of the appeal, which would then make the
6 timeliness issue go away.

7 MS. CAIN: You would essentially render the timely
8 issue moot at that point because you're deliberating on the
9 merits.

10 CHAIRMAN HILL: Okay.

11 (Pause.)

12 CHAIRMAN HILL: Okay, we've already gone down this
13 pipe, we've already gone down this road for a little while,
14 so we're going to finish up this timeliness thing, okay. So,
15 because I am, because I want to know, okay, where we stand
16 on this, right. So Ms. Zara, you've heard everything that's
17 been said, okay, and so you can go ahead and give us your
18 opinion as to why you think that this is a timely appeal.

19 MS. ZARA: The waiver of rights as a matter of
20 right for a firehouse in an R-2 facility would preface the
21 ability for the firehouse to be built. Would, in order for
22 them, for the developer and for the government to build an
23 industrial facility in an R-2 neighborhood would depend on
24 this waiver of a matter of right. A matter of right, as Mr.
25 LeGrant had issued, without any --

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1 CHAIRMAN HILL: Ms. Zara, I'm sorry, you're, and
2 it's okay because we might get to the appeal anyway, but
3 just, I'm just talking about the timeliness. I mean, do you
4 not understand the timeliness issue that is being discussed
5 in front of us right now?

6 MS. ZARA: Right, so the time, what we are
7 appealing is a matter of right for an industrial facility to
8 be built on the R-2.

9 CHAIRMAN HILL: Okay.

10 MS. ZARA: That would precede, if that didn't
11 happen, a permit -- that's what we found out about. And we
12 found out about it when Appellants went down to DCRA and
13 talked to people, and the workers gave them a copy of it.
14 They never got it mailed, it never wound up in the ANC post
15 office, it never wound up to people 14 yards from the
16 development, never happened, never happened.

17 CHAIRMAN HILL: Okay, okay, so you're appealing,
18 I'm going to ask questions, now then, you're appealing the
19 determination letter, yes?

20 MS. ZARA: Yes.

21 CHAIRMAN HILL: Okay. And your appeal was filed
22 August 21 -- that's OAG, I guess. In the record it's August
23 21. Okay, that's fine. So that's all I need to know, that's
24 all I need to know. So Mr. DeBear, do you have any comments
25 again about the timeliness issue?

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1 MR. DEBEAR: I do, Chair Hill. First of all, this
2 idea, I understand when the Appellant is saying they found
3 the determination letter. But the idea that it wasn't
4 available publically, all permit applications that they're
5 pending are available publically. I have the permit
6 information here. We have to look at the totality of the
7 circumstances here. This was active litigation, there were
8 numerous ANC meetings.

9 I'm reading from, this is filed in the record, the
10 minutes from January 8, 2019, ANC 7D. DGS is ready to build
11 the fire station. Okay. We have --

12 CHAIRMAN HILL: Okay, Mr. DeBear, I'm just going
13 to interrupt --

14 MR. DEBEAR: Just one more, I'm sorry, just one
15 more point.

16 CHAIRMAN HILL: That's all right, sure.

17 MR. DEBEAR: In the litigation, we submitted an
18 opposition with an affidavit that states, and this was on
19 March 8, 2019 --

20 VICE CHAIR HART: Which document are you looking
21 at?

22 MR. DEBEAR: I have copies for the Board. It's
23 not in the record, it's not in the record yet. But it's
24 publically available information filed in the DC Superior
25 Court case, an affidavit from Mr. Lansing of Valor saying we

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1 have applied for a building permit.

2 CHAIRMAN HILL: That's okay. I mean, your
3 argument, again, is they should have reasonably known or had
4 knowledge.

5 MR. DEBEAR: Exactly.

6 CHAIRMAN HILL: In addition to the fact that you
7 think they're untimely.

8 MR. DEBEAR: And just one final point.

9 CHAIRMAN HILL: Sure.

10 MR. DEBEAR: If you want to address it, this issue
11 of waiving the 60-day period. There's plenty of harm we can
12 talk about with the idea that this is the District, a fire
13 station. So there's obviously a public --

14 CHAIRMAN HILL: We're just, honest to goodness,
15 we're just trying to get through the timeliness issue.

16 MR. DEBEAR: But that's part of it.

17 CHAIRMAN HILL: I'm not, once we get to the
18 appeal, you know, then that's a whole other discussion.

19 MR. DEBEAR: No, but that goes to the extending
20 the 60-day period, which was alluded to.

21 CHAIRMAN HILL: It was extending --

22 MR. DEBEAR: That the Board could waive it. I
23 just wanted to get that in there.

24 CHAIRMAN HILL: That's good. It was waiving it
25 if we thought that there was an issue with the fact that they

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1 were applying an appeal on the determination letter, and the
2 determination letter is something that can't be appealed.
3 So that's where the whole, and then we would be back to the
4 whole thing with, you know, the building permit and the
5 timeline and such. Give me one second, Ms. Douglas. You had
6 a comment?

7 MEMBER JOHN: I just need some clarification from
8 Mr. DeBear. Are you saying that because there was
9 litigation, they should have known that a permit was issued?
10 All they knew was that an application was filed. That's not
11 appealable. So I'm not sure why you're charging them with
12 notice of a determination letter that they never received --

13 MR. DEBEAR: But --

14 MEMBER JOHN: Or why you're saying that they
15 should have known they should have applied for a permit that
16 was never issued. I don't understand that.

17 MR. DEBEAR: The standard, what they're
18 challenging is the determination letter, which was posted on
19 the Zoning Administrator's website, publically, publically
20 available information.

21 If you have an active piece of litigation against
22 the fire station, stopping the fire station, I would argue
23 that falls under reasonably should have known. They
24 reasonably should have availed themselves of this information
25 that was on a public website that the Zoning Administrator

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1 posted.

2 MEMBER JOHN: Okay, so what notice is on us, Mr.
3 LeGrant, what notices are normally sent to the ANC? Do they
4 get notice of every permit that's filed? And do they get
5 notice of determination letters?

6 MR. LEGRANT: ANCs get notice of building permit
7 applications geographically based on the areas that they
8 cover. Determination letters, which there is no regulation
9 requiring determination letters be given any public notice,
10 they are sent to applicants in response to requests made to
11 my office. My office, as a public transparency measure,
12 posts said determination letters, as Mr. DeBear noted, on
13 DCRA's website.

14 MEMBER JOHN: And we had this discussion before.
15 Is this an appealable action by you, this determination
16 letter with the exculpatory language at the end that says
17 this does not prohibit us from issuing a permit which is
18 based on more specific information? So is it your policy
19 determination that these letters, the determination letters,
20 are appealable?

21 MR. LEGRANT: My counsel will speak to this.

22 MEMBER JOHN: Okay, counsel, could you please
23 clarify? Because we had this in another case, and in that
24 case --

25 COMMISSIONER MILLER: There was a certificate in

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1 that case. It wasn't a --

2 MEMBER JOHN: There was a certificate, but it was
3 the same issue, a similar issue.

4 COMMISSIONER MILLER: Well, I think it's
5 distinguishable.

6 MEMBER JOHN: Okay, I stand corrected. Counsel?

7 MR. GREEN: So the exculpatory language, which
8 certainly is in there, the regulations go to your power as
9 a Board. So the fact that there may be exculpatory language,
10 3022, if -- for lack of a better term, Mr. LeGrant can't
11 necessarily waive your ability to hear or not appeal
12 something with respect to a particular issue.

13 In other words, he may attempt to -- that
14 language, although it's in there, this goes to your power as
15 a Board in a determination that's contained within that
16 letter, so it would be appealable. That's what they base
17 their appeal on.

18 The fact that we have exculpatory language cannot
19 remove your power to hear an appeal or infringe on their
20 rights because -- I'm trying to articulate the fact that this
21 goes to your ability of whether or not you can even hear it,
22 and I don't think that language can somehow waive your
23 ability to hear an appeal.

24 MEMBER JOHN: But you're saying it's not a
25 decision, right? You're saying it's not a final decision in

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1 the same way a permit is a final decision?

2 MR. GREEN: I'm saying that there is a
3 determination made by the building official, which has been
4 -- as a right, which has now been brought to the Board for
5 a ruling, and you're focusing on a particular exculpatory
6 language, but that alone cannot waive your ability to hear
7 an appeal.

8 MEMBER JOHN: So basically the language that says
9 -- and I'm just trying to understand this because we have so
10 many cases that come before us. So basically, when -- let
11 me see if I can get this right. So there is a determination
12 letter, and even if there is no exculpatory language, you
13 would say that that's a final decision by DCRA?

14 MR. GREEN: I don't think so. I think --

15 MR. DEBEAR: It depends probably on the
16 circumstances.

17 MR. GREEN: Correct.

18 CHAIRMAN HILL: Even though it sounds like this
19 is a big old conversation that we're having, like let's just
20 try to not talk back and forth even up here amongst
21 ourselves. I think -- did you finish the statement? Did you
22 finish your question?

23 MR. GREEN: Sorry, yes, I think it depends on the
24 nature of the decision and the particular issue that's being
25 alleged to be, that is being appealed, and so it's clear that

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1 the basis of their appeal is the by right issue which is
2 contained within that letter, and that's why we're before the
3 Board.

4 CHAIRMAN HILL: Okay, may I interrupt for one
5 moment? No, I just want to interrupt. So because now I
6 think we are possibly at a more unclear point, I'm going to
7 let DCRA finish their say. Everyone has had their say. It's
8 your motion as to why it's untimely or not.

9 I, however, am back to the beginning where I think
10 this is possibly a bigger discussion that we, as the Board,
11 are going to have to have, and going to maybe have to have
12 a training on, and we will possibly hold this in abeyance and
13 then hear the merits of the appeal, and possibly just decide
14 the appeal on that.

15 However, Mr. Green, if you want to go ahead and
16 tell us why it's untimely again?

17 MR. GREEN: It's fairly clear, Chairman and the
18 Board, that a letter dated October 16, 2018, which contained
19 the determination of Mr. LeGrant, is being appealed in this
20 case. The appeal was filed far outside the 60 days. So in
21 that regard, this should not -- this is an untimely appeal.

22 The second piece is that the ANC has known and has
23 been aware of this facility -- including I would argue the
24 by right nature of its construction -- for longer than just
25 July of, in July of 2019 in which they said they received the

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1 letter.

2 Therefore, I believe it's even unreasonable for
3 them to then come before the Board and suggest that they just
4 discovered this information. And so looking again, as Mr.
5 DeBear had said, at the totality of facts, the active
6 participation throughout the process and monitoring --

7 CHAIRMAN HILL: Okay, I'm going to interrupt you,
8 Mr. Green. Okay, so that's okay. We're just -- we've now --
9 it's -- no, no, no, no, this is only about timeliness. This
10 is only about timeliness.

11 MS. BROWN: Can I say just one thing?

12 CHAIRMAN HILL: All right, go ahead.

13 MS. BROWN: Mr. LeGrant just said that they are
14 not under any obligation to pass these letters onto ANC. So
15 when we finally discovered it, we discovered --

16 CHAIRMAN HILL: Right, that's okay.

17 MS. BROWN: He said they're not under any
18 obligation, so --

19 CHAIRMAN HILL: That's okay. Ms. Brown?

20 MS. BROWN: -- what are we supposed to do?

21 CHAIRMAN HILL: Okay, okay, got you. All right,
22 so I'm going to close this part of the hearing for a second
23 so we can just kind of deliberate on this, like I still don't
24 know -- so since we've been here all day and I just want to,
25 you know -- and Mr. Miller, welcome. You're with us on this

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1 beautiful day when we're here all the time.

2 As I understand it, and this is where, I think,
3 we're going to have to hold this in abeyance now and hear the
4 merits, and then maybe try to figure out this timeliness
5 thing later, is that as you, Ms. John, have just mentioned,
6 and Mr. Miller has pointed out again, there was a certificate
7 the last time that we were having this discussion, and so
8 there's certificates. There's determination letters. The
9 determination letter actually has some plans to it or plans
10 with it.

11 The part that confuses me also in terms of the
12 timeliness is that -- I mean the determination letter was
13 from the 16th in 2018, like that's way past 60 days, right,
14 but if they only got it on July 11, then that also -- I'm
15 just saying why I'm confused, right?

16 That also confuses me, and also, and this is the
17 last thing I'll say and then you all can talk amongst
18 yourselves, is that if, in fact, the determination letter is
19 not an appealable decision, then we're back to where there's
20 no appealable decision here, right?

21 So my vote is to go ahead and hold it all in
22 abeyance. We'll figure this out on the side in terms of like
23 having a training, or talking with the Office of Planning,
24 or OIG, and kind of straighten all of this out, and then we
25 can hear the merits of the appeal. So do you all have any

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1 thoughts on any of that?

2 COMMISSIONER MILLER: I support holding it in
3 abeyance, not dealing with that issue at all, and hearing the
4 case on the merits --

5 CHAIRMAN HILL: Okay.

6 COMMISSIONER MILLER: -- and deciding that case
7 today.

8 CHAIRMAN HILL: Okay, so we're going to take a
9 three-minute break, okay, and then we're going to have the
10 appeal, okay. Before we have the appeal, okay, I want to
11 point out what we're going to talk about at the appeal, okay,
12 and how it's going to work, all right?

13 So you guys, as the appellant, are going to be
14 able to speak to why you think the zoning administrator
15 erred, okay, and the only thing we're here to talk about --
16 we've read all of your information and we've read your
17 arguments.

18 The only thing that we're able to discuss here is
19 zoning issues and why the zoning administrator erred. We're
20 not here to talk about environmental issues, claims against
21 DGS bid and award process, financial issues, and all of these
22 type of things are beyond the scope of the Board's review.

23 What the appellant has come forward with in terms
24 of why you believe that an error has been made was that, as
25 I understand it, under Subtitle D 5201.3(b), that is the

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1 first thing that you all have said that the zoning
2 administrator has erred, right, or why he has erred, and then
3 the other was in Subtitle U 202.1(i) and Subtitle B 200.2(t).

4 So in Subtitle U 202.1(i), it's the use provision
5 for local governments matter of rights for fire stations,
6 right? So you have to say why the zoning administrator has
7 erred under that subtitle, and then you also have to I guess
8 say how or why the definition of local government under
9 Subtitle B 200.2 does not apply.

10 So those are the only issues that we're going to
11 be talking about on the appeal, okay? So when we come back,
12 we'll probably talk about maybe 15 minutes for each party to
13 talk about why those issues the zoning administrator erred
14 on, okay? Ms. Zara, do you understand? Okay, great, all
15 right, so we'll come back in about three minutes. Thank you.

16 (Whereupon, the above-entitled matter went off the
17 record at 5:25 p.m. and resumed at 5:37 p.m.)

18 CHAIRMAN HILL: Okay, Mr. Moy, we're back, okay?

19 SECRETARY MOY: Yes, sir. Let's go.

20 CHAIRMAN HILL: All right, so Ms. Zara, so again,
21 I'm going to put 15 minutes on the clock, and then what's
22 going to happen is -- there's clocks all around. You'll have
23 an opportunity to present your case as to why the zoning
24 administrator has erred in those areas that I spoke of
25 earlier.

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1 Then what's going to happen is the -- and OIG can
2 help me with how the order goes, but I always think it's,
3 again, that DCRA will get to go, next the property owner, and
4 after you have an opportunity to speak, DCRA, the property
5 owner, will have an opportunity to ask questions of your
6 testimony in the vice versa of everybody else. Then we'll
7 go ahead and work backwards in terms of conclusion, which is
8 that we're going to go with -- I don't know why the
9 conclusion always ends with the property owner, so I think
10 it's appellant, DCRA, property owner, and I have to look
11 because -- everybody is going to get a chance to talk, right?

12 So that being said, again, Ms. Zara, in terms of
13 why the zoning administrator erred in Subtitle D 5201.3(b),
14 and then also in U 202.1(i) and B 200.2(t), and you can begin
15 whenever you like.

16 MS. ZARA: Okay, thank you. I'll be brief. We've
17 submitted largely these arguments in writing with our appeal,
18 but basically Section 5201.3(b) provides for the privacy of
19 use, and enjoyment of neighboring properties shall not be
20 unduly comprised.

21 If you consider the enormity of this proposed
22 industrial facility, its juxtaposition to an R2 zoned long
23 term residential neighborhood, and how it will infringe on
24 exactly the use and enjoyment of the neighborhood, and as a
25 matter of fact, it will upend it and destroy any peace that

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1 is there with these long term --

2 VICE CHAIR HART: Can I ask one question, if you
3 could kind of focus the discussion on one aspect of this, and
4 that is this section applies to additions? In the zoning
5 regulations, this section applies to additions to a building
6 or accessory structures, so there is just kind of two reasons
7 that this should be inapplicable.

8 So what we're trying to understand is how does
9 this apply to this -- how do you believe that this zoning reg
10 applies to this particular decision that the zoning
11 administrator made?

12 MS. ZARA: Okay.

13 VICE CHAIR HART: So it's specifically on the --

14 MS. ZARA: Additions.

15 VICE CHAIR HART: If this is an addition to a
16 building or an accessory structure, then we can have this
17 discussion. Anything else outside of that, this should not
18 apply, and so we're just trying to figure out how this
19 applies in those specific instances.

20 MS. ZARA: Okay. With the presumption that -- can
21 I ask a question now? Would that be based on the fact that
22 there is no existing building, or would that be based on the
23 fact that there will be multiple buildings here, not a single
24 firehouse?

25 VICE CHAIR HART: Okay, so the zoning regs

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1 themselves actually have -- and I need to get to the zoning
2 regs, so give me a second. They actually have the --
3 describe when these zoning regulations should apply and --
4 no, it's not that one. The one we're really looking at right
5 now is Subtitle D 5201.3(b).

6 The privacy and use and enjoyment of neighboring
7 properties should not be unduly compromised, but this should
8 be focused on this being an -- this only is in effect if this
9 is an addition to a building, an existing building, or if
10 this is an accessory structure.

11 MS. ZARA: Okay, so we can define an accessory
12 structure. There was a structure on the building, on the
13 lot.

14 VICE CHAIR HART: What's there now?

15 MS. ZARA: It's been demolished.

16 VICE CHAIR HART: Okay. So everything is gone on
17 the lot?

18 MS. ZARA: Yeah, there's a --

19 VICE CHAIR HART: Okay. So where is the accessory
20 structure?

21 MS. ZARA: The accessory structure will be when
22 they build the original firehouse. They haven't begun to
23 build yet.

24 VICE CHAIR HART: But that's just, that's a
25 structure. That's a building, so where is the accessory

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1 structure? That's what --

2 MS. ZARA: The accessory structures will be the --
3 we have actually a rendition. It's not accurate and --

4 VICE CHAIR HART: No, what I'm saying is when you
5 have a site --

6 MS. ZARA: Yes.

7 VICE CHAIR HART: -- and you have a building --

8 MS. ZARA: Yes.

9 VICE CHAIR HART: -- and you add to it --

10 MS. ZARA: Yes.

11 VICE CHAIR HART: -- that's an addition to a
12 building.

13 MS. ZARA: Okay, so --

14 VICE CHAIR HART: Well, hold on, hold on. When
15 you have an existing building on a site and you add another
16 building to that site when that existing building is already
17 there, then you have an accessory structure to the existing,
18 the primary building.

19 MS. ZARA: Okay.

20 VICE CHAIR HART: But right now, we have neither.

21 MS. ZARA: Right.

22 VICE CHAIR HART: This entire site has been razed,
23 so --

24 MS. ZARA: Right.

25 VICE CHAIR HART: -- how do you believe that this

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1 zoning regulation applies because we don't have those -- we
2 don't have an existing building there?

3 MS. ZARA: Okay, so is your presumption that this
4 is not ripe yet because the first building hasn't been built?
5 Because this involves not only one building, but additional
6 buildings to host a fleet of ambulances --

7 VICE CHAIR HART: I'm just --

8 MS. ZARA: -- and firehouses.

9 VICE CHAIR HART: What I'm trying to get to is you
10 are supposed to be giving us information. I'm not asking --
11 I'm not -- I'm trying to understand what your point is about
12 this, and right now, we need to focus on this particular
13 aspect of it so that we can --

14 MS. ZARA: Okay.

15 VICE CHAIR HART: -- decide whether or not this
16 does -- this is a -- it is an issue or is not an issue, and
17 right now, it is -- we don't have that information to be able
18 to --

19 MS. ZARA: So unless there is an --

20 VICE CHAIR HART: -- figure that.

21 MS. ZARA: -- existing building and there are
22 additional buildings that might destroy the peace and
23 enjoyment of the neighborhood, this statute --

24 MEMBER JOHN: Ms. Zara?

25 MS. ZARA: -- doesn't apply according --

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1 MEMBER JOHN: Ms. Zara, can I just add something
2 to this discussion?

3 MS. ZARA: Yes.

4 MEMBER JOHN: I think you're looking at the wrong
5 regulation.

6 MS. ZARA: Okay.

7 MEMBER JOHN: So the regulation you need to look
8 at, I believe, and maybe OIG can help me, is B 200.2,
9 somewhere there that describes what can be built, right?

10 MS. ZARA: Oh, you mean -- okay.

11 MEMBER JOHN: And --

12 MS. ZARA: So --

13 MEMBER JOHN: And I believe if you look through
14 that section, you will see that a fire station can be built
15 as a matter of right.

16 MS. CAIN: Commissioner John?

17 MEMBER JOHN: Yes?

18 MS. CAIN: I think that's a second claim that the
19 appellant has raised. We're right now dealing with the first
20 claim, which is the 5201.3, so we will get to the B 200
21 section.

22 MEMBER JOHN: Thank you.

23 CHAIRMAN HILL: Okay, let me try again. So I do
24 appreciate the help, and I do appreciate the clarity. Thanks
25 for pausing the clock. I'm not going to interrupt you

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1 anymore. I'm going to go ahead and let you do your 15
2 minutes and tell us why you think the zoning administrator
3 erred in the areas that you think the zoning administrator
4 erred, and then we can come back and ask questions, okay?

5 MS. ZARA: All right.

6 CHAIRMAN HILL: Thank you.

7 MS. ZARA: Okay, so regarding 5201.3(b), the
8 existing structure that was razed will be replaced by
9 multiple buildings. So if it's considered the initial
10 firehouse building which has not yet happened, but the rights
11 have been laid out by the D.C. government and by BZA, then
12 those additional structures that will happen and that will
13 accompany the original firehouse will impede the use and
14 enjoyment of the neighborhood, and that's it for that. I
15 have nothing else to add.

16 I mean no buildings have been built, but if you
17 look at the proposal for it, which is what this relies on,
18 you'll see that there will be multiple buildings, not just
19 one.

20 CHAIRMAN HILL: Okay, and now to the other two
21 points, U 202.1(i) and Subtitle B 200.2(t).

22 MS. ZARA: And if I may show, there is a rendition
23 of all of the buildings that are proposed, so you can pick
24 one as an addition or pick all of them as an addition to one,
25 but none of them have been built yet.

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1 CHAIRMAN HILL: I understand.

2 MS. ZARA: Yet this is a permit for all of them
3 or a waiver of rights for this to be constructed.

4 CHAIRMAN HILL: I understand.

5 MS. ZARA: Okay, all right, so would you like to
6 look at the rendition of the multiple buildings or is that
7 clear?

8 CHAIRMAN HILL: I think we're okay.

9 MS. ZARA: All right.

10 CHAIRMAN HILL: If we have any questions, we can
11 ask more afterwards.

12 MS. ZARA: Okay, do I go on?

13 CHAIRMAN HILL: Yeah, sure.

14 MS. ZARA: Okay, to the other one, to the --

15 CHAIRMAN HILL: Please.

16 MS. ZARA: Okay, so B 200.2(t) and U 201 either
17 L or 1. R2 zoning makes no specific mention of fire
18 stations, but rather states' local government use, and even
19 if these sections specifically delineated provision for the
20 construction of a fire station, which it doesn't explicitly
21 do, the plan involves more than a mere firehouse.

22 It's an industrial facility as we said. It
23 includes at least these structures which will house a fleet
24 of ambulances, a fleet of fire engines, maintenance
25 facilities for them, the accompanying sirens and whatever

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1 pollution, although I'm not supposed to talk about it, noise
2 and otherwise that will accompany it, within 10 to 20 yards
3 of the residences.

4 MS. DOUGLAS: 14 feet.

5 MS. ZARA: Let's say 14 yards to be safe, and we
6 have pictures of the juxtaposition. Here we see Ms. Douglas'
7 house right here, and the fence that starts the road. The
8 road that has to accompany the firehouse will be right
9 outside her house.

10 This is Valor's land and this is where the
11 construction will begin, and here is, I would say, a
12 dishonest rendition of it which shows the juxtaposition of
13 the CSX tracks and the community and the placement of this
14 large industrial structure, okay.

15 And okay, so this is in an R2 facility. It's
16 supposed to replace a fully functional firehouse a half a
17 mile away which is in a commercially zoned neighborhood.
18 They're closing that supposedly if this can go off the
19 ground.

20 So for these two reasons, or these three reasons,
21 the enormity of the task, the juxtaposition of it, the
22 imposition of it as a long term residential neighborhood, R2
23 neighborhood, it's more than just a firehouse, and I think
24 a comparison of other firehouses in D.C. that are in
25 neighborhoods such as Columbia Heights or wherever, while

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1 they're loud, they do not have such an industrial facility.

2 So for those reasons, we think it violates these
3 statutes if you consider the enormity of it, and that's all
4 I have to say. I don't know what anyone else has to offer.

5 MS. DOUGLAS: My concern, I guess, is the matter
6 right. And I know according to the information that I
7 received --

8 CHAIRMAN HILL: Ms. Zara, if you could turn off
9 your microphone just for the feedback? Thank you. That's
10 all right.

11 MS. DOUGLAS: I apologize. As a matter of right,
12 the letter that came from Mr. LeGrant on November 9, 2010,
13 it says that the R2 zoned district consists of those areas
14 that have been developed with family, single-family housing
15 throughout the development, which they agreed with the ANC
16 commissioners to build in the first place, but never told us.

17 We had no knowledge that even a firehouse would
18 even come into place, and the young man who was talking about
19 he's been meeting with us, they have not been meeting with
20 us and giving the information to us.

21 If you see through our statements that the ANC has
22 submitted and we have submitted in our evidence, that they
23 have not been forthcoming, transparency, and all that we
24 wanted, information, and that's been ongoing, so that's not
25 true.

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1 And then also it's designed to protect these areas
2 from density types of residential development. Commercial
3 use is not a matter of right use in an R2 zone, and that's
4 his signature on that, Mr. LeGrant. So that's my concern,
5 and I am concerned about the safety.

6 We had a fire this Saturday in one of the houses
7 on Sheriff Road. You couldn't even turn around because it
8 was so close. I could walk out my door and walk right to the
9 location that they have. It's a safety issue. They did the
10 demolitions without permission, getting permits I meant to
11 say, and that caused some issues with us. They claimed they
12 were getting the permission.

13 And before, when Mr. LeGrant's attorney said that
14 he gave us -- that he don't have to give us information, but
15 the ANC under the Home Rule, Regulation Sunshine, that he has
16 to provide information to the ANCs, I think it's 45 days or
17 within 37 days whatever was going on in the area, and they
18 have not been meeting with us. They started building.

19 The time frame that he's talking about is 2018,
20 but they have not been to our ANC meeting keeping us up to
21 date on what's been going on in the plans and the community
22 engaged in what's been happening.

23 And even Ms. Zara, the, what is it, Ms. Felder,
24 I want to say she said that they have to come back to the
25 commissioners because they have not been communicating with

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1 us, and they found also that that's an issue that I submitted
2 to you all earlier, that they have not been communicating
3 with the community, so that's not true that he said that he
4 had, so they have not been doing diligently as they're
5 supposed to.

6 We're concerned about getting out. We have a
7 straight. There's no one way in and no way out. We have
8 problems with the danger of 5:00 in the morning. I'm up.
9 They could start the working, and I sent those pictures, so
10 it's just noise and it's just really unsafe.

11 There's a whole lot going on and they just -- they
12 falsely told us they were going to build the houses and then
13 kept us out of the loop for two years, and they claim that
14 they came and that we knew about it. No, we didn't know
15 about it until after they started doing what they needed to
16 do, and the ANC Commissioners support what we're saying and
17 we've been saying it in the beginning, when they first came,
18 we said no when we first learned of it, and when we learned
19 of it was on Channel 7 news that they were building the
20 firehouse. That's how we knew about it.

21 CHAIRMAN HILL: Okay, and Ms. Douglas and Ms.
22 Zara, so again, and I think I've heard -- we've seen
23 everything that's in the record, so we've read through the
24 record and what your arguments are, and again, you might have
25 different cases before different boards and jurisdictions,

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1 or what have you. We're just here for the zoning issues --

2 MS. ZARA: Okay.

3 CHAIRMAN HILL: -- right? And so -- but I think
4 you've made your arguments for the zoning issues, and so now
5 we're going to have some questions for you, okay?

6 MS. ZARA: Okay.

7 CHAIRMAN HILL: And for the Board here, and then
8 you all can make -- So Ms. Zara, like, you know, are you guys
9 aware that under U 202.1(i), it specifically allows for local
10 government uses in the R2 zone?

11 MS. ZARA: Yes.

12 CHAIRMAN HILL: You're aware of that, right?

13 MS. ZARA: Yes, we are.

14 CHAIRMAN HILL: And so why do you believe -- how
15 come you don't think that then this counts as a local
16 government use?

17 MS. ZARA: We're not arguing that it's not broadly
18 defined as a local --

19 CHAIRMAN HILL: Ms. Douglas, could you turn off
20 your microphone? I'm sorry. Thank you.

21 MS. DOUGLAS: I apologize.

22 CHAIRMAN HILL: That's all right.

23 MS. ZARA: -- a local government use. What we're
24 arguing is this, the implementation of, the enormity of this
25 and dropping it right here. You have the CRX tracks, or is

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1 it CSX? You have the CSX tracks, and then you have this
2 little trapezoidal piece of land, right, between Sheriff and
3 Minnesota Avenue, and then you have Dorothy Douglas' house
4 right here, okay, and then you're going to build --

5 CHAIRMAN HILL: Okay, but you're arguing --

6 MS. ZARA: -- all of these buildings.

7 CHAIRMAN HILL: You're arguing different things.
8 That's okay. I was trying to understand why you don't think
9 it's a local government use, like you're arguing different
10 things, and you just said --

11 MS. ZARA: An airport could be a local government
12 use, isn't that correct?

13 CHAIRMAN HILL: I don't know. I mean, this is a
14 fire station, so.

15 MS. ZARA: A helicopter pad?

16 VICE CHAIR HART: The local government use is
17 defined in Subtitle B 200.2(t), and they talk about what
18 examples are. The examples include, but are not limited to,
19 public community centers, police stations, libraries,
20 driver's license and road test facilities, or fire stations.
21 That is examples, not just those things, but --

22 MS. ZARA: E.G.

23 VICE CHAIR HART: -- it includes those things and
24 others.

25 MS. ZARA: Okay, I understand.

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1 CHAIRMAN HILL: Okay.

2 MS. ZARA: This is not just a fire station.

3 CHAIRMAN HILL: Okay. You've answered my
4 question.

5 MS. ZARA: Okay.

6 CHAIRMAN HILL: So that's all right. Does the
7 Board have any other questions of the applicant or the
8 appellant?

9 VICE CHAIR HART: So with regard to -- so do you
10 believe this is a large-scale government use?

11 MS. ZARA: Yes, yes.

12 VICE CHAIR HART: Okay. So you do not think that
13 -- okay, in the zoning regulations, large-scale government
14 use and local government use are two different things.

15 MS. ZARA: Okay.

16 VICE CHAIR HART: So they're defined differently.

17 MS. ZARA: So to correct the record, we believe
18 it is not --

19 VICE CHAIR HART: Okay.

20 MS. ZARA: It is beyond the boundaries or the
21 definition of a local government use.

22 VICE CHAIR HART: Okay.

23 MS. ZARA: It will be used locally, but --

24 VICE CHAIR HART: No, I understand that.

25 MS. ZARA: -- it goes beyond that.

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1 VICE CHAIR HART: And so you believe that it's
2 beyond that because why?

3 MS. ZARA: Because of the enormity of it, for --

4 VICE CHAIR HART: But what I'm saying is --

5 MS. ZARA: This --

6 VICE CHAIR HART: It would be helpful for us to
7 understand this is what a typical, you know, fire station is,
8 and this is what they're proposing so we have an
9 understanding as to --

10 MS. ZARA: Oh, okay.

11 VICE CHAIR HART: -- why you think enormity means
12 something. This room could be enormous to somebody, but
13 other people may think, "Oh, it's not enormous. It's kind
14 of a small room," and so it's helpful for us to understand
15 what that -- what your idea of enormity means in some sort
16 of tangible way.

17 MS. ZARA: Okay, well, we're not experts on all
18 of the firehouses in the city and the ramifications on
19 neighborhoods. I'm familiar with the firehouses in my
20 neighborhood in Ward 1, and while they are --

21 I don't know how the history of them came, if the
22 houses moved to them or they came to the neighborhood, but
23 they're small and contained. They have maybe one ambulance
24 there, maybe one small fire engine.

25 We haven't really been kept abreast of exactly how

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1 many fire engines, but we know that there will be at least
2 two. We don't know how many, if they are 20, 30, 40 feet.
3 We know at least two ambulances, and we know that they're
4 going to have to maintain fuel and facilities for them on
5 that land.

6 And we know that road construction, major road
7 construction, which had been opposed in the Minnesota Avenue
8 2000 extension --

9 CHAIRMAN HILL: Okay. Did you get your question
10 answered?

11 VICE CHAIR HART: Yes.

12 CHAIRMAN HILL: Okay, all right, okay, does the
13 Board have any other questions? Does the Board have any
14 other questions? No, okay. Does the property owner have any
15 questions for the appellant?

16 MR. DEBEAR: No.

17 CHAIRMAN HILL: Okay, does DCRA have any questions
18 for the appellant?

19 MR. GREEN: No, Your -- no.

20 CHAIRMAN HILL: Your Honor? Were you going to
21 Your Honor me?

22 MR. GREEN: I slipped. I slipped, Chairman.

23 CHAIRMAN HILL: Okay. So DCRA, you got the same
24 amount of time. They went like eight minutes, it looks like.
25 Please, if you could present your case as to why you believe

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1 that the zoning administrator has not erred in the three
2 areas that I specified at the beginning?

3 MR. GREEN: Thank you, Chairman. Mr. LeGrant, the
4 property at 4409 Minnesota Avenue, N.E., which is located in
5 an R2 zone, the ANC argues in Exhibit 3 that the fire station
6 requires a special exception. Are they accurate?

7 MR. LEGRANT: No.

8 MR. GREEN: Mr. LeGrant, I draw your attention to
9 the relevant regulations.

10 CHAIRMAN HILL: Which one are you trying to pull
11 up so I can also pull it up?

12 MR. GREEN: I'm going to put it on the screen
13 here.

14 CHAIRMAN HILL: Oh, great.

15 MR. GREEN: I'm sorry.

16 CHAIRMAN HILL: That's all right.

17 MR. GREEN: It's on my USB, sorry. Forgive me.
18 Here it comes. Mr. LeGrant, I draw your attention to 11B
19 DCMR Section 2000.2(t). Is this relevant in this case?

20 PARTICIPANT: 200.

21 MR. GREEN: 200.2(t), forgive me. Is this
22 relevant in this case, Mr. LeGrant?

23 MR. LEGRANT: Yes, it is.

24 MR. GREEN: And how so? Can you explain it to
25 everyone?

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1 MR. LEGRANT: Yes. So local government use is a
2 use that's allowed as a matter of right in the subject R2
3 zone, which we'll get to in a moment, but the local
4 government use, as you can see on the screen, is defined as
5 a use involving services owned, managed, or provided by local
6 government associated with providing neighborhood scale
7 services to meet the community needs of directly adjacent
8 areas.

9 It goes on to, as has already been spoke about
10 today, examples include, but aren't limited to, community,
11 public community centers, police stations, libraries,
12 driver's license and road test facilities, or fire stations.

13 And it goes on to exceptions of -- exceptions to
14 the use category does not include large-scale government uses
15 with a regional or larger service area, or uses that would
16 more typically fall on a large scaler government, emergency
17 shelter, parks or recreation, or motor vehicle-related use
18 category. It does not include administrative offices of
19 local government agencies when those office functions meet
20 the definition of an office use category.

21 MR. GREEN: Thank you, Mr. LeGrant. I wanted to
22 also draw your attention to 11 U DCMR Section 202.1(i). Is
23 that relevant, and can you explain why?

24 MR. LEGRANT: Yes, so this is the specification
25 in Subtitle U of the permitted matter of right uses in R use

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1 groups, A, B, and C, which includes a subject zoning
2 district, which is R2, which lists that, under 202.1(i) that
3 government local uses is a matter of right use.

4 MR. GREEN: Thank you, Mr. LeGrant. And I'd just
5 like to draw your attention to 11 B DCMR Section 100.2,
6 definition of a fire station. Is that relevant in this case?

7 MR. LEGRANT: Yes, so as we saw in the
8 specification of the use category of local government uses,
9 the listed fire station -- it lists fire stations. The
10 zoning regulations go on in this section that you denoted,
11 Subtitle B, Section 100.2, definitions. That's the
12 definitions of the zoning regulations that defines the
13 specific term "fire station."

14 It's, to quote, "A building and associated land
15 used by the fire department to house personnel and equipment
16 in connection with the provision of fire, rescue, emergency
17 medical, hazardous materials response, and other types of
18 emergency services throughout the District of Columbia, and
19 includes the harbor facility."

20 MR. GREEN: Thank you, Mr. LeGrant. And lastly
21 I have a couple more questions, and then I'll open it to the
22 Board for other questions, and that is the determination
23 letter that you had issued had identified a fire station, and
24 I'll quote.

25 "The project includes a fire station, principal

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1 building, and two accessory support shelters to store fire
2 apparatus on the lawn near a lot adjoining the tracks, the
3 WMATA Metro rail tracks to the north." After review of the
4 materials that were presented, is that applicable in this
5 case?

6 MR. LEGRANT: Yes.

7 MR. GREEN: And can you explain why?

8 MR. LEGRANT: Yes, so in speaking with the
9 representative of Valor that showed me the drawings and the
10 program set forth for it said fire station, I reviewed those
11 drawings and looked at the -- what would be encompassed to
12 be proposed on the site.

13 It includes, as you noted, a primary building
14 which is a facility in which firefighters will reside, and
15 their support facilities, and then there will be a storage
16 area within that building for the vehicles.

17 In addition, there's two accessory buildings for
18 storage of additional vehicles, which after my review, I
19 concluded that that would fall under the definition of fire
20 station as set forth in the zoning regulations.

21 MR. GREEN: Lastly, Mr. LeGrant, after review of
22 all of the material, and your expertise, and review of the
23 regulations, is this facility, the fire station, may it be
24 built as a matter of right within -- on this property?

25 MR. LEGRANT: Yes.

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1 MR. GREEN: We have no further presentation, and
2 we're open to answering questions.

3 CHAIRMAN HILL: Okay. Does anybody have any
4 questions for the zoning administrator, DCRA?

5 COMMISSIONER MILLER: Thank you, Mr. Chairman.
6 Why does this not fall into -- is large-scale government use
7 defined other than in the section that you referenced, and
8 why is this not a large-scale government use in your --

9 MR. LEGRANT: Right.

10 COMMISSIONER MILLER: And well, just -- I'm sorry.
11 Let me -- I'm thinking out loud. I'll make it a three-part
12 question so you can address those parts.

13 Why is not a large government use in your opinion,
14 and if it were a large government use -- and part of that
15 question is why is it -- is it serving more than a local area
16 that a fire station serves?

17 Is it serving -- is this facility going to be
18 serving -- it says regional or larger service area. I assume
19 when they use the term "regional," they mean not the DMV, but
20 I assume they mean a larger region than just the local
21 neighborhood or local neighborhood.

22 And so, and what would -- and if it were a large
23 government use, what would this, what would that large
24 government -- what procedure would be required to allow it
25 in an R2 neighborhood? Is it something, a special exception

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1 or a variance relief?

2 MR. LEGRANT: So the first part of your question,
3 in my review of the proposed facility, the principal use is,
4 I believe, would be a neighborhood serving fire station
5 similar to other fire stations that I've seen throughout my
6 career in the District of Columbia.

7 It has I believe storage for several vehicles, two
8 to three vehicles as I recall, and the property owner can
9 speak I think to some of those specific numbers, but as a
10 typical neighborhood serving fire station, sleeping quarters
11 for the firefighters, the kitchen, an administrative office,
12 and other facilities that allow the support and operation of
13 those vehicles to be dispatched on an emergency basis.

14 There are two additional accessory structures for
15 the storage of other vehicles that I believe will be used out
16 of the District of Columbia. They will not be called from
17 that location, as I understand it, for emergency service.
18 They're stored there and I think they're rotated to other
19 fire stations in the District.

20 I looked at this carefully and determined that the
21 principal use is the fire station. You have these accessory
22 areas for the storage of these other fire fighting equipment,
23 and I concluded that it fell within the fire station
24 definition, and therefore when we look at the R2 regulations
25 of permitted uses, it has a local government use.

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1 To distinguish this from a large-scale government
2 use, I do not know offhand what the R2, the R use group
3 designation for large-scale government use. It's either
4 special exception, or if it's not listed, it would be a
5 variance.

6 COMMISSIONER MILLER: And so the accessory
7 structures will house vehicles and equipment that will be
8 serving the entire District of Columbia or a larger area than
9 just the local neighborhood?

10 MR. LEGRANT: The --

11 COMMISSIONER MILLER: They won't be responding
12 immediately to serve emergency service calls?

13 MR. LEGRANT: That's correct. There's a storage
14 facility for those --

15 COMMISSIONER MILLER: It's storage.

16 MR. LEGRANT: -- vehicles.

17 VICE CHAIR HART: Is that a garage you're talking
18 about?

19 MR. LEGRANT: It's -- and again, the property
20 owner can maybe speak more specifically to the program, but
21 they're roofed. They have roofs over them to store the
22 vehicles underneath to keep them out of the elements. I
23 don't think they're enclosed on the sides. I believe it's
24 like a roof over those stored vehicles.

25 COMMISSIONER MILLER: So in B 200.2, well, in the

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1 section you cited which describes the local government use
2 and then has the exception saying the use category does not
3 include large-scale government uses with the regional or
4 larger service area or uses which more typically would fall
5 within the large-scale government, emergency shelter, parks
6 and recreation, or motor vehicle-related use category.

7 You don't think that those accessory motor vehicle
8 storage facilities fall into this motor vehicle-related use
9 category? You think the principal fire station use, which
10 you determined to be a local government use, that the extra
11 motor vehicles which do serve a larger area don't meet this
12 exception? Do you understand what I'm saying?

13 MR. LEGRANT: That's correct.

14 COMMISSIONER MILLER: Because they are accessory
15 to the principal or because -- not because they don't include
16 motor vehicles, because they do.

17 MR. LEGRANT: Right. I deem them as accessory
18 because they're not being dispatched out of this location for
19 an emergency service call outside the surrounding
20 neighborhood.

21 I do not know the exact boundaries of that fire
22 station call area, but the principal use, the primary
23 building will be serving, as I understand it from the
24 representations of the applicant, for the use of the facility
25 is a neighborhood serving fire station.

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1 COMMISSIONER MILLER: And those -- this is my
2 question, Mr. Chairman. Those accessory structures that have
3 the extra vehicles and equipment, do we have, does the
4 District have those types of facilities located elsewhere in
5 the city? I guess they do, or is there more than one?

6 MR. LEGRANT: I do not know.

7 COMMISSIONER MILLER: Okay, thank you.

8 VICE CHAIR HART: Thank you. Actually,
9 Commissioner Miller, you actually asked one of the questions
10 that I had which was around the large-scale government use,
11 Subtitle B 200.2(s). One of the things that they did include
12 in there are, as their examples -- and this may go to your
13 kind of question, and I'm reading from the text itself.

14 Examples include, and this is Subtitle B
15 200.2(s)(2), it says, "Examples include, but are not limited
16 to, airports, jails, truck dispatch facilities, or
17 police/fire training facilities," and the question that I had
18 was: would you, Mr. LeGrant, think of this as a police/fire
19 training facility, or do you not see it that way?

20 MR. LEGRANT: It was never represented that there
21 would be training, a training function, that there would be
22 a training function at this location. I do not recall that
23 being represented to me.

24 VICE CHAIR HART: Thank you for that. The only
25 other question that I had was -- oh, what was that?

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1 Actually, I think that the other question I had was the one
2 that Commissioner Miller asked, which was why is this not a
3 large-scale government use? And your response was because
4 you felt that it more closely fell within the local
5 government use that is listed in Subtitle B 200.2(t), which
6 of course includes the words "fire station" in it.

7 And I don't think I had any other -- oh, actually,
8 the only question that I had was you said that the project
9 had about two or three vehicles that were in the actual fire
10 station itself. There were other vehicles that are stored,
11 and I'm not exactly sure what "stored" means.

12 Are those vehicles being used -- they're not going
13 to be dispatched from this location, but what is their -- why
14 are they stored there? And I don't know if you know that or
15 if I should ask the property owner, and I can do that later,
16 but I didn't know what your understanding of that was.

17 MR. LEGRANT: I think the property owner can speak
18 better to that. My recollection frankly was that on a
19 rotating basis, they were stored there, and that -- they're
20 stored there and then they're rotated with other fire engines
21 that are in use, and then they're -- it's just a rotating
22 basis. That was my understanding.

23 VICE CHAIR HART: And these are fire engines and
24 ambulances?

25 MR. LEGRANT: I don't recall.

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1 VICE CHAIR HART: Okay. And the only other
2 question I had was: did you think that this was a, any work
3 would be done on the fire, on these stored facilities, or
4 stored vehicles?

5 MR. LEGRANT: It was not --

6 VICE CHAIR HART: Any maintenance, any --

7 MR. LEGRANT: Yeah.

8 VICE CHAIR HART: -- repair or anything?

9 MR. LEGRANT: It was not represented to me that
10 there would be any maintenance activity. I do know generally
11 from my experience with fire stations that there is some
12 level of minor maintenance that occurs, that, you know, the
13 firefighters or other personnel from the fire department may
14 go in, and I don't know if they would change a broken
15 lightbulb on a fire truck or something, but it was never
16 represented to me that they would be overhauling engines or
17 doing major vehicle repair or maintenance.

18 VICE CHAIR HART: Okay. Thank you. These are
19 just questions for the DCRA and the ZA, correct?

20 CHAIRMAN HILL: Yeah.

21 VICE CHAIR HART: Okay.

22 CHAIRMAN HILL: Okay. Does the applicant have any
23 questions for the zoning administrator? I'm sorry. Does the
24 appellant have any questions? Please, go ahead.

25 MS. ZARA: Yes, we do. We're wondering why it

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1 would be the zoning administrator and not the actual District
2 government or DGS that could represent as to the accuracy of
3 this facility? Appellants have been in the dark. We
4 understand there --

5 CHAIRMAN HILL: Wait one second, Ms. Zara.

6 MS. ZARA: Okay.

7 CHAIRMAN HILL: That's okay. Just ask your
8 question. What was the question?

9 MS. ZARA: Can DGS or a government official
10 besides the zoning administrator give more definitive answers
11 and details as to where in the District this will serve,
12 whether there is going to be maintenance, why choosing this
13 site to circulate, and how many vehicles are going to be
14 there, two fire engines, three fire engines, two --

15 MR. DEBEAR: Objection.

16 MS. ZARA: I'm asking for instance. Those are the
17 --

18 CHAIRMAN HILL: Wait, wait, wait. Give me a
19 second. Give me a second. So you asked about 10 questions
20 in there, okay.

21 MS. ZARA: Curious minds need to know.

22 CHAIRMAN HILL: So it's okay. That's all right.
23 So your first question was: is there somewhere other than
24 DCRA that would have these answers? I don't -- what was your
25 --

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1 MS. ZARA: No, no.

2 CHAIRMAN HILL: What was your first question?

3 MS. ZARA: Who on earth has these answers? It
4 seems that a lot of pressure is being put on the zoning
5 administrator and his determination. Now, in the letter that
6 was sent out --

7 CHAIRMAN HILL: Okay, give me one second. Give
8 me one second. I'm just trying to understand the question.
9 So --

10 MS. ZARA: Who would have these answers?

11 CHAIRMAN HILL: So again, just to, Ms. Zara, that
12 all of the, so all of the questions that you're going to be
13 asking are based upon the testimony that was just given,
14 okay, so just to set those parameters, right?

15 MS. ZARA: Yes.

16 CHAIRMAN HILL: Whatever he just talked about,
17 those are the questions that you're going to be asking about,
18 not the whole envelope of everything that you have questions
19 about, just what he testified.

20 MS. ZARA: Okay.

21 CHAIRMAN HILL: I mean, that's just the way it
22 works, right?

23 MS. ZARA: Okay.

24 CHAIRMAN HILL: However, at least, I guess, the one
25 question that you were asking was is there another place

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1 other than DCRA that has these answers? Was that your
2 question?

3 MS. ZARA: Can these answers be made public to us
4 in a definitive way? It seemed --

5 CHAIRMAN HILL: Okay, give me a second.

6 MS. ZARA: It seemed highly speculative answers.

7 CHAIRMAN HILL: So the question -- do you think
8 you understand the question?

9 MR. GREEN: No, only insofar as you just said,
10 Chairman, we're talking about the testimony he just gave.
11 So the question is now, "Where can we go for more
12 information?" Is that really to the testimony that Mr.
13 LeGrant just gave? I'm saying that not to argue, but to say
14 what is the question about Mr. LeGrant's testimony that is
15 being -- I mean, what's the --

16 CHAIRMAN HILL: Okay.

17 MR. GREEN: What's the question about the
18 testimony?

19 CHAIRMAN HILL: Okay.

20 MR. GREEN: That's what --

21 CHAIRMAN HILL: Okay.

22 MR. GREEN: Just for the purposes of --

23 CHAIRMAN HILL: Okay, so, Ms. Zara, again, what's
24 your question of the testimony that Mr. LeGrant just gave?

25 MS. ZARA: What my question is, the District

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1 government, DCRA, I mean, DGS, Department of General Services
2 is here. Is that true? Where are you from, Mr. Green?

3 MR. GREEN: We're DCRA.

4 MS. ZARA: Oh. You're DCRA.

5 CHAIRMAN HILL: They're DCRA. They're zoning.
6 They're zoning.

7 MS. ZARA: So the details -- the details about
8 this facility, we must rely --

9 CHAIRMAN HILL: All right, that's okay. So that's
10 okay.

11 MS. ZARA: We must rely on the zoning
12 administrator.

13 CHAIRMAN HILL: So your question, I guess, is
14 again still along the lines of what Mr. Hart was just asking,
15 which again, like, how many vehicles? What is supposed to
16 be there? You guys do know what is going to be there, is
17 that correct? And what you understand from what is going to
18 be there fits within the parameters of your decision within
19 the regulations? I think that's the question.

20 MR. LEGRANT: Well, I'll say this. The questions
21 that -- when the representative property owner came to me
22 approximately a year ago, we looked at the facility, the
23 buildings, and the use, and that is, of course, the zoning,
24 you know, the zoning question to me. Is the use permitted?
25 And we all know that my answer was yes, it was.

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1 As to the number of vehicles, there was a
2 discussion on the number of vehicles, but the number of
3 vehicles is not regulated under the zoning regulations. I
4 believe that Mr. DeBear in a moment will be able to speak as
5 a representative of Valor, which is developing this facility,
6 and can speak much more in detail to the number of vehicles
7 and some of the aspects that Ms. Zara is interested in.

8 CHAIRMAN HILL: Okay. But still, now to follow
9 up with that question for Ms. Zara, the information that you
10 were given, again, is the information that you made your
11 determination upon, and that is that this is by a matter of
12 right?

13 MR. LEGRANT: That's correct.

14 CHAIRMAN HILL: Okay, Ms. Zara, what's your next
15 question?

16 MS. ZARA: Are there many more details as to, that
17 were asked in the hearing as to what parts of the DMV are
18 being served by this, how many vehicles, whether there's
19 going to be maintenance? All of the questions that were
20 asked, if those were delineated in your mind, those answers
21 you were in possession of, and that led to your
22 determination?

23 MR. GREEN: I don't -- can you clarify the
24 question? I don't even understand the question.

25 MS. ZARA: Okay. So I've listened to your answers

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1 to the questions before the Board, and you weren't sure about
2 how many vehicles are going to be there, what part of the --
3 I'm not try -- what part of the city or DMV will be served
4 by this? How many ambulances are going to be going from that
5 site directly and if there's going to be maintenance? You
6 said you were unsure of all of those facts --

7 MR. LEGRANT: I believe I --

8 MS. ZARA: -- upon determining --

9 MR. LEGRANT: I believe I --

10 MS. ZARA: -- upon your determination.

11 MR. LEGRANT: -- spoke that I was -- it was
12 represented to me as the primary use of -- the primary
13 building use would be a fire station that would be serving
14 the adjacent neighborhood.

15 As to the particular boundaries of what that
16 neighborhood constituted, no, I did not know what those
17 boundaries are, but it was represented and I accepted the
18 applicant's representation that this was a neighborhood
19 serving fire station with the accessory uses.

20 CHAIRMAN HILL: Okay.

21 MS. ZARA: Okay, last question?

22 CHAIRMAN HILL: Yeah, sure, go ahead.

23 MS. ZARA: It's just procedural. So the
24 application and the description was provided by Valor and not
25 in combination with the government? The government provided

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1 no details about its firehouse facility there?

2 MS. ZARA: Valor is I believe under contract to
3 --- with either DGS or FEMS -- to provide this facility.

4 CHAIRMAN HILL: Okay, all right.

5 MS. ZARA: I'm not sure that answered my question.

6 CHAIRMAN HILL: He -- yeah, he did answer it.

7 What was the question again, Ms. Zara? I'm sorry. It's been
8 a long day. That's okay. Repeat the question again.

9 MS. ZARA: It was --

10 CHAIRMAN HILL: He answered the question. I just
11 can't remember whether -- can you remember your question?

12 MS. ZARA: No, I can't.

13 MEMBER JOHN: So what I hear is that the zoning
14 administrator would not have that information. He's only
15 looking at the facilities, the building, and the use. So is
16 it going to be used as a fire station for that adjacent
17 neighborhood? And that's the information he would have.

18 CHAIRMAN HILL: Okay, all right, so thanks for the
19 clarification, Ms. John. So now I'm going to turn to Valor.
20 So Valor -- I mean, not Valor, Mr. DeBear, and so you can go
21 ahead and give a presentation and --

22 MR. DEBEAR: Do I get a chance to cross?

23 CHAIRMAN HILL: Oh, no, he didn't get a chance to
24 cross. I'm sorry, right. So I was going to -- well, we're
25 going to do this a little bit out of order, I suppose,

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1 because I missed you the first time, so -- oh, no, I didn't.
2 Did I miss you? No, I didn't miss you.

3 MR. DEBEAR: I do just have one question.

4 CHAIRMAN HILL: No, no, but I'm saying you -- I
5 did ask you if you had any questions for the appellant and
6 you said no. Right, right, yeah, I understand. So do you
7 have any questions for DCRA?

8 MR. DEBEAR: Yes.

9 CHAIRMAN HILL: Okay.

10 MR. DEBEAR: Just one.

11 CHAIRMAN HILL: Sure.

12 MR. DEBEAR: Mr. LeGrant, can you read me the
13 first sentence of your determination letter in Exhibit 8 and
14 what that indicates to you?

15 MR. LEGRANT: Yes, reading from my determination
16 letter of October 16, 2018 to Mr. Hilmar Noble, "Mr. Noble,
17 I have reviewed the proposed facilities for a D.C. FEMS
18 Engine Company 27 at 4409 Minnesota Avenue, N.E., located on
19 Lot 846 and Square 5097 that we discussed on July 10, 2018."

20 MR. DEBEAR: Would that indicate to you that this
21 is for the District of Columbia?

22 MR. LEGRANT: Yes.

23 MR. DEBEAR: Have you known DGS to construct any
24 facilities that were meant for other states?

25 MR. LEGRANT: No.

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1 MS. ZARA: Object. Can we object?

2 CHAIRMAN HILL: He's just asking questions.

3 MS. ZARA: Speculation.

4 CHAIRMAN HILL: He's just asking questions.

5 MR. DEBEAR: It's relevant, so sorry, can you
6 repeat --

7 CHAIRMAN HILL: He's just asking questions.

8 MR. DEBEAR: This goes to the definition of fire
9 station.

10 CHAIRMAN HILL: He's just asking -- you guys don't
11 have -- it's okay, like, wow, it's really late. Repeat your
12 question, Mr. DeBear.

13 MR. DEBEAR: Have you known the Department of
14 General Services for the District of Columbia to build a
15 structure for another state?

16 MR. LEGRANT: No.

17 CHAIRMAN HILL: Okay. All right, is that it?
18 That's it. Okay. All right, so now, I guess, if you want
19 to go ahead and give your presentation. And then, if you
20 want to speak to some of the questions, I guess they've
21 already kind of come up in terms of, like, you know,
22 locality, number of trucks -- that kind of thing --
23 maintenance. I mean, again, what it seems to be -- and this
24 is where, I guess, we all kind of are, is that whether or not
25 it is a -- it is a training facility or something like that,

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1 you know, that's -- the large-scale use seems to be kind of
2 what some of the board members have had questions about.

3 MR. DEBEAR: Right, right. And --

4 CHAIRMAN HILL: But I am going to go ahead and
5 start the clock and you -- you know, go however you like, Mr.
6 DeBear.

7 MR. DEBEAR: Right. So -- I just want to start
8 off the dispatch with one issue, which is this D-521.3(b).
9 I think the zoning administrator spoke to this, but that's
10 for a special exception for a development standard -- lot
11 occupancy rear yard, et cetera. It's just simply not
12 applicable. So this is a -- this is a by right use, it isn't
13 relevant to apply that -- that section of the regulation.
14 So that would certainly be our position on that.

15 This idea that this is something other than a
16 local government use -- so first off, in terms of the
17 proximity of where these -- and Mr. Lansing from Valor
18 Minnesota is here, so he can speak to this as well. But in
19 terms of the proximity, the definition -- I would point the
20 board to the definition of fire station, which specifically
21 recognize that it would provide services throughout the
22 District of Columbia. So the use category for local
23 government use references fire stations. Vis a vis, fire
24 stations are something that can service the entire District.

25 Now, this fire station -- like the 50 to 60,

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1 anecdotally speaking -- 50 to 60 other fire stations
2 throughout the city -- I think we can all agree there are
3 many -- is intended to serve a neighborhood nearby for a
4 reason. When there's a fire, they can reach the fire
5 quicker. It is not a large-scale government use. We read
6 the definition, and those are airports and jails and training
7 facilities. There -- there is no training happening at this
8 facility. And again, I can allow Mr. Lansing to speak to
9 this, but this idea that it's anything more than a fire
10 station and somewhere to -- to literally shelter vehicles is
11 just a -- a gross misstatement. And I think that's what you
12 heard from the zoning administrator. This falls squarely
13 within the local government use.

14 I'd also note that it is not a motor vehicle-
15 related use. That is, to quote 200 -- I apologize 200.2(w)
16 -- that's a use engaging permanently in on-site sale, rental,
17 service, maintenance or refueling of motor vehicles. There's
18 no -- there's -- there's none of that. This is a place to
19 shelter vehicles. There will be no auto repairs. There will
20 be no maintenance. That is not what the facility is designed
21 for. Again, this is a permitted project. So we have a --
22 a set of plans that has been approved by DCRA. We spoke a
23 lot about whether that was even what's being appealed here,
24 but for the purposes of this appeal, the plans, you know,
25 speak for themselves. And this idea of the enormity of this

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1 facility -- it's a fire station. It's within all of the by-
2 right development standards in the R-2 zone. There -- we are
3 not here for a special exception or a variance. We are here
4 to defend, obviously, an appeal of the use.

5 With all that being said, I know that I obviously
6 cannot testify. So I'm actually just going to call Mr.
7 Lansing up just to speak to the board. And I know Board
8 Member Hart specifically had said he had a question. But
9 again, this is a -- a District of Columbia facility. And
10 it's a fire station. So they are building a fire station to
11 service the District of Columbia. It's not a regional
12 facility. It's not anything more than a -- a neighborhood
13 fire station.

14 CHAIRMAN HILL: Okay, I don't know if Mr. Hart has
15 any -- I mean, first of all, whether -- can you please
16 introduce yourself, for the record?

17 MR. LANSING: Mr. Chair, Members of the Board, my
18 name is William Lansing. I am with the ownership team, Valor
19 Minnesota, owner of the property.

20 CHAIRMAN HILL: Okay. So in terms of -- are you
21 finished with your presentation, Mr. DeBear?

22 MR. DEBEAR: Yes, that was it.

23 CHAIRMAN HILL: Okay. Does the Board have any
24 questions of the applicant -- of the property owner?

25 VICE CHAIR HART: Just the question that I had --

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1 and I asked -- I was asking -- thanking Mr. LeGrant for
2 bearing with me -- the questions that I was -- that I was
3 asking, which probably is better for the owner to -- to kind
4 of talk to. So Mr. Lansing, it's really around how many
5 vehicles are we looking at that are -- that are going to be
6 here? You know, I understand that they're going to be
7 several stored vehicles that are not going to be dispatched
8 from this location. But I was wondering why are they being
9 -- what is the storage for? You know, why are they -- why
10 are they stored here, you know, and not some other place?

11 MR. LANSING: Sure, Board Member Hart, to answer
12 your question. So yes, the -- the Butler Buildings, which
13 are -- I think the two buildings that everyone keeps sort of
14 referring to as these facilities that will be storing these
15 vehicles. What they are is, the exact number I don't have.
16 We can certainly get you an answer. It's multiple ambulances
17 and fire trucks.

18 (Simultaneous speaking.)

19 VICE CHAIR HART: I mean, are we talking about 20?
20 Or are we talking about three?

21 MR. LANSING: More than three, probably less than
22 20. It's probably somewhere in between -- would be my guess.
23 Because there's two buildings, and it depends upon --

24 VICE CHAIR HART: How large are the buildings?

25 MR. LANSING: The buildings are approximately --

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1 they're approximately 8,000 square feet per building -- give
2 or take.

3 VICE CHAIR HART: Okay.

4 MR. LANSING: So it's -- and there's -- there's
5 sort of multiple lanes in each building that will have a
6 combination of various ambulances, fire trucks, ladder
7 trucks, pumper trucks -- all emergency vehicles.

8 VICE CHAIR HART: And the reasoning that it is
9 difficult to -- well, because you're talking about vehicles
10 that have different sizes, that are different scales, it
11 could be a -- I don't know, 40-foot -- or whatever -- long
12 ladder truck, or it could be an ambulance, which is a much
13 shorter vehicles --

14 (Simultaneous speaking.)

15 MR. LANSING: Correct.

16 VICE CHAIR HART: Is that what you're --

17 (Simultaneous speaking.)

18 MR. LANSING: That's correct. Yes, sir.

19 VICE CHAIR HART: Okay. You don't need to get
20 into the details of that.

21 MR. LANSING: Okay.

22 VICE CHAIR HART: I'm just trying to understand --
23 a little further -- this.

24 MR. LANSING: Yes.

25 VICE CHAIR HART: And so they're -- they'll be

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1 stored there. And they will be then not dispatched, but when
2 -- at some point -- and I'm not -- I guess I'm a little
3 confused as to why they're being stored there.

4 MR. LANSING: Sure, absolutely. To be clear.
5 There's no maintenance taking place. There's no training.
6 These vehicles are -- they're what's called sort of a make-
7 ready facility. So these vehicles are being parked in the
8 facility, and sort of in the details -- they're hooked up to
9 what are called trickle chargers in these facilities. These
10 facilities keep the -- the vehicles out of the elements, out
11 of the weather. They're hooked up to an electrical charge
12 constantly, which keeps the emergency computer system ongoing
13 and charged and ready for dispatch. And they're ready and
14 on-call for when other emergency vehicles throughout the
15 District go down or need repair and are shipped off to some
16 other facility. A call is placed into this, where those
17 vehicles are then dispatched to the other engine companies
18 to then be put into use. So they're sort of on standby,
19 ready to service the needs of other fire stations, including
20 this one, in the event that a fire station -- or fire truck
21 or an emergency ambulance goes down and needs service.

22 VICE CHAIR HART: Okay, and so the -- you talked
23 about they're not going to be -- they're not going to be
24 maintained -- there's not going to be any maintenance going
25 on for the vehicles. You gave us the information as about --

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1 as to about how the scale of each of the -- of each of the
2 buildings. Now, with regard to the main building, how many
3 vehicles will be stored -- will be -- will be used out of
4 that building?

5 MR. LANSING: Again, it's going to vary depending
6 on -- but the -- there's three bays there, which would be a
7 -- two fire engines and an ambulance, is what the
8 contemplated, I guess, vehicle count right now would be.

9 VICE CHAIR HART: That may increase to four if
10 you're dealing with -- you know, depending on how many
11 ambulances or whatever -- it's -- there's a limited number
12 of -- of space to be able to house these vehicles. And so,
13 whatever combination is still going to be -- it may be five
14 vehicles, if they're smaller. But the longer vehicles --

15 MR. LANSING: That's correct.

16 VICE CHAIR HART: Okay.

17 MR. LANSING: Correct.

18 VICE CHAIR HART: All right, thank you.

19 MEMBER JOHN: So are there other facilities like
20 this one in the District that have storage for, you know,
21 readiness? Or is --

22 MR. LANSING: I believe so. I don't -- I can't
23 point to one -- any specifically. That's be probably a
24 question more for the Department of General Services. It's
25 -- to my -- my understanding is there are, but I don't have

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1 specifics on what those might be.

2 COMMISSIONER MILLER: Yes, just to clarify what
3 Mr. Hart asked. He said there won't be a -- it's not -- it's
4 not for ongoing maintenance or repair?

5 MR. LANSING: That's correct.

6 COMMISSIONER MILLER: Okay. And it's good to see
7 you on a different case. We've seen you a lot on the other
8 --

9 (Simultaneous speaking.)

10 MR. LANSING: You too, Mr. Miller.

11 COMMISSIONER MILLER: When I saw Valor, I
12 shuttered.

13 (Laughter.)

14 CHAIRMAN HILL: Okay, does DCRA have any questions
15 for the -- the property owner?

16 MR. GREEN: No questions.

17 CHAIRMAN HILL: Okay. Does the Appellant have any
18 questions for the property owner?

19 (Simultaneous speaking.)

20 CHAIRMAN HILL: Okay. Again, just to let you
21 know, it's based on the testimony that they just gave. Okay?

22 MS. BROWN: How many buildings are going to be on
23 this site?

24 MR. LANSING: There will be three buildings in
25 total.

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1 MS. BROWN: And you said one of the buildings is
2 -- is 8,000 square feet?

3 MR. LANSING: Approximately, yes ma'am.

4 MS. BROWN: And what's the size of the other two
5 buildings?

6 MR. LANSING: The -- and again, these are
7 approximate, the two Butler Buildings are approximately
8 between 7,000 and 8,000 square feet, I believe, each. And
9 then the fire house itself -- I believe the gross area of
10 that building -- that includes, I think, two levels -- is
11 around 10,000 square feet. But that is both the ground floor
12 as well as the upper bunk room and offices, et cetera.

13 MS. BROWN: And you all don't think that's a large
14 facility?

15 MR. DEBEAR: Objection. Objection, I'm not sure
16 what the size of the facility has to do with the use.

17 MS. BROWN: Because they kept saying about a large
18 facility compared to not a large facility. So that's what
19 I am asking him, how -- what is a large facility? When you
20 made rules --

21 (Simultaneous speaking.)

22 CHAIRMAN HILL: Okay, I -- that's fine. That's
23 fine. So again, what -- what we're here for is to find out
24 whether or not you all -- this is your appeal, right? And
25 what your appeal here is for that the zoning administrator

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1 made an error in giving this building permit. And then you
2 have -- and we're going to try to figure out, actually, as
3 to what you're -- if you're appeal is here actually for the
4 building -- well, that's a whole other thing. Anyway, you're
5 here because you believe the building -- the property -- I
6 am sorry. That the zoning administrator erred in giving the
7 building permit. So I understand, kind of, the questions
8 that you guys are trying to figure out in terms of the some
9 of the clarification. But I am just trying to let you know,
10 that's why you're here, right? You're here -- that you think
11 the zoning administrator made an error. But we are all
12 getting to ask our questions. Do you have any more questions
13 of the property owner?

14 MS. DOUGLAS: My question was -- you talking about
15 the huge size and you say you're not aware, and I'm thinking
16 if you had prepared yourself, you should have had data,
17 knowing that you was coming here. That would have --

18 MR. DEBEAR: Objection. That's the question?

19 CHAIRMAN HILL: That's okay. That's okay. So --
20 so --

21 (Simultaneous speaking.)

22 MS. DOUGLAS: I'm just saying, because --

23 CHAIRMAN HILL: That's all right. That's all
24 right. I mean, everybody -- and --

25 (Simultaneous speaking.)

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1 MS. DOUGLAS: I know, but I'm just saying he said
2 that it was -- it was -- the DGS was the person to refer to,
3 but it goes back once again -- transparency, and if we had
4 had this information known about it, how to --

5 CHAIRMAN HILL: That's okay. So Ms. Douglas, I
6 think what your question started was -- or whatever -- I
7 mean, you're -- I don't know what your question, you're
8 making a statement as to what --

9 MS. DOUGLAS: Well, my question --

10 CHAIRMAN HILL: -- you think that Mr. Douglas --
11 I mean, no, I'm sorry, mister --

12 MS. DOUGLAS: Commissioner Douglas.

13 CHAIRMAN HILL: No -- with DeBear --

14 MR. LANSING: Lansing.

15 CHAIRMAN HILL: Lansing, thank you -- was -- was
16 not as prepared as he should have been. And so I am saying
17 that he has given at least some square footage numbers for
18 some of those buildings, which gives you an idea of what the
19 size of those buildings are --

20 MS. DOUGLAS: Which is huge.

21 CHAIRMAN HILL: But what -- what question do you
22 have?

23 MS. DOUGLAS: My question is -- is that -- how
24 many homes will be -- be taken because of this huge size of
25 building that --

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1 CHAIRMAN HILL: Now that, miss -- now I do have
2 to say that that question has nothing to do with the
3 testimony he gave. So -- okay. All right. So does the
4 board have any more questions of anybody? Oh, sure, go ahead
5 Ms. Zara.

6 MS. ZARA: Just have two quick ones. So in terms
7 of training, I'm just confirming you're absolutely sure that
8 no training will be done on this site. I'm just --

9 MR. LANSING: That's correct.

10 MS. ZARA: And will there be fueling and fuel
11 storage on this site?

12 MR. LANSING: There will be no fueling or fuel
13 storage on this site, no.

14 MS. ZARA: Do you know where the fuel storage
15 facilities are? Or the training facilities are in the
16 District?

17 MR. LANSING: I do not, no.

18 CHAIRMAN HILL: Okay, so he answered no. And I
19 am just -- just for the record, also that I am clarifying --
20 I don't even know exactly what that means. Meaning, I am
21 sure there is going to be some kind of training on that site,
22 right? Like firemen need to understand what's going on.
23 They're going to train in some capacity. I think what we
24 were trying to get to -- and we're the ones that brought it
25 up in terms of the large-scale facility, that it's a large-

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1 scale training facility within the zoning definitions, right?
2 Like they might have a training class there. I don't know
3 what -- I'm just letting you know that some kind of training
4 will probably go on there. There's a difference between the
5 training we're talking about and what I assume you're asking
6 about, which is, is it large-scale facility training? And
7 their answer is no. Okay, I am just clarifying for the
8 record that they might have a training on CPR, or whatever
9 it is. That's training. So it's large -- it's training as
10 defined as a large-scale training, and their answer is no.
11 Okay. So does anybody have any more questions?

12 MS. ZARA: Can I ask one more?

13 CHAIRMAN HILL: Sure.

14 MS. ZARA: I asked about fueling. Will there be
15 storage of any flammable raw materials on this site?

16 MR. DEBEAR: Objection. I am not sure --

17 CHAIRMAN HILL: That's okay.

18 MR. DEBEAR: That you're not allowed to -- as a
19 fire station.

20 CHAIRMAN HILL: I -- you're -- you're -- I guess
21 your answer is that you can -- I mean, I am not saying that
22 you're allowed to or not allowed to. I mean, do you know if
23 they're -- I would assume they're going to have some
24 gasoline. There will be something there that's flammable.

25 MR. LANSING: There will be some gasoline in the

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1 trucks I would imagine, yes.

2 CHAIRMAN HILL: Yes.

3 MR. LANSING: If you mean it from that
4 perspective.

5 MS. ZARA: How close is that to --

6 (Simultaneous speaking.)

7 CHAIRMAN HILL: Okay, so again -- again. I don't
8 want to get down the road on these other things -- the
9 environmental factors. I mean, again -- and we've been
10 pretty good about letting everybody ask their questions and
11 try to get through this as best as possible at quarter-of-
12 seven at night, and we start at 9:00 in the morning, right?
13 I don't know when you all get here, but we start at actually
14 8:30.

15 MS. BROWN: We were here at 7:30.

16 CHAIRMAN HILL: All right -- okay, well good for
17 you. That's good. That's good. And just -- and I
18 appreciate that -- so that means that -- I guess what I am
19 trying to clarify, it takes a lot of energy to be up here.
20 And so -- nonetheless -- so the questions that are trying to
21 be asked are, again, how the zoning -- no, no, we're done.
22 We're done. Okay? Because you're now going to the gasoline,
23 and like all these other things. You know, I am trying to
24 figure out how you think the zoning administrator erred. So
25 now, you're going to get a chance to give your conclusion.

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1 And I am going to go with, I guess -- we'll go with DCRA
2 first, okay? Give a conclusion. We'll let the Appellant go
3 next with a conclusion. And the property owner has a
4 conclusion.

5 MR. GREEN: Mr. Chairman, outside of the -- the
6 timeliness issue, which we still stand by, it's clear that --
7 and it's evident by the testimony that Mr. LeGrant gave that
8 the fire station is of by-right in that zone and on that
9 property. He's presented ample testimony with respect to the
10 regulations, and with respect to the appeal, his
11 determination letter was proper and the contents of it was --
12 and the contents were as well. So with that being said, we
13 believe the appeal, if it's not going to be dismissed, should
14 be denied. And thank you very much for your time today.

15 CHAIRMAN HILL: Okay. And just again, for
16 timeliness issues here with the board, Ms. Zara, if you have
17 any kind of like rebuttal that you want to put forth or
18 anything -- you know, just roll it into your conclusion,
19 okay? So go ahead.

20 MS. ZARA: Okay, I'll be brief. Okay, we find
21 most of the answers to --

22 (Simultaneous speaking.)

23 CHAIRMAN HILL: Okay, Ms. Zara, someone just made
24 a suggestion, we'll let you go last. Okay? All right?
25 Okay, so you can think about what you'd like to say. Mr.

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1 DeBear?

2 MR. DEBEAR: I'll keep this short. I do want to
3 echo Mr. Green that we still maintain that this appeal is not
4 timely and/or was taken from a document that was not a
5 document that can be appealed. Take your pick, frankly. But
6 beyond that, in terms of the substance, I think it is very
7 clear here -- this is a fire station that is intended to
8 serve the neighborhood. If it serves the District of
9 Columbia, then that is also permitted under the definition
10 of fire station, which is very clearly referenced in the use
11 regulations for a local government use, which in turn is
12 permitted in the R-2 zone. Again, there is a reason for
13 that. It is a neighborhood-serving public function. And the
14 definition of fire station, just to put a fine point on this,
15 clearly references that it would be used by the fire
16 department to house personnel and equipment. Equipment is --
17 are trucks. And this is -- this -- the apparatus bays are
18 meant to store equipment. They are meant to store trucks for
19 the use of the fire station. This was something that the
20 zoning administrator said he knew about and it says it in his
21 letter that they are challenging. He knew about these bays
22 and clearly they are part and parcel of the fire station.
23 This is not a large-scale government use, which is something
24 like a jail or an airport, which is meant to serve, again,
25 the region. This is one of 50, 60, 70 -- I am not sure --

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1 fire stations throughout the city. They are not regional
2 fire stations. There is no training. So I think this is
3 very clear that it falls within the local government use.
4 And finally I would just say that I appreciate the Board's
5 time tonight. It's been a long day and we ask that you
6 dismiss this appeal.

7 CHAIRMAN HILL: Okay, thank you. Ms. Zara?

8 MS. ZARA: It seems that most of the answers are
9 unsatisfying to us in terms of the justification for this
10 large facility. It -- it -- the description of it with three
11 large buildings -- 8,000; 7,000; 10,000 square feet -- one
12 with two floors. Also the storage of between 20 and maybe
13 30 vehicles to service the entire -- not with sirens
14 screaming all the time, but to service the --

15 CHAIRMAN HILL: I believe -- just to clarify. I
16 believe he said between three and 20. Just to -- just --

17 MS. ZARA: Okay, three and 20 -- we're not sure.
18 Most of the answers seem speculative and unsatisfying. We
19 have to rely on the developer and a single assessment agent
20 to determine the enormity of this place. If you look at the
21 definition of 202.1(I) or 100.2 in 11 BDCMR it says a fire
22 house is a building, and it includes the harbor facility.
23 This is not a building. These are a large amount of large
24 buildings with large vehicles within 8 to 14 yards of a
25 neighborhood that they're going to destroy. So when it's

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1 stressed that this is here to serve the neighborhood, this
2 is here to dislodge the neighborhood. There's a functional
3 fire house a half a mile away in a commercial zone. And this
4 is clearly an expanded facility to serve the city. It seems
5 unusual and it seems immense and it -- it was carried out in
6 secrecy, and until we drag everybody out here, we never find
7 out the details. And we're still dissatisfied with the
8 answers and believe, with the facts that have been disclosed
9 here, that this does fall within a large-scale facility.

10 CHAIRMAN HILL: Okay. I am going to make one
11 comment, just for the record -- and you said -- you said it's
12 carried out in secrecy. I don't know if this was carried out
13 in secrecy or not, I just want to say for the record, that
14 was your comment. Okay?

15 MS. ZARA: Okay. Okay -- to -- to clarify, it's
16 been Appellants' feeling that unless they visit the offices
17 and are -- and talk to people who provide them -- months and
18 months they should have been mailed --

19 CHAIRMAN HILL: I'm just trying to interrupt. You
20 used the word secrecy, and I know how the process works to
21 the extent that it's not secret. I'm here right now. It's
22 not secret. Okay?

23 MS. ZARA: Up until this point.

24 CHAIRMAN HILL: Okay, whatever -- you know, you're
25 here, right?

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1 MS. ZARA: Okay.

2 CHAIRMAN HILL: If it's a secret, this thing would
3 be built and nobody would be here, okay? So --

4 (Simultaneous speaking.)

5 MS. ZARA: Almost, almost.

6 CHAIRMAN HILL: -- or, well, anyway -- all right.
7 Okay, so let me -- let me say one thing. I guess -- I guess
8 -- the -- well, anyway. So I want to -- Ms. John, I think,
9 might have had a question. But before we do the question,
10 I actually do want to have an emergency meeting, okay? I
11 want to meet with OAG and I had a couple of questions that
12 I wanted to ask about this. So as Chairperson for the Board
13 of Zoning for the District of Columbia and in accordance with
14 Section 407 of the District of Columbia Administrative
15 Procedures Act, I move that the Board of Zoning Adjustment
16 hold a closed emergency meeting on November 20th for the
17 purposes of seeking legal advice from our counsel on Case
18 Number 201-41 Appeal of ANC 7(d) per D.C. Official Code
19 Section 2-575(b)(4) and/or deliberate upon Case Number 201-41
20 Appeal of ANC 7(d), but not make any decisions for the
21 reasons cited in the D.C. Official Code Section 2-575(b)(13).
22 Is there a second?

23 VICE CHAIR HART: Second.

24 CHAIRMAN HILL: Mr. Secretary, if you'd please
25 take a roll call vote for us?

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1 SECRETARY MOY: Yes, sir. When I call a board
2 member's name, if you would please reply with a yes or no.
3 Ms. John?

4 MEMBER JOHN: Yes.

5 SECRETARY MOY: Zoning Commissioner Miller?

6 COMMISSIONER MILLER: Yes, and I hope it will be
7 short.

8 SECRETARY MOY: Vice Chair Hart?

9 VICE CHAIR HART: Yes.

10 SECRETARY MOY: Chairman Hill?

11 CHAIRMAN HILL: Yes.

12 SECRETARY MOY: That completes the roll call vote,
13 sir.

14 CHAIRMAN HILL: Okay, I hereby give notice that
15 the Board of Zoning Adjustment will recess this proceeding
16 on this date at 6:50 p.m. to hold a closed emergency meeting
17 in the Office of Zoning Conference Room pursuant to the
18 District of Columbia Administrative Procedures Act, a written
19 copy of this notice will be posted to the Jerrily R. Kress
20 Memorial Hearing Room at this time. Thank you. We'll be
21 back in a couple minutes.

22 (Whereupon, the above-entitled matter went off the
23 record at 6:48 p.m. and resumed at 7:09 p.m.)

24 CHAIRMAN HILL: All right, Mr. Moy, we're back.

25 SECRETARY MOY: Thank you, Mr. Chairman.

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1 CHAIRMAN HILL: All right, so we just had our --
2 I mean, it's a little cool in here, is it. We just had our
3 opportunity to have an emergency closed meeting with OAG,
4 just to kind of understand some things a little bit. And I
5 think what I would like to propose from us, for the Board or
6 whatever, is if we could get findings of fact and conclusions
7 of law from the Applicant -- the Appellant and the property
8 owner and I guess DCRA as well. And then, was there anything
9 else that you might -- because then what we're going to do
10 is we're going to have an opportunity look at that from what
11 you guys end up submitting, okay? And then we can go ahead
12 and make a decision based off of that. The -- and Mr.
13 Miller, you had some other things that you might want to take
14 a look at?

15 COMMISSIONER MILLER: Thank you, I support the
16 procedure you just outlined. We'll set a decision date for
17 -- for that. I would like to receive from either the
18 property owner, or DCRA, or both the -- the building plans.
19 The -- including the elevations that the Appellant, Ms. Zara,
20 was -- I hadn't seen that. I would like to take a look at
21 them, and just have them as part of your submission of the --

22 CHAIRMAN HILL: Just with the submission. Just --
23 you can put them in the submission.

24 MR. DEBEAR: Okay. I was just going to say, I
25 have them.

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1 (Simultaneous speaking.)

2 COMMISSIONER MILLER: Oh, not today. Yes, that's
3 okay. It's part of the -- Mr. Moy will set some dates for
4 the post-hearing submissions.

5 CHAIRMAN HILL: Is there anything else anybody
6 wants?

7 MS. CAIN: I just want to note for all parties if
8 this is only responding to the claims brought up in the
9 original appeal. No additional claims can be added at this
10 point in the findings of facts and conclusions of law.

11 CHAIRMAN HILL: Right, thank you very much. I
12 appreciate that. So again, what that means is again,
13 whatever the Appellant has originally argued is what you need
14 to now provide findings of fact and conclusions of law about.
15 Anything new that you introduce will be thrown out, okay?
16 No, I'm just being clear, okay. Anything else?

17 (No audible response.)

18 CHAIRMAN HILL: All right, when do you think we
19 need this, Mr. Moy?

20 SECRETARY MOY: Before I get into that, Mr.
21 Chairman, referencing Mr. Miller's request for the submittal
22 of approved building plans and elevations, did you want that
23 submitted by the property owner, or DCRA?

24 SECRETARY MOY: Just for clarity.

25 MR. DEBEAR: I can do that.

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1 SECRETARY MOY: You can do that?

2 CHAIRMAN HILL: Whatever is easiest. That's fine.
3 So, Mr. DeBear.

4 SECRETARY MOY: All right. So --

5 CHAIRMAN HILL: So the property owner is going to
6 submit the elevations and the plans. And then the -- and
7 then we're just going to get findings of facts and
8 conclusions of law.

9 SECRETARY MOY: Okay, so Mr. Chairman, the -- to
10 allow time to prepare the findings of fact and conclusions
11 of law, the last airing date of this -- in 2019 is December
12 18th, which is really not that far away. So if I start with
13 there -- we can -- the Board can change that. So we start
14 from there -- because today is already November 20th.
15 There's that -- the holiday --

16 CHAIRMAN HILL: I was laughing because we were at
17 12 cases before, then we added something else on. And so now
18 -- I mean, I would like to get this taken care of as quickly
19 as possible as well so that, you know -- you're back here
20 anyway, you said, on the 18th, right Mr. Miller?

21 COMMISSIONER MILLER: Well that's -- that's one
22 of the cases we pushed off to --

23 CHAIRMAN HILL: Right, right.

24 (Simultaneous speaking.)

25 COMMISSIONER MILLER: But I'll be here whenever

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1 you can do it.

2 CHAIRMAN HILL: So we already have now 13 cases.
3 And then -- but this will be a decision. And then we'll do
4 the decision first. And then we can do your case, right?
5 So let's do it on the 13th, okay? So work backwards -- I'm
6 sorry, 18th. So work backwards from the 18th, Mr. Moy.

7 SECRETARY MOY: Okay, so to allow time for the OHA
8 and the staff to review the findings of fact and conclusions
9 of law, then perhaps if all the parties can make their
10 submission by -- I'd like for them to submit that more than
11 a week ahead of time. So let's say December -- December 6th?
12 That's what I was going to say too. December 6th, which is
13 a Friday. December 6th to submit findings of fact,
14 conclusions of law. The drawings can be submitted --
15 hopefully this week or so. And also, Mr. Chair, we ask the
16 Appellant who -- who showed drawings and plans -- Ms. Zara --
17 to submit that also onto the record, because that's part of
18 what was presented today.

19 CHAIRMAN HILL: Ms. Zara, yes, you were holding
20 up a bunch of stuff. Just go ahead and submit that into the
21 record as well.

22 MS. ZARA: I just limit the evidence to what was
23 discussed in the hearing and -- and addressed --

24 SECRETARY MOY: Just the pictures and the plans
25 that you showed --

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1 MS. ZARA: Yes, the renditions.

2 SECRETARY MOY: That should be in the record. So
3 if you can upload that into the record, that would be
4 helpful.

5 MS. ZARA: Okay. And I should limit it to that --

6 SECRETARY MOY: Okay. And let's see, for the
7 property owner -- the attorney representing the property
8 owner, if you could submit those drawings by -- can you do
9 it this Friday? Or do you want to do it next week -- Monday?

10 MR. DEBEAR: I can do it by Friday.

11 SECRETARY MOY: Okay, let's do that.

12 MEMBER JOHN: Mr. Chairman, I have one request for
13 DCRA.

14 CHAIRMAN HILL: Sure, go on.

15 MEMBER JOHN: To clarify how this facility meets
16 the definition of a fire station in B-100.

17 (Pause.)

18 CHAIRMAN HILL: She'd wants to know how it meets
19 the definition of a fire station in B-100.

20 MR. DEBEAR: Just to be clear, there's no
21 responsive filings to any of these. The Board is not
22 requesting any responses --

23 CHAIRMAN HILL: No.

24 MR. DEBEAR: -- by any of the parties to any of
25 what's been requested?

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1 CHAIRMAN HILL: No.

2 MEMBER JOHN: You're welcome to submit something
3 regarding the fire station, if you like.

4 MR. DEBEAR: Oh, I'll submit the plans. I just
5 wanted to be clear that these aren't -- this isn't a -- an
6 iterative --

7 MEMBER JOHN: No, it's not mandatory. But if you
8 would like to respond, that's fine.

9 (Laughter.)

10 (Simultaneous speaking.)

11 CHAIRMAN HILL: Right, right.

12 MR. DEBEAR: I'm saying no responses.

13 CHAIRMAN HILL: We're not doing the back-and-
14 forth.

15 MR. DEBEAR: Yes, no back-and-forth.

16 CHAIRMAN HILL: We're not doing any responses --
17 right. So okay. All right, and then, Mr. Moy, go ahead,
18 sir?

19 SECRETARY MOY: Oh, I just -- just -- had a
20 question, Ms. John, regarding her question about definition
21 of a fire station -- if it was fine if the parties would add
22 that into their findings of fact, conclusions of law as
23 opposed to a separate filing?

24 MEMBER JOHN: So my question is how does the
25 permit that the -- the building approved in the permit meet

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1 the definition of fire station in B-100?

2 CHAIRMAN HILL: And I thought that question that
3 you were asking was specifically to DCRA, correct?

4 MEMBER JOHN: Yes, it was.

5 CHAIRMAN HILL: So that's fine. So nobody else
6 has to respond to that. DCRA -- the Board Member is asking
7 how the zoning administrator is defining fire station in this
8 context. Okay. All right, so nobody else has to say
9 anything about fire stations. All right -- I mean, in that
10 definition -- in B-100. Okay. You know the dates?

11 SECRETARY MOY: Yes, sir. The decision will be
12 on December 18th --

13 CHAIRMAN HILL: December 18th.

14 SECRETARY MOY: It's a meeting session. It's not
15 a hearing session. Findings of fact and conclusions of law
16 from parties would be due by December the 6th. All right?
17 And those are the pertinent days. Oh, and the property
18 owners said that they agreed to submit the -- the drawings,
19 plans by Friday, November 21st -- 21? Twenty-two.

20 CHAIRMAN HILL: Okay. And just to clarify what
21 Mr. Moy was mentioning is that it's a -- a meeting case,
22 meaning we don't take testimony. You guys are welcome to
23 come down and watch if you want -- or you can watch online.
24 But we don't take any testimony from anybody. Okay. Ms.
25 Zara you seemed like you had -- say something?

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1 MS. ZARA: Yes, but I -- I forget. I'm sorry.

2 CHAIRMAN HILL: That's all right. It's a long
3 day. Okay, all right. Okay, are we all good? Okay. Thank
4 you all very much. Mr. Moy, is there anything else before
5 the Board?

6 SECRETARY MOY: Nothing from the staff, sir.

7 CHAIRMAN HILL: Okay, thank you. We stand
8 adjourned.

9 (Whereupon, the above-entitled matter went off the
10 record at 7:18 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Case No. 20141 Appeal of ANC 7D

Before: Board of Zoning Adjustment

Date: 11-20-19

Place: Washington, D.C.

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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