

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 16, 2020

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Vice Chair
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

DANIEL BASSETT, ESQ.
MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes
from the Regular Public Hearing held on September
16, 2020.

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

(10:35 a.m.)

BZA CHAIR HILL: The hearing will please come to order. Good morning, ladies and gentlemen. We are convening and broadcasting this public hearing by video conferencing. This is the September 16th, 2020 public hearing of the Board of Zoning Adjustment in District of Columbia. My name is Fred Hill, chairperson. Joining me today is Lorna John, vice chair, and Chrishaun Smith, board member. And representing the Zoning Commission is Peter Shapiro as well as Anthony Hood on a continued case.

Today's hearing agenda -- excuse me.

Today's hearing agenda is available to you on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter, and is also webcast live via WebEx and YouTube Live. The webcast video will be available on the Office of Zoning's website after today's hearing.

Accordingly, everyone who is listening on WebEx or by telephone will be muted until the hearing. And only persons who have signed up to participate or testify will be unmuted at the

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1 appropriate time. Please state your name and home
2 address before providing oral testimony or your
3 presentation. Oral presentation should be limited
4 to the summary of your most important points. When
5 you're finished speaking, please turn your audio
6 off so that your microphone is not picking up sound
7 or background noise.

8 If you're experiencing difficulties
9 accessing WebEx, or your telephone call-in, or if
10 you have forgotten to sign up 24 hours prior to
11 this hearing, then please call our Office of Zoning
12 hotline number. It's listed on the screen there,
13 and I'm also going to repeat the number twice.
14 The number is 202-727-5471. Once again,
15 202-727-5471 to sign up to testify, and to receive
16 WebEx log-in or call-in instructions.

17 All persons planning to testify either
18 in favor or in opposition should have signed up
19 in advance. They will be called by name to testify.
20 By signing up to testify all participants have
21 completed the oath or affirmation as required by
22 Subtitle Y 408.7.

23 The request to enter evidence at the
24 time of an online virtual hearing such as written
25 testimony or additional supporting documents other

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1 than live video which may not be presented as part
2 of the testimony may be allowed pursuant to Subtitle
3 Y 103.13 provided that the persons making the
4 requests to enter an exhibit explains how the
5 proposed exhibit is relevant, the good cause that
6 justifies allowing the exhibit into the record
7 including an explanation of why the requester did
8 not file the exhibit prior to the hearing pursuant
9 to Subtitle Y 206. And how to perceive -- and how
10 to perceive exhibits when not necessarily prejudice
11 any party. The order procedures for special
12 exceptions and variances are also listed in Y 409.
13 The order of appeals is in y 507.

14 At the conclusion of each case an
15 individual who is unable to testify because of
16 technical issues may request a request for a leave
17 to file a written version of the planned testimony
18 to the record without 24 hours following the
19 conclusion of public testimony in the hearing.
20 If additional written testimony is accepted, then
21 parties will be allowed a reasonable time to respond
22 as determined by the Board.

23 The Board will then make its decision
24 at the next meeting, but no earlier than 48 hours
25 after a hearing. Moreover, the Board may request

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1 additional specific information to complete the
2 record. The Board and the staff will specify at
3 the end of the hearing exactly what is expected
4 and the date when persons must submit the evidence
5 to the Office of Zoning. No other information
6 shall be accepted by the Board.

7 The Board's agenda may include previous
8 cases set for decision after the Board adjourns
9 the hearing, the Zoning in consultation in
10 consultation with myself -- the Office of Zoning
11 in consultation with myself will determine whether
12 a full or summary order may be issued. A full order
13 is required when the decision it contains is adverse
14 to a party including an affected ANC. A full order
15 may also be needed if the Board's decision differs
16 from the Office of Planning's recommendation.
17 Although the Board favors the use of summary orders
18 whenever possible, an applicant may not request
19 the Board to issue such an order.

20 The District of Columbia
21 Administrative Procedures Act requires that the
22 public hearing on each case be held in the open
23 before the public pursuant to Section 405(b) and
24 406 of that act. The Board may, consistent with
25 its rules and procedures and the act, may appear

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1 in a closed meeting on a case for purposes to seek
2 legal counsel on a case pursuant to D.C. official
3 code section 2-575(b)4, and/or deliberating on a
4 case pursuant to D.C. Official Code section
5 2-575(b)13, but only after providing the necessary
6 public notice and in the case of an emergency closed
7 meeting after taking a roll call vote.

8 Preliminary matters are those which
9 relate to whether a case will or should be heard
10 today such as a request for a postponement,
11 continuance or withdrawal, or whether proper and
12 adequate notice of the hearing has been given.
13 If you're not prepared to go forward with the case
14 today, or believe the Board should not proceed,
15 please let us know when you get allowed into the
16 hearing. Mr. Moy, do we have any preliminary
17 matters before we take a break? You're on mute,
18 Mr. Moy.

19 SECRETARY MOY: Okay, here we go.
20 Let's see, the only preliminary matter I have is
21 for the record that case application 20261 of Ramon
22 Argueta has been postponed to a virtual public
23 hearing rescheduled to October 21st, 2020. And
24 that's it for me, Mr. Chairman.

25 BZA CHAIR HILL: Okay, great. So if

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1 it's all right with the Board, let's go ahead and
2 take a 15 minute break if that's good and we'll
3 get back here like 10:55, or 10:55, 11:00, whatever,
4 okay? Thank you.

5 (Whereupon, the above-entitled matter
6 went off the record at 10:40 a.m., and went back
7 on the record at 10:58 a.m.)

8 BZA CHAIR HILL: All right, so before
9 we start, I guess I have -- so the next case, and
10 I'll let -- well, actually, Mr. Moy, why don't you
11 read into the next case before I say everything
12 and before we allow everybody in, Mr. Young. Well,
13 hold on a second. Hold on. Wait one second again.

14 I'm sorry, I was waiting for --

15 ZC CHAIR HOOD: Mr. Moy, sorry, I
16 notice that you have two strikes on the mute and
17 unmute button, so I'll be watching the rest of the
18 day when I go off to see if you get that third one.

19 BZA CHAIR HILL: All right, sorry, I
20 just needed to get confirmation on something.
21 Okay. So, Mr. Moy, if you could just -- well,
22 actually, how should I do this? Okay, just allow
23 everybody in. Mr. Young, you can allow everybody
24 in.

25 SECRETARY MOY: All right, Mr.

1 Chairman, the Board is back in session after a brief
2 recess. And the time is at or about 10:59, and
3 we're beginning the start of our cases for the
4 hearing session.

5 BZA CHAIR HILL: Okay, great. Could
6 you read into the first case please, Mr. Moy?

7 SECRETARY MOY: Yes, thank you. That
8 would be case application number 20121 of Bridges
9 2 Psychological Services and Consultation, LLC
10 captioned and advertised for a use variance from
11 the use requirements of Subtitle U Section 201.1
12 to convert an existing detached residential
13 building to a medical office building. This is
14 in the R-2 zone at premises 639 Atlantic Street
15 Southeast, Square 3105, Lot 72. And the Board last
16 heard this at a public hearing on July the 15th.

17 BZA CHAIR HILL: Okay, great. Thanks,
18 Mr. Moy. Well, what I was going to say is that,
19 A, I have read into the record, and I've been fully
20 reviewed on it because I wasn't on the previous
21 hearings. Vice Chair Hart at the time was. Mr.
22 Smith, could you also verify that you have done
23 that?

24 MEMBER SMITH: Yes. And I've read
25 into the record and been thoroughly briefed.

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1 BZA CHAIR HILL: Okay. And then I also
2 asked Vice Chair John if she would mind introducing
3 everybody and leading this because she had sat on
4 the previous two hearing, and she kindly agreed
5 to do so. So that being the case, I'll go ahead
6 and turn this over to Ms. John. And, Ms. John,
7 if you have any questions about procedurally how
8 things go or whatever I've done in the past, I mean
9 I'm happy to offer any kind of suggestions or help.
10 But I've been talking for the past two and a half
11 hours, so I'm happy to have someone else talk.
12 So thank you very much, and Ms. John, I'll turn
13 it over to you.

14 VICE CHAIR JOHN: Good morning,
15 everyone. Good morning, Mr. Bello. So when we
16 were here the last time, we continued a case because
17 there was some exhibits that were introduced at
18 the last minute and the Board didn't have the
19 opportunity to review them. So at this point, I
20 think I would ask you to go ahead and introduce
21 yourself for the record, and also give us your
22 address. And I see Ms. Dickerson is here with you
23 as well.

24 MR. BELLO: I believe so, yes.

25 VICE CHAIR JOHN: Okay. Ms.

1 Dickerson, are you choosing not to use your video?

2 Well, Mr. Bello, let's go ahead and have you
3 introduce yourself and if you need to have her
4 testify, we can address it at that point.

5 MR. BELLO: Thank you.

6 VICE CHAIR JOHN: There she is. Ms.
7 Dickerson, welcome.

8 MS. DICKERSON: Hi.

9 VICE CHAIR JOHN: Good. Would you
10 introduce yourself, Mr. Bello, and give your name
11 and address for the record?

12 MR. BELLO: Yes. Good morning, Board
13 members. Olutoye Bello representing the
14 applicant.

15 VICE CHAIR JOHN: Ms. Dickerson.

16 MS. DICKERSON: Hi, Angelina
17 Dickerson, property owner of 639 Atlantic Street,
18 Washington, D.C.

19 VICE CHAIR JOHN: Okay, thank you.
20 So, Mr. Bello, I think what would be appropriate
21 at this time is to ask you just to go ahead and
22 bring us up to speed on where you are, and we'd
23 like to hear from you on the exhibits that you
24 submitted prior to the last hearing that was
25 postponed. And, Mr. Moy, could you put 15 minutes

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1 on the call? Mr. Moy? Okay. So --

2 SECRETARY MOY: Yeah, I think -- is
3 setting that up.

4 (Simultaneous speaking.)

5 VICE CHAIR JOHN: -- Okay. So let's
6 --

7 SECRETARY MOY: But I'll keep a record
8 for you, Vice Chair John.

9 VICE CHAIR JOHN: Thank you. Go
10 ahead, Mr. Bello.

11 MR. BELLO: Thank you, Madam Chair.
12 So the exhibit of interest would be Exhibit 77,
13 which is a PowerPoint presentation of the brief
14 of the case law which was the instructions that
15 the Board gave as of the last hearing in December
16 2019. For the applicant to brief the pertinence
17 of this case law to the relief of request.

18 Essentially, the issue is the doctrine
19 of reasonable use of a property, and whether that
20 reasonable use results in the reasonable return
21 on investment. So those two case laws briefs in
22 the PowerPoint presentation, that'll be Gilmartin
23 and Palmer. And if Mr. Young could put that up,
24 I think it's easier to just go through the
25 PowerPoint presentation.

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1 MR. YOUNG: What exhibit was it? I
2 didn't get an email with it so I just need exhibit
3 numbers so I can pull it.

4 MR. BELLO: Exhibit 77.

5 VICE CHAIR JOHN: So it seems as if
6 we're having difficulty getting the exhibit up.
7 Mr. Bello, are you comfortable --

8 MR. YOUNG: I have it up.

9 VICE CHAIR JOHN: Do the Board members
10 have copies and are they prepared to -- oh, here
11 we go.

12 MR. BELLO: Thank you.

13 VICE CHAIR JOHN: Thank you, Mr. Young.

14 MR. BELLO: So if we can go to the
15 second pane please. Yes. So all the statements
16 in quotations are direct excerpts from these two
17 case laws, and I will read them as I also provide
18 context to the application in question. To support
19 a variance it is fundamental that the difficulties
20 or hardships be due to unique circumstances
21 peculiar to the applicant's property and not to
22 the general conditions in the neighborhood. The
23 statute does not preclude the approval of variance
24 where the uniqueness form a confluence of factors.

25 So the applicant's contention is that

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1 this property does have a confluence of factors
2 affecting it, and those factors are listed in the
3 next pane. The factor, the subject property's
4 uniqueness is the only single family detached
5 dwelling in this neighborhood or location which
6 predominately comprise semidetached dwelling on
7 smaller lots and apartment houses. The factor of
8 the physical shape and size of the subject for the
9 zone district, or location comprises over 8,000
10 square feet of lot size. And a neighborhood that
11 is predominately improved with smaller lots and
12 semi-detached residences.

13 In this case, the size of a property,
14 which is the largeness of a property, it's the
15 particular hardship here because it is out of place
16 for the zone of location. Third point, the unique
17 features of the interior of the existing building
18 which include five foot wide corridors, commercial
19 grade fire alarm with sprinkler systems,
20 self-closing doors, commercial exit signs, and
21 other accessibility features given that the
22 building was constructed from inception for
23 purposes of a community residence facility and not
24 a single family dwelling.

25 The fact of the history of the uses of

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1 the subject premises as a CRF, which is community
2 residence facility, and never having been occupied
3 for purposes of a private residence. The fact of
4 the commercial tax classification of the property,
5 and I reference the exhibits that submits evidence
6 of that effect. The fact of the applicant's good
7 faith reliance upon DCRA's direction in incurring
8 expenses for repairs to make premises compliant
9 with construction codes for commercial use. And
10 those are the confluence of factors effecting this
11 property. And they are unique to the problem, and
12 no other property in that neighborhood suffers or
13 has this set of confluence of factors. Next page
14 please.

15 Extraordinary and exceptional
16 situation or condition of property. This term is
17 referenced -- the term defined in reference to
18 economic, geographic, or topographic situation or
19 condition connected with or affecting the lot for
20 which the variance is sought.

21 Economic situation of subject property
22 of application is the inability to attract a
23 conforming use which is interchangeably used for
24 a reasonable use which results in a fair and
25 reasonable return or reasonable income. The

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1 maximum rental income is approximately \$3,000 which
2 is evidence that we provided in record in previous
3 hearings. Whereas, the income necessary for debt
4 service and other property maintenance costs is
5 approximately \$4,600 resulting in negative cash
6 flow. The large size of the subject property for
7 its geographical location is directly related to
8 its economic disadvantage. Next page please.

9 Practical difficulties and undue
10 hardship. The New Jersey Supreme Court expressed
11 a view where peculiar and exceptional practical
12 difficulties exist, so does undue hardship.
13 Applicant concedes that the higher burden of
14 exceptional undue hardship is the applicant's
15 standard for the granting of the use variance.
16 Subject property's practical difficulty is the
17 inability to attract conforming use after nearly
18 two years of advertisement of the property for lease
19 without pre-condition as to use of interest.
20 Subject property's undue hardship is the
21 neighborhood rent schedule comparable is less than
22 the fair and reasonable return or reasonable
23 income. And that's provided in Exhibit 49,
24 evidence of that. Next page please.

25 The use variance can be granted when

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1 a situation arises where reasonable use cannot be
2 made of the property in a manner consistent with
3 the zoning regulations. Where the inability to
4 put property to a more profitable use or loss of
5 economic advantage not sufficient to constitute
6 a hardship. And this is not the case here. It's
7 not the case that the applicant has a profitable
8 use to which they can put the property, and that
9 the desire is just for more profit. This is a
10 situation in which the reasonable or conforming
11 use actually results in negative cash flow for the
12 applicant.

13 Regulations must be shown to preclude
14 use of a property for any conforming use with a
15 fair and reasonable return. So essentially, the
16 case law does not overtly state that when a property
17 can be used for a conforming use, that's the end
18 of it. That conforming use must result in fair
19 and reasonable return on investment. And we have
20 evidence after two years of advertisements in the
21 public sphere without attracting any conforming
22 use that is able to guarantee a return on investment
23 of the applicant. Use of subject premises for
24 residential use results in a negative cash flow.

25 Use of subject property would not produce a

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1 reasonable income or any income at all. Next page.

2 There was a suggestion at the last
3 hearing that the property could be redeveloped and
4 that that constituted a reasonable use of property.

5 But a causerie analysis of that actually negates
6 that narrative. To do that, we would have to
7 demolish the building, the existing structure in
8 entirety.

9 It's applicant's contention that the
10 Board is constrained to review the application
11 before it, and not what the property could
12 potentially be used for in the future. So the
13 reasonable use standards go to the use of subject
14 property as it exists at the time of the
15 application. And, moreover, neighborhood sales
16 comparable does not support redevelopment of
17 subject property as a viable project, and we've
18 gone through some numbers in Exhibit 70. Next page
19 please.

20 Substantial detriment to public good,
21 and substantial impairment of intent, purpose, and
22 integrity of the zone plan. Subject property was
23 constructed for purposes of an intermediate care
24 facility for the mentally challenged, six residents
25 and two rotating staff. That's the only history

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1 of use of this property since it was constructed
2 for that purpose. Subject premises has never been
3 occupied as a private residence or for residential
4 use.

5 OP reports state that the medical
6 office use should not cause substantial detriment
7 to the public good, and the OP is supportive of
8 neighborhood serving medical offices. Loss of
9 residential dwelling unit does not constitute
10 substantial harm to the intent and purpose of the
11 zone plan because the loss is temporary and not
12 permanent should the Board grant this use variance.

13 The Board has the discretion to mitigate any
14 potential harm by condition of approval with a
15 sunset or expiration date of an approval should
16 they grant an approval. Next page please.

17 No substantial harm or detriment to the
18 zone plan. Medical office use or the home offices
19 of a medical practitioner or a dentist is permitted
20 in the R-2 zone district under the Home Occupation
21 Provisions cited, provided that no more than two
22 persons not resident on the subject premises shall
23 be permitted as employees.

24 The proposed medical office use will
25 have only one employee. The medical office use

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1 will operate between the hours of 9:30 a.m. to 5:30
2 p.m. Wednesdays and Fridays, and 1:30 p.m. to 5:30
3 p.m. on Thursdays. Mondays and Tuesdays are
4 offsite client counseling visit days. In the three
5 days of office operation, not more than five to
6 seven clients will be present on premise on any
7 given day.

8 The proposed use will serve
9 neighborhood clients in close proximity to the
10 subject property, hence will not result in
11 increasing traffic impact or effect street parking.

12 The subject property has capacity for an
13 on-premise parking area which will accommodate for
14 the five automobiles. The objective of the owner
15 is to bring mental health services to an underserved
16 area so designated by the National Health Service
17 Corps as a health professional shortage area.
18 Hence, there is inherent public good in
19 establishing this use for this premises. Next
20 screen please.

21 The applicant believes that they comply
22 with the three-prong variance test. Applicant is
23 unable to use the property for conformed use which
24 produces a fair and reasonable return on income
25 or investment. The proposed medical office use

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1 will serve the public good of bringing mental health
2 services to a designated underserved area.
3 Applicant respectfully requests approval of relief
4 sought for all the foregoing reasons.

5 Now I just add in conclusion that the
6 applicant is aware of OP's supplemental report,
7 and states that the undue hardship that the
8 applicant has put forth is not solely based on DCRA
9 permit timeline or the confluence of factors. The
10 DCRA permit timeline only forms one of those
11 confluence of factors. And that timeline, which
12 clearly shows that the applicant was not properly
13 advised, is uploaded as Exhibit 80. It took five
14 months before the applicant was advised of the need
15 for BZA after she had been advised to make
16 substantial changes for commercial use of that
17 building. And that will be our presentation, Board
18 Members. Thank you.

19 VICE CHAIR JOHN: Thank you, Mr. Bello.
20 Thank you. Were you planning to have Ms.
21 Dickerson speak?

22 MR. BELLO: Yes, I would have Ms.
23 Dickerson testify as a fact witness to her
24 experience with the permit process at this hearing.

25 VICE CHAIR JOHN: Okay. Thank you.

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1 Ms. Dickerson?

2 MS. DICKERSON: Yes. Can you hear me?

3 VICE CHAIR JOHN: Yes.

4 MS. DICKERSON: Okay. I had spoken
5 about this during the first hearing that we had,
6 I believe that was back in December, that I had
7 spent literally about four to five months going
8 to DCRA, literally sometimes twice a week, to gain
9 some assistance in terms of how to obtain a permit
10 for the tentative applicant that I had which I don't
11 have anymore. And I was initially told that I
12 needed to file for a building permit, and then to
13 get the certificate of occupancy.

14 So I proceeded to do that. And then
15 I had another conflicting information from another
16 person by the name of Nestor Warren. He has said
17 that basically I could be able to get a conditional
18 certificate of occupancy. And this was in February
19 actually in 2019 with -- I believe it was February
20 25th. So when I proceeded to go to his office to
21 obtain the certificate of occupancy that he had
22 mentioned, he had told me to speak with his
23 supervisor which was Mamadou, and Mamadou had told
24 me that before he could issue me a certificate of
25 occupancy, that he needed to send an inspector there

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1 just to look at the place and see if it was okay.

2 And then the inspector went and saw the
3 place, and had several things for me to complete,
4 commercial grade, you know, repairs to do. And
5 he had mentioned that basically I had to get the
6 RV6, I think it was six fire exit alarms in working
7 order because some of them weren't working, had
8 to get a fire inspection, certificate of, you know,
9 of the sprinkler system. Everything in working
10 order, and that I have to maintain it every year.
11 And everything that he requested for me to do was
12 for commercial-grade repairs to do.

13 And I went and even to get an engineer
14 to go there and look at the structure of the place,
15 I spent close to about \$7,000, you know, to do the
16 repairs that was requested of me knowing that when
17 I was done with the repairs, I would be given the
18 certificate of occupancy. And that straight came
19 from, you know, Mamadou. He was a supervisor
20 there. And then once the repair was done, it took
21 probably another month and a half just to get an
22 inspector back there to, you know, to confirm the
23 repair and close the permit. And there was a
24 conflict, you know, with that as well.

25 So none the less, you know, I finally

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1 got all the commercial grade repairs that they told
2 me to do, and then I was issued the certificate
3 of occupancy back in August of 2019. Yeah, we've
4 been here for a while. But throughout this
5 process, you know, I didn't get the notification
6 of memorandum for BZA till late March or May. But
7 initially, I was informed that once I get the
8 repairs done, I would be issued a certificate of
9 occupancy, and once the repair was done, things
10 change from that point on.

11 VICE CHAIR JOHN: Okay. So I just have
12 one question. Are you going to live in the
13 property?

14 MS. DICKERSON: Am I what?

15 VICE CHAIR JOHN: Are you planning to
16 live in the property?

17 MS. DICKERSON: No.

18 VICE CHAIR JOHN: Okay. Your attorney
19 mentioned something about a home office exception,
20 so I wanted to clarify that with you. I don't have
21 any questions at this time. Do any of the board
22 members have questions for either Mr. Bello or Ms.
23 Dickerson?

24 MEMBER SMITH: I have a question. Mr.
25 Bello, could you elaborate, you said in your

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1 presentation, could you elaborate on how the size
2 of the property is directly related to its economic
3 disadvantage? Could you expound on that a little
4 bit more?

5 MR. BELLO: Certainly. The property
6 used to be zoned R-5-A, and was down-zoned I believe
7 in 2008 down to R-2. Be that as it may, both of
8 those zones only require about 3,000 square feet
9 of lot area for semi-detached structure. This
10 property is over 8,000 square feet. This will be
11 a lot size that will be consistent with being in
12 the R-1-A zone district. And it's improved -- it's
13 the only property in its neighborhood that's
14 improved as a detached dwelling with a history of
15 use as a community residence facility.

16 The nexus to the economic disadvantage
17 is that, one, the fact that the property was
18 advertised and sold to Ms. Dickerson as a commercial
19 property, which would not be unusual because, you
20 know, the lay person would necessary not think a
21 community residential facility to be a residential
22 use. They would consider it an institutional use.

23 So the nexus to the economic
24 disadvantage here is that, whereas, properties that
25 are semi-detached rent for about \$3,000 here. In

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1 order for her to be able to service the debt on
2 this property and maintain that property, she needs
3 to generate an income of at least \$400 to \$600.
4 And there are no comparables in that neighborhood
5 that would allow that kind of rent to be attractive
6 to this property. So that size and the type of
7 structure are necessarily connected to the
8 advantage of the owner.

9 MEMBER SMITH: Okay, thank you. I
10 don't have any other questions.

11 VICE CHAIR JOHN: Okay. Are there any
12 other questions? I don't want to cut anybody off.
13 So if there are no other questions, I'll go to
14 the Office of Planning.

15 ZC CHAIR HOOD: Sorry, Madam Vice
16 Chair, I do have a question. I thought the Chairman
17 had raised his hand, but I do have a question.

18 VICE CHAIR JOHN: Yes, sir.

19 ZC CHAIR HOOD: Okay, this goes to Ms.
20 Dickerson. Ms. Dickerson, I think your last
21 comments was once you were told -- I forgot how
22 you phrased it, to make the improvements by DCRA,
23 there was no other interaction or no -- you heard
24 nothing else until after you completed that to go
25 -- you're now ready to go get your C of O. Was

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1 the sequence of events?

2 MS. DICKERSON: Yes.

3 ZC CHAIR HOOD: So there was no check,
4 no conversation in between while the work was going
5 on or anything?

6 MS. DICKERSON: There was a memo that
7 when Mr. Reese first went to -- actually Mamadou
8 had sent Mr. Reese to go inspect the place after
9 I went there, and Mr. Reese had indicated that the
10 premise had already been inspected by a previous
11 -- I guess previous tenant that was also interested
12 in the property. And I had told him that I was
13 not aware of that particular inspection.

14 ZC CHAIR HOOD: Okay. So that was the
15 only interaction about the property as you were
16 doing the renovations and upgrades that DCRA asked
17 you to do?

18 MS. DICKERSON: Yes, from the time that
19 Mr. Reese went in in there, it was basically the
20 mode of fixing the repairs that he requested so
21 that the prospective tenant could be able to provide
22 services that he wanted to rent the property for.

23 ZC CHAIR HOOD: So let me back up
24 because I know it's in the record, but I'm just
25 trying to go off the top of my head. But when you

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1 purchased the property and the zoning was listed,
2 was that from a real estate agent, or what did you
3 rely on?

4 MS. DICKERSON: It was from a real
5 estate and was listed as a commercial property.
6 And I think I even had -- Mr. Bello I believe has
7 a copy of that advertisement as well.

8 ZC CHAIR HOOD: So there was no
9 verifications of the -- and maybe this is for Mr.
10 Bello, was there any verifications of what the real
11 estate company advertised? No verifications, no
12 back checking to make sure -- presumably they do
13 that all the time and misrepresent a zone, or
14 misrepresent an area, or misrepresent where it's
15 located. A lot of stuff they misrepresent.

16 MR. BELLO: Well, my general
17 experience is that often times, you know, real
18 estate brokers are not very informed about the
19 zoning regulations and would generally rely on the
20 history of the use of a property for its
21 advertisements. So it's not inconceivable for a
22 property to be located in a residential zone, but
23 have a history of commercial use. That can be
24 continued if that nonconforming use has not been
25 discontinued. So, you know, I would be reticent

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1 to say that it's willful misleading. It's actually
2 ignorance most of the time.

3 ZC CHAIR HOOD: Okay. All right. I
4 would concur. Okay, thank you, Madam Chair.
5 Madam Vice.

6 VICE CHAIR JOHN: So if the Office of
7 Planning is available, I'll go to them.

8 BZA CHAIR HILL: Madam Vice Chair?

9 VICE CHAIR JOHN: Oh, I can't see you,
10 Mr. Chair. Oh, there you are.

11 BZA CHAIR HILL: Oh, I'm sorry, I'm at
12 the top. I just had a question. So, Ms.
13 Dickerson, the C of O that you were -- you did get
14 a C of O in August, right?

15 MS. DICKERSON: Yes.

16 BZA CHAIR HILL: And it was for what?

17 MS. DICKERSON: It was a conditional
18 certificate of occupancy.

19 BZA CHAIR HILL: For what?

20 MS. DICKERSON: For medical office
21 use.

22 BZA CHAIR HILL: Okay. So not for the
23 CRF, is that right, Mr. Bello?

24 MR. BELLO: That's correct. But the
25 certificate of occupancy is for the medical office,

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1 not for the CRF. And --

2 (Simultaneous Speaking)

3 BZA CHAIR HILL: Yes --

4 MR. BELLO: --it was a conditional
5 certificate that expired in December, but this was
6 the accommodation that was extended to Ms.
7 Dickerson because of all the --

8 (Simultaneous Speaking)

9 BZA CHAIR HILL: -- I know this is in
10 the record, but I'm trying to -- and I was going
11 to ask the Office of Planning a bunch of stuff.
12 But like the certificate of occupancy that you got
13 in August, Ms. Dickerson, was for a commercial
14 medical building?

15 MS. DICKERSON: Yes.

16 BZA CHAIR HILL: Okay. And then what
17 again brought you back to us?

18 MR. BELLO: If I -- the certificate was
19 conditional to expire as of December of 2019 which
20 would have coincided with perhaps a decision of
21 the use variance application before the Board.

22 BZA CHAIR HILL: Oh, so you got a
23 conditional C of O based on the fact that you were
24 going to be before the Board for the use variance?

25 MR. BELLO: That's correct.

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1 BZA CHAIR HILL: So you didn't actually
2 get -- I'm just being clear, you didn't actually
3 get a permanent C of O, you got a conditional C
4 of O based on the BZA application process?

5 MR. BELLO: Yeah, pending the outcome
6 of the BZA process, but as an accommodation of Ms.
7 Dickerson's experience at DCRA.

8 BZA CHAIR HILL: I understand. Okay.
9 Thank you, Madam Vice Chair.

10 VICE CHAIR JOHN: Thank you, Mr.
11 Chairman. So I don't see any other hands up. So
12 we'll just go to the Office of Planning.

13 MS. MYERS: Hello. Crystal Myers with
14 the Office of Planning. The Office of Planning
15 continues to recommend denial of this case. I
16 should start off by saying that we are not against
17 medical office uses in residential areas, but we
18 are against the loss of residential units
19 especially units that are still configured for
20 housing in a residential neighborhood. The
21 applicant seems to be the victim of misadvertising.
22 The property was advertised as a commercial
23 property, and unfortunately, she made decisions,
24 investments related to that, but the property was
25 never a commercial property.

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1 The tax assessor does consider it
2 commercial according to the way they do things,
3 but the zoning regulations have never -- or do not
4 identify CRF uses, which is what it was previously
5 used as, the zoning regulations do not identify
6 CRF as a commercial. It identifies it at a
7 residential. And as the floor plan shown, the
8 set-up is still a residential set up. And the tax
9 assessor could always reevaluate if the use were
10 to change. So as the CRF, it's considered
11 commercial, but if it were used as a single family
12 house, it could be reevaluated accordingly.

13 Another thing I wanted to bring up is
14 the DCRA issues. According to the timelines
15 provided, I was having a difficult time finding
16 a point where the applicant -- or evidence that
17 the applicant was misled. The information seems
18 to indicate that it was flagged a couple of times
19 that this is a residential property. I mean number
20 one as the applicant has even stated, the original
21 commercial tenant that was -- or perspective
22 commercial tenant was told by DCRA that this is
23 a residential property which is why they weren't
24 able to get their permits.

25 And then further along, when the

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1 applicant worked with DCRA, it seems, and I, you
2 know, I have only what was provided in a timeline,
3 so, you know, I have to caution that way, but it
4 seems that the applicant was told by DCRA that a
5 variance relief was going to be needed. And at
6 one point, she had indicated, you know, should I
7 -- or should she make certain investments to change
8 the property for commercial purposes. But she had
9 asked about that around the same time she was told
10 that a variance was going to be needed.

11 So just from the timeline, it looks like
12 that in March it was flagged that a variance was
13 going to -- that there was issues and a variance
14 was going to be needed, and no changes, or at least
15 it looks like changes were not made at that time.

16 And then as you point out, changes to the property
17 were made subsequently later on, and then
18 obviously, the conditional C of O in August. But
19 it had been flagged back in March that there was
20 a problem and a variance was going to be needed.

21 So just from what we can see in the
22 timeline information and what has been discussed
23 at the hearings, we were not able to identify a
24 point where DCRA was negligent to base that as an
25 argument for an exceptional situation resulting

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1 in an undue hardship. But we understand there's
2 a confluence of factors issues. We've discussed
3 the other issues in previous hearings about the
4 size of the property, et cetera, so I won't, you
5 know, go back in to that. I just wanted to touch
6 upon some of the new information that's been
7 presented and our position on it.

8 So, again, you know, we think it's an
9 unfortunate series of events, but at the end of
10 the day, it's a residential property that has been
11 zoned residential in a residential neighborhood
12 that's still configured as a residential property,
13 and OP's position is that we do not want to see
14 a residential property for a commercial use. So
15 that's all I have. Any questions?

16 VICE CHAIR JOHN: So just to refresh
17 your recollection, can you go over the exceptional
18 condition prong of the variance test one more time?

19 MS. MYERS: So you have to identify an
20 exceptional situation resulting in a hardship on
21 the owner. And as the applicant has discussed,
22 they're going with a confluence of factors issues.

23 The DCRA argument, we did not find that argument
24 to be at the level of an exceptional situation.
25 We could not find evidence of there being an issue

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1 or -- we could not find evidence to support the
2 argument that there was an issue with DCRA.

3 When it comes to the tax assessors or
4 the identification of it being a commercial
5 property at one point in time, that's not related
6 to land use or zoning regulation issues. That's
7 something that the previous owner misadvertised,
8 and so that's an issue with that previous owner.
9 It's not an issue with the property itself.

10 When it comes to the size of the
11 property, it is a large property in the
12 neighborhood, but it is developed with a single
13 family house, and, you know, in theory, you could
14 use it as a house or you could use it as a CRF use.

15 I believe you were mentioning earlier, Vice Chair,
16 the opportunity that you can, you know, do like
17 a home occupation. I mean there is a variety of
18 uses under the R zone that qualifies residential
19 that would not take you to a variance use.

20 So, you know, our position is we don't
21 see an exceptional situation here. We understand
22 that there's some economic hardships, but it seems
23 to be more related to the misadvertisement of the
24 property, and perhaps the applicant has a very
25 credible issue with the previous owner. But as

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1 for the property itself, we're not seeing it
2 resulting in an exceptional situation.

3 VICE CHAIR JOHN: Okay, thank you.
4 Mr. Bello, do you have any questions for the Office
5 of Planning?

6 MR. BELLO: No, Madam Chair. Thank
7 you.

8 VICE CHAIR JOHN: Do any --

9 MR. BELLO: No question.

10 VICE CHAIR JOHN: Thank you. Do any
11 of the Board members have questions for the Office
12 of Planning?

13 ZC CHAIR HOOD: Madam Chair, I would
14 just like to ask Ms. Myers. So as I'm trying to
15 decipher something, and these are not my favorite
16 type of cases, especially when there seems to be
17 the question of whether the government was
18 predictable or whether things were not predictable,
19 and with the false advertisement. I mean not false
20 -- the not knowing the factual advertisement of
21 how it should have been advertised.

22 Would you -- because you did a thorough
23 background on looking at whether the government
24 was predictable or not, so is it the Office of
25 Planning's testimony, and this wasn't specifically

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1 like this in your report, but DCRA did not send
2 mixed messages because it sounds to me like DCRA
3 said one thing, and then they said something else.

4 So at some point in time I guess when does the
5 Department of Commercial Regulatory Affairs --
6 because that is something that's predictable
7 because it sounds to me -- well, first of all, the
8 government should be predictable.

9 Is it your assessment or your analysis
10 that the government was predictable, and it was
11 just a misunderstanding because of the
12 advertisement which was not the government's fault
13 if you understand the way I phrased that question?

14 MS. MYERS: Well, you know, I wasn't
15 there. And I don't want to, you know, say something
16 that, you know, that is misleading because I really
17 don't know. But just judging by the paper trail
18 provided in the timeline, the applicant provided
19 a letter that explains her experience. And she
20 says on the same day that it was noted, that there
21 was a need for a variance, she had asked, you know,
22 should I make the changes to my property. But that
23 was the same day it was also noted that there was
24 variance.

25 So, you know, in that letter it made

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1 it clear to, you know, from the OP point of view
2 is that she had an opportunity to pause at that
3 point when it was flagged that a variance would
4 be needed. So she did not have to proceed with
5 any changes at that point when it was told to her
6 that you would have to go to BZA. She offered to
7 do changes. But, you know, it was told to her
8 pretty clearly by I think a couple of folks at DCRA
9 that she would need to go through the variance
10 process. And then there was a letter I believe
11 like a week or two later following up on that
12 explaining the variance -- that she would need a
13 variance.

14 So, you know, just kind of judging by
15 that, and then like I mentioned a little earlier,
16 the fact that her tenant originally went to DCRA
17 was told that there was a problem with the property
18 to begin with. Now I see what you're, you know,
19 saying maybe somewhere between that point and the
20 point in March where the inspector came out and
21 then flagged that, you know, a variance would be
22 needed, or the DCRA when she went back to the DCRA,
23 flagged that the variance would be needed, maybe
24 there was something going on there.

25 But it's a back and forth discussion,

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1 you know, between DCRA and the applicant. And,
2 you know, when it came down to actual giving her
3 information, it seems that, you know, it ended up
4 that the correct determination that a variance
5 would be needed roughly, you know, I would say like
6 a month during the process. So the process started
7 in January, and before she was given any approvals
8 or anything, she was told a variance would be needed
9 like about a month and a half later.

10 So just judging by the paper trail,
11 that's kind of where we ended up. I don't know
12 what was said sort of, you know, just back and forth
13 in discussion, but when it came down to the paper
14 trail, it's showing that a variance was flagged.

15 ZC CHAIR HOOD: Okay. Thank you, Ms.
16 Myers. Thank you, Madam Vice Chair.

17 VICE CHAIR JOHN: So I have one
18 follow-up question, Ms. Myers. The D.C. permit
19 timeline, is that at Exhibit 80?

20 MS. MYERS: Yes.

21 VICE CHAIR JOHN: Okay. I have no
22 additional comments for Ms. Myers at this time.
23 Are there any other board members who'd like to
24 ask questions? So --

25 MEMBER SMITH: Ms. Myers, I do have one

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1 additional question. You had briefly described
2 different types of by-right or matter-of-fact uses
3 that would be allowed in the R-2 zone by right to
4 the applicant. Based on the size of this lot, could
5 you elaborate on what is the conforming lot size
6 for a single detached building?

7 MS. MYERS: Single detached, or --

8 MEMBER SMITH: Detached, sorry.

9 MS. MYERS: I apologize, I think I had
10 that information at the first hearing. Just
11 quickly --

12 (Simultaneous speaking.)

13 MEMBER SMITH: Would you --

14 MS. MYERS: No, my apologies. I know
15 it conforms.

16 MR. BELLO: Look, I can help out if you
17 don't mind. It's 4,000 square feet.

18 MEMBER SMITH: Four thousand square
19 feet?

20 MR. BELLO: That's correct.

21 MEMBER SMITH: Ms. Myers, is that --

22 MS. MYERS: Yeah, that's correct.

23 MEMBER SMITH: Okay. Thank you,
24 that's the only question that I had.

25 VICE CHAIR JOHN: So I think I'll go

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1 to the ANC. Is the ANC here? No. And I don't
2 see any other witnesses. Are there any witnesses
3 in support? Any witnesses in opposition? To
4 support --

5 MR. YOUNG: No one signed up for this
6 case.

7 VICE CHAIR JOHN: Thank you. Does the
8 Board have any more questions before I close the
9 hearing? So I didn't hear any request -- oh, Ms.
10 Dickerson, it's out of order, but we'll allow your
11 question. You're muted, Ms. Dickerson.

12 MS. DICKERSON: I just wanted to make
13 it known that the only reason that I proceeded with
14 the repairs that Mr. Reese had indicated was that
15 Mamadou had specifically indicated as well that
16 once I get the repairs done, he will issue me a
17 Certificate of Occupancy. And I didn't get a
18 memorandum for the BZA until May. May 1st
19 actually.

20 ZC CHAIR HOOD: Madam Vice Chair, can
21 I ask Ms. Dickerson a question about what she just
22 said?

23 VICE CHAIR JOHN: Yes.

24 ZC CHAIR HOOD: Ms. Dickerson, and if
25 I missed it, forgive me, but is that anywhere in

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1 writing, or, Mr. Bello, can you show me where that
2 was because I'm sure you just didn't take it
3 verbally? Do you know what exhibit it is?

4 VICE CHAIR JOHN: It would be Exhibit
5 80, and then we have email attachments in support
6 of each itemized timeline.

7 ZC CHAIR HOOD: So in Exhibit 80, and
8 I don't know how I missed this because I was trying
9 to get the sequence of events. So in Exhibit 80,
10 it says your Mr. Magoo or -- had informed Ms.
11 Dickerson that he would issue her a C of O after
12 she makes these renovations? Am I repeating that
13 back correctly because when I go back and look at
14 it, I want to make sure I understand?

15 MR. BELLO: If I can respond to that,
16 I do not believe that that particular conversation
17 is an email. So what we have in the email timeline
18 is the email that was sent to her about a referral
19 to the Board of Zoning Adjustment. This was in
20 May.

21 ZC CHAIR HOOD: So what I want, Mr.
22 Bello, is something in black and white for what
23 she just said that would help me get to where you
24 all are trying to get to. That would really help
25 me. But right now, I'm just hearing her say what

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1 somebody told her.

2 MS. DICKERSON: Oh, I actually have an
3 email that I had sent to Mamadou. It was on July
4 30th, 2019 with regards to that.

5 ZC CHAIR HOOD: Okay. And he
6 responded back that he would give you the C of O?

7 MS. DICKERSON: Okay.

8 ZC CHAIR HOOD: That's okay. I'm not
9 sure, Madam Chair, where you're going with this,
10 but if she has that, that would be beneficial for
11 at least myself. So, thank you, and thank you,
12 Madam Vice Chair.

13 VICE CHAIR JOHN: So now that it seems
14 we're -- conduct the hearing again, Ms. Dickerson,
15 when did you first hear that you needed zoning
16 approval, and do you have any documentation of that?

17 MS. DICKERSON: That was back when
18 after Mr. Reese had went to the property and went
19 and informed Mr. Mamadou of what I needed to get
20 done, you know, all the commercial grade level work
21 that he wanted to do. And I believe that was
22 towards the end of March.

23 VICE CHAIR JOHN: Okay. So you agree
24 with OP that at the end of March you knew that you
25 might need zoning approval?

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1 MS. DICKERSON: Yes. And also at the
2 same time, Mamadou had indicated once I finish doing
3 all these repairs that has been requested and the
4 premise closed, he will issue me a conditional
5 certificate of occupancy.

6 VICE CHAIR JOHN: Okay. All right.

7 MS. DICKERSON: So that was my goal.

8 VICE CHAIR JOHN: Mr. Chairman?

9 BZA CHAIR HILL: Yeah, no, Ms.
10 Dickerson, I'm just trying to understand this
11 again. You were told by DCRA that you -- and this
12 is where I'm kind of looking back at your timeline,
13 that you would need a variance. However, if you
14 did the changes, you would be issued a conditional
15 C of O while you went through the variance process,
16 correct?

17 MS. DICKERSON: Yes.

18 BZA CHAIR HILL: So I guess my question
19 back to you, and then Mr. Bello is also -- and this
20 is where I'm a little unclear as to whether or not
21 it was understood by you, Ms. Dickerson, I guess
22 you can just give me an answer, right, is that,
23 you know, you were basically doing things and making
24 improvements not knowing whether or not you were
25 going to get a permanent certificate of occupancy?

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1 You still had to go through the BZA process in
2 order to get approval, correct?

3 MS. DICKERSON: Initially, to me as a
4 lay person, it was just a certificate of occupancy
5 that we were looking at. So I got educated, it
6 became a conditional certificate of occupancy
7 because that -- go ahead.

8 BZA CHAIR HILL: I'm sorry. So you
9 were saying you were just -- you didn't understand
10 at the very beginning that it was a conditional
11 certificate of occupancy based upon your getting
12 BZA approval for your variance?

13 MS. DICKERSON: I was just told a
14 certificate of occupancy, and then as, you know,
15 it proceeded, it indicated conditional certificate
16 until I got the BZA approval.

17 BZA CHAIR HILL: So --
18 (Simultaneous Speaking)

19 MS. DICKERSON: I think we're saying
20 the same thing, I'm sorry.

21 BZA CHAIR HILL: That's all right.
22 Mr. Bello, I'm going to ask you the question if
23 I can.

24 MR. BELLO: Yes.

25 BZA CHAIR HILL: I want to understand,

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1 right?

2 MR. BELLO: Yeah.

3 BZA CHAIR HILL: You know, that if it
4 sounds to me, and this is where I'm looking back
5 at your Exhibit 80, it sounds to me as though DCRA
6 went out and said you're going to need a variance.

7 And then they said, okay, you're going to need
8 a variance, but if you make these changes so that
9 you're complaint with commercial, emergency signs,
10 et cetera, and so forth, we'll give you a
11 conditional C of O while you go through that
12 variance process.

13 They didn't say they were going to, you
14 know, maybe they weren't clear that this is still
15 a risk, right? Like you're investing money in
16 something that you might not get, but if you want
17 to invest it, we'll go ahead and give you a
18 conditional C of O while you're going through this
19 process. Is that correct?

20 MR. BELLO: That's not correct. And
21 I think perhaps my experience working at DCRA may
22 be helpful here. If you look at the timeline, Ms.
23 Dickerson first applied for building permit
24 application in January of 2019.

25 BZA CHAIR HILL: Can you give me that

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1 item number, I'm looking at your timeline? Are
2 you talking about number --

3 (Simultaneous Speaking)

4 MR. BELLO: That would be item number
5 one. The first application was in January 28.

6 BZA CHAIR HILL: Okay.

7 MR. BELLO: And that permit was on
8 instructions given to Ms. Dickerson to file a
9 building permit in order to bring the building into
10 compliance with the use that she proposed the
11 building for. Now ordinarily, the applicant is
12 not required to be the expert in zoning matters.

13 When the applicant goes to DCRA, that first contact
14 is when she should have been told that she would
15 need a BZA. And would have had the opportunity
16 to decide whether she wanted to make repairs, apply
17 for a building permit, take the risk, or go straight
18 to the BZA to find out whether they'll get this
19 review or not. So the applicant should not have
20 been told to file a building permit to pursue
21 repairs for a use that DCRA knew could not be
22 established as a matter of right.

23 VICE CHAIR JOHN: So, Mr. Bello, can
24 you go over that building permit and talk about
25 what repairs were being done? It seemed to me that

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1 those were repairs to bring the building up to code,
2 not to make changes for a commercial -

3 (Simultaneous speaking.)

4 MR. BELLO: Well, when DCRA sends out
5 an inspector, he would see an email from Mr. Reese
6 indicating that there had been a prior inspection
7 of the property, and that he relied on some of that
8 information to tell Ms. Dickerson what repairs
9 needed to be done. And there was an email exchange
10 between January and I believe late April back and
11 forth with instructions as to what Ms. Dickerson
12 needed to do in order to occupy the building. The
13 --

14 BZA CHAIR HILL: As a commercial,
15 Mister -- I'm sorry to interrupt you, Mr. Bello.

16 MR. BELLO: Yeah.

17 BZA CHAIR HILL: As a commercial use?

18 MR. BELLO: DCRA knew from the very
19 beginning what the intended use was. Ms. Dickerson
20 at no time indicated that she wanted to reoccupy
21 the building as a CRF or convert it for purposes
22 of a private residence.

23 MEMBER SMITH: Mr. Bello, if I can
24 interrupt, I'm looking at attachment 7 and to your
25 point, the permit that was issued, it says permit

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1 type alteration and repair, the existing use was
2 as a single family dwelling, and the proposed use
3 was a single family dwelling. Could you elaborate
4 a little bit more on the understanding of the
5 applicant whose name is on it says permission
6 granted to Angelina Dickerson that the property
7 -- that this permit was for a commercial building
8 -- conversion to a commercial property as opposed
9 to a single family dwelling.

10 MR. BELLO: Okay. So, again, when
11 applicants go to the DCRA, they follow the
12 instructions that they're given in order to get
13 what they need to get to where they need to get
14 to. So that would have been on the advice that
15 the only way she could get a permit was to indicate
16 that those uses were the same. Obviously, the
17 history of use of a property was not as a single
18 family dwelling, but it was as a community residence
19 facility. So I believe that she simply, as a lay
20 person, was just following instructions given to
21 her.

22 BZA CHAIR HILL: Yeah, but, Mr. Bello,
23 the CRF was allowed there.

24 MR. BELLO: Yeah. So community
25 residence facility is a permitted use. And my

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1 point is that if she had not been -- if she had
2 been given proper instructions, then the existing
3 use would have been a community residence facility
4 being converted to a residence, a single property
5 dwelling. It wouldn't say single family dwelling
6 to a single family dwelling.

7 VICE CHAIR JOHN: So I just want to
8 mention that Exhibit 80 attachment 6 has a letter
9 from Ms. Dickerson to Ms. Wanda Lockridge
10 describing the process that had happened to date.

11 And as of March 28th, Ms. Dickerson knew that she
12 needed relief, BZA relief to change the zoning from
13 residential to medical office use.

14 MR. BELLO: In 90 days after she filed
15 a building permit application.

16 VICE CHAIR JOHN: Right. But she
17 still knew on March 28th.

18 MR. BELLO: That's correct.

19 VICE CHAIR JOHN: Okay. So unless the
20 Board has any more questions, I think I'd like to
21 close the hearing. So does the Board have any
22 thoughts on whether we should have a discussion
23 now, or just set this down for a hearing next week
24 Wednesday?

25 ZC CHAIR HOOD: Madam Chair, I would

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1 like to review some of the information again that
2 I have a clearer understanding, especially with
3 Exhibit - going back to Exhibit 80, and some of
4 your comments and the other comments of the Board
5 members. And also testimony that's been received.

6 I in turn will be back next Wednesday, so that's
7 my vote that we be able to look at it and we
8 deliberate I guess upon and decide it next week
9 if that's the wishes of the Board.

10 VICE CHAIR JOHN: Thank you, Mr.
11 Commissioner Hood. Anybody else? Okay. So we
12 will hear this again on next week Wednesday, and
13 we will make our decision then. Thank you, Mr.
14 Chair. Oh, Mr. Moy?

15 SECRETARY MOY: Yes, just a logistic
16 question, Vice Chair John. Is that a decision
17 here, or a continued hearing?

18 VICE CHAIR JOHN: A decision. I'm
19 sorry, for a decision. Thank you. Thank you, Mr.
20 Ritting (Phonetic.) I saw your hand up.

21 ZC CHAIR HOOD: Madam Vice Chair, I
22 think that's it for me. May I be dismissed?

23 VICE CHAIR JOHN: Yes, Mr.
24 Commissioner.

25 ZC CHAIR HOOD: All right, thanks.

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1 See everybody later. Take care.

2 VICE CHAIR JOHN: And Mr. Chairman
3 Hill, may I now be dismissed?

4 BZA CHAIR HILL: No, but I guess you
5 can turn off your microphone. All right, I am going
6 to ask for a three minute break. Okay? I'll be
7 right back.

8 (Whereupon, the above-entitled matter
9 went off the record at 11:58 a.m. and resumed at
10 12:04 p.m.)

11 BZA CHAIR HILL: All right, Mr. Moy,
12 you can read us in, bring us back and read us into
13 our next case. You're on mute, Mr. Moy. You're
14 still on mute, Mr. Moy.

15 SECRETARY MOY: I'm sad Mr. Hood left
16 because he was tracking keep of it. Okay.
17 Application number 20318 of Bernard Berry captioned
18 and advertised for a special exception under
19 Subtitle C, Section 1504.1 for the penthouse
20 setback requirements Subtitle C, Section
21 1502.1(c).

22 This would allow the construction of
23 a glass guard rail on the roof top of a three story
24 detached principal dwelling unit, RF-1 zone at
25 premises 509 O Street Northwest, Square 479, 4-7-9,

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1 Lot 818. And the preliminaries here, Mr. Chairman,
2 is that two of the documents were late. The
3 affidavit posting under exhibit 39 was four day
4 late. Affidavit and maintenance under Exhibit 40
5 is one day late.

6 BZA CHAIR HILL: Okay. All right, Mr.
7 Berry, are you there? Hello? Mr. Berry, I'm
8 sorry, I can't hear you. There we go.

9 MR. BERRY: Good. Now you can hear me?

10 BZA CHAIR HILL: Yeah, yeah.

11 MR. BERRY: Okay. All right, great.

12 BZA CHAIR HILL: All right, Mr. Berry,
13 could you introduce yourself for the record please?

14 MR. BERRY: Sure. My name is Bernard
15 Berry, owner of 509 O Street Northwest, D.C.

16 BZA CHAIR HILL: Okay. Mr. Berry,
17 you're the only one today?

18 MR. BERRY: Yeah. Yeah, yeah.

19 BZA CHAIR HILL: Okay. Mr. Shapiro,
20 you can't hear Mr. Berry?

21 COMMISSIONER SHAPIRO: Sorry, Mr.
22 Chair, it's just soft.

23 BZA CHAIR HILL: Oh, okay. Well, Mr.
24 Berry, try to speak up a little bit more.

25 MR. BERRY: Okay.

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1 BZA CHAIR HILL: Be a little bit more
2 articulate if you can.

3 MR. BERRY: No problem.

4 COMMISSIONER SHAPIRO: Thanks, Mr.
5 Berry.

6 BZA CHAIR HILL: So, Mr. Berry,
7 actually before we get into all of this, I know
8 that there has been some discussion that you might
9 not even need before us in terms of that the zoning
10 administrator might believe that your guardrail
11 actually would count as a parapet wall, and so
12 there's not something that needs to be approved.
13 Are you aware of this?

14 MR. BERRY: No.

15 BZA CHAIR HILL: Okay. So the Office
16 of the Attorney General has reached out to the
17 Zoning Administrator to try to find clarification
18 if in fact you need -- or maybe it was the Office
19 of Planning. I don't know who reached out, and
20 I'll let the Office of Planning talk in a second.

21 But if you in fact do you need this relief. Okay?

22 So what I would go ahead and propose
23 is clarification from the Zoning Administrator this
24 week, and then we'll do this again next week. And
25 if you don't need the relief, then you can just

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1 go ahead and withdraw the application. But let
2 me go ahead and clarify that with the Office of
3 Planning. Ms. Vitale, would you please introduce
4 yourself?

5 MS. VITALE: Good afternoon, Mr.
6 Chair, members of the Board. Elisa Vitale with
7 the Office of Planning. And we would defer to the
8 Zoning Administrator for any interpretations of
9 the zoning regulations.

10 BZA CHAIR HILL: Okay. So then where
11 -- we don't have OAG with us, do we, Mr. Moy? Mr.
12 Moy, you're on mute.

13 SECRETARY MOY: I have tried to talk
14 yet so that doesn't count against me, Mr. Chairman.
15 Okay. Yeah, the OAG person should be there. It's
16 --

17 BZA CHAIR HILL: Okay. That's all
18 right. I'm pretty -- I mean -- or Mr. Young can
19 let OAG in. Oh, there we go.

20 SECRETARY MOY: Yeah, there he is.

21 BZA CHAIR HILL: Mr. Bassett, have you
22 heard everything I've said?

23 MR. BASSETT: No, I just got let in on
24 this one, sorry.

25 BZA CHAIR HILL: That's all right.

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1 What I understand is that there is some
2 clarification going on with the Zoning
3 Administrator as to whether this relief is needed
4 at all due to that guardrail being considered a
5 parapet wall. And so I'd rather just go ahead and
6 get -- I mean, Mr. Berry, you have gone down this
7 road so we're prepared, you're prepared,
8 everybody's prepared to move forward. So even if
9 you do need to do this, you've already gone through
10 the Office of Planning, you've already gone to the
11 ANC. I think you did at least.

12 MR. BERRY: I did.

13 BZA CHAIR HILL: Okay. And so, you
14 know, we would be able to go ahead and have the
15 hearing, but if we don't have to have the hearing,
16 then that's fine with me.

17 MR. BERRY: Okay.

18 BZA CHAIR HILL: So let's go ahead and
19 wait until next week and see if there's some
20 clarification with the Zoning Administrator. You
21 don't need to do anything. This is all going to
22 happen and somebody will reach out to you.

23 MR. BERRY: Okay. So does Mr. Bassett
24 not know is what he's saying?

25 BZA CHAIR HILL: Someone at OAG has

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1 reached out to the Zoning Administrator, and Mr.
2 Bassett, I guess if you can get back to Mr. Berry
3 with further clarification maybe when you hear back
4 from the Zoning Administrator.

5 MR. BASSETT: I believe that the Office
6 of Zoning has been in contact with Mr. Berry about
7 what the next steps would be. I believe that Kira
8 (Phonetic.) sent him correspondence about what
9 questions he should be asking the Zoning
10 Administrator. And is that not accurate?

11 BZA CHAIR HILL: Mr. Berry doesn't seem
12 to know anything about this?

13 MR. BERRY: No, this is all new to me.

14 MR. BASSETT: Okay. I can follow up
15 with Kierra and make sure that he has our
16 instructions on what he should be asking for from
17 the Zoning Administrator.

18 BZA CHAIR HILL: So I guess, Mr. Berry,
19 what this is doing to you now, and I didn't know
20 exactly until right now, is that someone from the
21 Office of Zoning is going to give you information
22 to ask the Zoning Administrator, right? And this
23 seems to be going down this road, so that's why
24 I'm following this road, right?

25 MR. BERRY: Okay.

1 BZA CHAIR HILL: Is that go ahead and
2 talk to the Zoning Administrator, and you might
3 not have to be back here again next week. However,
4 if you do end up back here again next week, we'll
5 accommodate your schedule and put you first.

6 MR. BERRY: Thanks.

7 BZA CHAIR HILL: Okay. Mr. Moy?

8 SECRETARY MOY: Thank you, Mr.
9 Chairman. I'd just like to add for the record that
10 our office has been in touch with ZA's office
11 regarding this particular issue. So we can
12 collaborate with OAG to move forward on it, and
13 OZ can take the lead and have direct contact with
14 Mr. Berry on the status of this issue.

15 BZA CHAIR HILL: Okay.

16 SECRETARY MOY: -- between now and next
17 week, okay?

18 BZA CHAIR HILL: So OZ will reach out
19 to Mr. Berry and help him understand what the next
20 steps are?

21 SECRETARY MOY: Yes.

22 BZA CHAIR HILL: Okay.

23 MR. BERRY: Who will reach out? I'm
24 sorry.

25 BZA CHAIR HILL: The Office of Zoning.

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1 MR. BERRY: The Office of Zoning will
2 reach out.

3 So I'll expect to hear from them then. Okay.

4 BZA CHAIR HILL: Yeah. Okay?

5 (Simultaneous speaking.)

6 MR. BERRY: Okay. All right.

7 BZA CHAIR HILL: And so I guess is that,
8 Mr. Berry, I'm kind of curious now because you might
9 not be back with us again.

10 MR. BERRY: Yeah.

11 BZA CHAIR HILL: So -- or at least I
12 hope so as well, Mr. Berry. So how much of the
13 house is done?

14 MR. BERRY: I'm working on the inside
15 now, yeah. The exterior's done, yeah.

16 BZA CHAIR HILL: Is the pool finished?

17 MR. BERRY: They start tiling it in
18 like two weeks, but it's on the roof.

19 BZA CHAIR HILL: Okay. Good for you,
20 Mr. Berry.

21 MR. BERRY: Thank you.

22 COMMISSIONER SHAPIRO: Are you looking
23 for a site visit, Mr. Berry?

24 MR. BERRY: It was cool to watch it go
25 up there and the cranes and all that stuff. It

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1 was good.

2 BZA CHAIR HILL: All right. So we'll
3 hopefully not see you next week, Mr. Berry.

4 MR. BERRY: All right.

5 BZA CHAIR HILL: Otherwise, see you
6 next week. Okay?

7 MR. BERRY: All right. All right, got
8 you. Thank you.

9 BZA CHAIR HILL: Bye-bye.

10 MR. BERRY: Bye.

11 BZA CHAIR HILL: Okay. So, Mr. Young,
12 you can release Mister -- okay, great. All right.

13 So we're now going to -- so that's getting
14 postponed until next week and we'll see what
15 happens, correct, Mr. Moy? I'm going to assume
16 he said yes.

17 SECRETARY MOY: Yes, sir.

18 BZA CHAIR HILL: Okay. And so that's

19 --

20 COMMISSIONER SHAPIRO: Mr. Moy, Mr.
21 Chair, if I may.

22 BZA CHAIR HILL: Yeah.

23 COMMISSIONER SHAPIRO: Just while we
24 have this, I will not be available next week. I'm
25 not sure that it matters because we've not heard

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1 any of the merits of the case. But I just want
2 to be clear about that.

3 BZA CHAIR HILL: Okay. We'll see what
4 happens. But then, Mr. Moy, you might have to --
5 if we do have to do it, then the other ZC.

6 SECRETARY MOY: Well, yeah, if it is,
7 you know, it's going to be Chairman Hood.

8 BZA CHAIR HILL: Oh, is he next? Is
9 he next? He's back with us again?

10 SECRETARY MOY: Next week, sir.

11 BZA CHAIR HILL: Okay. All right,
12 let's go ahead and do our last one.

13 SECRETARY MOY: Okay. So this (audio
14 interference)

15 SECRETARY MOY: Okay. So this is
16 appeal number 20252 of the Citizens Against
17 Developers Greatly Obfuscating captioned and
18 advertised as the appeal for the decision made on
19 July 5th, 2019 by the Zoning Administrator,
20 Department of Consumer and Regulatory Affairs to
21 issue building permit number B1707176 to construct
22 a new two-story principal dwelling unit on a vacant
23 lot in the R-3 zone at premises 1602 V Street
24 Southeast, Square 5777, Lot 694.

25 BZA CHAIR HILL: Okay.

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1 SECRETARY MOY: The only thing I want
2 to add is that DCRA uploaded PowerPoint slides that
3 was submitted less than 24 hours before the hearing,
4 sir. And I believe there was a response by the
5 applicant objecting to the submission.

6 BZA CHAIR HILL: Got it. Okay. Let
7 me see. Mr. Theresa, are you there?

8 MR. THERESA: Yes.

9 BZA CHAIR HILL: Okay. Are you
10 choosing not to use your video which is fine, I
11 just want to know if there's a problem.

12 MR. THERESA: I'd like to use my video.
13 I don't know what's going on with it.

14 BZA CHAIR HILL: Maybe hover over the
15 screen and then it should put something in the
16 bottom that says video.

17 MR. THERESA: Ah, got you. Okay.
18 Cool. All right.

19 BZA CHAIR HILL: Okay, there you go.
20 Mr. Theresa, could you introduce yourself for the
21 record please?

22 MR. THERESA: My name is Aristotle
23 Theresa. I'm a member of CADGO and resident at
24 1604 V Street, Southeast, and so I filed this
25 appeal.

1 BZA CHAIR HILL: Okay. Thank you, Mr.
2 Theresa. Is it Theresa?

3 MR. THERESA: Yes.

4 BZA CHAIR HILL: Theresa. Mr. Green,
5 could you please introduce yourself for the record?

6 MR. GREEN: Yes. Good afternoon,
7 Chairman and members of the Board. My name is Hugh
8 Green, attorney with the DCRA.

9 BZA CHAIR HILL: All right. Mr.
10 LeGrant.

11 MR. LEGRANT: Good afternoon, Matt
12 LeGrant, Zoning Administrator, DCRA.

13 BZA CHAIR HILL: All right, Mr.
14 LeGrant, are you not using your camera, which is
15 fine, I just want to make sure it's not a problem.

16 MR. LEGRANT: I am trying to turn it
17 on. There we go.

18 BZA CHAIR HILL: Okay, great. Thank
19 you. Well, welcome. All right. So there's a
20 couple of preliminary issues, and I'd like to kind
21 of address those with the Board first. I guess,
22 Mr. Theresa, and Mr. LeGrant, if you don't mind
23 putting your microphones on mute just so I don't
24 get any feedback, and then we'll call on you as
25 needed. Thank you.

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1 So there's a motion for a continuance.
2 There's two things, right? So there's a motion
3 for a continuance about this easement issue, okay?
4 And so -- oh, wait, is the property owner here?
5 Mr. Green?

6 MR. YOUNG: I have the property owner
7 and the property owner's attorney that are calling
8 in by phone, so I can unmute them.

9 BZA CHAIR HILL: Oh, okay. Yeah. Can
10 you let me talk to the property owner? Well, let's
11 -- they both need to introduce themselves for the
12 record. That's what I'm trying to figure out.

13 MR. TASEW: Okay, my name is Zayed
14 Tasew.

15 (Simultaneous Speaking).

16 MR. YOUNG: They're unmuted, they can
17 talk now.

18 MR. TASEW: Oh, Zayed Tasew.

19 MR. HUNT: Thank you, sir, this is
20 attorney Paul Hunt representing the owner. He is
21 present and he may introduce himself as well.

22 MR. TASEW: My name is Zayed Tasew,
23 this is the owner of V Street.

24 BZA CHAIR HILL: Could you say your
25 last name again please, sir?

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1 MR. TASEW: Tasew, T-A-S-E-W.

2 BZA CHAIR HILL: Okay, great. All
3 right, well, welcome everyone. So there is a
4 motion for a continuance, and I guess what the
5 motion on the table seems to be to me is that there
6 is -- and I'll let Mr. Theresa actually, he can
7 tell me more about it, but there's like, you know,
8 it's the court's right now as to whether or not
9 the easement is going to be upheld. And my opinion
10 after reading everything is that if that easement
11 is upheld, then this appeal might not be before
12 us, right?

13 So the idea is for first the court's
14 to determine whether or not this easement will be
15 upheld, and that is what the motion is for the
16 continuance. And so I would be in favor of granting
17 the motion for the continuance to see whether or
18 not this easement is going to be upheld or not,
19 and because if it is, then, you know, then that's
20 that, right? And so I'll let the board kind of
21 tell me what their thoughts on the about the record
22 with that in one second.

23 And then the other is the timeliness
24 issue. I actually would like to talk about the
25 timeliness issue one way or the other just because

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1 I'd like to get that off of the table if, in fact,
2 we're back again here at some point in time. Okay?

3 So I'm going to go around the table and see what
4 my fellow board members think of what I just
5 suggested. And I'm going to start with
6 Commissioner Shapiro.

7 COMMISSIONER SHAPIRO: Thank you, Mr.
8 Chair. I agree with you related to the
9 continuance. I think that that is information that
10 would help us decide whether to go forward or not,
11 so, yes. And also looking forward to discussing
12 the timeliness issue, but I'll hold off on that
13 until our next round of conversation I assume.

14 BZA CHAIR HILL: Okay, thank you. Ms.
15 John? You're on mute, Ms. John, I'm sorry.

16 VICE CHAIR JOHN: So I concur that we
17 should consider the continuance but discuss the
18 timeliness issue so we take care of that issue.

19 BZA CHAIR HILL: Okay. Mr. Smith?

20 MEMBER SMITH: I do concur with my
21 other colleagues. I think we do need to give time
22 for the courts to consider the discussion of the
23 easement. But I am open and welcome to a discussion
24 about the timeliness issue.

25 BZA CHAIR HILL: Okay. So let's see.

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1 Well, yeah, I guess, Mr. Theresa, I mean you're
2 the one who made the motion, correct? Yeah, you
3 can just nod. You can just nod. I think that's
4 correct. And then since, Mr. Hunt and Mr. Tasew,
5 I just want to understand -- I just want you to
6 understand what's about to happen. Do you
7 understand?

8 MR. HUNT: This is counsel from the
9 owner. I completely understand, and in fact, I
10 must concur that the resolution would most
11 appropriately be in superior court, and then
12 deferred back.

13 BZA CHAIR HILL: Okay. All right. So
14 I'm going to go ahead and make a motion then to
15 approve the emotion -- to approve the motion for
16 continuance that was provided by the appellant,
17 and ask for a second, Ms. John?

18 VICE CHAIR JOHN: Second.

19 BZA CHAIR HILL: The motion been made
20 and seconded. Mr. Moy, could you please take roll
21 call vote?

22 SECRETARY MOY: Thank you, Mr.
23 Chairman. So when I call your name, if you would
24 please response with a yes or no to the Chairman's
25 motion to continue this appeal, seconded by Ms.

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1 John. Zoning Commissioner Peter Shapiro?

2 COMMISSIONER SHAPIRO: Yes.

3 SECRETARY MOY: Mr. Smith?

4 MEMBER SMITH: Yes.

5 SECRETARY MOY: Vice Chair John?

6 VICE CHAIR JOHN: Yes.

7 SECRETARY MOY: Chairman Hill?

8 BZA CHAIR HILL: Yes.

9 SECRETARY MOY: Staff would record the
10 vote as four to zero to one. We have a board seat
11 vacant, and this is to the Chairman's motion to
12 continue this appeal to a future date, seconded
13 by Vice Chair John. Also in support the motion,
14 Mr. Smith and Zoning Commissioner Peter Shapiro,
15 board seat vacant, staff record the vote as four
16 to zero to one.

17 BZA CHAIR HILL: Okay, great. Thank
18 you, Mr. Moy. All right. So the next issue --
19 yeah, sure, Mr. Shapiro?

20 COMMISSIONER SHAPIRO: I'm just
21 wondering if anyone on the call has any information
22 about the status of the court proceedings. If we
23 have any sense of what the timing's going to be
24 like? I know that's a hard thing to prognosticate
25 this year.

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1 BZA CHAIR HILL: Okay, hold on, hold
2 on, hold on. Let me ask Mr. Theresa to go first
3 because it's his motion. Mr. Theresa?

4 MR. THERESA: Well, right now the
5 hearing has been delayed till December 15th because
6 of Covid. The timeline to respond has been
7 extended. So I don't know when the hearing will
8 be on that. It's too hard to determine.

9 BZA CHAIR HILL: Okay. Mr. Hunt, do
10 you have any comment?

11 MR. HUNT: Yes, sir. To some degree
12 I must concur because if this becomes a contested
13 issue requiring a trial, it's just not clear what
14 the timelines are in Superior Court right now.
15 So I would concur to that degree.

16 BZA CHAIR HILL: Okay. Mr. Shapiro,
17 does that -- okay, does that answer your question?

18 All right. Let's see. So then now I'm going to
19 move on to the timeliness issue. So I guess we,
20 the Board, have read the record concerning all of
21 the timeliness information that was put forward.

22 And I guess the motion is that this be dismissed
23 due to timeliness. And I suppose, Mr. Green, you
24 made the motion, correct?

25 MR. GREEN: That's correct, Chairman.

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1 BZA CHAIR HILL: Okay. Mr. Green, I
2 kind of already know where I am with this one, but
3 you can go ahead and give your argument for it if
4 you like.

5 MR. GREEN: No, it's fairly brief,
6 Chairman. I appreciate the time. It's basically
7 -- it's been laid out in our brief and our filing.

8 And the timeframe in which to file this appeal
9 was 60 days as the Board is well aware, and it's
10 over 200 days in which it was filed. The issue
11 that -- certainly for preservation of DCRA's
12 position and the record, that we filed this motion
13 that it was untimely, and that's really where our
14 position is. So at this point we believe it wasn't
15 filed timely, and we would ask that it be dismissed.

16 BZA CHAIR HILL: Okay. Mr. Green --
17 I'm sorry, I'm going to let the Board ask questions
18 after I go through this real quick. Mr. Theresa,
19 so we read your filings and everything, right, and
20 again, what it kind of hinges on upon is, you know,
21 known or should have known that anything was going
22 on next door, right? And I'm going to kind of just
23 come forward and give my opinion right now which
24 is that I think that I want to have a discussion
25 with DCRA a little bit about this, because I still

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1 get a little confused which is the known and should
2 have known.

3 From Mr. Theresa's filings, nothing was
4 going on next door. Nothing was being -- nothing
5 was posted. No one was mailed anything, right?
6 How would you know or should have known that any
7 construction was going on, that anything was going
8 on next door to your house? So, Mr. Theresa, I
9 basically just made the argument for you, but please
10 go ahead and tell me why you believe that your filing
11 is not untimely.

12 MR. THERESA: Basically I received no
13 notice, and so the only notice I got was some
14 contractors in my yard, and I talked to them and
15 they said that, you know, they were about to begin
16 construction. And I said, hey, do you guys have
17 a building permit because nothing still was posted?

18 And they said, yeah, we have one. And so I
19 immediately went to DCRA, looked to see if they
20 had one. They did have one, and, you know, I filed
21 this within days.

22 BZA CHAIR HILL: Right. So you filed
23 your appeal a few days after talking to people in
24 your yard, outside your yard, correct?

25 MR. THERESA: Yes. Yes. Yes.

1 BZA CHAIR HILL: Yeah?

2 MR. THERESA: Yeah.

3 BZA CHAIR HILL: Okay. Does the Board
4 have any questions for Mr. Green or Mr. Theresa?
5 Mr. Shapiro?

6 (Simultaneous Speaking)

7 MEMBER SMITH: Oh, go for it.

8 COMMISSIONER SHAPIRO: Thank you, Mr.
9 Chair. Yeah, my question is your question which
10 is to Mr. Green or Mr. LeGrant, was there some
11 information that wasn't communicated or what is
12 it that you're using to say that he, you know, that
13 your assumption would be that he should have known?

14 MR. GREEN: That's the open question
15 that the applicant has to present. In other words,
16 I do know that the application was filed for a
17 building permit in 2017, and I know Mr. Theresa
18 received notice of that. Obviously, we're talking
19 about the building permit which is a different set
20 of facts and circumstances.

21 The filing, the response to it became
22 clear. However, the original filing for this
23 appeal was unclear of exactly when Mr. Theresa had
24 received notice for this building permit. I
25 believe, and I'll have to take a look at the filing,

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1 I believe it was -- I think I'm hearing now that
2 there were workers on the premises, and I believe
3 the original filing was it was due to some -- the
4 facts were a little unclear from the DCRA's
5 perspective of when notice was received.

6 So with respect to that, Mr. Shapiro,
7 that's a fair assessment to DCRA to assert that
8 right. And for the respondent or the -- excuse
9 me, the appellant in this case to say when they
10 received notice. It certainly was unclear in the
11 filings. But I do know from the fact of the
12 application, again, we're dealing with the building
13 code that the neighbor notification was received
14 and signed by Mr. Theresa so there is a possibility
15 that he had been following the process all along.

16 And so that's now Mr. Theresa has provided some
17 further information. So that's my response to your
18 question, Mr. Shapiro.

19 COMMISSIONER SHAPIRO: Well, thank
20 you. Let me make sure I'm clear about that. What
21 was it in 2017 that you know that he did receive
22 notice of?

23 MR. GREEN: That would be the neighbor
24 notification form for the application for the
25 building permit. I've got a certified green card

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1 from 2017 that was signed, and I can show it to
2 the Board, but it's certainly not part of the
3 record. But that's 2017, we're now obviously in
4 2020. But there is --

5 COMMISSIONER SHAPIRO: Right.

6 MR. GREEN: -- it's an open question
7 whether or not Mr. Theresa had been following along
8 with this process.

9 COMMISSIONER SHAPIRO: But is that
10 what was -- the neighbor notification 2017, does
11 that typically trigger the known or should have
12 known?

13 MR. GREEN: I think the question is
14 that certainly that from DCRA's perspective, that
15 a neighbor would be on notice of this application
16 and would contribute to the known or should have
17 known within the activity of building, you know,
18 that this project would be proceeding.

19 COMMISSIONER SHAPIRO: Right. And
20 just for my clarification, Mr. Theresa --

21 BZA CHAIR HILL: Mr. Theresa I'll get
22 to you in a second.

23 COMMISSIONER SHAPIRO: Okay. I mean
24 I was going to ask him whether he remembered
25 receiving that in 2017.

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1 BZA CHAIR HILL: That was for Mr.
2 Theresa? Yeah, if your question's for Mr. Theresa,
3 please go ahead.

4 COMMISSIONER SHAPIRO: Yeah.

5 MR. THERESA: The only thing I remember
6 receiving from them was about the historic
7 preservation review. And I don't remember signing
8 anything. I'll say this that I think this is a
9 very slippery slope and I don't think people are
10 responsible to stay abreast of an application once
11 an application's been filed. So even if I did see
12 the application, which I do not recall seeing, and
13 I would say that I had not seen one, I don't think
14 that this qualifies as me having known because
15 still, there's no date for when I would have known.

16 And there's also case law for people
17 who do applications in piecemeal, and you don't
18 know when the notice started because it was
19 piecemeal. You don't know when it ended, when
20 everything ended. So I think you have to count
21 from when the building permit was issued, not, you
22 know, when the application was made, and I don't
23 recall getting anything like that.

24 And I think that's a heavy burden to
25 put on someone to follow along a process for three

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1 years, and even if they did follow along a process
2 for three years, when is the point where you're
3 responsible for having known or should have known?

4 Do you have to look every week? Do you have to
5 look every month, every three months? Like, you
6 know, how do you follow along this process for three
7 years? I don't know. I don't recall seeing
8 anything like that.

9 BZA CHAIR HILL: Okay. Thank you, Mr.
10 Theresa -- sorry, Mr. Shapiro?

11 COMMISSIONER SHAPIRO: Just two.
12 Assuming you received the neighbor notification
13 in 2017, and maybe this is just my ignorance, is
14 that a moment in time when one can appeal?

15 BZA CHAIR HILL: Are you asking OAG,
16 Mr. Shapiro?

17 COMMISSIONER SHAPIRO: I guess DCRA or
18 OAG would be, you know, either/or.

19 BZA CHAIR HILL: Ms. Nagelhout, do you
20 know?

21 COMMISSIONER SHAPIRO: Perhaps (audio
22 interference.)

23 MS. NAGELHUOT: I would let the parties
24 -- I think the parties should address that. But
25 it has to be a zoning decision. I'm not sure what

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1 exactly you're talking about, the notice.

2 MR. GREEN: That sits with the building
3 codes. Sorry, this is Hugh Green. It's a building
4 code requirement, not necessarily strictly a zoning
5 code requirement. But I guess I had one further
6 follow up, question. I'll wait for the Board to
7 continue on the line of questions.

8 BZA CHAIR HILL: You have a question
9 for whom, Mr. Green?

10 MR. GREEN: Yeah, I was just curious
11 in terms of the -- so one of the issues is that
12 --

13 BZA CHAIR HILL: That would be your
14 question, Mr. Green. I'm sorry, who do you have
15 a question for?

16 MR. GREEN: I'm sorry, I had a question
17 for the property owners.

18 BZA CHAIR HILL: Oh, okay. Hold on --
19 give me a second then. Give me --

20 MR. GREEN: Okay, that's fine.

21 BZA CHAIR HILL: That's all right.
22 Because I have a question for the property owner.
23 Mr. Hunt, can you hear me?

24 MR. HUNT: Yes, I can.

25 BZA CHAIR HILL: Do you have any kind

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1 of proof that you've notified Mr. Theresa of this
2 building permit being issued?

3 MR. HUNT: Your Honor, I have
4 statements that I'm texting with my clients that
5 they do exist. I have just been retained on this
6 case within the last week and had focused on the
7 civil action. So I wasn't part of that process
8 myself. What I was thinking was is that this issue
9 might -- if it carries forward be supplemented by
10 that type of information.

11 BZA CHAIR HILL: Okay, that's fine.
12 We can talk about all that later. I mean let's
13 just give me a second, Mr. Theresa. I know you
14 look like you want to say something. Mr. Green,
15 what was the question that you had for Mr. Hunt?

16 MR. GREEN: It was precisely that is
17 were there any communications or conversations
18 between the neighboring owner and Mr. Theresa
19 regarding this activity. I think that bears into
20 whether or not -- and who the permit was really
21 for. I think that's a question which I was going
22 to ask Mr. Hunt and his client.

23 BZA CHAIR HILL: Okay. All right.
24 So, Mr. Hunt, you were about to say something?

25 MR. HUNT: Yeah, if I may in response.

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1 The contours of the lawsuit in superior court have
2 to do with a title change and issues that are
3 somewhat independent of that question. So, again,
4 I think I would respond that if we would be allowed
5 to supplement the record, I can dig into that
6 further having been in this less than a week
7 actually at this point.

8 BZA CHAIR HILL: All right. Well,
9 we'll see what happens. Mr. Tasew, can you hear
10 me?

11 MR. TASEW: Yes, sir.

12 BZA CHAIR HILL: hold on, Mr. Theresa,
13 one second. And I don't know if I'm pronouncing
14 it right. Mr. Tasew?

15 MR. TASEW: Yes. Yes, sir. Yes, sir.
16 Mr. Tasew, correct.

17 BZA CHAIR HILL: Do you have any proof
18 -- do you have any proof that you've notified Mr.
19 Theresa inside of 60 days that the building permit
20 was issued?

21 MR. TASEW: Actually, I just started.
22 Actually I got the building permit December 4.
23 The 1600 V so I started with this -- actually to
24 try to start the project. But I have never noticed
25 him.

1 BZA CHAIR HILL: Okay. Mr. Theresa --
2 I mean -- I'm sorry. Mr. Tasew, you know, what
3 we're trying to figure out is that should the
4 applicant have known or should have known within
5 60 days that your building permit was issued. And
6 so far there's nothing in the record that indicates
7 that he should have known. That there's some kind
8 of, you know, definitive, yes, I knew. Okay?

9 So if you want to add something into
10 the record that you think you can have because this
11 might go on for a little while longer, we can hold
12 the timeliness issue in abeyance for if we come
13 back here again. I do want to have a discussion,
14 however, with DCRA about this issue. So at this
15 point I'm just saying we'll go ahead and hold it
16 in abeyance. However, Mr. Theresa, you seem like
17 you have something you wanted to say?

18 MR. THERESA: Yes. You know, I
19 disagree with this. I feel like if he had notified
20 me, it should be on the record. I don't feel like
21 we should be at a hearing now and him talking about,
22 you know, presenting some sort of post facto
23 evidence of notification. Like it's simple. This
24 should have been on the record. If he notified
25 me, put it on the record, put the evidence on the

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1 record. We shouldn't allow him the opportunity
2 to create some sort of document to put that on the
3 record and there be some question as to this.

4 There is a requirement when you file
5 for this to give notice. I have not received
6 notice. I would like for this to be ruled on today.

7 I don't believe that it's fair for the person
8 applying for this permit to have a chance to go,
9 you know, do whatever and make whatever documents.

10 This stuff should be in the record at this point.

11 This case has been outstanding for a while now.

12 BZA CHAIR HILL: I mean hold on a
13 second. Hold on a second.

14 MR. TASEW: Can I say something first?

15 BZA CHAIR HILL: -- and --

16 (Simultaneous Speaking)

17 MR. THERESA: And also --

18 BZA CHAIR HILL: Excuse me, excuse me.

19 Excuse me, I'm going to respond. I don't want
20 anybody else to talk right now. Whoever is on the
21 phone just hold on a second. Mr. Theresa, I'm not
22 disagreeing with you. I'm just saying right now
23 that somebody has just said that they have something
24 that may -- and people can't create evidence, right?

25 You're talking about people like faking

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1 documentation, right?

2 And so like I -- whether or not -- I
3 want to have a -- I was trying to have a discussion
4 with DCRA about how this system doesn't seem to
5 be very definitive, right? There's not like a time
6 -- like you were mailed something that says this
7 is going on next door to your house, right? And
8 the only thing so far that I've heard is there's
9 maybe a card that you might have signed three years
10 ago, which by the way, I don't think you should
11 be responsible for tracking stuff, you know, for
12 three years that's going on next door to your house.

13 So I think we're all in the same place,
14 we're just trying to get everything on the record.

15 And since this isn't -- and I'll let my fellow
16 Board members speak up in a minute, but this isn't
17 going to come back to us one way or the other perhaps
18 until January or February, we can see what happens
19 with the timeliness issue there. But I can let
20 my fellow Board members also state their opinion.

21 But you have now told me what you think and I can
22 hear somebody on the phone. I guess Mr. Tasew,
23 you're trying to say something?

24 MR. TASEW: Yes, sir. Please allow
25 me. We posted it, and had a picture and we sent

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1 to DCRA. Also I have been discussing with him,
2 with Mr. Theresa, I have been discussing with him
3 so many times, we're going to build two houses and
4 then we have a lot of conversation --

5 (Simultaneous Speaking)

6 BZA CHAIR HILL: Okay, okay. So, Mr.
7 Tasew, this is obviously something that's going
8 to court and I don't want to get all involved in
9 all this stuff. We have a simple matter we're
10 trying to talk about right now, and if we want to
11 hold this in abeyance, then we're going to hold
12 this in abeyance, right?

13 As of now, I've seen nothing in the
14 record that shows me that Mr. Theresa should have
15 known that this thing was going to on next to his
16 house, right? So I'm going to turn to my fellow
17 Board members right now, okay, and ask you, and
18 I'll start with Mr. Shapiro and go to Ms. John,
19 and then Mr. Smith, I would just go ahead and hold
20 this in abeyance the timeliness issue and see if
21 anything definitive comes in to the record -- Mr.
22 Theresa, I see your hand -- and see if anything
23 definitive comes into the record that changes what
24 currently is in the record, right? And so that
25 would just be my opinion. I don't know, Mr.

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1 Shapiro?

2 COMMISSIONER SHAPIRO: Thank you, Mr.
3 Chair. Where you were going with your question,
4 I thought you were going to was to direct this a
5 little bit towards DCRA because I'm also not clear
6 about what the standard of notification is here.

7 BZA CHAIR HILL: Yeah, that was more
8 -- I was kind of getting past this discussion a
9 little bit. And then kind of asked my questions
10 directly of DCRA like what is there and --

11 COMMISSIONER SHAPIRO: Right.

12 BZA CHAIR HILL: -- I guess we can have
13 this conversation now, but what I first am curious
14 of is what do you think of the abeyance issue?

15 COMMISSIONER SHAPIRO: That makes
16 perfect sense to me. But I also -- I think I'll
17 be informed by what DCRA has to say about the
18 standard of notification.

19 BZA CHAIR HILL: All right, then let's
20 do that first.

21 (Simultaneous Speaking)

22 COMMISSIONER SHAPIRO: Based on
23 everything --

24 BZA CHAIR HILL: Mr. Green, Mr.
25 LeGrant, what is the standard of notification?

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1 MR. GREEN: Well, I didn't hear yet --
2 I don't know what you mean by -- and let me just
3 respond to two points. One is the standard of
4 notification, in terms of when we get to these
5 timeliness issues, all of these timeliness issues
6 are really fact specific. All of the cases that
7 I have read concerning the BZA is when did someone
8 know? Was it an email, was it not? And I know
9 the Board has been enmeshed in many of those. So
10 let me just say it's always a factual specific --
11 it many times boils down to facts specific issues
12 with regards to when someone knew or should have
13 known.

14 Now I guess the question you're asking
15 is what is -- and I apologize if you could repeat
16 it, your question is what is reasonable notice?
17 Or can you repeat the question that you wanted
18 answered?

19 COMMISSIONER SHAPIRO: How is one
20 notified?

21 MR. GREEN: Of a building permit? So
22 it's really available on our website. Mr. LeGrant,
23 I know we know -- and, of course, I'm not punting
24 it to him, but I know it's been a practice of ANCs
25 are notified of new building permits. And sorry,

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1 Mr. LeGrant, is there anything you wanted to add
2 in terms of the general process internally?

3 MR. LEGRANT: Yes. Thank you, Mr.
4 Green. So two points. There is nothing in the
5 zoning regulations that require notice of an
6 issuance of a building permit be given to an
7 adjacent owner or any property owners, or any other
8 parties. As a transparency measure, and as I've
9 been a zoning administrator, the permit operations
10 division of DCRA publishes a list of issued building
11 permits, building permit, address, and the date
12 that is available, channeled I believe on our
13 webpage specific which will give more details to
14 each ANC.

15 And so each ANC gets a notice of the
16 date, the building permit number, and the address
17 for those building permits. And then my experience
18 in the past is those ANCs if there's a question
19 and they follow up, they can drill down all the
20 building permit information including the scope
21 of work. Plans are available to any party online.

22 BZA CHAIR HILL: Okay. I'm going to
23 go back. But I have changed my mind now about the
24 timeliness. Like we can talk about it a little
25 bit more now as well if you want. But I'm --

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1 (Simultaneous Speaking)

2 MEMBER SMITH: Mr. Chair, I have a
3 question.

4 BZA CHAIR HILL: A little bit out of
5 order, but okay, Mr. Smith, go ahead.

6 MEMBER SMITH: This probably is
7 directed to Mr. LeGrant and Mr. Green. As far as
8 the regulations of posting of building permits,
9 when is a building permit required to be posted?
10 Is it after it has been issued? And on the
11 question of notification, would posting of a
12 property with a building permit constitute
13 notification for an adjacent property owner? Is
14 the applicant required to post the building permit
15 at the site?

16 MR. GREEN: Yes, a building permit has
17 to be -- you know, and Mr. LeGrant can talk to a
18 little bit more about it, but the posting is a
19 requirement I believe --

20 (Simultaneous Speaking)

21 BZA CHAIR HILL: -- only when the
22 construction starts, correct, Mr. Green?

23 MR. GREEN: I believe so.

24 BZA CHAIR HILL: Right. Mr. LeGrant,
25 is that correct?

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1 MR. LEGRANT: To be fully up front with
2 people, because it's a building code requirement
3 to post a building permit, I am not aware of the
4 actual requirement do you -- after you get your
5 building permit in hand do you have to post it at
6 the start of construction, or do you have to post
7 it in some time period? I do not know that
8 particular building code provision.

9 BZA CHAIR HILL: Okay. I'm going to
10 back a little bit. I got to talk my board members
11 here a second now. So the discussion I was trying
12 to have with DCRA, and, Ms. John, you know this
13 because we've talked about all this in terms of
14 timeliness issues, right? And as Mr. Green has
15 said, it's very much case specific, right? Case
16 by case basis, we look at everything on a case by
17 case basis, right? And I guess I'm going to kind
18 of offering something to the Zoning Administrator,
19 DCRA, whatever is that if there were a more
20 definitive way to start that clock, it would be
21 easier for us to have a discussion about it.

22 And I don't know, maybe there's not.
23 I don't know. And maybe it's not necessarily
24 worth it. I, again, don't know, right? But I do
25 now believe, now that I've thought about this a

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1 little bit more, and you guys can talk about it,
2 that Mr. Theresa is going to have a building put
3 up right next to his house. It's going to take
4 away half of his possible easement, and to think
5 that he didn't put an appeal out as soon as he knew,
6 I now believe that, you know, it's timely, okay?

7 So as a case by case thing, right, I
8 don't think he knew, okay? And I think that as
9 soon as he knew, he would have filed his appeal.

10 Okay? And as soon as he did know when somebody
11 was talking in his yard, he filed his appeal. So
12 I think it's timely and I'm going to move on then
13 for the -- you know, the case by case thing. You
14 know, so I believe him. Okay? So now, Ms. John,
15 what do you think? And I'll be happy to go back
16 to the abeyance thing if you all have different
17 thoughts. But, Ms. John?

18 VICE CHAIR JOHN: So, Mr. Chairman,
19 when you mentioned the abeyance option, I was not
20 thinking for a year, I was thinking of maybe two
21 weeks to allow them to submit something. And like
22 you, I don't believe there's anything there because
23 I don't think Mr. Theresa is crazy. You know, he's
24 got an easement, and if someone's putting up, you
25 know, a building on his easement, he would do

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1 something if he knew. So I believe that, too.

2 BZA CHAIR HILL: Okay, all right.

3 VICE CHAIR JOHN: So having said that,
4 though, I do have an issue with this known or should
5 have known question that keeps coming up because,
6 number one, the public does not know. There are
7 no rules. It's like whack-a-mole. And so to me
8 the DCRA should be able to come up with some solution
9 so that the home owner doesn't have to sit there
10 and depend on the ANC to let them know if there's
11 a significant, you know, construction, you know,
12 about to start. Or has to sit at the computer every
13 weekend checking to see if there's a permit, you
14 know, next to the homeowner.

15 So I have a really serious problem with
16 this issue. I think DCRA should be able to come
17 up with a rule that says places the burden on the
18 property owner. And that says the property owner
19 has to post a permit within a certain time. And
20 I think that would really solve a lot of this
21 litigation about knew or should have known, he said/
22 she said, and that's how I see it. I don't want
23 to be the homeowner who has to having received a
24 notice three years ago have to sit at my computer,
25 and did I mention as a senior citizen, and try to

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1 figure out what's going on next door. So that would
2 be my two cents.

3 BZA CHAIR HILL: Yeah. So, again, I'm
4 going to back -- and I know, Mr. LeGrant and Mr.
5 Green, I mean, you know, they issued a building
6 permit, they have up to a year to kind of do anything
7 with it, so I don't know what the specifics are,
8 like, you know, I don't see how something can be
9 posted for a year or I don't know how you get over
10 this or what solutions there may be.

11 But I don't necessarily know if we're
12 going to address them here now. But this is
13 something that I think we're curious of because
14 it does happen to us every now and -- meaning the
15 BZA in terms of timeliness issues or not. So I'm
16 back to denying the motion for timeliness, and I
17 think I got one with Ms. John. And I want to hear,
18 Mr. Shapiro, are you good with voting on this today?

19 COMMISSIONER SHAPIRO: Yes.

20 BZA CHAIR HILL: Okay, Mr. Smith?

21 MEMBER SMITH: Yes.

22 BZA CHAIR HILL: Okay. All right. So
23 I'm going to make a motion to deny the motion for
24 timeliness as this is now a timely appeal, and I'm
25 going to ask for a second, Ms. John?

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1 VICE CHAIR JOHN: Second.

2 BZA CHAIR HILL: The motion made and
3 seconded. Mr. Moy, will you please take a roll
4 call? Mr. Moy, you're muted.

5 SECRETARY MOY: Okay, thank you, Mr.
6 Chairman. Yes, I was trying to manipulate my
7 fingers on this keyboard here. Okay. So when I
8 call your name if you would please respond with
9 a yes or no to the motion made by Chairman Hill
10 to deny the motion to -- deny the motion to dismiss
11 on timeliness, seconded by Vice Chair John. Zoning
12 Commissioner Peter Shapiro?

13 COMMISSIONER SHAPIRO: I vote yes to
14 deny.

15 SECRETARY MOY: Yes. Mr. Smith?

16 MEMBER SMITH: Yes to deny.

17 SECRETARY MOY: Chairman Hill?

18 BZA CHAIR HILL: Yes to deny.

19 SECRETARY MOY: Staff would record the
20 vote as four to zero to one. And this is on the
21 motion of Chairman Hill to deny the motion to
22 dismiss based on timeliness, seconded by Ms. John.

23 Also in support of the motion to deny is Zoning
24 Commissioner --

25 COMMISSIONER SHAPIRO: Did you ask for

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1 Ms. John's vote?

2 VICE CHAIR JOHN: Pardon?

3 SECRETARY MOY: What's that?

4 COMMISSIONER SHAPIRO: Did I miss
5 that? Did I fall asleep for a second? Did you
6 ask for Ms. John's vote?

7 VICE CHAIR JOHN: Oh, missed --

8 (Simultaneous Speaking)

9 SECRETARY MOY: Yes, I did. I thought
10 I did.

11 COMMISSIONER SHAPIRO: Oh, okay. All
12 right. I'm sorry.

13 SECRETARY MOY: No, that's okay.

14 COMMISSIONER SHAPIRO: I blinked for
15 a second.

16 VICE CHAIR JOHN: Well, if --

17 (Simultaneous Speaking)

18 SECRETARY MOY: No, that's all right,
19 it's always good to double check me.

20 VICE CHAIR JOHN: Yes. No, if you did,
21 the vote is yes.

22 SECRETARY MOY: Yes, thank you.

23 VICE CHAIR JOHN: Thank you, Mr.
24 Shapiro.

25 SECRETARY MOY: Okay. So staff would

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1 record the vote as four to zero to one. We have
2 a board seat vacant. In support of the motion to
3 deny is Zoning Commission Peter Shapiro, Mr. Smith,
4 Vice Chair John, and Chairman Hill. Again, the
5 vote is four to zero to one, the motion to deny
6 is passed.

7 BZA CHAIR HILL: Okay. Mr. Green, you
8 guys submitted a slide deck, is that right?

9 MR. GREEN: Yes, sir.

10 BZA CHAIR HILL: Which exhibit is it,
11 Mr. Green? I don't know why I'm having a tough
12 --

13 MR. GREEN: They haven't -- they were
14 not admitted --

15 BZA CHAIR HILL: Okay.

16 MR. GREEN: -- because it was delayed.

17 BZA CHAIR HILL: Okay.

18 MR. GREEN: So I can talk about that,
19 or refile it in a time -- I mean it's --

20 BZA CHAIR HILL: So that's all right.

21 So it's going to be moot now because this is going
22 to be open now until we're back again or not, right?

23 So, Mr. Theresa, that slide deck will probably
24 get into the record at some point, and you'll have
25 an opportunity to take a look at it. If in fact

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1 we get to that point, right? So Mister -- let's
2 see, I'm going to -- Mr. Hunt, do you understand
3 everything that's going on?

4 MR. HUNT: Yes, sir.

5 BZA CHAIR HILL: Okay. Mr. Tasew, do
6 you understand that's going on?

7 MR. TASEW: Yes, sir.

8 BZA CHAIR HILL: Mr. Theresa, do you
9 understand everything that's going on?

10 MR. THERESA: Yes.

11 BZA CHAIR HILL: All right. Then I guess
12 we'll postpone this until after the court thing
13 whenever that is. Okay?

14 MR. HUNT: That would seem
15 appropriate, and a long time line does make sense
16 even into the New Year.

17 BZA CHAIR HILL: Okay. Mr. Moy, you had
18 your hand up?

19 SECRETARY MOY: Yes. Two things, Mr.
20 Chairman. So for clarity for the record, then the
21 Board is allowing DCRA's PowerPoint slide deck into
22 the record, correct?

23 BZA CHAIR HILL: Yes.

24 SECRETARY MOY: And the second thing
25 is I think it might be helpful for the Board to

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1 put a placeholder with regards to the continued
2 hearing.

3 BZA CHAIR HILL: Okay. So I do have
4 a question now again. So like, you know, as far
5 as the record being open, so then like, you know,
6 Mr. Green just submitted something. I don't know
7 whether Mr. Theresa wants to bother writing
8 anything against it right -- or not against it,
9 writing anything to that slide deck right now or
10 just waiting to see what happens. But how would
11 we keep the record open, and how would this -- I
12 guess the record will be open until we come back
13 for this supposed date. Is that correct, Mr. Moy?

14 SECRETARY MOY: I believe so, but I
15 would defer to Counselor Nagelhout.

16 BZA CHAIR HILL: Okay. Then I'll ask
17 Ms. Nagelhout in a moment. Then as far as the
18 supposed date, I don't know I heard January is when
19 they're going to in court. And so I guess I don't
20 anything happening until February, you know?

21 MR. HUNT: Or even further to be quite
22 honest on behalf of the owner.

23 BZA CHAIR HILL: Okay. Well, I mean,
24 Mr. Hunt, do you have a timeline to propose?

25 MR. HUNT: To actually get to a point

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1 where there could be reasonable movement in the
2 case, I could see even going out into the spring
3 like April.

4 BZA CHAIR HILL: Okay. Mr. Moy, how
5 do you do that? You don't schedule that far out.

6 SECRETARY MOY: Well, we haven't gone
7 that far out in the past, but I could hold this
8 aside with a future date to come. But I -- at
9 present, given the number of applications that have
10 been filed to the Office of Zoning, dockets are
11 getting filled. I'm not that far out yet, but it
12 won't be long. We're --

13 (Simultaneous Speaking)

14 BZA CHAIR HILL: All right. Okay.
15 Then go ahead and put April 7th down and we'll just
16 see what happens.

17 SECRETARY MOY: Okay, that's good
18 because we can always move that depending on the
19 status.

20 BZA CHAIR HILL: Okay. All right. So
21 I guess that's it unless anybody has anything else?
22 No?

23 (Simultaneous Speaking)

24 MR. HUNT: Not at this time. No.

25 BZA CHAIR HILL: Okay. All right.

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1 Well, thank you, all, very much, and we'll see what
2 happens. Thank you.

3 MR. HUNT: Great. Very well. Thank
4 you, all.

5 BZA CHAIR HILL: I guess then, Mr. Moy,
6 that keeps us here, right? And is it -- well, gosh,
7 is there anything else before the Board?

8 SECRETARY MOY: Well, not anything from
9 the staff, sir.

10 BZA CHAIR HILL: Okay. Well, then
11 we're adjourned, everyone.

12 (Whereupon, the above-entitled matter
13 was concluded at 12:55 p.m.)
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C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DCBZA

Date: 09-16-20

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