

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

DECEMBER 2, 2020

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:37 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:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, Esquire
ALEXANDRA CAIN, Esquire

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The transcript constitutes the minutes from the
Regular Public Hearing held on December 2, 2020

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Case No. 20322 - Application of 503 Park Avenue, NW, LLC . - 4

Case No. 20324 - Application of ANC 1A - 13

Case No. 20321 - Application of 700 Randolph Street, NE, LLC
(Postponed to December 9, 2020)

Case No. 20323 - Application of The District of Columbia
Department of General Services (Postponed to February 10,
2021)

Case No. 20314 - Application of George Thanos
(Second postponement to February 24, 2021)

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

2 (9:37 a.m.)

3 CHAIRPERSON HILL: Sorry, guys. There was a -- this
4 Zoom world is so weird.

5 Okay. All right. Mr. Moy, you can go ahead and call
6 our first case.

7 MR. MOY: Thank you, Mr. Chairman. I'm glad you're
8 back. We couldn't play this game until you came back on here.
9 Okay.

10 So this would be Case Application No. 20322 of 503 Park
11 Road, N.W., LLC, captioned and advertised for special exceptions
12 under the residential conversion requirements, Subtitle U, Section
13 320.2 and under Subtitle C, Section 703.2, from the minimum
14 parking requirements of Subtitle C, Section 701.5. This would
15 convert a principal dwelling unit into a three-unit apartment
16 house, RF-1 Zone. This is at premises 503 Park Road, Northwest,
17 Square 3037, Lot 85. And the only other information for the
18 Board, as you are well aware of, there is a request from the
19 applicant for -- to waive the 21-day filing deadline so that they
20 can enter into the record a letter from the Zoning Administrator.

21 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
22 Mr. Sullivan, are you there or Ms. Wilson? Who is going
23 to be --

24 MS. WILSON: This is Ms. Wilson. I'll be presenting.

1 CHAIRPERSON HILL: Okay. Ms. Wilson, could you
2 introduce yourself for the record, please?

3 MS. WILSON: Absolutely. Alex Wilson from Sullivan &
4 Barros on behalf of the applicant.

5 CHAIRPERSON HILL: Great. Thank you.

6 Commissioner, could you please introduce yourself for
7 the record?

8 COMMISSIONER WRAY: Good morning, everyone. This is
9 Michael Wray with ANC 1A09.

10 CHAIRPERSON HILL: Great. Commissioner, welcome.

11 Let's see. Ms. Wilson, is there someone else here with
12 you?

13 MS. WILSON: Yes. I have the architects, Elizabeth
14 Stewart and Michael Cross, and we should have a representative of
15 the owner with us, Matt Scorzafava.

16 CHAIRPERSON HILL: Okay. I only see Ms. Stewart. I
17 don't know -- oh, wait a minute. Okay. There is Mr. Cross.
18 There is Mr. Scorzafava. Let's see how we get through this and
19 see who you're going to need or who we're going to need to talk
20 to.

21 There was the motion to -- for the waiver of the 21-day
22 filing deadline to submit the confirmation from the Zoning
23 Administrator. Unless the Board has any issues with that, I would
24 like to admit that into the record, so we know what the Zoning
25 Administrator had to say and if anyone from the Board has an

1 issue, please raise your hand.

2 All right. I don't see anybody raising their hand, so
3 we're going to go ahead and waive that filing deadline and admit
4 that into the record, Mr. Moy.

5 Ms. Wilson, if you want to go ahead and walk us through
6 your application as well as why you believe you're meeting the
7 standard for us to grant the request -- the relief requested, and
8 I'll go ahead and put 15 minutes on the clock there so I know
9 where we are, and you can begin whenever you like.

10 MS. WILSON: Great. Thank you, so much.

11 Mr. Young, would you mind pulling up the presentation?
12 We have a very brief presentation. Thank you.

13 And so originally, we requested a waiver from the
14 architectural elements provision and that email from the Zoning
15 Administrator was simply confirming that we no longer needed that
16 for the removal of the bay window. Could you go to the next
17 slide, please?

18 So the property is currently improved with a three-story
19 single-family dwelling and the applicant is proposing to construct
20 a rear addition to the building and convert it to three
21 residential units. Accordingly, we need relief from U 320.2 for
22 the conversion and as there is no alley access on the property, no
23 parking can be provided so we're also requesting relief from C
24 703.2. Next slide, please?

25 This is an overview of the location and existing

1 building. It is an interior lot with no alley access. Next
2 slide, please?

3 This is an overview of the proposed rear addition. It
4 extends about 9.5 feet past the rear wall of the only adjoining
5 building. The addition itself is permitted as a matter of right
6 and the Zoning Regulations recently changed so that relief from U
7 320.2 is only limited to three criteria and none are related to
8 the addition. So we are just asking for relief from the use and
9 parking which is why we don't have any plans in this presentation,
10 but of course after we are happy to walk through the plans in
11 Exhibit 28. Next slide, please?

12 As I mentioned, the requirements of U 320.2 are now very
13 limited. The application meets the requirements as there is an
14 existing building on the property. The applicant is proposing
15 three dwelling units and the property has at least 900 square feet
16 of land area per unit. Next slide, please?

17 For the parking, the rear of the property is landlocked
18 and does not have access to an alley. It is a row building with
19 no side yards and there's no way to access Park Road from the rear
20 of the subject property. Accordingly, due to the physical
21 constraints of the subject property, the required parking spaces
22 cannot be provided on the lot. Based on a review of the
23 properties within 600 feet of the lot, all parking spaces within
24 that radius appear to belong to private owners and are not
25 available for lease. Next slide, please?

1 In conclusion, we have a letter in support from a
2 neighbor in the area who went into a lot of detail about the
3 public transportation in the area. The Howard Metro is within
4 walking distance. There are shops and restaurants nearby on 11th
5 Street and Georgia Avenue.

6 We've reached out to both adjacent owners. We've sent
7 them plans, we've sent them detailed information and we haven't
8 heard back from them and this project was applied for in June so
9 it's been on the docket for a while and so we have not heard back
10 from them, so it appears they do not have any issues with the
11 project. The ANC supports the application, and the Office of
12 Planning is recommending approval.

13 CHAIRPERSON HILL: Okay. Great. Thank you, Ms. Wilson.

14 MS. WILSON: Thank you.

15 CHAIRPERSON HILL: I don't know. There seems to be an
16 echo. Maybe it's me -- or Ms. Wilson, you want to mute? Thanks.

17 Does the Board have any questions for the applicant, or
18 the architect, or anybody?

19 MEMBER SMITH: I don't have any questions, Mr. Chair.

20 CHAIRPERSON HILL: Commissioner, would you like to
21 provide your testimony?

22 COMMISSIONER WRAY: Good morning again. Michael Wray,
23 ANC 1A. The ANC, as we've already said, is in support of the
24 application. While it's maybe not as directly relevant to the
25 case, you know, this property was subdivided before the case was

1 brought and so the driveway that you see perhaps in many
2 photographs coming off of Park Road is actually going to be
3 removed as part of the overall plan for this project and because
4 of that, we're going to be -- the project would actually return
5 some of the parking back to the street which we find in 1A to be a
6 net positive when we think about it in terms of not only the
7 parking, but also the safety.

8 And so that was one of the primary reasons that we felt
9 that parking relief was not going to be a significant impact to
10 the community and so that is why we are in support and I'm here if
11 there are any questions. Thank you.

12 CHAIRPERSON HILL: All right. Well, thanks,
13 Commissioner, for taking the time to be with us. We haven't seen
14 you in a little while.

15 Does anybody have any questions for the Commissioner?

16 CHAIRPERSON HILL: Commissioner, is this your SMD?

17 COMMISSIONER WRAY: Yes, this is my SMD.

18 CHAIRPERSON HILL: I've always been curious; is that
19 golf course still there?

20 COMMISSIONER WRAY: The one on the -- yes, there's a
21 golf course on the Old Soldiers' Home which you can -- some people
22 are able to get access to through a membership.

23 CHAIRPERSON HILL: I've always been curious about that.
24 Okay. All right.

25 Can I hear from the Office of Planning, please? Oh,

1 wait. I'm sorry. Does the Board have any questions for the
2 Commissioner?

3 Could I hear from the Office of Planning, please?

4 MS. FOTHERGILL: Good morning, Chairman Hill and members
5 of the Board. I'm Anne Fothergill for the Office of Planning
6 (audio interference) 20322 at 503 Park Road, Northwest, and the
7 Office of Planning does recommend approval of the two special
8 exceptions that have been requested for (audio interference) units
9 and the parking relief.

10 The Office of Planning Staff Report inadvertently
11 omitted the general special exception review criteria for the
12 conversion under Subtitle X, Section 901 and if the Board would
13 like, we can review them now on the record.

14 CHAIRPERSON HILL: Yes, please do so, Ms. Fothergill.

15 MS. FOTHERGILL: So the general special exception
16 criteria for the conversion (audio interference) for the three
17 units will be in harmony with the general purpose and intent of
18 the Zoning Regulations and maps as the RF-1 Zone does allow for
19 conversions to apartment houses with the special exception. And
20 we reviewed the review criteria of U 320.2 in the Staff Report and
21 it -- and we support that special exception.

22 Additionally, the proposed conversion would not appear
23 to adversely affect the use of neighboring properties. The
24 proposed addition complies with all other development standards
25 and would be permitted as a matter of right as the applicant

1 mentioned -- the applicant (audio interference), but it meets the
2 development standards and should not adversely affect the
3 submitted properties.

4 So my apologies that those were omitted in the written
5 report, but that's our presentation and we recommend it.

6 CHAIRPERSON HILL: Okay. Thank you, Ms. Fothergill.

7 Does the Board have any questions for the Office of
8 Planning?

9 Commissioner, do you have any questions for the Office
10 of Planning?

11 COMMISSIONER WRAY: No, thank you.

12 CHAIRPERSON HILL: Ms. Wilson, do you have any questions
13 of the Office of Planning?

14 MS. WILSON: No, thank you.

15 CHAIRPERSON HILL: Mr. Young, is there anybody here
16 wishing to testify?

17 MR. YOUNG: We do not have anyone.

18 CHAIRPERSON HILL: Okay. All right. Does anyone have
19 any final questions for anybody? I'm looking at my fellow Board
20 members.

21 Ms. Wilson, do you have anything that you'd like to add
22 at the end?

23 MS. WILSON: No, thank you.

24 CHAIRPERSON HILL: All right. I'm going to close the
25 hearing and the record. I'm going to excuse everyone. Thank you

1 all. Have a nice day.

2 Is the Board ready to deliberate? Okay. I can begin.
3 I didn't really have any issues with this. I thought it was
4 relatively straight forward. I would be in agreement with how
5 they're meeting the criteria for us to grant the relief requested
6 and I'm also -- you know, it was very nice of the Commissioner to
7 show up and kind of give us the ANC's report because we didn't
8 have a report on-hand. And also, I would agree with the analysis
9 that was provided by the Office of Planning, so I'm going to be
10 voting in favor.

11 Mr. Miller, is there anything you'd like to add? You're
12 shaking your head no.

13 Mr. Smith, is there anything you'd like to add? You're
14 shaking your head no.

15 Ms. John, is there anything you'd like to add?

16 VICE CHAIR JOHN: No, Mr. Chairman.

17 CHAIRPERSON HILL: Okay. Then I'm going to make a
18 motion to approve Application No. 20322 as captioned and read by
19 the secretary and ask for a second, Ms. John.

20 VICE CHAIR JOHN: Second.

21 JUDGE PRAISS: The motion was made and seconded. Mr.
22 Moy, could you please take a roll call vote?

23 MR. MOY: Thank you, Mr. Chairman. When I call your
24 name, if you would please respond with a yes, or a no, or abstain
25 to the motion made by Chairman Hill to approve the application for

1 the relief requested. Motion was seconded by Vice Chair John.
2 Zoning Commissioner, Rob Miller?

3 COMMISSIONER MILLER: Yes.

4 MR. MOY: Mr. Smith?

5 MEMBER SMITH: Yes, approved.

6 MR. MOY: Vice Chair John?

7 VICE CHAIR JOHN: Yes.

8 MR. MOY: Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MR. MOY: And we have a Board seat vacant. Staff would
11 record the vote as 4 to 0 to 1 and this is on the motion made by
12 Chairman Hill to approve the application, grant the application,
13 seconded by Vice Chair John. Also in support of the motion is
14 Zoning Commissioner Rob Miller, Mr. Smith, and, of course, Vice
15 Chair John and Chairman Hill, Board seat vacant. Motion carries 4
16 to 0 to 1.

17 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.

18 All right, you guys. As you know, we have an appeal and
19 that's the only thing we have left. Does anybody -- we can take
20 breaks at any time. Like, I'm just letting you know normally we -
21 - anyway, so does anybody need a break right now? Okay.
22 Everybody is good. Okay.

23 All right. Mr. Moy, you can go ahead and call our next
24 case.

25 MR. MOY: Thank you, Mr. Chairman. So this would be

1 Appeal No. 203 -- excuse me -- 20324 of ANC 1A. Caption and
2 advertised as the appeal from the decision made on May 20th, 2019
3 by the Zoning Administrator, Department of Consumer and Regulatory
4 Affairs, to issue the revision of building permit B2008299 to the
5 building permit B1901444 to permit the conversion of a principal
6 dwelling unit into a two-unit condominium building, RF-1 Zone at
7 premises 3600 Park Place, Northwest, Square 3035, Lot 52.

8 CHAIRPERSON HILL: Okay. Great. Wow. Okay. We've got
9 the same people. All right. Let's see. Mr. Sullivan, are you
10 there? Oh, wait. No, hold on. Sorry. Commissioner Boese, could
11 you please introduce yourself for the record?

12 COMMISSIONER BOESE: Sure. My name is Kent Boese, Chair
13 of ANC 1A. My Single Member District is 1808 and this property is
14 in my Single Member District.

15 CHAIRPERSON HILL: Okay. Great. Commissioner, good to
16 see you. The beard looks serious, you know. Yeah, you --

17 COMMISSIONER BOESE: You know, just to say that, I feel
18 like I'm in search of a cave right now.

19 CHAIRPERSON HILL: Oh, gosh. We're all -- everybody is
20 growing things. I love it. All right. Okay. Let's see.
21 Commissioner Wray, are you there?

22 COMMISSIONER WRAY: Yes. Good morning again.
23 Commissioner Wray, ANC 1A09 and I'll be assisting Commissioner
24 Boese in any way I can.

25 CHAIRPERSON HILL: Okay. Great.

1 Let's see. Mr. LeGrant, could -- oh, hold on. Where is
2 your attorney, Mr. LeGrant? You're on mute, Mr. LeGrant.

3 MR. LEGRANT: Okay. Can you hear me now?

4 CHAIRPERSON HILL: Yes.

5 MR. LEGRANT: Yeah. So Matthew LeGrant, Zoning
6 Administrator, DCRA. My attorney, Mr. Green, is in the process of
7 logging on. He's, I think, just getting his credentials in order
8 to log on.

9 CHAIRPERSON HILL: Okay. All right. Well, we'll go
10 around the table for a while first and then we'll see where we
11 get.

12 Mr. Sullivan, could you introduce yourself for the
13 record?

14 MR. SULLIVAN: Sure, Marty Sullivan, and I just want to
15 make clear. I signed up to testify, but I'm not authorized by the
16 property owner and I'm not engaged, so I just wanted to clarify
17 that I'm not going to be part of this case.

18 CHAIRPERSON HILL: So you're in here just to submit
19 public testimony?

20 MR. SULLIVAN: No. I signed up to testify because it
21 looked like I was going to be engaged to represent the property
22 owner, but I am not engaged to represent the property owner, so
23 I'm not representing anybody, so you can knock me off and I'm
24 going to listen just for fun, but I'm not part of the case.

25 CHAIRPERSON HILL: Okay. All right. Well, Mr.

1 Sullivan, thank you for explaining all of that.

2 MR. SULLIVAN: Thank you.

3 CHAIRPERSON HILL: That makes sense. So Mr. Young, you
4 can excuse Mr. Sullivan.

5 Okay. All right. So then we're going to wait for --
6 oh, there's Mr. Green.

7 Mr. Green, could you introduce yourself for the record
8 when you get a chance?

9 MR. GREEN: Hi. Good morning Chairman and members of
10 the Board. My name is Hugh Green, attorney with the DCRA. I'm
11 sorry I'm late.

12 CHAIRPERSON HILL: Sure, no problem.

13 Hey, Mr. Young, I forget. You can't make the clock --
14 it only counts down. It can't count up, correct?

15 MR. YOUNG: I believe so. I can double check.

16 CHAIRPERSON HILL: That's all right.

17 Okay. All right. Commissioner Boese, so this is your
18 appeal and I know that you're familiar with the process.

19 Mr. Young, I think your microphone is not muted.

20 MR. YOUNG: Yeah, it is. So there actually is a
21 stopwatch feature, I believe, so I can try using that if you'd
22 like.

23 CHAIRPERSON HILL: Yeah. Go ahead and give it a shot.
24 I'm just kind of curious as to where we kind of are with things.
25 I don't really have a timeline exactly. Thank you.

1 Let's see. Mr. LeGrant, you're not muted just so you
2 know.

3 And then Commissioner Boese, if you want to go ahead and
4 present your appeal and you can begin whenever you like.

5 COMMISSIONER BOESE: Thank you. So ANC 1A is here today
6 to challenge the Zoning Administrator's decision to allow
7 construction to proceed at 3600 Park Place, Northwest, bypassing
8 the BZA special exception requirement and without coming before
9 ANC 1A for review and comment. We are heartened that DCRA and the
10 ANC agree on many of the facts in this case. Where we disagree is
11 in the Zoning Administrator determining that wholesale removal of
12 a rooftop architectural element original to the building can be
13 replaced in kind without going through the special exception
14 process required under the regulations.

15 The Zoning Administrator has stated that this is
16 permissible based on evidence and photographs submitted for review
17 that show a severely deteriorated condition of the dormers and
18 roof which grants the Zoning Administrator the latitude to
19 authorize repairs that circumvent the legal zoning approval
20 process.

21 While ANC 1A does not take issue with addressing
22 distressed properties in a productive manner, this is not what is
23 before us today. As you can see from our submission at Exhibit
24 18, a photograph of the building with the original roof is
25 included on page 3. This photo dates to July 2019 which is the

1 same date that DCRA issued its original building permit.

2 The approval by DCRA employee Shawn Gibbs specifically
3 states that, quote, "The existing architectural elements, front
4 porch, and roof, and mansard roof are to be preserved and that the
5 third-floor addition setback 3 feet from all architectural
6 elements, yet by December and without approval or review, the
7 owner entirely removed the roof and dormers.

8 According to the architect's field support sent to Matt
9 LeGrant following a May 15th, 2020 investigation by Axis
10 Architects states that the reason for the removal, based on their
11 site visit five months after the removal and an examination of
12 apocryphal photographs showing the deteriorated state of the
13 dormers, was too far gone to save. Interestingly, we did not see
14 the referenced photographs in the records nor were they shared
15 with ANC 1A.

16 We countered that the real reason for the removal of the
17 roof was not concern about the condition of the roof, but rather
18 that the roof encroached upon the design of the building and
19 decreased profitability. One need only look at ANC 1A's Exhibit
20 18, page 5, Figure 3. This shows construction on May 2nd, 2020
21 after DCRA erred in vacating their stop work order and at which
22 time the builder started construction full speed ahead.

23 This construction does not conform with the approved
24 building plans, it does not represent the 3-foot setback approved
25 and gives clear indication that there is no intent to recreate the

1 dormer roof. Interestingly enough, I was in an email conversation
2 with DCRA at the same time that said the plans did conform.
3 Clearly, they did not.

4 Regarding the Zoning Administrator's authority under
5 Subtitle E, Section 206.2, it grants the Zoning Administrator to
6 authorize ordinary repairs or based on evidence accepted to the
7 Zoning Administrator that A, the rooftop element is substantially
8 eroded. We question how this can be considered an ordinary
9 repair.

10 In this case, the Zoning Administrator erred because no
11 evidence of the substantially eroded conditions exists. It's all
12 in a landfill and was removed five months before the Zoning
13 Administrator became involved. Furthermore, the photographic
14 evidence submitted to the record is not of the dormer or rooftop
15 structures, but rather of an area of the facade exposed to the
16 elements by the property owner five months before the photographs
17 were taken.

18 These alternative facts have been put forward as truth,
19 yet attempt to establish an unprovable position. For this reason
20 alone, the Zoning Administrator does not have the authority to
21 approve the project without coming before the BZA.

22 More broadly, however, is the whole issue of original
23 rooftop elements which we have discussed before you before. As
24 the Board is well aware, according to E 206.1 in the RF Zone
25 District, "Rooftop architectural elements original to the building

1 shall not be removed or significantly altered without a special
2 exception." This language in this section is resolute and offers
3 no latitude.

4 Furthermore, as ANC 1A has established before this Board
5 in BZA cases 2192 and 20114, the core problem with E 206.1 is that
6 the Zoning Commission established this regulation without
7 establishing a set criteria to evaluate when it is appropriate to
8 remove the original architectural element nor did they establish
9 criteria or standards on what is considered to be an appropriate
10 replacement for original architectural elements when they need to
11 be repaired or replaced.

12 For example, if the original slate shingles and molded
13 tin dormer decoration could have been removed and reinstalled if a
14 replacement was deemed necessary. Instead, the illegal
15 unpermitted construction resulted in these materials going to a
16 landfill. It is this loss of detail that the special exception
17 review by both the BZA and ANC is meant to help resolve.

18 But more importantly and to the point, the lack of
19 criteria and standards has resulted in significantly different
20 outcomes from this Board as each case is deliberated; outcomes
21 that are not standard and seemingly do not convey from one case to
22 the next. If the Board struggles with applying this section of
23 the Code consistently, it therefore cannot delegate this authority
24 to the Zoning Administrator as it is impossible for him to act on
25 behalf of the BZA when the Board itself is unclear.

1 Ultimately, I would prefer not to be here today and
2 challenging the Zoning Administrator before the BZA. It is not
3 something I enjoy, but I do care about consistency in the zoning
4 process and fairness to property owners to work within the
5 regulations and residents who look to DCRA for enforcement.

6 Nothing at 3600 Park Place functioned correctly. DCRA
7 has made a mess of it and ultimately approved construction to move
8 forward. This has all the hallmarks of being more concerned with
9 sweeping a problem under the rug than doing the right thing.
10 Frankly, had the property owner been correctly instructed to come
11 before the BZA in December 2019 when this all began, it would have
12 been settled by now and the owner would be finished with his
13 project. I thank you for your time.

14 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

15 Let's see. Does the Board have any questions of the
16 Commissioner?

17 Okay. We'll just see how we kind of go through this and
18 then we'll see what questions we have.

19 Mr. Green, are you there?

20 MR. GREEN: Yes, Chairman.

21 CHAIRPERSON HILL: Commissioner Boese, you might want to
22 mute your microphone. Thank you.

23 All right. Mr. Green, you want to give your
24 presentation or respond?

25 MR. GREEN: Yes. If I may, just to begin, and then I'd

1 like to offer some testimony by the Zoning Administrator.

2 Good morning, Chairman Hill and members of the Board.
3 Hugh Green, attorney for DCRA. The ANC 1A has raised this basis
4 of the appeal and that is -- I'm just going to read it, the Zoning
5 Administrator's approval for the removal or replacement of rooftop
6 architectural elements of the subject property and ultimately the
7 approval for a revision of building permit which is B2008299.

8 Unfortunately, I think one of the main key issues here
9 is that the Zoning Administrator themselves did not approve the
10 removal of those elements. There's no factual dispute there.
11 They removed without prior consultation or approval by the DCRA or
12 the Zoning Administrator, and I think it's helpful to understand a
13 timeline of the events after the removal by the property owner and
14 which Mr. Le Grant will testify to as to his decisions after that
15 removal and what he directed the property owner to do in order to
16 ultimately replace that architectural element to be identical or
17 substantially identical to the original, and I think a timeline of
18 the events which we will go through is relevant and important for
19 the Board to hear.

20 The last bit before we get to Mr. LeGrant is that we do
21 believe that the Zoning Administrator acted within his authority
22 when he directed the owner to remove this without prior
23 consultation to restore it to its identical features and ask the
24 Board in our submissions in our prehearing statement. Clearly, the
25 Zoning Regulation were amended 206.2, which the Commissioner has

1 noted, allows the replacement of an architectural element such as
2 this after the Zoning Administrator has reviewed the material
3 submissions in order to make that determination.

4 So in this case, I think Mr. LeGrant's conduct and
5 decision was in harmony with the Zoning Regulations then and
6 certainly comports with the amended regulations that they are now.
7 So that's the testimony that we will purport today. So if I
8 could, I'd like to bring Mr. LeGrant, and for the Board's benefit,
9 I'm going to walk through a bit of the timeline of events because
10 I think it's irrelevant -- it's very relevant and then talk about
11 how that decision was made.

12 So I'd ask Mr. LeGrant -- Mr. LeGrant, good morning --
13 can you restate your name?

14 Before I begin, Chairman Hill, could I begin with Mr.
15 LeGrant? I wanted to ask your permission.

16 CHAIRPERSON HILL: Sure, that's fine.

17 MR. GREEN: Okay. Hi. Mr. LeGrant, can you please
18 state your name for the record.

19 MR. LEGRANT: Good morning. Yes, Matthew LeGrant,
20 Zoning Administrator, DCRA.

21 MR. GREEN: And Mr. LeGrant, are you familiar with the
22 facts surrounding building permits B191344 and B20089299 for a
23 property known as 3600 Park Place, Northwest?

24 MR. LEGRANT: I am.

25 MR. GREEN: Okay. Mr. Young, I'd ask you to, if you

1 could, or the Board, can you pull up the slides? Slides were
2 provided pursuant to the rules.

3 MR. YOUNG: I didn't receive an email with the
4 PowerPoint. Is it in the record? I can go into the record and
5 pull an exhibit.

6 MR. GREEN: I know it was filed, yes. Whether it's in
7 the record now is -- I know it was submitted within 24 hours of
8 the hearing.

9 CHAIRPERSON HILL: Mr. Young, I don't know if it's No.
10 21 or not.

11 MR. GREEN: Let me go into the -- let me open the record
12 here.

13 MS. NAGELHOUT: This is Mary Nagelhout, an OAG. I think
14 it's (audio interference) or thereabouts.

15 MR. GREEN: So this would be --

16 MR. YOUNG: Okay.

17 MR. GREEN: -- Exhibit -- BZA Exhibit 21, page -- it
18 was, looks like, 13 pages.

19 CHAIRPERSON HILL: Is somebody trying to talk? Oh.

20 MR. YOUNG: Just give me a couple minutes to pull --

21 CHAIRPERSON HILL: Yeah.

22 MR. YOUNG: -- this up.

23 UNIDENTIFIED SPEAKER: (Audio interference).

24 CHAIRPERSON HILL: I don't know. I just heard some
25 garbled thing a minute ago.

1 Mr. LeGrant, if you don't mind muting your microphone or
2 -- yeah. I don't know what that is. I'm just hearing weird
3 background noise.

4 MR. GREEN: Hey, Chairman Hill?

5 CHAIRPERSON HILL: Yeah?

6 MR. GREEN: Sorry to bother you. I just got an email.
7 It looks like the property owner is trying to join. Just wanted
8 to give you that heads up; joining the Webex meeting.

9 CHAIRPERSON HILL: Okay. Let's take this one step at a
10 time. So, Mr. Young, just try to pull that up; Exhibit -- I think
11 it was 21. Is that what he said? Yeah, 21. And then what's the
12 name of the property owner, Mr. Green?

13 MR. GREEN: Sure. It's Fernando Guedes. G-U-E-D -- I'm
14 sorry. Let me get his -- G-U -- G-U-E-D-E-S.

15 CHAIRPERSON HILL: Okay. Mr. Young, you can try to
16 bring him in after you get the PowerPoint up.

17 MR. YOUNG: I do not see that name here.

18 CHAIRPERSON HILL: Okay.

19 MR. YOUNG: And I do have the PowerPoint up.

20 CHAIRPERSON HILL: All right. Go ahead and pull up the
21 PowerPoint first and then, Mr. Green, I don't know if you want to
22 text the property owner or if he needs to call or she needs to
23 call in. You're on mute, Mr. Green.

24 MR. GREEN: Sorry, I'm a -- I'll try to email while
25 we're talking.

1 CHAIRPERSON HILL: Yeah, no problem.

2 MR. GREEN: Give me just one minute. Maybe I can get
3 the phone number here.

4 MR. YOUNG: I was just told that he was just sent the
5 link, so I'll keep an eye out.

6 CHAIRPERSON HILL: Okay.

7 MR. GREEN: All right. Then we'll continue. So thanks,
8 Mr. Young, for getting me the PowerPoint slide. If you wouldn't
9 mind just bringing that photo into -- all right. So what I'm --
10 what we're showing here is essentially, Mr. LeGrant, just kind of
11 -- just for the Board's benefit, this is the property before its
12 removal and I'm just -- I'm going to ask you, you know, the
13 subject of this appeal has to do with the rooftop architectural
14 elements. Can you just briefly explain how they relate to this
15 appeal just for the benefit of everyone?

16 MR. LEGRANT: Sure. Thank you, Mr. Green. So, you
17 know, this is a photo of the subject property and just for a
18 little context it's a corner property. In front of the property
19 to the right is along Park Place and then to the left is Newton,
20 Newton Street, and the subject rooftop architectural elements
21 include at the very top of the building, of course, the mansard
22 roof that wraps around the Park Place and Newton Street and the
23 two dormers that face Park Place.

24 MR. GREEN: So, and Mr. Le Grant, for the purposes of
25 this hearing when I refer to mansard roofs or architectural

1 elements for this property, I'm just referring to the same thing.

2 Okay?

3 MR. LEGRANT: Yes.

4 MR. GREEN: Okay. So Mr. LeGrant, I'd like to show you
5 a drawing which is if Mr. Young could move to the next slide,
6 Slide 2. It's skewed to the side, I apologize, but this is part
7 of our exhibits. It's BZA record Exhibit 20A5. 20A5. So this is
8 a drawing in connection to the original building permit which is
9 B1913444. You know, I'd like to ask you about the plans and the
10 architectural elements and what was the owner's intention with
11 respect to the architectural elements in the original plans.

12 MR. LEGRANT: So again, this image here is an elevation
13 view of the side of the building, again on Newton Street, and this
14 is the original building permit showing the architectural elements
15 being retained.

16 MR. GREEN: And so was the understanding, and I also --
17 you had also reviewed the front -- it wasn't a slide, but the
18 front elevation which represented the dormers which is BZA Exhibit
19 20A4; the dormers, were those also to be retained as well under
20 the original plans?

21 MR. LEGRANT: Yes.

22 MR. GREEN: Okay. So Mr. LeGrant, this permit went
23 through zoning review and the appellant has tendered certain
24 information from Mr. Shawn Gibbs. Who is Mr. Gibbs?

25 MR. LEGRANT: Shawn Gibbs is a zoning technician that

1 works under me in the Office of Zoning Administrator at DCRA.

2 MR. GREEN: Okay. And Mr. Gibbs had basically,
3 according to the, you know, to the Commissioner had said that he
4 had flagged this for a concern about, you know, the architectural
5 elements. What's your understanding about Mr. Gibbs'
6 understanding of why it was flagged with respect to the building
7 plans?

8 MR. LEGRANT: Well, Mr. Gibbs is well aware of the
9 subject provision and the Zoning Regulations that have been
10 wielded by the appellant, that being 206.1(a) is that the
11 architectural elements were to be retained and he noted, I believe
12 in his review, the zoning inspectors verifying that the existing
13 architectural elements to include the porch roof is not issue --
14 which is not at issue here today and the mansard roof which is at
15 issue have been preserved and that the partial third-story
16 addition has been set back at least 3 feet from the architectural
17 elements on all sides.

18 MR. GREEN: Okay. And so just to summarize, it was your
19 understanding that DCRA -- you know, (audio interference)
20 understanding that the architectural elements in the original
21 plans were to remain and be preserved, correct?

22 MR. LEGRANT: Yes.

23 MR. GREEN: Okay. So now I'd like to ask -- I'd like to
24 walk you through the timeline -- walk us through the timeline of
25 when you received notification of the removal of the mansard roof

1 and the architectural elements if that's okay.

2 MR. LEGRANT: Yes.

3 MR. GREEN: Okay. So can you just --

4 MR. LEGRANT: (Audio interference).

5 MR. GREEN: Can you just start that, and can you tell us
6 when you received notification that they were removed and maybe we
7 can go through that process? I'd like to -- actually, Mr. Young,
8 if you wouldn't mind moving to Slide 3. Okay.

9 MR. LEGRANT: Right. So on December 30th, 2019, I
10 received an email from Mr. Kent Boese that the rooftop
11 architectural elements had been removed and he requested a stop
12 work order be placed on the property. After DCRA sent an
13 investigator out to review, DCRA did issue a stop work order on
14 January 21st, 2020.

15 MR. GREEN: And so was it your understanding that as of
16 January 2020 all work was suspended, correct?

17 MR. LEGRANT: Correct.

18 MR. GREEN: And then in May of that -- May 2020, were
19 you notified that work was proceeding?

20 MR. LEGRANT: Yes, I received another email from Mr.
21 Boese that work had been proceeding and -- at that point in time.

22 MR. GREEN: And so what was your understanding about why
23 it was proceeding? Was it -- was there some issue why that work
24 was proceeding despite the --

25 MR. LEGRANT: After --

1 MR. GREEN: -- stop work order?

2 MR. LEGRANT: After I got the email from Mr. Boese, we
3 sent out -- DCRA sent out an inspector and another stop work order
4 was placed. It appears that the original stop work order from
5 January was inadvertently lifted without my office being
6 consulted.

7 MR. GREEN: And so was there another -- was there a stop
8 work order -- sorry. Was a stop work order issued in May then?

9 MR. LEGRANT: That's correct. Yes, it was.

10 MR. GREEN: And after the May 2020 stop work order was
11 placed, did the owner reach out to you?

12 MR. LEGRANT: Yes. Then the owner, Mr. Guedes, Fernando
13 Guedes, were -- we were in communication. He, you know, said,
14 "Hey, the job is stopped, and we don't understand why." I
15 informed him that the stop work order was reinstated because of
16 the removal of the rooftop architectural elements either without
17 BZA approval or my office's approval. Mr. Guedes indicated that
18 the -- at that point, that the rooftop architectural elements were
19 removed due to decay and degradation.

20 MR. GREEN: Thanks, Mr. LeGrant. So, Mr. LeGrant, I
21 understand Mr. Guedes sent you an email on May 7th, 2020, and it's
22 in BZA Exhibit 20B. It's not a slide, but it's part of our
23 prehearing statement and I'd like to show you some photos that
24 were attached. And if Mr. Young -- I apologize I'm not on the
25 same page, but for reference it is Slide 4 of 13, 5 of 13, and 6

1 of 13. I don't know the best way to present it, but if Mr. Young
2 wants to go to, say, for example, 5 of 13.

3 MR. LEGRANT: Yes.

4 MR. GREEN: Mr. LeGrant, you received these photos in
5 this email. Can you just tell us what these photos show and what
6 -- how they may have impacted your decision?

7 MR. LEGRANT: Yes, after I -- he initially had said that
8 he had removed the elements due to decay and degradation, I asked
9 for additional information. He showed these photos that showed
10 the deterioration of the knee wall as well as some decay.

11 MR. GREEN: And then on May 8th, 2020, you sent an email
12 to Mr. Guedes which is BZA Exhibit 20E stating that you'd need
13 more documentation. What did you ask of him, Mr. Guedes, the
14 property owner and why?

15 MR. LEGRANT: So I said I needed to know why the
16 previous roof assembly including the mansard roof and dormer were
17 deteriorated to an extent that they could not be salvaged and they
18 -- that required their complete removal and replacement. I also
19 asked for a report from his architect and another licensed
20 architect reviewer detailing the reasons as to why the roof
21 elements could not be saved and that their removal and replacement
22 was necessary.

23 MR. GREEN: And you received a report from the owner's
24 architect, correct?

25 MR. LEGRANT: Yes.

1 MR. GREEN: So, Mr. Young, if you could move to Slide
2 No. 7, if you could. It says, "Architect's Field Report."

3 And so, Mr. LeGrant, I'm trying to show you what's been
4 filed as -- it's BZA Exhibit 20F. It's a report from Axis
5 Architects. Now, Mr. Green -- Mr. Le Grant, can you just
6 summarize what the report contains?

7 MR. LEGRANT: Yeah. The report then talked from the
8 Axis Architects who did a roof investigation and they described
9 what was the problem with the materials and it included language
10 that they were rotten beyond repair, the brick knee wall was
11 crumbling, and so it detailed that architect's assessment of why
12 the roof materials had deteriorated to the point that they could
13 not be salvaged.

14 MR. GREEN: And after -- thanks, Mr. LeGrant. And after
15 you received that report and information, what did you do next?

16 MR. LEGRANT: Well, I wanted an independent
17 verification, so I went to DCRA's building official which was
18 Garrett Whitescarver who is the head of the Building Division of
19 DCRA to ask him for his assessment.

20 MR. GREEN: And what was Mr. Whitescarver's assessment
21 of the report and information?

22 MR. LEGRANT: Mr. Whitescarver concluded that due to
23 deterioration of these rooftop elements, based on the information
24 he reviewed, he would have required the building owner to replace
25 the damaged structures. He did not -- he concurred that they were

1 not salvageable in his assessment.

2 MR. GREEN: And so, Mr. LeGrant, after you consulted
3 with Mr. Whitescarver and reviewed the material, what did you do
4 next?

5 MR. LEGRANT: I then told Mr. Guedes his options were to
6 go to the BZA or -- to seek relief, or he could reconstruct them
7 and restore them as they were before.

8 MR. GREEN: So I think this is the crux of the question,
9 Mr. LeGrant. Under what authority do you -- you give him two
10 choices, but then under what authority do you have, or do you feel
11 that you had to allow him to reconstruct or replace that roof?

12 MR. LEGRANT: Yes, and this, of course, is an issue that
13 I've dealt with several times with this provision. I've had other
14 instances in which other applicants, property owners, have shown
15 in their plans that the rooftop architecture element was going to
16 be -- was to be retained and then in the course after a building
17 permit was issued and they began their construction activities,
18 they found that in many instances, in several instances, that
19 those elements were, similar to this case, deteriorated to an
20 extent that they were not salvageable. As they started
21 construction, they would crumble. They could not be refitted with
22 exterior material. They could not re-shingle them or they could
23 not replace the exterior elements that they had begun beyond a
24 repair.

25 So again that's a dilemma because my options were --

1 could include shutting down the construction, having them apply to
2 the BZA, waiting the usually the typical several months to -- for
3 that process to play out or to have them restore them as before
4 and so in this, the case here as well as other cases I have said,
5 "Okay. If you restore them to the same size, extent, materials as
6 before, the exterior appearance, I will approve it
7 administratively."

8 MR. GREEN: And then, Mr. LeGrant, you asked Mr. Guedes
9 to provide a revised building permit plan, did you not?

10 MR. LEGRANT: Yes, I did.

11 MR. GREEN: So Mr. Young, I'd ask you to go to Slide 10
12 of 13. It's a sheet with a photo of some dimensions. There's
13 several sheets, but I wanted to bring this one, I think it's the
14 most relevant for our discussion.

15 So this is BZA -- I'd like -- this is -- Mr. LeGrant,
16 I'd like to draw your attention to BZA -- this is BZA Exhibit 20I
17 and these are plans that -- I guess, part of the plans you asked
18 for. And what's the relevance of these plans that were submitted
19 to you?

20 MR. LEGRANT: Okay. So this was Mr. Guedes and his
21 architect's response to my telling him what were his possible
22 steps going forward and he said, "I would like to restore them as
23 they were before." I said, "Okay. Submit plans," and he did
24 submit plans and there was some back and forth between Mr. Guedes
25 and I as to -- I said, "Wait a second." You know, "That didn't

1 appear to be exactly as it was before. You have to follow (audio
2 interference) and there was some back and forth, but ultimately,
3 he submitted these drawings as part of a building permit revision.

4 MR. GREEN: And Mr. LeGrant, were you -- were these --
5 were you satisfied with these amended plans?

6 MR. LEGRANT: I was.

7 MR. GREEN: And were these plans to show that the --
8 essentially, what the -- where the architectural elements to be
9 replaced (audio interference) similarly to what they were; is that
10 the purpose?

11 MR. LEGRANT: That's correct.

12 MR. GREEN: And so your office then approved -- you
13 know, a building permit B2008299, correct?

14 MR. LEGRANT: Yes, we did.

15 MR. GREEN: Okay. And after you had reviewed this
16 material and seen it, did you inform Commissioner Boese of this
17 decision?

18 MR. LEGRANT: Yes, during the -- during this time there
19 was several back-and-forth emails with Commissioner Boese. Then
20 when I concluded the review of the building permit or recent
21 application, I did inform Commissioner Boese and I explained the
22 process that I had went through.

23 MR. GREEN: And what did the Commissioner do?

24 MR. LEGRANT: He said he would consult with his fellow
25 members of the, I guess, of the ANC and make a decision as to

1 whether they would file an appeal.

2 MR. GREEN: Okay. And that's why -- I think that's why
3 we're here. But one of the last things -- and I'm kind of
4 wrapping up before I have a couple more questions. So Mr.
5 LeGrant, I would ask Mr. Young to go to the final page, 13 of 13,
6 if you could. And I think it's in our submissions and it's some
7 amendments to the Zoning Regulations which is seen on submission
8 Subtitle E, 206.1. I'm sorry, 206.2, pardon me. This is a recent
9 amendment to the zoning amendments. And so obviously with these
10 kinds of scenarios that were faced, how is this relevant with
11 respect to those decisions as to these kinds of scenarios that
12 come up?

13 MR. LEGRANT: So as I mentioned to you, the subject
14 decision was consistent with the practice of my office to allow in
15 instances where rooftop architectural elements had deteriorated
16 and could not be replaced to replace them in kind because -- in
17 the assembly as before. This, the text you're showing, is part of
18 Zoning Commission Order 19-21 which went into effect on November
19 13th, which amended the Zoning Regulations which basically
20 codified my practice at the bottom of that page of the exhibit
21 you're showing 13 of 13, E 206.2 talks about the -- what we talked
22 about. This has now been codified as a Zoning Regulation. The
23 administrator gets -- now gets this, looks like -- looks at these
24 situations and tells me the criteria for it. So this is now in
25 effect and, again, it codifies what my office has been doing for

1 several years.

2 MR. GREEN: Okay. And lastly, I don't know if I asked
3 this. This is my final question for you, but Mr. LeGrant, just to
4 confirm, you were -- the removal of those rooftop architectural
5 elements was done without your consultation or DCRA's information
6 was -- is that correct?

7 MR. LEGRANT: Correct.

8 MR. GREEN: Okay. I don't have any further questions.
9 We're open to the Board and the appellant for questions (audio
10 interference).

11 CHAIRPERSON HILL: Okay. I'm going to first turn to the
12 Board. Does anyone have any questions of DCRA?

13 Mr. LeGrant, real quick. I just have one or Mr. Green,
14 you can respond to it. That 206 -- everybody has the ability to
15 pull the -- this up at home. I mean, so I'm pulling this up on my
16 computer in terms of your page 13 of 13. E 206.2, I mean, that
17 was not in effect when this was actually happening. Like, you
18 only had what was in E 206.1. So I guess what I'm -- Mr. LeGrant,
19 there's nothing in the regulations that spoke to what is now in
20 the regulations which is the E 206.2. Like, how did -- what kind
21 of gave you the authority at that time to do what you did?

22 MR. LEGRANT: You're right. That provision which went
23 into effect on November 13th was not in effect for the decisions
24 in this case. As I noted to the Board, the practice of my office
25 has been for several years in the administration of E 206.1 the --

1 I was faced with this dilemma. (Audio interference).

2 CHAIRPERSON HILL: It was just your practice. That's
3 okay. It was just your --

4 MR. LEGRANT: Yeah.

5 CHAIRPERSON HILL: -- practice. That's what you had
6 done --

7 MR. LEGRANT: That's correct.

8 CHAIRPERSON HILL: -- and you're just saying that it's
9 now codified in the regulations, right? So and again, just the
10 further question that I had is you never approved the mansard roof
11 to be removed. This was after the fact, you had to deal with the
12 fact that the mansard roof was now gone, correct?

13 MR. LEGRANT: Right.

14 CHAIRPERSON HILL: Okay.

15 MR. LEGRANT: Yes.

16 CHAIRPERSON HILL: All right. My fellow Board members,
17 does anybody want to raise their hand? Commissioner Miller?

18 COMMISSIONER MILLER: Thank you, Mr. Chairman and thank
19 you Mr. Boese and Mr. LeGrant for your testimony today.

20 Mr. LeGrant, I'm not sure it's relevant to our
21 deliberations on the case, on this case, this appeal, but can you
22 just inform me and the Board about the removal of the mansard roof
23 that was done without your authority or awareness until after the
24 fact? What is the -- what do you see as the remedy for a clearly
25 required under the regulations -- the removal -- such removal

1 would normally require BZA approval beforehand. So it was done.
2 You found out about it after the fact.

3 What is the remedy that your office has for a -- that
4 violation, basically, of the Zoning Regulation, removal of the
5 rooftop element here without BZA approval that you became aware
6 of? You issued a stop work order and that's one remedy that is
7 relevant in this case, but I'm just curious, does your office
8 initiate -- I guess you have the authority, I guess, I'm just
9 assuming based on my own general knowledge that your office has
10 the authority to, I don't know, assess fines or initiate civil
11 infraction based on a violation of the Zoning Regulation in this
12 case -- in the scenario of this case.

13 MR. LEGRANT: Yes. I may just have my counsel speak to
14 that, some of the remedies which included a -- can include a
15 Notice of Infraction.

16 MR. GREEN: Yes, Mr. Miller. The DCRA can issue
17 infractions, Notice of Infraction, for this activity for failure
18 to seek BZA relief. As I sit here right now, I believe one was
19 issued in this case surrounding the stop work order as well as
20 failure to do so. I cannot be sure. I'd have to go into ANOTEC
21 (phonetic) and try to do that now if there's other questions. But
22 yes, that would be the enforcement action which goes before the
23 OAH. Those fines go there.

24 COMMISSIONER MILLER: Right. Okay. Thank you. That
25 was my question. I just wanted to confirm what my understanding

1 of how enforcement of the Zoning Regulation would proceed other
2 than the stop work order that you did have the authority to assess
3 fines and penalties. Whether they happened here, we don't know, I
4 think is what you're saying.

5 MR. GREEN: Yes, Mr. Miller. I can try to dig it up.
6 I, you know --

7 COMMISSIONER MILLER: No, it's not -- as I said, I don't
8 think it's relevant --

9 MR. GREEN: Okay.

10 COMMISSIONER MILLER: -- to the appeal except
11 tangentially. I think it's important as a public policy matter
12 for the public to know that there are remedies for violation of
13 the Zoning Regulation.

14 MR. GREEN: Correct, and the DCRA does, as a policy and
15 practice, issue Notice of Infraction when violations occur, and I
16 apologize. I don't have the information readily available, but I
17 believe that is the case in this instance.

18 COMMISSIONER MILLER: Okay. Thank you, very much.

19 MR. GREEN: Thank you.

20 VICE CHAIR JOHN: Mr. Chairman --

21 CHAIRPERSON HILL: Ms. John?

22 VICE CHAIR JOHN: -- I have one question for Mr. Green.
23 So can you clarify what the ZA's authority to order replacement of
24 the mansard roof or seek an application from the BZA to maintain
25 the roof as the applicant had tried to do? So the short question

1 is, what the ZA's authority to order the replacement of the
2 original roof? Is that part of his enforcement authority? In
3 other words, he could order the replacement and impose fines.
4 It's not one or the other; is it?

5 MR. GREEN: Well, you can. No, there's the -- in terms
6 of fines is a separate part of the statute or regulation, so fines
7 can be issued. In this case, you know, there are -- and it's
8 cited in our brief that the Zoning Administrator in other aspects,
9 for instance under the, you know, non-conforming structures, the
10 zoning administrator can make a determination to approve a
11 replacement or reconstruction due to damage. And so although it's
12 another exception of the Zoning Regulations, the Zoning
13 Administrator can make a determination in that instance to approve
14 a replacement.

15 Nevertheless, what the Zoning Administrator is doing, I
16 think in his role, is actually restoring what should be there.
17 What was agreed to in the plans as they would be -- and it was
18 approved that those plans said that they would be preserved or not
19 impacted in any way. And so what the -- Mr. LeGrant under his
20 role is having the -- directing the applicant or the owner to
21 restore what was removed without approval and to restore the
22 harmony of the structure, the size, dimension, and so forth.

23 So I think it goes to his authority -- the authority for
24 ordering, or allowing, or approving replacements for damaged
25 property under the zoning regs is there and I think that falls

1 under his role as Zoning Administrator in this case.

2 VICE CHAIR JOHN: So in other words, the Zoning
3 Administrator is basically saying, "You must comply with the
4 permit as issued or seek approval," and the permit required the
5 mansard roof to remain --

6 MR. GREEN: Yes.

7 VICE CHAIR JOHN: -- in other words?

8 MR. GREEN: Yes, ma'am.

9 VICE CHAIR JOHN: All right. Well, thank you.

10 MR. GREEN: Thank you.

11 CHAIRPERSON HILL: Mr. Smith?

12 MEMBER SMITH: I don't have any additional questions.

13 CHAIRPERSON HILL: Okay. Mr. LeGrant, I'm just trying
14 to walk through this a little bit. So if -- well, there's two
15 ways I'm trying to understand this. Again, if -- the proper way
16 would have been for them to have come to you and say that the roof
17 needs to be replaced, they can't keep it, and prove to you that
18 the roof is unsalvageable because that was the original permit,
19 they had to keep the roof the way it was and then you would have
20 done the same thing. You have determined that the roof was
21 unsalvageable, and you would have issued a new permit to allow
22 them to replace the roof; is that correct?

23 MR. LEGRANT: They would have to had -- yes, they would
24 have had to gone through the same exercise of demonstrating why
25 the work was not salvageable with the -- similarly to what they

1 ultimately didn't submit, a -- their architect's report and then I
2 would verify with the DCRA's Building Official.

3 CHAIRPERSON HILL: Right. And now the regulations --
4 it's in the regulations to allow you to do this. You were -- this
5 was just your practice beforehand?

6 MR. LEGRANT: That's correct.

7 CHAIRPERSON HILL: Okay. All right.

8 Mr. Boese, do you have any questions of anyone? I mean,
9 Commissioner Boese, sorry.

10 COMMISSIONER BOESE: Absolutely. Mr. Le Grant, Subtitle
11 E 206.1, my reading of that is that original rooftop features are
12 to be retained and to me that would include slate shingles and
13 pressed tin architectural details around a dormer. Would you
14 agree with that and if not, why?

15 MR. LEGRANT: Well, in this case and other cases when
16 faced with the preservation of a rooftop architectural element, I
17 look to the basic volume of the element itself and I think the
18 language of E 206.1 does not allow enlargement, extension, or
19 movement of the mass of those elements. It gets down to when
20 people are -- if they're replacing them or maybe if they're just
21 reskinning them, what materials and so forth do they use and it's
22 -- I have to look at them case-by-case to determine if the
23 restoration is consistent with E 206.1.

24 COMMISSIONER BOESE: Okay. I'll take that for what it
25 was though I don't know if it was helpful.

1 Subtitle E 206.2, we've already established that it went
2 into effect on November 13th, but you've stated it codifies your
3 longstanding practice. My question to you is the language of that
4 subtitle says that you -- this is related to ordinary repairs of a
5 rooftop architectural element and in those cases, it should be
6 permitted when an element is substantially eroded or damaged.

7 My question to you is how in any sense of a rational
8 (audio interference) was a wholesale removal ordinary?

9 MR. LEGRANT: Well, again, the -- an applicant or
10 property owner would have to present evidence of that element,
11 what is the state of that current element and what they plan to do
12 with it. If they -- if it's deteriorated beyond salvageability
13 that they can't go up there and reskin it or retain it, then they
14 have to demonstrate, you know, to my satisfaction. And I'll tell
15 -- and I'll inform the Board or anyone, I'm not an architect. I'm
16 not a structural engineer. I have to look to the information that
17 those -- an architect would submit to me and then I would verify
18 that with the expertise in DCRA as to their assessment of that and
19 (audio interference) evaluation.

20 COMMISSIONER BOESE: So then in your opinion the
21 wholesale removal of a roof is an ordinary repair?

22 MR. LEGRANT: Well, I have to take them case-by-case,
23 Commissioner, as to what they would demonstrate to me if the
24 particular elements were salvageable or not.

25 COMMISSIONER BOESE: Okay. I recognize that the

1 challenge for you is that you had to review the state of a roof
2 that hadn't existed for five or more months, so based on your
3 submission in Exhibit 21, the architect's report which I think was
4 also submitted separately from Axis Architects, they state on May
5 15th, again five months after the structure is gone, that they met
6 with the owner or the contractor, that they were shown photos of
7 deteriorated conditions of the dormers before they demolished
8 them. It seems incredulous to me that someone would have the
9 foresight to photographically document something that they're
10 removing illegally, but we'll leave it at that.

11 I saw nothing in the record, and I want you to speak to
12 this, none of the photographs that you shared show the condition
13 of the rafters or deterioration of the dormers or any other part
14 of the roof. Were those materials shared with you and can you
15 share those photographs now?

16 MR. LEGRANT: I believe the information that was brought
17 before the Board in this appeal including the photographs, the
18 architect's report and the assessment from Building Official
19 Whitescarver was the information that was presented to me in this
20 regard.

21 Yes, the -- arguably the mansard and the dormers were
22 long gone by the time the report and evaluation, the architect's
23 report and the Building Official's assessment occurred, but in
24 both the statement of the Building Official and my conversations
25 with them, he described how the photographs show where that roof

1 element used to be as it tied into, the remaining structure showed
2 evidence of deterioration and I relied on that information.

3 COMMISSIONER BOESE: Honestly, I live in a century-old
4 rowhouse in this neighborhood, they all have certain degrees of
5 deterioration, in many cases none of which rise to the level of
6 wholesale destruction, so unless you can produce photographs of
7 the damaged dormers and the mansard roof along Newton Place, I
8 really don't think you have a case. Can you produce those
9 photographs because that is really --

10 MR. GREEN: Can I object?

11 COMMISSIONER BOESE: -- what you're basing your judgment
12 on?

13 MR. GREEN: Can I just object, Mr. Hill? He's already
14 testified to what he's produced. I don't know. I don't
15 understand if it's a question. Is there a question?

16 CHAIRPERSON HILL: Okay. Hold on. So Commissioner, I
17 mean, he doesn't have the photographs, but you're asking him to
18 say again that he doesn't have the photographs, correct?

19 COMMISSIONER BOESE: Correct, because on May 29th, 2020,
20 Mr. LeGrant stated to me in an email, quote, that "The owner
21 provided information from his architect that the previous roof
22 assembly was deteriorated so as not to be salvageable." I do not
23 believe he has proven that point and we can move on from there.

24 MR. GUEDES: May I interject? I'm the owner also (audio
25 interference).

1 CHAIRPERSON HILL: Wait a second. Mr. Guedes, you'll
2 get a chance in a minute.

3 MR. GUEDES: Very good.

4 CHAIRPERSON HILL: Commissioner, you got any other
5 questions?

6 COMMISSIONER BOESE: I have one final question because
7 if you can -- well, and maybe this is not the right time for it,
8 but if you were to bring up the last item we submitted which is
9 the current state of the building, there are some concerns there
10 as well because -- and that might be Exhibit 22, I believe.

11 CHAIRPERSON HILL: I got it up if -- Mr. Young, if you
12 want to pull it up.

13 COMMISSIONER BOESE: So I have two questions related to
14 this. The one goes back to Mr. LeGrant testified that he allowed
15 this to move forward because it was going to be virtually
16 indistinguishable from the original in style, dimensions,
17 materials, appearance, that the dormer windows proportions are
18 completely off, and I'm deeply concerned that the newly
19 constructed mansard roof goes all the way out to the edge of the
20 architectural tin cornice which is not loadbearing.

21 Those are concerns for me, but I guess the question to
22 Mr. LeGrant is once this is constructed properly, since it's to be
23 indistinguishable from what should never have been removed, does
24 that include slate tiles and pressed tin around the dormers?

25 MR. LEGRANT: My response is based on the information

1 presented in the building permit revision, I concluded that it was
2 -- it restored the previous roof element.

3 COMMISSIONER BOESE: Then I want to ask one last
4 question for you because this is really a broader issue and I
5 really don't want to have to appeal future cases if we can sort
6 some of this today. When you make a determination that an
7 original rooftop is damaged and therefore you believe you have the
8 authority to circumvent the ANC and the BZA, where is the
9 opportunity to negotiate with the owner to retain undamaged
10 original elements to be reinstalled after the damage has been
11 repaired?

12 MR. GREEN: Mr. Hill, can I just generally object to
13 this question? It's irrelevant and it has -- I'm not sure what it
14 has to do with this case, so I'll just say -- pause there.

15 CHAIRPERSON HILL: Okay. Mr. LeGrant, did you hear the
16 question? I kind of -- I understand the question. Commissioner
17 is going to have to repeat the question a little bit, but Mr.
18 LeGrant, do you understand? Because I'm also just curious. So,
19 Mr. LeGrant?

20 MR. LEGRANT: Yes. Yes, I heard the question, and I can
21 respond. Because in the case-by-case instances of these
22 situations if -- I can say to the other property owners if the
23 element has not been removed, then yes, I can engage with that
24 owner and say, "Okay. Tell me exactly what you're going to do
25 here," and if there is an opportunity to keep elements, exteriors,

1 skinning, and so forth, I would encourage that owner to do so.

2 CHAIRPERSON HILL: Okay. All right. Does any of my
3 fellow Board members have any questions? Ms. John?

4 VICE CHAIR JOHN: Just one question for Commissioner
5 Boese. Can you explain which regulation the Zoning Administrator
6 violated?

7 COMMISSIONER BOESE: Well, I believe Subtitle E 206.1
8 since 206.2 did not yet -- it was not yet in effect. It's very
9 clear. It's resolute. "Original architectural elements shall not
10 be removed." So why we brought this appeal forward is because he
11 did -- we do not believe the Zoning Administrator had the leeway
12 to give the owner a choice of recreating the element or coming
13 before the BZA. That was not yet codified. Therefore, we believe
14 since the entire roof, before its removal originally, we would
15 have had to come before the BZA to have that conversation and
16 maybe we would have supported that removal if we had the evidence
17 that the Zoning Administrator currently claims that has been shown
18 to him five months after the fact. That allows for the community
19 to have the conversation, to evaluate the pros and cons, to work
20 with the BZA to come up with a good solution.

21 In essence, we were -- our engagement and oversight role
22 was completely pushed aside, and this was an end-run around us.
23 So that's where this appeal is coming from. Regardless of what
24 the end construction result is, there needed to be a community
25 conversation to find a win-win opportunity and we were denied that

1 opportunity by the Zoning Administrator deciding that the public
2 process was not important here.

3 VICE CHAIR JOHN: So just a follow-up and I think this
4 is my last question. Is it your contention that the Zoning
5 Administrator does not have the authority to require the owner to
6 comply with the permit? Because that's essentially what he did,
7 which is to replace the roof as you said in your permit you were
8 planning to. So he did not -- the administrator did not order or
9 authorize the removal of the roof. The roof was removed and then
10 there was a complaint and the administrator said, "Replace the
11 roof and if you're not planning to replace the roof, then go to
12 the BZA." That's how I understand what the administrator did.

13 COMMISSIONER BOESE: That's fair, but part of the back
14 and forth with DCRA on all of this dating back to February is it's
15 clear that DCRA, the staff there, there's great confusion there
16 because even as far back as February -- I believe that was
17 February 27th in the emails we submitted, not met LeGrant himself,
18 but the members of DCRA and let me find it here. I believe it was
19 -- yeah, February 27th.

20 Don Sullivan sent an email saying that they were
21 vacating the stop work order because the owner was agreeing to
22 replace -- everything they were embracing was -- this is -- the
23 replacements were being done in kind. Yet, if you look at the
24 photograph, what was going on on May 2nd, it's not in kind. It
25 just wasn't. So there was this whole fallacy at DCRA that you can

1 replace things in kind and it's okay.

2 My question therefore is if the regulation at 2 -- if
3 206.1 says, "Original features shall not." Not should not, not
4 might not, not will, it would be nice, "shall not." It's
5 resolute. If original materials shall not be removed, how do you
6 place historic material in kind? It's not possible. It's just
7 not possible.

8 So I mean from our perspective, 206.1, even with newly
9 adopted 206.2 just does not grant the leverage to replace in kind
10 unless it's truly in kind and for any variance from that, like
11 there has to be resolute uncontroversial solid documentation that
12 this damage that is allowing this regulation to be circumvented,
13 that evidence must exist, and we just don't see it here.

14 You know, in essence, the original materials were, you
15 know, removed from the neighborhood. How do we get compensated
16 for that?

17 CHAIRPERSON HILL: Ms. John, did you get your question
18 answered?

19 VICE CHAIR JOHN: Thank you, Commissioner Boese.

20 CHAIRPERSON HILL: Okay. Anybody else got a question?

21 I mean, I'm going to turn to the property owner a
22 second. I mean, Commissioner, I also kind of don't know -- what
23 was I going to say? I'm going to disagree with anything that's
24 being said here to be quite -- and we're going to have an
25 opportunity to deliberate amongst the Board. It's kind of opened

1 up a bigger discussion.

2 I'm now speaking to you, Commissioner, because I just --
3 I won't have another opportunity to speak to you except for now.
4 Like, I don't exactly know how -- and I'm not on the Zoning
5 Commission so I don't know exactly how this does get fixed. I
6 mean, it sounds to me, and I guess we're somewhat deliberating or
7 talking right now, is that Mr. LeGrant getting approved for the
8 mansard roof to be removed, he did and then it was removed, and
9 then DCRA is stuck with trying to figure out what to do.

10 So I'm not sure what exactly -- and I don't think
11 there's disagreement with that. I mean, I don't -- even if you
12 were in control Commissioner, meaning you got to decide, I'm not
13 sure what you even would -- and I guess I will have a question
14 though. Like, I don't really necessarily know, and Commissioner
15 Wray is also there as well. Like, I don't necessarily know what
16 we would have -- what the different options were at that point,
17 right.

18 I don't think the -- Mr. LeGrant, you know -- what --
19 this is bringing up a bigger discussion to me and this is kind of,
20 I guess -- I don't know if I'm talking to my Commissioners or who
21 I'm talking to at this point, is that, you know, right, it seems
22 as though this problem will still be kind of out there, right.
23 Like, Mr. LeGrant is going to be in a situation again where, as he
24 said, he's not an architect, neither am I. And I'm not an
25 engineer and neither is he. So I just look at what's in the

1 record as to what the architects have said and what the engineers
2 have said. And so they're saying that they can't replace it. I
3 mean, they can't keep it there, right?

4 And so then Mr. LeGrant is stuck with what's the next
5 thing that has to happen and they're like, "Okay. Well, you can
6 tear" -- and I guess that's where, I guess -- and this I'm kind of
7 even talking to the Zoning Commissioner there, Mr. Miller, is
8 that, you know, is everything supposed to come to the -- like, I
9 mean, does it have to -- like, I don't understand where that --
10 you guys seem to have now put in the regulations that this
11 flexibility is there if you need to replace it and it has to be
12 replaced, then replace it exactly as it is.

13 I don't know as I'm looking at, you know, Exhibit 22,
14 you know, is that exactly like what was there before, right, and
15 what is "in kind." I guess what am I trying to ask or say? Well,
16 I'll ask the Commissioner. I mean, either one of you
17 Commissioners, like what do you think is -- what would have been
18 the option or what should have been the option once the roof was
19 removed?

20 COMMISSIONER WRAY: Well, I'll start --

21 CHAIRPERSON HILL: Okay.

22 COMMISSIONER WRAY: -- if you don't mind, Commissioner,
23 since, you know, I was involved in at least voting in favor of
24 this appeal in the first place. Obviously, my fellow
25 Commissioners would appreciate that the community has an

1 opportunity to weigh-in on a case especially one where it seems
2 like everything is happening after the fact.

3 You know, this is not the first time that our ANC has
4 seen an owner or a developer do something that they shouldn't have
5 done and then run to the Zoning Administrator in order to fix it
6 after the fact and I think that alone -- and maybe it needs to be
7 codified in the regulations specifically, but I don't understand
8 why that was not necessarily the option, because I think it would
9 have been an easier one and I think a lot of this could have been
10 avoided if it were, so thank you.

11 CHAIRPERSON HILL: No, that's all right. Commissioner
12 Wray and Commissioner Boese, so I just still -- I understand what
13 you are saying and the testimony that, you know, you all think
14 that this is kind of -- you know, and I don't know, right. I
15 mean, I can't -- I don't want to go into, "Was this done
16 maliciously? Was this the plan," right. Okay. And so, you know,
17 I have what's in front of me. Again, the architect's, the
18 engineer's testimony, right.

19 And so what do you guys think you -- I mean, you're
20 upset about it. I got that. But what do you guys think you --
21 what should have happened once the roof was removed? You didn't
22 answer my question.

23 COMMISSIONER WRAY: Oh. I'm suggesting that once the
24 roof was removed and the stop work order was put in place that the
25 alternative would have been to go to a BZA case that would have

1 allowed a review of what then the replacement would have been.
2 It's the fact that the community is not being given an opportunity
3 to weigh-in on what is -- what we feel is a replacement. This is
4 not a repair and there might have been some changes made based on
5 that review and that's where at least I am.

6 CHAIRPERSON HILL: Got it.

7 COMMISSIONER WRAY: Right.

8 CHAIRPERSON HILL: So the regulation that -- the
9 regulations would have been if this happens, they have to come
10 back to the BZA, right? You've now -- you've done what you
11 shouldn't have done and now there has to be a discussion as to how
12 it's going to get resolved. And I don't know, like I'm not on the
13 Zoning Commission and I'm not on the Council, which is to say all
14 the different ANCs are like -- you know, you all are pretty active
15 and you're pretty aware and you're pretty engaged, but not all of
16 the ANC's are active and engaged, right, so it's difficult for me
17 to understand.

18 I mean, thankfully I'm just having to deal with this
19 appeal, but I appreciate you answering the question which is you
20 thought that it should come to the BZA once the roof had been
21 removed.

22 Commissioner Boese?

23 COMMISSIONER BOESE: Yeah. I agree with that because
24 the -- well, first of all, and I want to clarify something else
25 too going back to Ms. John with the statement that the Zoning

1 Administrator is only enforcing the original building permit.
2 That's not entirely true because the original building permit was
3 to retain the roof and there's no way to comply with that part of
4 the permit, but we feel that -- it's our opinion that for the roof
5 to have been removed following the appropriate process, that would
6 have been the BZA process for evaluation, determination and, you
7 know, that would have involved the ANC. We would have considered
8 the alternatives; we would have looked at the pros and cons. We
9 would have looked at the impact on the community. We might have
10 said it was okay to remove it if it was increasing housing that we
11 liked. There's a lot of things that go into that.

12 This de facto retroactive approval of something that
13 should have never happened doesn't go through that process, so,
14 you know, it essentially takes away every -- you know, it takes
15 away all the input. It takes away discussions about materials.
16 It takes away discussions about the severity of the damage. It
17 takes away impact on the abutting property owner. It just denies
18 us to look at this holistically and make good decisions or even
19 embrace good policy.

20 You know, and we also feel that -- and I appreciate the
21 Zoning Administrator. This is a mess that he would probably never
22 want to deal with himself but finding a way to just like ask for
23 forgiveness and move forward without going through the public
24 process really creates, in our opinion, a scenario where it's just
25 easier to constantly ask for forgiveness afterwards and avoid the

1 public process. Like, we want to -- we don't want to encourage
2 additional examples of this either. Like, there needs to be a
3 public process and for us, that's the BZA process.

4 CHAIRPERSON HILL: Okay. All right. Thanks,
5 Commissioner.

6 All right. Let me see. Where are we? Okay. Does any
7 of my fellow Board members have any questions before I move on to
8 the property owner? Okay.

9 So Mr. Guedes -- Guedes? Is that how you pronounce it?

10 MR. GUEDES: Yes, it's Guedes.

11 CHAIRPERSON HILL: Guedes. Oh, that's easier. Mr.
12 Guedes, let's see. So first of all, could you introduce yourself
13 for the record?

14 MR. GUEDES: Yes. My name is Fernando Guedes. I'm the
15 property owner of 3600 and 3602, the abutting property.

16 CHAIRPERSON HILL: Okay. So Mr. Guedes, so you're the
17 property owner. You're a party. You have an opportunity to give
18 testimony. I don't know if you -- you haven't submitted anything
19 in terms of what you'd like to provide testimony for. If you want
20 to give testimony, you can, or if the Board has any questions of
21 you, we can also just ask you questions. If there's something you
22 would like to testify to or is there a presentation you'd like to
23 give?

24 MR. GUEDES: Yes. First, I want to answer any questions
25 the Board has, and I also would like to make a statement based on

1 the information you guys have.

2 CHAIRPERSON HILL: Okay.

3 MR. GUEDES: So start?

4 CHAIRPERSON HILL: Okay.

5 MR. GUEDES: So first off, thank you guys for your time.
6 I guess first and foremost, I don't understand the point of the
7 appeal because -- for a couple factors and I'm going to go into
8 those, but primarily is what do we achieve with the appeal? The
9 mansard had to put back and it was put back in like and kind.
10 Now, that's going to segue me into the next phase which we did not
11 take down the mansard. I had no intention to take down the
12 mansard. I'm a developer. Additional work includes additional
13 costs which does not behoove me.

14 And to Mr. Kent, I believe he said why wouldn't I take
15 pictures. With regard to pictures, it collapsed. The building
16 was vacant for a number of years from the previous owner that I
17 bought. And I have to check the record, I'm not a hundred percent
18 sure, but I'm about 90 percent sure, it did not slate roofs at
19 that time. Most of -- I don't think any house on that block has
20 slate roofs anymore, but I have to double check that. I'm not a
21 thousand percent sure. I know the roof below it had shingles.
22 The roof above it, I'm not a hundred percent.

23 When it collapsed, there was no more saving it. I'm not
24 sure everybody's level of expertise on the Board with
25 understanding of construction, but when it's decayed to that

1 point, there is no salvaging it. There is no way to bring that
2 back in any way that makes any logical sense.

3 And that segues to another thing, which is also, that I
4 see this happen all over the city. I'm born and raised in the
5 city. I own dozens of properties throughout the city and I see a
6 lot of developers get in, something like this happens. Maybe they
7 took it down by mistake, maybe it collapsed, whatever the
8 circumstance may be, but the timeline between going to DCRA,
9 potentially BZA, and every step through, well a lot of these
10 properties have a timeline that they can operate under, so they
11 don't have the luxury to go through an extended process for
12 something that doesn't warrant.

13 For example, a mansard roof that was decayed. It was
14 going to collapse. It was going to have to be removed if it -- in
15 any capacity. There was no way to salvage it. There was
16 literally -- when we took off the ceiling, it just collapsed the
17 next day and it just -- it fell all the way into the house. So
18 there was no way of saving this thing.

19 So when those things happen if the Board, and this is my
20 just two cents on it. If the Board -- if the BZA wants to have
21 the option, and this is from my personal experiences, it just
22 takes absolutely way too long to even think about going down that
23 narrative. I don't see how that would even be possible. We're
24 going to open a bigger can of worms with developers and homeowners
25 having like huge problems including damages to the property, so

1 forth and so on. I don't know if that brings on lawsuits. I
2 don't know where that goes.

3 But sticking to this property, that roof was completely
4 -- that mansard was completely caved, and it collapsed in. I did
5 not know, to my defense, that I had to go get another permit to
6 put it back up because I put it back exactly like it was. We got
7 hit with the stop work order. I talked to Mr. Sullivan. Mr.
8 Sullivan said, "Yes, if it collapsed you shouldn't have got a stop
9 work order. You have the plans, put it back to what it was."

10 We did that. We get hit with another stop work order,
11 and this is my frustration as an owner, as a resident of the city,
12 that I'm being now subject to multiple stop work orders, multiple
13 violation penalties that I have to go through and then for me, I
14 don't understand, is this -- to my perspective, DCRA and the Board
15 should be working to work with homeowners, and developers, and
16 residents of the city not to get money out of us. We're already
17 paying exponential amount of fees throughout.

18 So now I've heard it come up a couple times, "Well,
19 what's the recourse? Where does the public get money?" The
20 public gets money with me developing these projects, more housing,
21 the fees that I pay are astronomical, the condo association, you
22 name it. All the things that go into it. When things like this
23 happen, there should be a very simple straight process. Someone
24 with the experience of like a Mr. LeGrant that understands what
25 needs to be done and that be done. So that's my two cents on it.

1 And again, seguing back, I don't understand the point of
2 this appeal. If it's -- "replace in kind," it is not "replace in
3 exact," right? That's what -- the word "kind" and "like" is in
4 there. It's not going to be exact. There's just no way. These
5 houses are also hundreds of years old, some of them. There's just
6 no way, you guys. We also have to exercise common sense. It's
7 not going to be exactly the same, but -- nor should it really be.
8 That material was horrendous. It looked awful. It was decayed.
9 It was collapsing. It was a danger. This is a corner unit. This
10 thing could have collapsed in the street and killed the lady that
11 walks her daughter every day across the corner. There's so much
12 stuff that goes into it.

13 So my perspective is, yes, it collapsed. There's no way
14 for me to know or to stop it from collapsing. It collapsed. It
15 was decayed. I purchased it that way. It was fortunate nobody
16 was in there. It was fortunate nobody got hurt. We put it back,
17 you know, siding, we went through the proper channels and we had
18 it fixed.

19 So my first question is, what is the point of this
20 appeal? What is the -- like, are you guys saying that the mansard
21 can't stand? We're going to remove it and replace it again
22 because that goes back to common sense. It doesn't make any
23 sense.

24 Two is what if -- and then this is kind of maybe not the
25 right forum for this, but why is there this so drawn-out process

1 for something that doesn't make logical sense and does that
2 behoove the city, it does not behoove developers and does not
3 behoove the homeowners. Like, yourselves are sitting there. I'm
4 sure one day potentially you guys are going to want to do
5 something to your house. Would that process make sense logically
6 for the time that it takes? And it's just like me as a developer.
7 I won't take on certain projects if I don't have the ability to do
8 it and that -- you know, that's my kind of two cents and statement
9 on it.

10 I apologize I wasn't prepared. I was notified of this
11 maybe a week ago and I was also given the wrong time. I was told
12 it started at 11:00 and apparently it started at 10:00. So yeah,
13 that's my two cents. If anybody has any questions, feel free to
14 ask.

15 CHAIRPERSON HILL: Okay. Before I -- Mr. Guedes, thank
16 you for your testimony. Before I get to questions and stuff. Mr.
17 Guedes, like it's so funny. Like, we all live in the city. We've
18 all lived in the city our whole lives, right. Everybody is just
19 trying to figure out what to do, okay, and I've been on this Board
20 now for five years and I'm just trying to read through the
21 regulations. There's a regulation that you're not supposed to
22 remove the mansard roof, right. So that's all we're trying to
23 figure out. Okay.

24 And so, you know, that -- you removed -- you're
25 following along with the case, correct? You understand what is

1 being said. I understand that you don't know what --

2 MR. GUEDES: Correct, but that doesn't --

3 CHAIRPERSON HILL: -- the --

4 MR. GUEDES: The Board doesn't have the accurate
5 version. I did not remove it. I just want to be very, very, very
6 clear about this. It collapsed.

7 CHAIRPERSON HILL: Even if -- Mr. Guedes?

8 MR. GUEDES: It collapsed into the entire --

9 CHAIRPERSON HILL: Mr. Guedes, it's okay. That's okay.
10 It's gone, right. It's gone, right. Okay. It was removed. That
11 might be the taking off. Okay. So, you know -- let's see. But
12 anyway, so Mr. Miller, I'm going to keep looking at you because
13 you're the freaking Commissioner of the Zoning Commission. It
14 seems like we're having policy discussions, right?

15 This is a completely, you know -- I don't even -- this
16 is -- this doesn't even -- this kind of looks like something that
17 should be discussed at a different level altogether, you know, but
18 so that's -- I don't -- that's not a question, Mr. -- well, I'm
19 just hoping that the Zoning Commissioner, since you are the
20 Commissioner, you come rescue me in a minute.

21 But does anybody have any questions for the property
22 owner?

23 Okay. All right. Commissioner Boese, do you have any
24 questions for the property owner?

25 COMMISSIONER BOESE: Just one. In the statement there

1 was -- it was stated that the roof just collapsed. When it
2 collapsed, was this documented and was there outreach to DCRA at
3 that time to address it since this is -- since that is a feature
4 that the permit said had to be retained?

5 MR. GUEDES: I'd have to go back. This was over a year
6 ago. I'm sure there are pictures, some of which we've already
7 provided you guys showing the decay, showing some of the damage,
8 when it collapsed, you know, I'm not on every site. I own, I
9 think, 38 properties in the city. Most are under construction.
10 So I'm not at every single one. I would have to check with one of
11 my foreman's. They're pretty good at documenting everything.

12 As far as the -- as far as going to DCRA no, because it
13 collapsed and I -- I'm not -- like, as a developer, there's no --
14 like, when I get a permit it doesn't say, "Hey, if something
15 collapses like a roof mansard, you need to go and apply for
16 another permit to," you know. My permit says I need to preserve
17 this to the best of my ability. If the thing collapses, like it
18 collapsed. You know, so I put it back. That's on me, sure, and
19 that's why I got hit with a stop work order and I went through the
20 proper channels to get that resolved. The channels are (audio
21 interference).

22 CHAIRPERSON HILL: (Audio interference). I think you've
23 answered the question. You've answered the question.

24 Commissioner, you got any more questions?

25 COMMISSIONER BOESE: (Audio interference.)

1 CHAIRPERSON HILL: Okay. All right. What happens? Oh,
2 yeah. So Commissioner Boese, so you have rebuttal or if you have
3 anything you'd like to kind of conclude with. And then, by the
4 way, I want to kind of talk a little bit amongst ourselves here a
5 minute because I -- for clarity, but do you have any rebuttal or
6 any conclusions?

7 COMMISSIONER BOESE: Honestly, I don't need to spend a
8 lot of time now with that. I think we've had a robust discussion.
9 I think everybody knows what the issues are or aren't, so I think
10 we've been pretty clear about where the areas are of concern, so
11 we don't need to spend a lot of time on the rebuttal --

12 CHAIRPERSON HILL: Okay.

13 COMMISSIONER BOESE: -- (audio interference).

14 CHAIRPERSON HILL: Okay. I guess -- all right. I don't
15 know if -- I mean, does my Board -- there's something. Oh, Mr.
16 Guedes, could you please put yourself on mute?

17 MR. GUEDES: Sure.

18 CHAIRPERSON HILL: Thanks. I don't know if -- do we
19 want to talk about anything with anybody? You guys don't have any
20 -- like because I guess the only thing I have for Mr. LeGrant, I
21 guess is like you -- I'm sure you understand everything that's
22 being said and the issues and you don't have a better -- you don't
23 have a thought as to what is a better way of doing this, correct?

24 MR. LEGRANT: I do not. I would look to the Commission
25 if the Commission wanted to do something different with the

1 provision.

2 CHAIRPERSON HILL: Okay. All right. Okay. Before I
3 let everybody go, I mean none of my Board members have anything
4 they want to say?

5 MEMBER SMITH: I have a question to Mr. LeGrant.

6 CHAIRPERSON HILL: All right. Mr. Smith?

7 MEMBER SMITH: You had stated that you had a standard --
8 you previously had a standard practice within the office regarding
9 Section 206.1 for incurring replacements. Could you elaborate on
10 how long you had been conducting this standard practice and how
11 you couched the argument that it was within your power to
12 implement this standard practice prior to the implementation of
13 Section E 206.2?

14 MR. LEGRANT: Yes, thank you, Board Member Smith. So
15 there -- E 206.1 has been in effect, I believe, approximately
16 five, maybe six years. The Commission has amended it at least
17 three times during the course of its history. It wasn't -- I
18 would say within the first year of its enactment, issues with it
19 came to my office. So I believe within the first year of its
20 enactment that I allowed on, a case-by-case basis, applicants to --
21 - who have found an element had deteriorated to replace them.

22 I've had instances of like porch roofs which are very
23 exposed on many instances, the applicant has represented, like in
24 this case, it was to be retained, they went out there. One
25 instance, they -- the developer said his contractor walked out on

1 him and almost fell through the roof because it was completely
2 deteriorated. And so when those came to me, I felt the authority
3 that I have and I took my Council's, as mentioned, the provision
4 of the non-conforming structures, I believe it's C 202.1 ordering
5 repairs of non-conforming structures is to allow people to replace
6 them and so that's what I've done.

7 MEMBER SMITH: Okay. Thank you. This structure in and
8 of itself is encroaching over the western part of the yard is a
9 non-conforming structure. Could you (audio interference)?

10 MR. LEGRANT: I'm sorry. Can you repeat?

11 MEMBER SMITH: The existing -- that the existing
12 structure as it is now because it is encroaching over the property
13 line based on the material is a non-conforming structure in and of
14 itself.

15 MR. LEGRANT: No, I think the non-conforming comes in to
16 play that the Zoning Regulation specifies to preserve and if it
17 cannot be -- if it's removed, it's gone, so that -- I construe
18 that as a non-conforming condition.

19 MEMBER SMITH: Okay. Thank you.

20 CHAIRPERSON HILL: Anyone else? Commissioner Miller,
21 Ms. John? Ms. John, go ahead.

22 VICE CHAIR JOHN: So one question for Mr. Guedes. So
23 you're an experienced property developer, right?

24 MR. GUEDES: Yes. Yes, ma'am.

25 VICE CHAIR JOHN: And you do know that you have to

1 comply with your permit?

2 MR. GUEDES: Yes, I do.

3 VICE CHAIR JOHN: And so when the roof fell and was
4 damaged, you still would have had to comply with the permit,
5 right?

6 MR. GUEDES: The permit says to preserve it, correct?

7 VICE CHAIR JOHN: That's right.

8 MR. GUEDES: Correct.

9 VICE CHAIR JOHN: And so --

10 MR. GUEDES: So if it collapses, there's nothing in the
11 permit that says, "If collapsed or," da, da, da, da, "You need to
12 do," da, da, da. There is no guideline for that as the developer.
13 So for me, it collapsed. I put it back up to exactly what it was.
14 In my opinion, I did the right thing. I got flagged and they
15 said, "No, you need to submit paperwork." We did that and it was
16 -- well, first we got it approved and then it also had to go a
17 second time to the Zoning Board.

18 So I did the correct process in my eye as a developer
19 and if you speak to any developer, they're going to tell you the
20 same thing. "We don't adhere or go through BZA," da, da, da. We
21 go to the DCRA. DCRA then tells us, "Hey, this now has to go to
22 the BZA. This has to go here. This has to go there," whatever.
23 But for us when the roof collapsed and we put it back up exactly
24 like it was and we had the plans showing what the roof structure
25 was, we just followed it and put it back. It was framed like

1 this. We put it back exactly where it was.

2 VICE CHAIR JOHN: So I believe I saw a photograph with
3 framing that was not a mansard roof. Am I mistaken?

4 MR. GUEDES: I don't know what you saw, I apologize. If
5 you have something I can reference, I can tell you a little bit
6 better.

7 VICE CHAIR JOHN: We can move on.

8 CHAIRPERSON HILL: Okay. Yeah, Ms. John. I know the
9 exhibit you're talking about actually and that's a whole other
10 conversation. I see the Commissioner Wray nodding his head also.
11 I don't know.

12 So I'm going to say a couple of things before I excuse
13 everybody, but Commissioner Miller, you don't have anything you
14 want -- you're good?

15 COMMISSIONER MILLER: Sorry, it took me a while to find
16 my cursor to unmute myself. No, I don't have anything at this
17 time. I'll try to save that for deliberation.

18 CHAIRPERSON HILL: Okay. All right. Well, I'd like to
19 just say a couple of things then because I see the Commissioners
20 often or sometimes. I mean, Commissioner Boese, Commissioner
21 Wray, I thank you for bringing this up and bringing it to our
22 attention because I don't know, and I'm kind of talking through
23 some of this deliberation now, in that this is a policy thing to
24 me that I didn't know was there and I guess it's now something
25 that we're going to have an opportunity to discuss. I don't know

1 | if it -- and I doubt it's actually the BZA forum that has this
2 | kind of authority to figure out what hoop is the correct hoop to
3 | jump through when this happens or these kind of things happen, but
4 | I think you'll hear about that in our deliberations. But I --
5 | first of all, I just want to say since you guys are here, thank
6 | you for bringing this to our attention and thank you for bringing
7 | this forward and now we're going to have a discussion about it.

8 | And to Mr. Guedes, you know, I understand developers and
9 | we're all here trying to work through stuff with the city and we
10 | all want to see things happen and move forward and, you know, so
11 | it's a balancing act, okay, for whatever that's worth. And you
12 | don't -- okay. You can respond. You seemed -- I -- it seemed
13 | like you were going to say something.

14 | MR. GUEDES: No. I was going to say thank you. And I
15 | understand it's a balancing act and I apologize for bringing it
16 | up. I just didn't understand what the point of this appeal was,
17 | and I still don't actually, and no one has ever answered that
18 | question. What are we appealing? Or is -- I think this is the
19 | wrong forum for what's happening here. I think we all
20 | collectively figured that out, is that -- I think you guys have
21 | questions about things that are happening.

22 | CHAIRPERSON HILL: All right, Mr. Guedes. That's great.
23 | That's great. Okay. Thank you. Thank you.

24 | MR. GUEDES: What is the point of it?

25 | CHAIRPERSON HILL: No, I gotcha. You're --

1 MR. GUEDES: You're not answering my question.

2 CHAIRPERSON HILL: No, no. I -- that's okay. You're
3 going to have to wait for the deliberation part then. Okay? You
4 can read the appeal. Okay. You can mute yourself. Thank you.

5 Commissioner Wray, Commissioner Boese, you got anything
6 you want to say at the end because I'm going to excuse everybody.
7 We're going to take a break and then we're going to talk.

8 COMMISSIONER BOESE: No, thank you.

9 COMMISSIONER WRAY: No, I'm good.

10 CHAIRPERSON HILL: Okay. All right. Okay. Well, thank
11 you all very much. You're all excused.

12 If it's okay you guys, can we just take a quick 5-minute
13 break and then we'll come back and talk or just take 10 minutes?
14 I just need to take 5 to 10 minutes. Okay? Okay. All right.
15 I'll see you in a little bit.

16 (Whereupon, the above-entitled matter went off the
17 record and resumed at 11:35 a.m.)

18 CHAIRPERSON HILL: So to another interesting discussion
19 which is this case. So are we all ready to talk about it because
20 I'm ready to talk about it or do you all want -- or do you want to
21 start to talk and see where we get?

22 VICE CHAIR JOHN: So are you planning to try to decide
23 it today or just talk about it?

24 CHAIRPERSON HILL: I think I could probably decide
25 today, but I also think that -- let me start. Let me start, okay,

1 because I just want -- and let's just see where we get at the end
2 here and what you guys think, right.

3 So I think that this is a little bit, in my opinion,
4 beyond the BZA, right. Like, I don't know what -- how this thing
5 is supposed to work. Like, to answer the property owner's
6 question, the appeal is based around -- and I'm going to pull up
7 the reg here. The appeal is based around 206.1, right, and this
8 is now for discussion, that the rooftop -- that rooftop
9 architectural elements are not to be removed, right. So the
10 rooftop architectural element was removed, right. So what should
11 have happened is that rather than remove the rooftop architectural
12 element when the -- when, you know, it was -- when it collapsed,
13 that's when you would have gone to the BZA to get approval for the
14 rooftop architectural element to be removed, right. So this is
15 where I'm looking at the Commissioner. This is just kind of a
16 policy thing. Like, I don't know -- this is more of a policy
17 thing because I don't know where this would be caught or how this
18 works, right.

19 So then what is again part of this appeal is that the
20 rooftop architectural element was removed, right. The Zoning
21 Administrator did not give approval for that to be removed, right,
22 but now it's been removed, right. So now the ANC's belief is that
23 at that point it still not should have come to the BZA, right?

24 Like, the Zoning Administrator should not have said,
25 "Okay. In the past, if removed, if things had collapsed or

1 couldn't be fixed then I've said, 'You need to replace it in
2 kind,'" right, the Zoning Administrator, and this is again what
3 had happened in the past, looks at architects, looks at engineers,
4 which is what we do.

5 Like, I'm not an architect or an engineer. I have to
6 have those people tell me is it or not -- can it be replaced, or
7 should it be taken down or what have you and the Zoning
8 Administrator not only got the information from the property
9 owner's architect, but then sent out their own person to clarify
10 is that the truth, right.

11 So they did what I think they should have done which is
12 gone out there and said, "Okay. You said it was going to -- it
13 was collapsed. You know, it can't be replaced." I mean, sorry,
14 "It can't -- it needs to be torn down," and he, the Zoning
15 Administrator, verified this with their own people. So didn't
16 take the -- you know, didn't just take the testimony from the
17 property owner.

18 I guess what I'm just trying -- and this is where I'm
19 just confused as to what this is. I mean, I know what we're
20 supposed to be doing and I have my opinion again now as to whether
21 or not this appeal is to be granted or denied, right, that -- but
22 it's the bigger policy question that I just kind of want to talk
23 about because this now has come up before us, right.

24 In terms of the appeal, I don't think the Zoning
25 Administrator did anything wrong. I mean, he, the Zoning

1 Administrator, did not issue anything that said they could tear
2 down the mansard roof. The mansard roof was torn down, right.

3 So where I'm saying this is like a Zoning Commission
4 issue or this whoever's issue it is, I don't know where that hoop
5 is that sticks in the ANC again because I understand what the ANC
6 is saying. They're like they didn't get to discuss this mansard
7 roof, right, because it's in the regulations that these aren't to
8 be removed because then the community has an opportunity to say,
9 "Okay. You know, the tin should be saved," or whatever and, you
10 know, really what it is that in their community they want to see,
11 and they like to see.

12 As I said during the hearing, all of the ANCs are so
13 different, right. Like, you never know. So that's where I'm also
14 -- at a policy level, I don't know how this is necessarily
15 resolved and/or how you get to decide whether the Zoning
16 Administrator has replaced it properly in kind.

17 So now I'm turning to, again, the Zoning Commission
18 which is that they now have put in E 206.2 which wasn't there
19 before, but this was, again, what is being codified, I guess the
20 Zoning Administrator has always done. "The original rooftop
21 architectural element is substantially rendered damaged due to no
22 overt action of the owner or affiliate." So somehow, I guess you
23 have to prove that. Then, "The replacement will be visually
24 indistinguishable from the original in style, dimensions, profile,
25 and appearance when viewed from a public right-of-way."

1 You know, where does it talk about exactly what the
2 materials are? You know, it just says that it has to look the
3 same way that it was and so then how does the Zoning -- and see,
4 that's where I don't know whether -- I don't think it's our place
5 also, but, you know, that sounds like a historical, you know, HPRB
6 kind of thing or something, design review, you know. Like, is the
7 material this or that.

8 So back to whatever the original -- I mean, I think, and
9 I was kind of playing my hand out with talking to the
10 Commissioner, so I respect them coming forward and the property
11 owner. You know, I don't want to get into whether or not they did
12 or didn't do it, or what was going on. I mean, to speak -- and
13 I'm going to stop in a minute and then start to go around the
14 table. To speak to that one photo that you were talking about,
15 Ms. John, about the framing, like I can't tell from that. It was
16 in Exhibit --

17 MR. YOUNG: 21.

18 CHAIRPERSON HILL: Thanks. It was in Exhibit -- oh, was
19 it 21? These PDFs. No, I'm looking at 18. So the one at 18 is
20 the one that came from ANC and they show on, you know, page 5,
21 like framing that, to me, doesn't look like the mansard roof is
22 coming back, but I don't know if that is actually -- and this is
23 where it doesn't matter. Like, I don't know if that means that
24 the mansard roof is going around that framing. I don't know
25 enough about architecture to see if that, you know -- anyway, what

1 the Zoning Administrator approved, the approved plans show that
2 the mansard roof was coming back, right. Now, again, whether it's
3 exactly the same way, I don't -- you know, it can't be exactly the
4 same way because those materials, to the quote the Commissioner,
5 is in a landfill.

6 So, you know, so back to the other thing. I don't --
7 you know, the Zoning Administrator didn't approve the mansard roof
8 to be taken off, so I don't see how he made an error, but I think
9 that what this does bring to light or to more of a discussion is,
10 you know, what hoop is it that re-includes or reactivates the ANC
11 when something like this happens, right.

12 So I'm going to move right -- who wants to go next? Do
13 you? Commissioner, you want to go next? Mr. Smith, do you want
14 to go next?

15 MEMBER SMITH: I'll --

16 CHAIRPERSON HILL: Mr. Smith, your microphone is not on.
17 So you go next.

18 MEMBER SMITH: So I have a question, well clarification,
19 as far as the two grades, Mr. Chair, in Exhibit 18. Because yes,
20 you're right, Exhibit 18 really doesn't show the mansard roof was
21 being placed back in, but I just want to note that image is from
22 May 2nd, 2020 and that construction is for the new addition that
23 would have been behind the faux mansard roof. Exhibit 22 is the
24 state of construction as of three days ago which does show a faux
25 mansard roof, so just as a clarification that in front of the

1 framed addition that you see from Exhibit 18 would tie back around
2 it.

3 So I do have a question for Mary and it's in relation to
4 E 206.2. So can we consider E 206.2 if we -- the state of the
5 appeal is to appeal a building permit that was issued prior to the
6 implementation of this new section?

7 MS. NAGELHOUT: I would say the issue on appeal is
8 whether the Zoning Administrator erred in making the decision
9 that's being challenged in the appeal which is the issuance of the
10 revised permit. So you would assess it relative to the version of
11 the regulations that were -- that was in effect at the time --

12 MEMBER SMITH: Okay.

13 MS. NAGELHOUT: -- but you don't have to entirely ignore
14 the amendment either because to the extent that DCRA is arguing,
15 "It just codifies what we've been doing anyway," you can take that
16 into account, but the answer to your question is go with the
17 version that was in effect at the time.

18 MEMBER SMITH: Okay. Thank you. That's all I had for
19 now, Mr. Chair.

20 CHAIRPERSON HILL: All right. Yeah. Thanks, Mr. Smith.
21 And that was kind of helpful in that I also just don't -- I'm a
22 little -- I don't know. What it made me think of now when you
23 were speaking was, you know, did the Zoning Administrator violate
24 something because E 206.1 says that nothing will be removed,
25 right. And so it just seems like you're kind of stuck in this

1 weird limbo place, right? You know, nothing will be removed, but
2 it was removed, right? And so he didn't approve it to be removed,
3 he didn't remove it, but it was removed.

4 And so I guess, again, to the appellant's point of view,
5 they're saying that at that point the break should have been
6 stopped and they should have been sent to the BZA and I'm going to
7 -- but what the Zoning Administrator had done in the past is what
8 he just now did at this point which is that, "Okay. Well, you
9 know, is it that as the property owner says, the roof collapsed,
10 and it couldn't be replaced?"

11 Anyway, so I'm back to -- all right. Who wants to go
12 next? Ms. John? We'll leave with the Commissioner -- I've been
13 bugging the Commissioner so many times now that like, you know, I
14 mean, we'll let him go last.

15 VICE CHAIR JOHN: Okay. So I -- this might be too
16 simple. The way I look at it is that the ZA does have enforcement
17 authority and if there was a violation of the permit, then the ZA
18 said, "Comply with your permit or go to the BZA," and that's the
19 way I see it. The roof -- there has to be a mansard roof and the
20 order was that it should be in kind. It doesn't have to be an
21 exact replacement based on the meaning of the word -- the ordinary
22 meaning of the word "in kind."

23 So that's the issue as I see it, but -- and then the
24 other thing is that this is not -- this property is not subject to
25 HPRB review which would have been more stringent in terms of the

1 materials to be used and so on, so we start there. But I think
2 this whole issue is moot with the new regulation and what would
3 have to be decided in the future is whether we needed to have more
4 criteria for the BZA to exercise its jurisdiction in allowing
5 certain kinds of in-kind replacements where there is damage to a
6 roof. So I think this really is not a very complicated case.

7 CHAIRPERSON HILL: Okay. All right. And to be clear
8 for me, you know, and then turning to Commissioner Miller.
9 Commissioner Miller, I don't know. You know, maybe this is fine
10 the way it is, you know, I don't know, right. I'm just saying
11 that maybe you guys -- the regulation is good, everything's good,
12 the amendment. You know, the text amendment is good and
13 everything's fine. I mean, this is one particular -- I don't
14 know.

15 So Commissioner Miller, do you have some deliberation?

16 COMMISSIONER MILLER: Thank you, Mr. Chairman. And I
17 thank the ANC for their vigilance in bringing the matter, the
18 violation, forward to DCRA to begin with and their vigilance in
19 following this case forward and I appreciate DCRA's diligence in
20 trying to respond to the situation and all the circumstances
21 involved. And, you know, I'm not going to -- well, I would just
22 say that under the existing -- under the then existing regulation
23 the -- well, under the current regulation, the removal happened
24 without the DCRA's approval and without BZA's approval and that's
25 not supposed to happen, but it happened.

1 So then given those circumstances, was there an error in
2 how this all played out? I agree with DCRA's statement in their
3 prehearing statement that there was nothing in Section 206.1 that
4 expressly precluded the replacement or restoration of damaged
5 rooftop architectural elements and that's what -- the Zoning
6 Administrator exercised that discretion in ordering the
7 replacement and restoration of those damaged rooftop elements and
8 that was his practice under that regulation and then it was
9 further codified in the new regulation which wasn't yet in effect.

10 So I don't see an error in the Zoning Administrator's
11 exercise, but I think discretion existed under the preexisting
12 regulation or the -- or even -- or the new regulation to do what
13 he did. He could have also exercised discretion and said, "No, go
14 to the BZA. I don't -- it's too complicated for me to figure
15 out," but he didn't and I -- but I think he would have, you know,
16 had the authority to do that as well.

17 So I think the discretion was there under the old
18 regulation. I think it's there under the new regulation and I
19 think the -- an effort was made to restore the elements to their
20 previous condition to be in harmony with the neighborhood and the
21 character that previously existed.

22 As others have pointed that, you know, it's not -- this
23 isn't a historic district as I -- as far as -- I don't think so,
24 so it would have been another process that would have gotten into
25 more detail, the materials and all that. You know, maybe under

1 the new regulation when the evidence is presented to the ZA that
2 what the new rooftop is going to look like, maybe there should be
3 some kind of consultative process with the ANC, the affected ANC,
4 which in this case was obviously very interested in that, in this
5 kind of thing. Maybe they're interested to the extent that they
6 want to make this a historic district. That would really be the
7 way to try to deal with design issues instead of the BZA or a
8 Zoning Administrator review process.

9 But I mean, if the ANC wants to bring forward a case to
10 the Zoning Commission that puts the ANC in the loop in that type
11 of administrative review by the Zoning Administrator of the
12 replacement that occurs in an advisory capacity which is all the
13 ANC is, an advisory capacity, to be given great weight, maybe
14 that's something to be considered in the future, but I don't see
15 an error that occurred in this case under the pre-existing
16 regulation or under the new regulation and I think everybody was
17 trying to do the right thing and so that's where I -- I don't
18 think there was an error here.

19 I think the Zoning Administrator exercised the
20 discretion that was there, that he had exercised previously in
21 practice, and is further codified in the new regulation and maybe
22 there's ways to bring the ANC into the loop in future processes,
23 either informally or formally through a text amendment, but I
24 don't think there's anything further for the BZA to do here except
25 maybe make a recommendation to the Zoning Commission if we ever

1 get to such a case. So that's where I am, Mr. Chairman. I
2 appreciate your comments and everybody else's comments on this,
3 and I would be ready to vote on this today.

4 CHAIRPERSON HILL: Okay. And just for the record again,
5 yeah, Mr. Smith was pointing out that I don't know, right, that
6 that mansard roof is now actually going up around that framing is
7 what you were kind of pointing out, right. Like, you know, I'm
8 not the expert, so that -- you're saying that -- and now I'm just
9 curious. You're saying that you think that that mansard roof was
10 going up around that frame?

11 MEMBER SMITH: Yes, as of November 29th, I think they
12 have reconstructed the mansard roof.

13 CHAIRPERSON HILL: Right.

14 MEMBER SMITH: Whether it's in kind, you know, we can
15 debate that, but I do believe that --

16 CHAIRPERSON HILL: Right. Right.

17 MEMBER SMITH: -- they are constructing the mansard
18 roof.

19 CHAIRPERSON HILL: All right. Okay.

20 Ms. John, are you ready to -- are you guys ready to
21 vote? Mr. Smith, are you ready to vote?

22 MEMBER SMITH: Well, I'm ready to vote, but I can have a
23 discussion on the matter.

24 CHAIRPERSON HILL: Yeah.

25 MEMBER SMITH: I do agree with -- I do agree with

1 Commissioner Miller up until this discussion about the prehearing
2 statement. So I'm of the opposite opinion that I do believe that
3 Section 206.1 is resolute prior to the institution of E 206.2. I
4 do believe that if it's not expressly stated that the Zoning
5 Administrator can, through his enforcement powers, enable or
6 require that an applicant replace in kind, whether it was
7 destroyed by an act of God or it collapsed in some way, shape or
8 form. I don't think this provision expressly gives the Zoning
9 Administrator that ability, so I do believe that it should have
10 been in the power of the Zoning Administrator to -- when the
11 applicant removed it, whether it collapsed or not, when the
12 applicant removed the mansard roof, I believe the Zoning
13 Administrator should have required the applicant to submit an
14 application to our BZA for a special exception. So I take a
15 different approach to this.

16 Now, I think that the remedy now exists within the
17 zoning ordinance now with E 206.2 to enable the zoning
18 administrator to make this interpretation that you can replace
19 something in kind. I think the architectural element had been
20 substantially eroded or damaged, but I do believe that there was
21 an error. Where that falls is where it falls, but that's my
22 position right now.

23 CHAIRPERSON HILL: Okay.

24 MEMBER SMITH: It's in your (audio interference), Mr.
25 Chair.

1 CHAIRPERSON HILL: No, no, no. I'm just -- it's -- I
2 don't -- you know, we don't all have to be on the same page, and I
3 don't necessarily disagree with you. I mean, the thing that, I
4 guess even in (audio interference) Ms. Nagelhout -- I guess, I'm a
5 little -- you kind of mentioned that we don't have to completely
6 ignore 206.2, but then I'm a little confused also in that 206.1
7 was the only thing that was actually going on. Can you clarify at
8 the time of when this mansard roof was removed -- and I'm sorry to
9 kind of put you here on the spot here again a little bit -- can
10 you clarify how we can kind of look at 206.2 or at least
11 understand that it codified something that the ZA had always been
12 doing?

13 MS. NAGELHOUT: Well, so under 206.1 as it existed at
14 the time, it didn't -- it just said you shall not remove a rooftop
15 architectural element. That's it. You cannot remove the
16 architectural element. So then the question becomes what happens
17 in the case of a violation when somebody takes it down without
18 prior approval? I think what the ZA testified to in this case was
19 that considering all the facts, like the deterioration, you know,
20 the photographs and the testimony of the owner and the other
21 people at DRCA, he concluded that it was appropriate in this case
22 to allow the replacement because of the deteriorated state of the
23 original.

24 And so that's why I don't think you should apply the new
25 version of the regs, but you can -- I think the fact that the regs

1 were amended to basically codify what the ZA had been doing does
2 speak to whether the ZA's action under the old regs was reasonable
3 or not. But again, it's -- you gotta -- you have to look at what
4 the ZA had the authority to do, what was essentially enforcement
5 action under the prior version of the regulation.

6 CHAIRPERSON HILL: Okay. All right. Ms. John, are you
7 ready to vote?

8 VICE CHAIR JOHN: Yes, I am.

9 CHAIRPERSON HILL: Okay. All right.

10 VICE CHAIR JOHN: Yes, I am.

11 CHAIRPERSON HILL: Okay. So just to clarify again my
12 position and this is where I think there is -- the appeal is, is
13 did the Zoning Administrator make an error in issuing the
14 secondary building permit and I guess it kind of -- I guess I
15 think that's the whole thing, we can argue it both ways, and we
16 have to -- everybody gets a vote.

17 Because even as I'm sitting here talking out loud with
18 it, Mr. Smith, you know, I understand your point as to what you
19 think how the Zoning Administrator erred and I guess based upon
20 the testimony that this was what the Zoning Administrator was
21 doing beforehand to try -- because they're trying to fix things,
22 like, you know, and follow the regulations. This is what they or
23 he was doing beforehand. This was what he was doing, which is now
24 206.2, so therefore I don't think he made an error. So I'm going
25 to make a motion that he didn't make an error and we'll see where

1 we get.

2 So I'm going to make a motion to deny Appeal No. 203.24
3 as captioned and read by the secretary.

4 And Mr. Miller, I'm going to turn to you just for
5 suspense because I know where you are. Will you second my motion?

6 COMMISSIONER MILLER: Yes. Yes, I will. I'll second
7 it.

8 CHAIRPERSON HILL: All right. So the motion has now
9 been made and seconded. So Mr. Moy, would you like to take a roll
10 call?

11 MR. MOY: Yes, sir. Thank you, Mr. Chairman. So when I
12 call your name if you would please respond with a yes, no, or
13 abstain to the motion made by Chairman Hill to deny the appeal,
14 and that motion is seconded by Zoning Commissioner Rob Miller.
15 Mr. Smith?

16 MEMBER SMITH: No, thank you.

17 MR. MOY: Vice Chair John?

18 VICE CHAIR JOHN: Yes, an aye.

19 MR. MOY: Zoning Commissioner Rob Miller?

20 COMMISSIONER MILLER: Yes.

21 MR. MOY: Chairman Hill?

22 CHAIRPERSON HILL: Yes, to deny.

23 MR. MOY: We have a Board seat vacant. Staff would
24 record the vote as 3 to 1 to 1. This is on the motion made by
25 Chairman Hill to deny the appeal. The motion was seconded by

1 Zoning Commissioner Rob Miller. Also support in the motion is
2 Vice Chair John. Opposed to the motion is Mr. Smith and, of
3 course, Zoning Commissioner Miller and Commissioner Hill are in
4 favor to deny the appeal. So again, the motion carries, 3 to 1 to
5 1.

6 CHAIRPERSON HILL: Okay. Great. All right. Thank you,
7 Mr. Moy.

8 Okay. All right. Well, it was nice seeing everybody.
9 And Mr. Moy, we don't have anything else before us, correct?

10 MR. MOY: Nothing from the staff, sir.

11 CHAIRPERSON HILL: Okay. All right, everyone. We're
12 adjourned. Thank you.

13 VICE CHAIR JOHN: Bye.

14 CHAIRPERSON HILL: Bye.

15 MEMBER SMITH: Take care.

16 CHAIRPERSON HILL: Okay.

17 (Whereupon, the above-entitled matter went off the
18 record at 12:04 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 12-02-20

Place: Teleconference

was duly recorded and accurately transcribed under my
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