

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 3, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice at 10:06 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:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist
SARA A. BARDIN, Director

OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS
KAREN THOMAS

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OFFICE OF DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
PRESENT:

Matthew LeGrant

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JOHN K. RICE, ESQUIRE
MARY NAGELHOUT, ESQUIRE

The transcript constitutes the minutes from the
Regular Public Hearing held on February 3, 2021

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

Case No. 20338 - Application of Glennorth Investment -
 (Withdrawn) 8

Case No. 20369 - Application of Emily and Wesley Raynor -
 (Rescheduled) 8

Case No. 20367 - Application of Lee A. Granados and Kevin R.
 Klym 9

Case No. 20371 - Application of Charles and Coreil Dickinson 16

Appeal No. 20356 - Appeal of Neighborhood Advisory
 Commission 1C 22

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

(10:06 a.m.)

CHAIRPERSON HILL: All right. The hearing will please come to order.

Good morning, ladies and gentlemen. We are convened and broadcasting this public hearing by videoconference. This is the February 3rd, 2021 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair; Chrishaun Smith, Board Member; and representing the Zoning Commission is Peter May.

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

The webcast video will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing, and only persons who have signed up to participate or testify will be unmuted at the appropriate time.

Please state your name and home address before providing oral testimony or your presentation. Oral presentations should be limited to a summary of your most important points. When you are finished speaking, please mute your audio so that your microphone is no longer picking up sound or background noise.

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1 If you are experiencing difficulties accessing Webex or
2 your telephone call-in, or if you have forgotten to sign up 24
3 hours prior to this hearing, then please call our OZ hotline
4 number at 202-727-5471. Once again, 202-727-5471. It's also
5 listed on the screen in front of you, to sign up to testify and
6 receive Webex login or call-in instructions.

7 All persons planning to testify either in favor or in
8 opposition should have signed up in advance. They'll be called by
9 name to testify. If this is an appeal, only parties are allowed
10 to testify. By signing up to testify, all participants completed
11 the oath or affirmation, as required by Y 408.7.

12 Requests to enter evidence at the time of an online
13 virtual hearing, such as written testimony or additional
14 supporting documents other than live video, which may not be
15 presented as part of the testimony, may be allowed pursuant to
16 Subtitle Y 103.13, provided that the person making the request to
17 enter an exhibit explain how the proposed exhibit is relevant, the
18 good cause it justifies allowing the exhibit into the record,
19 including an explanation of why the requester did not file the
20 exhibit prior to the hearing pursuant to Y 206, and how the
21 proposed exhibit would not unreasonably prejudice any parties.

22 The order of procedure for special exceptions and
23 variances pursuant to Subtitle -- are in Subtitle Y 409. The
24 order of procedures of appeal applications are pursuant to Y 507.

25 At the conclusion of each case, an individual who is

1 | unable to testify because of technical issues may file a request
2 | for leave to file a written version of the planned testimony to
3 | the record within 24 hours following the conclusion of public
4 | testimony in the hearing.

5 | If additional written testimony is accepted, then
6 | parties will be allowed a reasonable time to respond, as
7 | determined by the Board. The Board will then make its decision at
8 | its next meeting, but no earlier than 48 hours after the hearing.

9 | Moreover, the Board may request additional specific
10 | information to complete the record. The Board and the staff will
11 | specify at the end of the hearing exactly what is expected and the
12 | date when persons must submit the evidence to the Office of
13 | Zoning. No other information shall be accepted by the Board.

14 | The Board's agenda may include previous cases set for
15 | decision after the Board adjourns the hearing. The Office of
16 | Zoning, in consultation with myself, will determine whether a full
17 | or summary order may be issued. A full order is required when the
18 | decision it contains is adverse to a party including an affected
19 | ANC. A full order may also be needed if the Board's decision
20 | differs from the Office of Planning's recommendation.

21 | Although the Board favors the use of summary orders
22 | whenever possible, an applicant may not request the Board to issue
23 | such an order. The District of Columbia Administrative Procedures
24 | Act requires that the public hearing on each case be held in the
25 | open before the public.

1 However, pursuant to Section 405(b) and 406 of that Act,
2 the Board may, consistent with its Rules of Procedures and the
3 Act, enter into a closed meeting on a case for purposes of seeking
4 legal counsel on a case, pursuant to D.C. Official Code Section 2-
5 575(b)(4), and/or deliberating on a case pursuant to D.C. Official
6 Code Section 2-575(b)(13), but only after providing the necessary
7 public notice and, in the case of an emergency closed meeting,
8 after taking a roll call vote.

9 Preliminary matters are those which relate to whether a
10 case will or should be heard today, such as request for a
11 postponement, continuance, or withdrawal, or that proper and
12 adequate notice of the hearing has been given. If you are not
13 prepared to go forward with the case today, if you believe that
14 the Board should not proceed, now is the time to raise such a
15 matter.

16 Mr. Secretary, do we have any preliminary issues?

17 MR. MOY: Thank you, Mr. Chairman. The only preliminary
18 matter of consequence is to the appeal case that's last on the
19 docket today. So I suggest -- I had mentioned those when I called
20 the appeal. Other than that, I'd like to record for the record,
21 for the transcript that Case Application No. 20338 of Glennorth
22 Investment originally scheduled for today has been withdrawn by
23 the applicant. Also, Case Application No. 20369 of Emily and
24 Wesley Raynor, R-A-Y-N-O-R, this case has been rescheduled to a
25 future date which I will notice in the case record.

1 So that's it, Mr. Chairman.

2 CHAIRPERSON HILL: Okay. Thank you. Mr. Moy, could you
3 call our first hearing case please?

4 MR. MOY: Okay. This would be Case Application No.
5 20367 of Lee A. Granados and Kevin R. Klym, K-L-Y-M, captioned and
6 advertised for a special exception under Subtitle F, Section 5201.
7 This is from the lot occupancy requirements of Subtitle F, Section
8 604.1. This would construct a new porch addition with entry
9 stairs to an existing attached principal dwelling unit, RA-8 Zone
10 at premises 1725 Church Street, Northwest, Square 156, Lot 337.

11 CHAIRPERSON HILL: Mr. Sullivan, are you there?

12 MR. SULLIVAN: I am, Mr. Chair, members of the Board. I
13 believe Alex Wilson was going to present, but she may be having
14 some technical difficulties as well so I can do the presentation
15 unless Alex comes on.

16 CHAIRPERSON HILL: I'm sorry, Ms. Wilson, the name just
17 popped up.

18 MS. WILSON: Hi, I'm here. I was just -- I wasn't
19 allowed access. I'll be presenting today.

20 CHAIRPERSON HILL: Okay. Ms. Wilson, who is here with
21 you?

22 MS. WILSON: I'm here with Paul Wilson who is the
23 architect and Lee Granados who is the property owner.

24 CHAIRPERSON HILL: Okay. Well, let's see if we need to
25 get to them. I'm going to go ahead and put 15 minutes up on the

1 clock and you can begin whenever you like, your presentation.

2 MS. WILSON: Great. Thank you all so much. My name is
3 Alex Wilson, from Sullivan & Barros. Mr. Young, could you please
4 pull up the presentation when you have a chance, I will quickly
5 run through it.

6 Thank you. Could you please go to the second page?
7 Thank you.

8 The property is located in the Dupont Circle Historic
9 District in the RA-8 Zone. It's an interior row building and the
10 owners are proposing to add a new front porch to the house, which
11 will more closely match the character of the existing row
12 dwellings on the block, almost all of which have porches.

13 The existing lot occupancy is 58.4 percent, and the RA-8
14 Zone limits that occupancy to 60 percent. The porch is going to
15 increase the lot occupancy to 64.5 percent. Accordingly, we are
16 requesting relief from the lot occupancy requirements pursuant to
17 F-5201.

18 Next slide, please. We have two letters in support.
19 One from each adjacent neighbor and those are in Exhibits 13 and
20 17. ANC 2B unanimously supported the application. Their report
21 is Exhibit 18. The Office of Planning is recommending approval
22 and DDOT has no objection.

23 With that, I will turn it over to Paul for a very brief
24 overview of the plans just to show the porch location.

25 MR. WILSON: Okay. Good morning, members of the Board.

1 My name is Paul Wilson. I'm with the firm of Trout Design Studio.
2 And just briefly, what we're proposing is a six-foot-deep front
3 porch essentially to replace a porch that was removed at some
4 point in this building's history.

5 If I could have the next slide, please.

6 As you can see at this end of the block, just about
7 every house has a front porch and we are at 1725 and what we've
8 proposed is a very similar design to the porches at the -- this
9 end of the block.

10 If I could have the next slide, please.

11 So here again, the front extension of the building, it's
12 a little unusual because typically these porches can be a public
13 space, but this one is actually on the lot, so it is contributing
14 to our plot occupancy. And next slide.

15 And this is the design we're proposing very similar to
16 the neighboring properties. And it extends to the same dimension
17 as the neighboring properties. And it's of a very similar
18 character to those porches that are adjacent.

19 MS. WILSON: Can you all hear me?

20 VICE CHAIR JOHN: I can hear you.

21 MS. WILSON: Sorry, I lost audio for a second.

22 Okay. I'll go ahead and --

23 CHAIRPERSON HILL: I also lost the audio for a second.

24 Mr. Wilson, I don't know if I heard the end of your --

25 MS. WILSON: I can go ahead and pick up and just run

1 through the rest of the special exception requirements and he can
2 answer questions at the end. Thank you, Paul.

3 For the general special exception requirements, the
4 Zoning Regulations specifically permit special exception relief
5 from lot occupancy of up to 70 percent in this zone. We are only
6 exceeding the permitted 60 percent lot occupancy by 4.5 percent.
7 And the use of neighboring properties will not be adversely
8 affected by the relief, as the neighboring properties also have
9 similarly sized front porches.

10 Next slide please. Regarding light and air, the porch
11 will be approximately the same size as the adjacent porches, which
12 are already covered. Accordingly, the light and air available to
13 neighboring properties shall not be unduly compromised.

14 Next slide please. Regarding privacy of use and
15 enjoyment, the proposed porch would be to the front of the house
16 facing Church Street and we're not proposing any new windows on
17 the porch and it is not permitting any new or invasive views into
18 adjacent buildings.

19 Next slide please. Regarding character, this house
20 which does not currently have a front porch, is between two houses
21 that have front porches in a row, where all of the other houses
22 have front porches, almost all of them. So adding the proposed
23 porch should improve the house's appearance and visual character
24 of Church Street. This property is in the Dupont Circle Historic
25 District. It's ultimately subject to HPRB approval and we've been

1 assured that this is a staff level approval.

2 That concludes our presentation, and we are happy to
3 answer any questions. Thank you so much.

4 CHAIRPERSON HILL: Okay. Great. Does the Board have
5 any questions for the applicant?

6 (No audible response.)

7 CHAIRPERSON HILL: Okay. I'm going to turn to the
8 Office of Planning.

9 MS. MYERS: Hi. I'm Crystal Myers with the Office of
10 Planning. The Office of Planning is recommending approval in this
11 case and stands on the record of the staff support.

12 CHAIRPERSON HILL: Ms. Myers, can you hear me? Can you
13 all hear Ms. Myers, just nod your head no. Yeah, okay.

14 So, Ms. Myers, I heard that you're standing on the
15 record of the staff report. That's basically it, correct, and you
16 can just nod your head yes.

17 MS. MYERS: Yes.

18 CHAIRPERSON HILL: Okay. She cannot hear us. Ms.
19 Myers, can you hear me?

20 Can my fellow Board members hear me? This is going to
21 make for a very long appeal.

22 VICE CHAIR JOHN: I can hear you, Mr. Chairman.

23 CHAIRPERSON HILL: Ms. Myers, can you hear me?

24 Okay. Let me do this. She said she's going to stand on
25 the record. I'm not so concerned about this one, I'm more worried

1 about the appeal.

2 So does the applicant have any questions for the Office
3 of Planning? No.

4 Does the Board have any questions for the Office of
5 Planning? No.

6 All right. Mr. Young, is there anyone here wishing to
7 testify?

8 MR. YOUNG: We do not.

9 CHAIRPERSON HILL: Okay. All right. I don't have
10 anything to add. Ms. Wilson, do you have anything to add at the
11 end? Just nod your head.

12 Okay. All right. That was a "no" for the record.

13 I'm going to go ahead and close the hearing and the
14 record, goodbye, everyone.

15 CHAIRPERSON HILL: Commissioner May, can you hear me?
16 Are you amused, Commissioner May?

17 COMMISSIONER MAY: What else can I be, you know?

18 CHAIRPERSON HILL: Commissioner, why don't you start the
19 deliberations.

20 COMMISSIONER MAY: This is as just about as
21 straightforward as it gets. It's a building that probably had a
22 porch at once -- at one point, and you know, would be better off
23 with a porch and there's no impacts, so I don't see any problem
24 with approving it.

25 CHAIRPERSON HILL: Mr. Smith?

1 BOARD MEMBER SMITH: I'll second Mr. May's terminology
2 (audio interference). I believe that this particular case (audio
3 interference), the design of the porch would be in keeping with
4 the character of the other porches along the street, and I
5 applaud the applicant for coordinating with the ANC also (audio
6 interference) they also (audio interference) note that in the
7 (audio interference) -- also note that the Historic Preservation
8 (audio interference) reviewed the application, so they have no
9 objections as well. So I would be in support of this special
10 exception.

11 CHAIRPERSON HILL: Vice Chair John?

12 VICE CHAIR JOHN: I agree with Commissioner May and
13 Board Member Smith, and I would also just give great weight to the
14 analysis of the Office of Planning.

15 CHAIRPERSON HILL: Okay. All right. I have nothing to
16 add. I agree with my colleagues. I'm going to make a motion to
17 approve Application No. 20367 as captioned and read by the
18 Secretary. If I may ask for a second, Ms. John?

19 VICE CHAIR JOHN: Second.

20 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,
21 could you please take a roll call vote.

22 MR. MOY: Yes, thank you, sir. When I call your name,
23 if you would please respond with a yes, no, or abstain to the
24 motion made by Chairman Hill to approve the application for the
25 relief requested. The motion was seconded by Vice Chair John.

1 Zoning Commissioner Peter May?

2 COMMISSIONER MAY: Yes.

3 MR. MOY: Mr. Smith?

4 BOARD MEMBER SMITH: Yes.

5 MR. MOY: Vice Chair John?

6 VICE CHAIR JOHN: Yes.

7 MR. MOY: Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MR. MOY: We have a Board seat vacant. Staff would
10 record the vote as 4 to 0 to 1. And this is on the motion of
11 Chairman Hill to approve the application, seconded -- the motion
12 was seconded by Vice Chair John. Also in support of the motion
13 Mr. Smith and Zoning Commissioner Peter May. Board seat vacant.
14 Motion carries on a vote of 4 to 0 to 1.

15 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.

16 Vice Chair John, can you hear me?

17 VICE CHAIR JOHN: Yes, I can.

18 CHAIRPERSON HILL: I sent you a text.

19 VICE CHAIR JOHN: Okay. Thank you.

20 CHAIRPERSON HILL: All right. Mr. Moy, you can call our
21 next one.

22 MR. MOY: All right. This would be Case Application No.
23 20371 of Charles and Coreil, C-O-R-E-I-L, Dickinson. Caption and
24 advertised for special exceptions under Subtitle E, Sections 205.5
25 and 5201, from the rear yard addition requirements of Subtitle E,

1 Section 205.4, lot occupancy requirements Subtitle E, Section
2 304.1 and a rear yard requirement Subtitle E, Section 306.1, which
3 would construct a three-story rear addition and a third-floor
4 addition to an existing principal dwelling unit, RF-1 Zone at 1507
5 E Street Southeast, Square 1076, Lot 38.

6 CHAIRPERSON HILL: All right. Great. Ms. Fowler, are
7 you there?

8 MS. FOWLER: Yes, I'm here, good morning.

9 CHAIRPERSON HILL: Good morning.

10 MS. FOWLER: Hi.

11 CHAIRPERSON HILL: Okay. If you want to go ahead Ms.
12 Fowler, I'm going to put 15 minutes on the clock. I don't have
13 any particular things to ask about, other than maybe if you can
14 kind of again speak a little bit to the light and air --

15 MS. FOWLER: Okay.

16 CHAIRPERSON HILL: -- issues. And then also how it is
17 keeping in harmony with the lot frontage and for that block, I
18 know that you gave us some -- you cited some things that were not
19 necessarily on that block, but if you'd kind of speak to the block
20 itself. And I'll put 15 minutes on the clock there and you can
21 begin whenever you like.

22 MS. FOWLER: Okay, sure.

23 So this is a request for relief for lot occupancy, rear
24 yard setback for -- and the ten-foot neighbor setback for that
25 kind of extension to this property. We're asking for a third-

1 floor addition, as well as a threshold rear addition that's --

2 CHAIRPERSON HILL: Ms. Fowler, can I interrupt one
3 second?

4 MS. FOWLER: Yes, uh-huh.

5 CHAIRPERSON HILL: You did get your affidavit of
6 maintenance, right? Yeah.

7 MS. FOWLER: Yes, I submitted that.

8 CHAIRPERSON HILL: Okay. So, Mr. Rice, we're good with
9 everything, correct?

10 MR. RICE: That's correct, sir.

11 CHAIRPERSON HILL: Okay. All right. Ms. Fowler, I'm
12 sorry, please continue.

13 MS. FOWLER: Okay. No problem. So this is a very small
14 property, a small house on a small lot. The addition that we're
15 asking for we're really just going two feet, roughly two feet past
16 the 12 -- 2 feet, 2 inches past the 10-foot setback Regulation.

17 We're also proposing that the rear extension have a side
18 yard, a side court of 4 foot-6 inches on the side abutting 1509.
19 As far as the front façade, we're proposing a mansard design with
20 standing seam metal roof with casement windows. And part of that
21 is to kind of, you know, kind of soften the façade, so that it's
22 not a straight up wall.

23 We're not required to setback at the front here because
24 it is a flat front and there's no architectural features that
25 we're having to stay clear of. But there are a number of other

1 houses in the immediate area that have kind of designed a similar
2 type third floor.

3 There are third floor additions across the street that
4 have been set back, but there's also a number of houses that have
5 kind of similar third floor additions.

6 We did get support from the ANC, everybody's very
7 comfortable with this proposal, unanimous support. And also a few
8 addresses submitted a letter of support. It's in the record. I
9 think they just submitted a couple of days ago, that they felt
10 comfortable with the proposal.

11 In addition, we have letters of support in the record
12 for -- from both adjacent neighbors, so 1505 and 1509 as well the
13 house kind of immediately behind the addition at 15th Street,
14 Southeast.

15 So again, it's been very well received from the
16 neighborhood and the committees. And we did submit a sun study in
17 the record that did show that there was a very minimal impact to
18 the adjacent neighbors. And, of course, everybody's reviewed it
19 as far as the ANC and the neighbors and has shown no concerns.

20 So with that, I'll just leave it open to questions.

21 CHAIRPERSON HILL: Okay. Thank you, Ms. Fowler. Does
22 the Board have any questions for the applicant? If so, please
23 raise your hand.

24 (No audible response.)

25 CHAIRPERSON HILL: Okay. I'm going to turn to the

1 Office of Planning.

2 MS. THOMAS: Good morning, Mr. Chairman, and members of
3 the Board, Karen Thomas with the Office of Planning. We are
4 recommending approval in this case and we will stand on the record
5 of our report. I'll be happy to take any questions, thank you.

6 CHAIRPERSON HILL: Okay. Does anybody have any
7 questions of the Office of Planning?

8 (No audible response.)

9 CHAIRPERSON HILL: Ms. Fowler, do you have any questions
10 for the Office of Planning?

11 MS. FOWLER: No, I don't, thank you.

12 CHAIRPERSON HILL: I have a quick question just because
13 I'm curious. I'm looking at your sun study. The 1506 15th
14 Street, Southeast what the backyard is facing, is that like a
15 garage or is that a separate garage? Do you know?

16 MS. FOWLER: So the house at the -- you mean, the one
17 that's on 15th Street? When you look out from 1507, to the right
18 you can see the side of the house that fronts onto the alley, so
19 it's a brick wall there and there is a garage at the rear of that
20 property.

21 CHAIRPERSON HILL: Okay. I was just curious.

22 MS. FOWLER: Yeah.

23 CHAIRPERSON HILL: Okay. All right. Mr. Young, is
24 there anyone here wishing to testify?

25 MR. YOUNG: No.

1 CHAIRPERSON HILL: Okay. Ms. Fowler, is there anything
2 you'd like to add at the end?

3 MS. FOWLER: No. Thank you so much for your time.

4 CHAIRPERSON HILL: Okay. All right. I'm going to go
5 ahead and close the record and the hearing. Mr. Young, if could
6 excuse everyone.

7 Okay. Is the Board ready to deliberate? Okay. I
8 didn't really have an issue with this also, in terms of, you know,
9 the relief that's being requested. I thought that it was also
10 pretty straightforward. I would agree with the analysis the
11 Office of Planning has provided, as well as that from the ANC 6B
12 and DDOT.

13 There's support from it from the adjacent neighbors as
14 well as CHRIS. I always want to call it "Chris," C-H-R-S, and so I
15 will be voting in support. Commissioner May, do you have anything
16 you'd like to add?

17 COMMISSIONER MAY: No.

18 CHAIRPERSON HILL: Mr. Smith, do you have anything you'd
19 like to add?

20 BOARD MEMBER SMITH: No.

21 CHAIRPERSON HILL: No. Vice Chair John?

22 VICE CHAIR JOHN: No, I have nothing to add.

23 CHAIRPERSON HILL: Okay. Then I will go ahead and make
24 a motion to approve application No. 20371 as captioned and read by
25 the Secretary and ask for a second. Ms. John?

1 VICE CHAIR JOHN: Second.

2 CHAIRPERSON HILL: The motion has been made and
3 seconded. Mr. Moy, if you could please take a roll call.

4 MR. MOY: Thank you, sir.

5 When I call your name, if you would please respond with
6 a yes, no, or abstain to the motion made by Chairman Hill to
7 approve the application for the relief requested. The motion was
8 seconded by Vice Chair John.

9 Zoning Commissioner Peter May?

10 COMMISSIONER MAY: Yes.

11 MR. MOY: Mr. Smith?

12 BOARD MEMBER SMITH: Yes.

13 MR. MOY: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 MR. MOY: Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MR. MOY: We have a Board seat vacant. The staff would
18 record the vote as 4 to 0 to 1, and this is on the motion of
19 Chairman Hill to approve, seconded by Vice Chair John. Also in
20 support of the motion, Mr. Smith and Zoning Commissioner Peter
21 May. We have a Board seat vacant. The staff would record the
22 vote as 4 to 0 to 1. The motion carries, sir.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

24 To my fellow Board members, I guess I have a plan, or I
25 wouldn't have proposed it, so we have an appeal coming up and

1 | there is an intervenor status request. So what I'd like to do is
2 | go ahead and process the preliminary matters first and then we'll
3 | take a break, a quick break and then we'll come back for the
4 | appeal.

5 | So that being the case, unless anybody has an issue
6 | raise your hand. And then, Mr. Moy, you can go ahead and call our
7 | appeal when you get a chance.

8 | MR. MOY: Thank you, Mr. Chairman. So this is Appeal
9 | No. 20356 of the Advisory Neighborhood Commission 1C. Captioned
10 | and advertised as an appeal from the decision made on July 29,
11 | 2020, by the Zoning Administrator, Department of Consumer and
12 | Regulatory Affairs to issue building permit No. B, that's B as in
13 | bravo, 20051559 to permit the construction of a rear addition and
14 | the conversion of an existing principal dwelling unit to a flat in
15 | the RF-1 Zone at premises 1808 Ontario Place, Northwest, Square
16 | 2583, Lot 416.

17 | And as you said, Mr. Chairman, there are preliminaries
18 | here, one of which there is a request for intervenor status.

19 | The second preliminary matter, Mr. Chairman, as you're
20 | aware, there's the matter of expert status of -- under the name of
21 | Guillermo Rueda.

22 | CHAIRPERSON HILL: Okay. Right, there's just like two
23 | issues.

24 | Okay. Do you want to let everybody in, Mr. Young?

25 | Okay. Just give me a second so everybody gets their

1 camera on and I make sure it all works.

2 All right. Who's the Commissioner, if you could raise
3 your hand?

4 Okay. Great. All right. Commissioner Faulkner, can
5 you hear me?

6 COMMISSIONER FAULKNER: Yes, yes.

7 CHAIRPERSON HILL: Is it Faulkner?

8 COMMISSIONER FAULKNER: Faulkner, yes.

9 CHAIRPERSON HILL: Okay. Great. Ms. Ferster, can you
10 hear me?

11 MS. FERSTER: Yes, I can.

12 CHAIRPERSON HILL: Okay. Welcome. I haven't seen you
13 in this virtual (audio interference).

14 MS. FERSTER: This is my first.

15 CHAIRPERSON HILL: Yeah. Let's see, Mr. Sullivan, can
16 you hear me?

17 MR. SULLIVAN: Yes, I can.

18 CHAIRPERSON HILL: Okay. Great.

19 All right. Ms. Ferster, I guess let's start with --
20 well, where's Mr. -- oh, Mr. Rueda, can you hear me?

21 MR. RUEDA: Yes, sir. How are you doing today?

22 CHAIRPERSON HILL: Good, thank you. Welcome as well.
23 Are you choosing not to use your camera?

24 MR. RUEDA: Oh, I do have pants on, hang on.

25 CHAIRPERSON HILL: That's good, that's good.

1 MR. RUEDA: Yeah, yeah, there you go. Good morning.

2 CHAIRPERSON HILL: And you have a tie on, too, Mr.
3 Rueda. You have an interesting outfit if you don't have pants on.

4 Let's see. I can't see you very well, Mr. Rueda, I
5 don't know. Let's see if there's -- well, we'll see -- okay.
6 We'll see what happens. There's some crazy technical issues going
7 on.

8 So, Ms. Ferster, let's start with the intervenor status.
9 Could you explain why you think per the Regulations you guys
10 should be granted intervenor status?

11 I can't hear you, Ms. Ferster. I think you're on mute.
12 You're on mute.

13 MS. FERSTER: Thank you. So the Regulations specify
14 that we need to demonstrate that we would be distinctly adversely
15 affected in a manner that's different from the general public and
16 that our interests will not be adequately represented by the
17 appellant and that we will not unduly delay or broaden the matter
18 and I think we meet all three criteria.

19 The intervenor, requesting intervenor is the 8th Day
20 Community Cooperative, which is immediately adjacent to the
21 subject property, meaning it is within zero feet of the property
22 line. And as the property owner acknowledges, their building is
23 within 12 feet of the subject building.

24 So clearly, they are within that 200-foot threshold that
25 the BZA has historically viewed as distinctly adversely affected.

1 We have submitted testimony in advance by two of the shareholders
2 and residents of the 8th Day Community Cooperative who have
3 detailed why they believe that they will be adversely affected and
4 aggrieved in a manner that is different from the general public in
5 terms of their impacts on light, air and privacy, as well as the
6 general character of their building.

7 And we are submitting that for the record so that we can
8 demonstrate that they meet the requirements for an intervenor.
9 We're not seeking to broaden obviously the scope of this hearing
10 to address those impact issues, but simply to demonstrate their
11 standing.

12 We're -- the issues we've raised are limited to the
13 issue raised by the ANC, we're not going to broaden, and we will
14 stay within the timeframe allocated for the appellant.

15 Further, to make sure that we're efficient, while we
16 have identified three witnesses for the hearing, which would
17 include Kathleen Gille, Julie Langsdorf of the Cooperative, they
18 are prepared to submit on their written testimony and simply be
19 available for questions if you have any of them, so that we will
20 simply have one witness who is Mr. Rueda, who will be presenting
21 on the zoning violations that have been alleged and he will be --
22 he would be the focus of our case and is prepared, of course, to
23 also be efficient.

24 So we don't see that there's any prejudice to anybody
25 for our participation.

1 CHAIRPERSON HILL: Okay. Thank you, Ms. Ferster.

2 Commissioner Faulkner, did you hear all that?

3 COMMISSIONER FAULKNER: Yes.

4 CHAIRPERSON HILL: Okay. Ms. Ferster, maybe if you want
5 to mute your phone also, and I'll (audio interference). I'm just
6 getting some feedback, but I'll tell you, you know, if you need to
7 mute or unmute.

8 And just for the record, Ms. Ferster, I'm not arguing
9 whether or not you guys should be getting intervenor status or
10 not. You mentioned something about the 200 foot. Like, I'm just
11 kind of stating, like, it doesn't necessarily mean if you're in
12 the 200 foot you get party status, but I know that that's
13 something that the Board does take into account. I just wanted to
14 kind of mention that.

15 The -- Ms. Faulkner, then, in terms of the ANC or
16 Commissioner, I'm sorry, you don't have any opposition to this
17 intervenor status; is that correct?

18 COMMISSIONER FAULKNER: No, we do not.

19 CHAIRPERSON HILL: And what I seem to get from the
20 record was that you guys were going to share the time; is that
21 correct?

22 COMMISSIONER FAULKNER: Yes.

23 CHAIRPERSON HILL: Okay. Mr. Sullivan, I think you were
24 in opposition to the intervenor status; is that correct?

25 MR. SULLIVAN: That's correct.

1 CHAIRPERSON HILL: Could you tell us why?

2 MR. SULLIVAN: Sure. You know, my name is Marty
3 Sullivan on behalf of the property owner. I just think their
4 request just simply doesn't meet the requirements under the
5 Regulations.

6 The requirements for intervenor status is distinctly
7 different from the party status requirement. There's actually
8 four requirements, only one of which is in common with the party
9 status request. And they are also required to demonstrate that
10 they meet all those requirements.

11 And regarding requirement number two, which is the
12 requirement that's in common with the party status request, they -
13 - I don't believe they have demonstrated anything. They've shown
14 some pictures. And, in fact, if you looked at the location and
15 the configuration of these two buildings in regard to the
16 direction they're in and the distance they're apart, it doesn't
17 seem likely at all that this would provide any additional even
18 shadow on their property. But they certainly haven't demonstrated
19 that. They've submitted nothing to that effect.

20 But the biggest thing is, requirement number three, that
21 the right or interest will not be adequately represented by the
22 parties, including the ANC. The ANC specifically filed this
23 appeal upon the request of the Coop, which -- and they filed it
24 with the Coop's expert witness report as their justification.
25 It's essentially one and the same party.

1 So -- and I think for that reason, it wasn't submitted
2 for any other reason but to unduly broaden the issues and delay
3 the proceedings. But, you know, requirement number two and four
4 are judgment calls. I don't think they've demonstrated it.

5 But requirement number three that it won't be adequately
6 represented by other parties, I think that's an absolute
7 requirement. If you're saying that this ANC who files more
8 appeals of zoning administrator decisions probably than any other
9 ANC, and often has Mr. Rueda as an expert witness can't adequately
10 represent one of their constituents, which they do all the time,
11 and which they intended to do when they filed the appeals, then
12 this requirement is kind of meaningless. And they just -- I just
13 think they simply don't meet that requirement. Thank you.

14 CHAIRPERSON HILL: Okay. All right. I guess I'll turn
15 this to the Board to kind of speak about in terms of the
16 intervenor request. And I have suggestions on either side of
17 this. So -- but if I could go around the Board and hear what your
18 thoughts are concerning the intervenor request.

19 Vice Chair John, if you don't mind if I start with you.

20 VICE CHAIR JOHN: Thank you, Mr. Chairman. So I am not
21 inclined to grant (audio interference) because of some of the
22 suggestions from -- that were mentioned by the property owner.

23 Especially that -- I think that granting intervenor
24 status would broaden the issues before the Board. The appellant
25 argued that the building height measurement was incorrect. That's

1 the only issue before the Board right now.

2 The intervenor seeks to include issues such as the
3 impact on light and air and privacy. And that issue is not before
4 the Board. So I believe that the requestor has not met the
5 criteria in why (audio interference) 2.134 that their intervention
6 would not unduly broaden the issues or delay the proceedings.

7 As to the third criteria, the specific rider interest
8 will not be adequately represented by the automatic parties. I
9 agree with the property owner.

10 Again, in this respect that the ANC filed this appeal at
11 the specific request of the Cooperative, the 8th Day Community
12 Center Cooperative, which is next door, and ordinarily, we take
13 that into consideration.

14 But that would only be relevant in terms of the issue of
15 the impact on light and air and privacy, which is not before the
16 Board.

17 With respect to criteria 2, under 502.13, a person's
18 interest would likely be more significantly distinctively or
19 uniquely affected by the zoning relief than those of other persons
20 in the general public.

21 And this is one area where there might be some
22 difference of opinion, but the only issue here is the building
23 height and where that -- where the building height measurement
24 point should be determined.

25 And so I don't think that the requestor's interests are

1 anymore specific than any other person who might have an interest
2 in the building height. So I would start there. I would be
3 interesting in hearing what my fellow Board members believe. But
4 I think that it is not reasonable to ask the ANC to file an appeal
5 on the specific issue that the requestor is (audio interference)
6 that the ANC is not competent to represent them on.

7 So I find that a difficult argument to get over. And as
8 I read the Regulations, that is a critical, that is a critical
9 factor. But I will stop there.

10 CHAIRPERSON HILL: Okay. And we'll see what happens as
11 we get through this, and that's why I wanted to do this first and
12 take a break, because we might have to combine things, or I don't
13 know what happens.

14 Commissioner May, may I have your opinion?

15 COMMISSIONER MAY: Certainly. So I am inclined to grant
16 the intervenor's request. I don't really agree with the arguments
17 against it. You know, yes, they are making a case because of the
18 potential impacts of light and air, which is not specifically the
19 issue upon which the ANC -- the ANC's appeal is based, but the
20 impacts of light and air flow directly from where you set the
21 building height measuring point. And so I don't see them as
22 separate issues. I see that as completely connected.

23 I do think that the specific -- you know, the ANC has
24 broad interests that have to do with things beyond the -- you
25 know, the specific interest of the abutting property. And, you

1 know, if I were the abutting property like that, I mean, I would
2 go to the ANC as well to, you know, particularly since the ANC has
3 experience in doing appeals. I would want to have their
4 involvement and their expertise and their representation as part
5 of the broader community.

6 Because, you know, building additions like this that
7 result from the building height measuring point issue how it
8 affects on the neighborhood overall. And so I think that that's,
9 you know, it's completely reasonable to go to the ANC and yet
10 still want to chime in on the particular interests being the next-
11 door neighbor.

12 So I'm, in short, inclined to grant the status.

13 CHAIRPERSON HILL: Okay. So we're going to have a
14 discussion about a bunch of things. And, Commissioner, just one
15 of the other things that you brought forward is I don't -- and I'm
16 going to ask OAG to help or ring in this in terms of whether or
17 not the appeal can be broadened. Meaning if this were to be
18 granted, I was going to ask the intervenor which at the beginning
19 seemed to be the case, that they were just going to be arguing the
20 building height measuring point, the issues that were brought for
21 the ANC -- I'm sorry, the issues that were brought through the
22 appeal with the ANC and they weren't broadening the issues that
23 were first put forward by the ANC.

24 So that was not light and air, but we can still talk
25 about it. I'm just kind of -- there's two now things that you're

1 floating out there.

2 Mr. Smith, did you have thoughts?

3 BOARD MEMBER SMITH: I completely agree with Mr. May. I
4 do believe that there's a next-door neighbor. While the question
5 before us is regarding the building measurement point where the
6 (audio interference) measured, I agree with the potential
7 intervenor, as it stands (audio interference) stated has brought
8 up issues of light and air.

9 I do agree with Mr. May, but I do believe that light and
10 air can be (audio interference) draw a conclusion that there would
11 be impacts to light and air based on where the building height of
12 the building can be. And I do believe that the neighboring
13 property is uniquely impacted by the effects of the (audio
14 interference).

15 So I would be in favor of (audio interference) extent.

16 CHAIRPERSON HILL: Okay. So, Mr. Smith -- okay, so, Ms.
17 Nagelhout, of OAG, are you there?

18 MS. NAGELHOUT: I am here.

19 CHAIRPERSON HILL: Okay. So my question as we're kind
20 of going through this process is in terms of within the
21 Regulations, in terms of expansion of the issues of the appeal,
22 would light and air be expanding the issues of the appeal?

23 MS. NAGELHOUT: Well, if I understood, the potential
24 intervenors -- the counsel's statement, the information they
25 provided about light and air was only to demonstrate how they had

1 an interest in the appeal. They weren't asking to present
2 testimony on the light and air impacts of this particular
3 construction.

4 So the issue in the appeal seems to me is the building
5 height measuring point and if they can restrict their testimony to
6 that, then I don't see how -- I don't see any expansion of the
7 appeal to consider light and air impact. It's strictly about was
8 the location of the building height measuring point identified
9 correctly in the permit.

10 CHAIRPERSON HILL: Okay. Ms. Ferster, I saw you nodding
11 your head. Can you unmute your mic for a moment?

12 MS. FERSTER: Yes. Yes, that's correct. As I said, you
13 know, the Regulations do require that we have to explain how we
14 have an interest that might not be adequately represented by the
15 automatic parties.

16 So our statements that we presented about, you know, the
17 impacts, the air, privacy, that sort of thing, were simply to
18 demonstrate standing. And as I also said, once -- if we are
19 granted intervenor status, we will not present that testimony.
20 It's simply to have it in the record, so that, you know, you
21 understand that the client has standing.

22 CHAIRPERSON HILL: Okay. All right. So then, right,
23 your testimony will be focused on the building height measuring
24 point?

25 MS. FERSTER: That's correct.

1 CHAIRPERSON HILL: Okay. All right. Ms. Ferster, you
2 can mute your line please, thank you.

3 All right. Okay. Okay. I mean, again we only have
4 four members, and so you know, I'm going to go with Commissioner
5 May and Mr. Smith. And so we'll go ahead and grant the intervenor
6 status and limit the testimony to the building height measuring
7 point, which is what was brought up in the original appeal.

8 I guess what had been -- and this is where I don't
9 really necessarily think this changes the dynamic of how this is
10 going to happen, so that's why I just -- I mean, I still think
11 that what would've happened is the ANC would've allowed the
12 intervenor to, you know, testify.

13 And so I guess then what we will end up doing is running
14 the hearing and we'll run it with the ANC and the intervenor as a
15 party. And, Commissioner Faulkner, can you hear me?

16 COMMISSIONER FAULKNER: Yes, yes.

17 CHAIRPERSON HILL: So the testimony that the ANC is
18 giving, I guess it's going to rely quite a bit on the testimony
19 and expertise of the intervenor; is that correct?

20 COMMISSIONER FAULKNER: Yes.

21 CHAIRPERSON HILL: Okay. All right. So I don't think -
22 - and you're -- and we've already established that you're going to
23 share your time with them.

24 COMMISSIONER FAULKNER: Yes, yes.

25 CHAIRPERSON HILL: Okay. All right. So the next issue

1 | before we take a break is the expert status of Mr. Rueda. And,
2 | Mr. Rueda, could you please give us your testimony as to why you
3 | should be granted expert status?

4 | MR. RUEDA: Sure. I mean, in the past I've been granted
5 | the status before this Board and I think with regards to the --
6 | certainly with the residential Zoning Regulations that, you know,
7 | we've rehashed a bunch of times with Mr. LeGrant on two different
8 | appeals, I certainly think I have a particular expertise in
9 | reviewing the matter and especially with regards to 17-18 with
10 | which I was a part of, you know, some of the meetings with both --
11 | you know, the OZA and with Office of Planning to implement some of
12 | those Regulations and some of the rewriting of that text
13 | amendment, however direct or indirect you may want to characterize
14 | it.

15 | CHAIRPERSON HILL: Okay. And you're a registered
16 | architect again; is that correct, Mr. Rueda?

17 | MR. RUEDA: Yes, I am.

18 | CHAIRPERSON HILL: No, no, I'm just trying to get that.

19 | Okay. I don't have an issue with Mr. Rueda being
20 | granted expert testimony. I will see whether my fellow Board
21 | members have any issues, and if so, please raise your hand.

22 | Mr. Sullivan, does the applicant have -- or I'm sorry,
23 | does the appellant or whatever, do you have any issues?

24 | Okay. Shaking his head no.

25 | Mr. LeGrant, do you have any issues or DCI, do you have

1 any issues, shake your head no or yes or -- I got no from both of
2 you.

3 All right. So then I guess what we'll do is we'll take
4 a break, we'll come back -- oh, sorry, Mr. Moy, go ahead.

5 MR. MOY: Yeah, I'm sorry, Mr. Chairman, I'm sorry to do
6 this. Before you break, take a brief break there is one final
7 administrative matter is that DCRA attempted to file their
8 PowerPoint that they were going to be using for their arguments
9 and their presentation that was within that 24-hour period before
10 the hearing. So I would need the Board to allow that into the
11 record or not.

12 CHAIRPERSON HILL: Okay, yeah. I mean, as now this is -
13 - okay, Mr. Sullivan.

14 MR. SULLIVAN: I would add that the -- I don't know if
15 it was the appellant or the intervenor filed a flurry of documents
16 in the last 24 hours as well without serving anybody and without
17 asking they be put in, so I don't know what the Board wants to do
18 with those documents. We would oppose accepting them, but I
19 assume the Board wants to handle that with whichever party filed
20 them.

21 CHAIRPERSON HILL: Mr. Moy, which documents is Mr.
22 Sullivan speaking of?

23 MR. MOY: These are Exhibit Nos. 31, 31-A, 31-B, 31-C-1
24 and 31-C-2.

25 CHAIRPERSON HILL: Okay. And, Ms. Ferster, you're also

1 asking for a waiver then to include those documents?

2 MS. FERSTER: Yeah. I think the documents he's
3 referring to are simply the -- well, we prefiled our testimony 24
4 hours in advance, so we don't need a waiver for that. But we did
5 submit three exhibits, which were simply the slides that DCRA had
6 presented with Mr. Rueda's mark-ups to illustrate the locations of
7 the various building height measuring points that are at issue in
8 this case. So it's a demonstrative exhibit.

9 CHAIRPERSON HILL: Okay. That's fine. But you're
10 asking for the 24 hour --

11 MS. FERSTER: Right, right. You know, it's the same
12 slides as DCRA but with Mr. Rueda's mark-ups on it.

13 CHAIRPERSON HILL: I understand. So just for the Board,
14 and Ms. Ferster, you can mute your microphone if you wouldn't
15 mind, the Board I guess, you know -- I don't struggle with this, I
16 mean like since we're in this virtual world, I mean, these might
17 have been things that we would've been handed or seen during the
18 hearing itself in the chamber.

19 And so, you know, I want to see everything so we can
20 pull it up on our own screens and look at things, because
21 sometimes it's difficult on this little screen. So unless anybody
22 has any issues, I want to see everything, so I'd like to admit
23 everything into the record including the PowerPoint presentation
24 by the property owner, so that we can like look at things as
25 they're going through it.

1 And if anybody has any issues with that, I'm looking at
2 my Board members, could you please raise your hand.

3 Okay. All right. So there's no issues with that.

4 Okay. So we're going to grant the intervenor status,
5 Mr. Moy. We're going to grant the expert testimony. What will
6 happen, Commissioner, and you're kind of lagging, I don't know if
7 you can hear me, if you can nod, Commissioner, if you can hear me.

8 Commissioner, can you hear me?

9 COMMISSIONER FAULKNER: Yes.

10 CHAIRPERSON HILL: Okay. You're going in and out,
11 Commissioner.

12 So we're going to start with you, Commissioner, and your
13 presentation, then the property owner -- I'm sorry, DCI will have
14 questions for you, then the intervenor will have their testimony
15 and then questions from DCI and the property owner. And then the
16 DCI and the property owner will have an opportunity to present,
17 you guys will all go back and forth if you have any questions.
18 Then there will be a chance to do a little summary at the end.
19 And you'll have an opportunity as the appellant, to give I think
20 it's rebuttal to the testimony that was given.

21 And then we'll end with the conclusion. I haven't done
22 an appeal in a while here in the virtual world. So I will follow
23 also OAG's instructions in terms if I miss a step during the
24 process.

25 Does anyone have any questions before we take a break,

1 and if so, raise your hand?

2 Okay. All right. Then it's 11 o'clock now. Let's go
3 ahead -- I want to take a break because in case we needed to -- in
4 case the intervenor or the ANC needed to kind of like talk amongst
5 themselves they could do that.

6 So now why don't you go ahead and give your -- we'll
7 give ourselves 15 minutes to get organized. We'll come back at
8 11:15, okay? Thank you.

9 (Whereupon, the matter recessed at 11:01 a.m.;
10 reconvened at 11:15 a.m.)

11 CHAIRPERSON HILL: Okay. Mr. Moy. Can you hear me?

12 MR. MOY: Yes, sir.

13 CHAIRPERSON HILL: Let's see how the technical issues go
14 and maybe we'll just have to go kind of slowly because I kind am
15 missing the video on Mr. Rueda. Oh, there we go. So we'll see
16 what happens.

17 Do you want to call the case back in again or --

18 MR. MOY: Yeah, I'll do it very quickly for the
19 transcript.

20 CHAIRPERSON HILL: Go ahead.

21 MR. MOY: After a brief intermission the Board is back
22 in session in its public hearing and the time is at or about
23 11:21.

24 CHAIRPERSON HILL: Okay. Great. All right.
25 Commissioner, can you hear me?

1 Okay. So, Commissioner, you can go ahead and begin your
2 presentation.

3 COMMISSIONER FAULKNER: Yes, thank you. So I am
4 Commissioner Meghan Faulkner. I am the ANC Commissioner for 1C04
5 which is where this property is located.

6 ANC 1C filed this appeal based on the concerns of
7 neighbors and the ANC at large about what they believe to be an
8 incorrect determination of height of the building, based on where
9 the building height measurement point is.

10 The ANC passed the resolution 5 to 2 to 0 at a meeting
11 on August 5th, 2020. And I'd just like to point to the resolution
12 in the prehearing statement, which have already been filed for the
13 record I believe. So I'm just going to highlight a few points in
14 my testimony since those are already on the record.

15 The ANC has historically had concerns about the clear
16 enforcement of the rules around the height limits in linear
17 heights, in particular given the downzoning several years ago that
18 was designed to protect specific housing stock of rowhouses.

19 Further, in this particular ruling with regards to the
20 height and the appropriate building height measurement point seems
21 to be in conflict with a past position in a 2019 case elsewhere in
22 1C, as is outlined in the prehearing report.

23 And the ANC and the neighborhood as a whole have an
24 interest in, you know, clear enforcement of the rules and
25 following proper procedures and we'd just ask the Board to

1 consider that today.

2 So that, I'd just point to the ANC report and resolution
3 for further details.

4 CHAIRPERSON HILL: Okay. Let's see. Does the Board
5 have any questions of the ANC, and if so, please raise your hand?

6 (No audible response.)

7 CHAIRPERSON HILL: No? All right. Does the intervenor
8 have any questions of ANC?

9 MS. FERSTER: No, we do not.

10 CHAIRPERSON HILL: Thank you. Does DCI -- okay, I
11 didn't do introductions, I'm sorry. Let's do that first. Okay.

12 Ms. Ferster, could you please introduce yourself for the
13 record?

14 MS. FERSTER: My name is Andrea Ferster. I'm counsel
15 for the intervenor, 8th Day Community Cooperative.

16 CHAIRPERSON HILL: Thank you. And, Commissioner, I
17 think you already did introduce yourself for the record. Mr.
18 Green, could you introduce yourself for the record?

19 MR. GREEN: Yes, good morning, Chairman, members of the
20 Board. My name is Hugh Green. I'm an attorney with the D.C.
21 Department of Consumer and Regulatory Affairs.

22 CHAIRPERSON HILL: Mr. LeGrant, can you introduce
23 yourself for the record?

24 I can't hear you, Mr. LeGrant. You were off mute for a
25 second and then I don't know why it didn't work.

1 Now, you're off mute. But I still can't hear you.
2 You're off mute, so that might be another issue that -- why don't
3 you go ahead and figure that out for a second, Mr. LeGrant.

4 Mr. Sullivan, could you introduce yourself for the
5 record?

6 MR. SULLIVAN: Thank you, Mr. Chairman, and members of
7 the Board. My name is Marty Sullivan representing the property
8 owner.

9 CHAIRPERSON HILL: Mr. Rueda, could you introduce
10 yourself for the record?

11 MR. RUEDA: Yes, good morning, thank you, Mr. Chairman,
12 members of the Board. My name is Guillermo Rueda and I've been
13 hired by the Coop to present expert testimony to you.

14 CHAIRPERSON HILL: Thank you. Ms. Gille, I'm just going
15 to go right -- could you introduce yourself for the record?

16 MS. GILLE: My name is Kathleen Gille and I am the Vice-
17 President of the 8th Day Community Coop.

18 CHAIRPERSON HILL: Okay. Thank you, Ms. Gille, welcome.
19 Is it Ms. Langsdorf, Langsdorf?

20 MS. LANGSDORF: Yes, Julie Langsdorf and I'm the
21 President of the 8th Day Community Coop.

22 CHAIRPERSON HILL: Okay. And is it Mr. Kuhn, are you
23 there as well?

24 MR. KUHN: Yes, I am. Jonathan Kuhn, I'm the architect
25 for the project at 1808 Ontario Place, Northwest.

1 CHAIRPERSON HILL: Okay, great. So you're with the
2 property owner, correct, Mr. Kuhn?

3 MR. KUHN: That is correct.

4 CHAIRPERSON HILL: Okay. Mr. LeGrant, did you fix your
5 microphone, can you test it again?

6 No, you're on mute, Mr. LeGrant.

7 MR. LEGRANT: What about now?

8 CHAIRPERSON HILL: Yep.

9 MR. LEGRANT: Well, good. Okay. Matthew LeGrant,
10 Zoning Administrator DCRA. Good morning, Chairman Hill, and
11 members of the Board.

12 CHAIRPERSON HILL: Okay. So I asked Ms. Ferster if she
13 had any questions for the Commissioner, that was a no.

14 Mr. Green, do you have any questions for the
15 Commissioner?

16 MR. GREEN: No, Chairman.

17 CHAIRPERSON HILL: Mr. Sullivan, do you have any
18 questions for the Commissioner?

19 MR. SULLIVAN: No, thank you.

20 CHAIRPERSON HILL: Okay. Mr. Young, can you -- I
21 forget, can you make the clock go forward, just so --

22 MR. YOUNG: That's what I'm doing.

23 CHAIRPERSON HILL: Okay. Great, perfect.

24 All right. So, Ms. Ferster, I'm going to turn to you
25 then for I guess what's going to be more of the bulk of the

1 presentation. And you can begin whenever you like.

2 MS. FERSTER: Thank you. As I mentioned Ms. Gille and
3 Ms. Langsdorf do not plan on testifying, but they are available
4 here for your questions if anybody have any.

5 I'm going to turn to Guillermo Rueda who's going to be
6 presenting the case for the violations of the Zoning Regulations
7 by the intervenor.

8 CHAIRPERSON HILL: Okay. Thank you, Ms. Ferster.

9 Mr. Rueda.

10 MR. RUEDA: Yes, sir. Good morning, members of the
11 Board. My name is Guillermo Rueda. I've been practicing
12 architecture in the District of Columbia for the last 30 years.
13 Thank you for this opportunity to present my testimony to you.

14 Before you is another case study in how building height
15 is measured. The Regulations that govern residential zones for
16 height and the number of stories are clarified by the Zoning
17 Commission's text amendment 17-18, which was accepted in -- you
18 know, in August of 2018.

19 This text amendment codified language to prevent the
20 abuse of density increases perpetuated across the city, especially
21 in RF zones, of which linear heights is a part of.

22 It's my professional opinion that this appeal correctly
23 brings to the Board's attention continued misapplication of the
24 regulatory requirements for building height measurement that
25 distort the Regulations in order to allow construction beyond the

1 | stated development standards for RF zones.

2 | The 8th Day Cooperative contacted me in January of 2020
3 | to assess the zoning impact of the proposed design for the
4 | conversion of a single family dwelling adjacent to their lot.

5 | This was ultimately approved as a two-dwelling flat,
6 | with the addition of a story. The report I authored was submitted
7 | to the Zoning Administrator in February of 2020 requesting
8 | clarification specific to zoning setback and height violations
9 | that we considered in that report. And as a result of this
10 | report, the Zoning Administrator required the property owner to
11 | reduce the footprint of the building to comply with the pushback
12 | requirements of E-205.4, the Regulation that restricts additions
13 | from extending farther back than ten feet from adjacent rear
14 | walls.

15 | The response to the question of building height came
16 | later when the Zoning Administrator ruled, contrary to the opinion
17 | of its deputy, that the area under the porch could be considered
18 | as an existing non-conforming areaway. And therefore, considered
19 | as an exception to grade (audio interference) posed (audio
20 | interference) measurement of height for this building making a
21 | higher ground elevation --

22 | CHAIRPERSON HILL: Mr. Rueda --

23 | MR. RUEDA: -- away from the building side --

24 | CHAIRPERSON HILL: Mr. Rueda.

25 | MR. RUEDA: Yes, sir.

1 CHAIRPERSON HILL: Could you repeat that last statement,
2 you broke up?

3 MR. RUEDA: Yes, sir. The response to the question of
4 building height came when the Zoning Administrator ruled, contrary
5 to the opinion of its deputy, that the area under the porch could
6 be considered as an existing non-conforming areaway. And
7 therefore, could be considered as an exception to grade by the new
8 definition offered by 17-18, to allow the measurement of height
9 taken at a higher ground elevation away from the building façade.
10 And we have an e-mail of that correspondence attached as Exhibit
11 C.

12 Per the pre-hearing submission of DCRA that position is
13 now revised and DCRA's principal argument now being that it's
14 appropriate to measure building height measuring -- to measure --
15 excuse me, to set the building height measurement height at the
16 face of a porch rather than at the face of the building. The
17 property owner also rests his defense on this argument.

18 As I will now discuss, the language of the Zoning
19 Regulations and past zoning practice requirement measurement of
20 residential buildings at the grade adjacent to the mid-point of
21 the building façade covered by specific exceptions unless --
22 unless covered by specific exceptions for areaways and window
23 wells, none of which are applicable here.

24 Under further analysis of building height is that by the
25 plain language of the Regulations the building height is measured

1 adjacent to the mid-point of the building façade, which by 308.2
2 is understood as the BHMP.

3 At 1808 Ontario Place this point can be assessed under
4 the porch -- it can be accessed under the porch at the base of an
5 entry door. And whether placed at the mid-point of the actual
6 natural grade or the lowered proposed finished grade by the
7 property owner, the proposed building will be taller than 35 feet
8 -- then the 35 feet maximum height allowed in RF zones, when you
9 measure to the highest point of the roof.

10 And in my testimony that I submitted online, I included
11 photographs of the current condition of the building so you can
12 see exactly, you know, what we're talking about here. By
13 approving a BHMP that's not located as required by the Zoning
14 Regulations, the building permit that is the subject of this
15 appeal incorrectly approved this two-family flat that when
16 measured correctly rises 41 feet from the lowered finished grade
17 adjacent to the mid-point of the building façade when measured to
18 the highest point of the roof. Obviously, this exceeds the
19 standard set by E303 for RF zone -- the RF-1 zone.

20 So regarding number of stories, the BHMP is similarly
21 used to determine if the lower level of a building is considered a
22 story by the Regulations; you've heard this before. If the
23 measure from the BHMP to the ground floor elevation is five feet
24 or greater, it can be considered a basement and therefore counted
25 as a story. If this dimension is less than five feet, obviously,

1 | it can be considered a cellar and not counted.

2 | The lower level is clearly a basement when you measure
3 | from both natural and finished grade, because the measurement from
4 | the BHMP at the lower-level basement entry at the mid-point of the
5 | building façade when measured to the elevation of the ground floor
6 | finish is greater than five feet, thereby counting it as a story.

7 |
8 | Therefore, it can be confirmed that these are approved a
9 | new illegal fourth story as it exceeds the three-story limit of
10 | E303.

11 | Importantly, and I want to point out that the changes
12 | that were made to the Regulations in 17-18 ensure measuring
13 | building height and stories to the most restrictive condition,
14 | thereby eliminating the ability to add stories to buildings
15 | already at maximum height. This was proposed by the Office of
16 | Planning and it was implemented by the Zoning Commission and
17 | prevents the conversion of existing basements to cellars. And the
18 | language of the text amendment cleaned up the imprecise language
19 | of the regulations that allowed the discounting of existing
20 | basements from the total story count, which was resulting in the
21 | additional density and mass contrary to the development standards
22 | and intent of residential flat neighborhoods.

23 | The revised language, therefore, of 17-18 requires that
24 | residential buildings be (audible interference) elevation of
25 | either natural or finished grade or to the higher elevation of

1 either the existing or relocated ground floor finish. And this is
2 stated in 308.2 for grade and 310.6 for the movement -- the
3 inability to move stories to affect a more -- a favorable
4 measurement.

5 So, basically, the property owner and DCRA, basically,
6 amend the recently codified language with their arguments, stating
7 that they can include their reasonable conclusions regarding what
8 they describe as the actual consistent natural grade of the block
9 to suggest that the construction of a four-story 41-foot-tall
10 building can be considered by-right, rather than address the
11 specific language of the Regulations regarding building height.
12 And they do this by arguing that the building's porch, the face of
13 that porch, can be considered the building façade for purposes of
14 establishing the BHMP, under B308.2 despite the fact that the
15 Zoning Administrator stated exactly the opposite in arguing the
16 case at 19950.

17 In the pre-hearing submission by DCRA, they claim that
18 19950 is not relevant because it was decided before the new
19 language for 308.2 that was codified by 17-18, and that there was
20 no areaway at that property. Neither point is relevant for this
21 Board.

22 Furthermore, DCRA forgets its own position that agrees
23 that there is no areaway at 1808 Ontario. Rather, the point of
24 BZA case number 19950 is that the Board accepted, unanimously, the
25 Zoning Administrator's testimony that the BHMP could only be

1 | located at the building façade and exclusive of any appurtenances.

2 | That rule is unchanged by the language of 17-18.

3 | Significantly, the BZA accepted the Zoning
4 | Administrator's testimony that a porch does not constitute the
5 | face or façade of building for purposes of establishing a BHMP.
6 | And you can look at the transcript of that case 19950 from May
7 | 8th, 2019 at page 135. Mr. Le Grant's words, he states that the
8 | BHMP, "should not be at the face -- at the front of a porch. It
9 | needs to be at the face of the building. And this is consistent
10 | with, again, B308.2 that calls out how we measure building height.

11 | It's from the face of the building." I believe there's language
12 | in the Zoning Regulations that says what the building face or
13 | façade is, it is exclusive of appurtenances."

14 | So, obviously, he uses the word appurtenance instead of
15 | permanent projection. And in that case, we were talking about a
16 | porch similar to what we are talking about here.

17 | The ZA -- excuse me, the Zoning Administrator takes the
18 | opposite position here to seek to approve his case and now asserts
19 | that the BHMP can be set at the face of the porch and not adjacent
20 | to the building façade, i.e. the front exterior wall, by alleging
21 | that under the porch can be considered interior space.

22 | The Board confirmed the ZA's position that to look at a
23 | measurement from the porch -- from the front of the porch was
24 | irrelevant, wherein that case the grade measurement -- the
25 | building face was questioned because of a misunderstanding about

1 what was finished and existing grade.

2 Still, the Board upheld placement of the BHMP at grade
3 adjacent to the building façade and exclusive of any projections
4 or appurtenances.

5 The property owner unpersuasively argues to you in his
6 pre-hearing submission that the BHMP can be placed at the front
7 wall of a porch, based on the view that this porch includes a
8 roof, a floor, a door and columns and walls, thereby meeting the
9 definition of a building. The property owners also implicitly
10 acknowledges that the space under the porch is not interior or
11 conditioned space by arguing that the space is not -- that space
12 need not be conditioned or artificially lighted in order to comply
13 with the definition of a building.

14 The area under the porch, it should be clear, and you
15 can see in the exhibits that we included under Exhibit A, is open
16 to the weather, it's used for the storage of items as yard tools
17 and bikes and provides access to the basement level entry. (Audio
18 interference) lattice panel and a door, which the Zoning
19 Administrator cites as evidence that it separates exterior from
20 interior space.

21 If you look at the photos that we included, you are
22 looking at the porch under 1810, which is the mirror image, mirror
23 condition to 1808 and significantly improved in terms of, you
24 know, the state of the order of under the porch.

25 As stated previously, this area under the porch is in no

1 terms -- in no terms can be considered interior space, because it
2 is open to the weather. It therefore cannot be part of a building
3 by which by longstanding interpretation encloses interior space,
4 a/k/a the exterior wall envelope -- separated by it.

5 The argument from DCRA relies on confusing this
6 longstanding guidance for defining building façade as the exterior
7 wall that separates the interior space and suggesting that the
8 outdoor storage area under the porch can be considered interior to
9 the building. The irony of this argument, of course, is that the
10 proposed finished condition at this property, the door and lattice
11 are removed and left open to the weather, even unsecured except
12 for a metal gate, that's proposed in their final solution. So
13 therefore, in the proposed condition, DCRA's argument is interior
14 space is removed.

15 The property owner also argues that the definition of
16 building façade exempts permanent projections, and they reference
17 Subtitle B, 324. The Regulation governing structures in required
18 open spaces to speculate for the Board that a covered porch is not
19 a permitted projection, and that it is part of a building and
20 therefore considered as the face from which to measure building
21 height, thus challenging the Zoning Administrator's very words
22 stated before this Board in case number 19950, that a porch is
23 excluded from the definition of a building façade as an
24 appurtenance or a permanent projection.

25 The DCRA then offers its theory that the porch front

1 wall can be considered the building façade because it is part of
2 building area. And they cite exclusions listed in 312.4 for the
3 zoning calculation of lot occupancy, which has no relevance to the
4 measurement of the building height. DCRA incorrectly uses the
5 definitions of building area and lot occupancy to create a new
6 exception to grade, one that is not considered by 17-18 and that -
7 - one that furthers the dissolution of RF zones.

8 Notably, DCRA provides no examples of this logic in
9 previous cases. Further, this interpretation is inconsistent with
10 the Zoning Administrator's enforcement of E205.4 which is the
11 Regulation that prevents additions from extending farther back
12 than 10 feet from adjoining properties. Using the building area
13 argument to define the farthest wall of the building would mean
14 that 1808 Ontario Place would have been allowed to extend 10
15 farther back than the face of the rear covered porch of the
16 neighbor because it is part of the building area. The porches
17 count toward lot occupancy and yet, the Zoning Administrator has
18 ruled consistently that they use the exterior rear -- the rear
19 exterior wall, which is the wall that separates inside from
20 outside space.

21 Lastly, the arguments from the property owner and DCRA
22 rest on trying to convince this Board that there's an association
23 between projections and required open spaces, building, building
24 area and lot occupancy definitions that can be bent towards the
25 definition of building façade. These assertions ignore that the

1 definition of gross floor area more closely relates to the general
2 practice used by the Zoning Administrator.

3 It is in this definition the horizontal sum of all the
4 floors measured from the exterior faces of exterior walls that we
5 can find the described reference plane of the building façade,
6 where the building height and stories are logically assessed and
7 it is the one definition not cited that describes the interior
8 space that is counted in important zoning calculations that define
9 development like floor area ratio, which is a defining limitation
10 of residential apartment zones.

11 In conclusion, I will address the issue of areaway that
12 was touched on by DCRA's pre-hearing submission and since we can
13 agree with the Zoning Administrator's final -- since we can agree
14 (audio interference).

15 CHAIRPERSON HILL: Mr. Rueda, can you hear me?

16 MR. RUEDA: Yes, sir.

17 CHAIRPERSON HILL: Mr. Rueda, can you repeat that final
18 statement again?

19 MR. RUEDA: The conclusion? Where I cite my conclusion?

20 CHAIRPERSON HILL: Yes.

21 MR. RUEDA: Yes, sir. So, I want to address the issue
22 of the areaway that was touched on in DCRA's pre-hearing
23 submission. Since we can agree with the final conclusion noted
24 above, that it is not an areaway, that the area under the porch,
25 as that term is defined, by the Zoning Regulations, it is not

1 necessary -- it is not necessary to respond in detail to this
2 alternative definition, this alternative argument, that the lower
3 grade is not a factor in determining a structure's BHMP. Because
4 the area under the porch, under the original argument by DCRA,
5 could be accepted as an existing non-conformity, even though until
6 2018 there was no codified language that described exceptions to
7 the rule for measuring building height. They've always been
8 articulated as measuring from the ground adjacent to the building
9 façade.

10 DCRA in the pre-hearing statement cites C-201.2 in an
11 attempt, which I believe fails to secure -- which is -- fails in
12 their attempt to secure an additional non-compliant story to this
13 existing compliant three-story single-family structure in the RF-1
14 zone and by suggesting that the area below this porch can be
15 considered an areaway that is non-conforming because it project in
16 excess of five feet from the building façade, which is contrary to
17 the definition of exceptions to grade.

18 However, the Regulations governing non-conforming
19 structures don't apply here. The current building exists as a
20 compliant structure for height and stories because when measured
21 to the highest roof from the ground adjacent to the mid-point of
22 the building façade, the height is less than 35 feet, in fact,
23 it's 34.5, without regard to the new exceptions to finished and
24 natural grade that were added in 2018. In other words, the
25 structure did not rely on that definition as we understand it now

1 | in order to be compliant.

2 | The measurement of building height and stories is and
3 | was compliant by measuring the existing single-family dwelling as
4 | prescribed at the ground elevation at the mid-point of the
5 | building façade. And that grade point adjacent to the front
6 | façade known as the BHMP is accessible from the exterior space
7 | under the porch that provides access to the basement level and in
8 | any event non-conforming structures may not be enlarged upon,
9 | expanded, extended nor may they be used as a basis for adding
10 | other structures or prohibited uses elsewhere in the same zoning
11 | district.

12 | Finally, DCRA is incorrect in saying that the ANC made a
13 | vague assertion of the location of the BHMP in its pre-hearing
14 | statement. ANC 1C has relied upon the definition of BHMP as
15 | stated in the Zoning Regulations and identified in its resolution,
16 | the BHMP as the proper measurement location is at the finished
17 | grade at the face of the building within the areaway. This is not
18 | vague, and the ANC even underlined that in its case.

19 | Finally, in my concluding remarks, I just cite the
20 | language that Mr. LeGrant himself used in case 19950 in order to
21 | support the idea that you do not measure at the face of a porch,
22 | which is what we're asking this Board today to rule in favor of
23 | the Regulation, regulatory definitions and regulatory procedure
24 | for measuring building height in B308.2 at the face of a building.

25 | Thank you very much.

1 CHAIRPERSON HILL: Okay. Thank you, Mr. Rueda. Ms.
2 Ferster, is that where you'd like to pause, and we can start
3 asking questions?

4 MS. FERSTER: Yes. We have no further testimony.

5 CHAIRPERSON HILL: Okay. Thank you, Ms. Ferster. Let's
6 see, does the Board have any questions? Commissioner May?

7 COMMISSIONER MAY: Yes, I have a couple. Mr. Rueda, so
8 in your rebuttal of the property owner's assertions and the ZA's
9 assertions, one of the points you made is that this space under
10 the porch could not be considered part of the building because
11 it's open to the elements. So is it your thought that if it were
12 actually closed in then the Zoning Administrator's interpretation
13 would be correct and therefore the building could go taller?

14 MR. RUEDA: Well, the fact is that that would be the
15 finished condition of the property, right? So the more restricted
16 condition would be placing the -- in that case, if you're going to
17 discount it because they've enclosed the area under the porch and
18 they have an argument that that can now be considered the building
19 façade, which arguably, you could. We've tried to get that
20 determination from the administrator in the past and have really
21 not been able to, you know, find a case that fully supports, you
22 know, how to interpret that.

23 That notwithstanding, it would be the finished condition
24 of the property, so you would still revert back to the existing
25 grade location, which is in the current condition of the property

1 | under the porch. And we've determined that if you measure from
2 | that point to the first floor you have 8 feet, 7 foot 11, I
3 | believe. And that's assuming that there's a 4- inch step between
4 | the basement floor elevation and the area -- you know, the ground
5 | elevation at the façade. And so if you establish it at that
6 | height you would still fail to be able to add a story.

7 | COMMISSIONER MAY: Yeah, I'm not sure I quite follow you
8 | there.

9 | MR. RUEDA: Okay.

10 | COMMISSIONER MAY: The Regulations say natural or
11 | finished grade, whichever is lower.

12 | MR. RUEDA: The lower condition, yes.

13 | COMMISSIONER MAY: The lower condition. So I mean, the
14 | areaway does -- I mean, is arguably an existing condition, but it
15 | isn't an efficient finished condition, but it's not -- it doesn't
16 | make sense to me that it would be considered a natural grade.

17 | MR. RUEDA: I mean, it's the actual condition of the
18 | property. I mean, it's the way that --

19 | COMMISSIONER MAY: And that's not what I'm saying, I
20 | mean, that's a finished surface, right?

21 | MR. RUEDA: I believe that's how they --

22 | COMMISSIONER MAY: I mean, the grade that's next to the
23 | house -- the grade next to the house is -- you know, is quite a
24 | bit higher. There are photos that you submitted for that record
25 | that show it's quite a bit higher. So, I mean, it seems to me

1 that if the porch -- the space under the porch were enclosed, by
2 your logic, it would make sense to measure at the front of that
3 porch.

4 MR. RUEDA: Well, again, I'm trying to use the
5 interpretations that Mr. LeGrant has offered as how to determine
6 the building façade, okay. And what I would repeat is that I
7 don't believe that the grade elevation, the ground elevation, you
8 know, the measuring point at the base of the building, at the
9 façade, right, that elevation is currently 8 feet below the first
10 floor, okay. And so if you were to then determine that the
11 proposed condition of the property would actually raise the grade,
12 whether you filled underneath the porch or whether you pushed the
13 façade out to meet a higher grade, that would be the higher
14 condition, right? And so that would go against the logic of
15 B308.2. You're nodding your head --

16 COMMISSIONER MAY: But the two circumstances that are
17 being compared are natural and finished grade and I don't know how
18 you can argue that the grade of the areaway is a natural grade.
19 You can argue that it's the finished grade, but I don't think you
20 can argue that it's the natural grade.

21 And it seems to me that if they, you know, I mean, the
22 alternative that you are suggesting even is that they could fill
23 that in or fill in enough of it and just leave the passage to the
24 door or something like that, that that would create a new finished
25 grade and it's arguable that that's the finished grade and it's

1 probably consistent with what one would consider the natural grade
2 to be. Because it's closer to what's in front of the building and
3 what's to the side of the building.

4 MR. RUEDA: Okay. So the definition for natural grade
5 is the undisturbed elevation of the ground of a lot prior to human
6 intervention; or where there's an existing improvement on a lot,
7 the established elevation of the ground exclusive of the
8 improvements or adjustments to the grade made (audio
9 interference).

10 COMMISSIONER MAY: You're breaking up. You're breaking
11 up. Can you repeat that last sentence, you broke up.

12 MR. RUEDA: Yes, sir. Can you hear me now?

13 COMMISSIONER MAY: Yes.

14 MR. RUEDA: Okay. So, natural grade as defined by the
15 Regulations states, "where there are existing improvements on the
16 lot, the established elevation of the ground exclusive of the
17 improvements or adjustments to the grade made in the 5 years prior
18 to applying for a building permit." That's what they're talking
19 about. That's the area under the porch. It has been improved,
20 right? But not in the last five years for sure and that is
21 considered the natural grade.

22 It was always understood as the existing condition of
23 the property. And so I would offer to you that is the elevation
24 in the situation that you pose, which is not the, you know,
25 current condition of the application. But if it were to be that

1 | they somehow were to present a higher elevation as part of their
2 | proposed work, right? You would go back to 308.2 and say well,
3 | the lower of these two measurements is the natural grade (audio
4 | interference). Can you hear me?

5 | COMMISSIONER MAY: Yes.

6 | MR. RUEDA: And so therefore, you would have to use the
7 | natural grade in that condition. As it's been submitted to DCRA,
8 | the finished condition is actually 27 inches lower than the actual
9 | condition. So that measurement is actually more than 10 feet
10 | below the ground floor elevation. And so I anticipated -- well,
11 | this question at some level by referring to the text, you know,
12 | from B308.2. And then furthermore, even though it's not proposed
13 | in this project, where we've had projects where they proposed to
14 | lower the first floor in order to reduce the measurement height,
15 | that is also not allowed in order to gain a more favorable
16 | condition, which is what they want, in this case, to be considered
17 | a cellar.

18 | COMMISSIONER MAY: Right. Okay. Thank you. I mean,
19 | I've been dealing with building height measuring point for close
20 | to 20 years now.

21 | MR. RUEDA: Yes.

22 | COMMISSIONER MAY: Since it was redefined in the early
23 | 2000s and there have been many cases and much testimony about how
24 | this should be done. And we'll probably get into this a little
25 | bit later. I would be interested in hearing what the Zoning

1 Administrator and what Mr. Sullivan have to say about your
2 responses to my questions, particularly the second question. So
3 thank you very much.

4 MR. RUEDA: Well, let me just follow-up by saying that
5 this whole issue was addressed in all the discussions that led up
6 to 17-18, at least the ones that I had with the Office of Zoning
7 administrator and OP, which was I thought part of the catalyst for
8 expanding the "existing grade" definition from 2 to 5 years.

9 COMMISSIONER MAY: Yeah. You know, part of the problem
10 with writing Zoning Regulations is that as much as you try to
11 anticipate every single circumstance, you can't necessarily.

12 MR. RUEDA: Well, I understand that for sure.

13 COMMISSIONER MAY: So, we didn't -- let me just say, you
14 know, I mean, there are circumstances, I mean, just for example,
15 the definition of where the grade should be taken, whether at the
16 front of the porch or the front of the building. I mean, there
17 are many rowhouse buildings that have enclosed space under their
18 porch, I mean, you know -- when I look out my window here, I see
19 four of them. So it's a very common thing and it's -- we want to
20 treat everything consistently when we write the Regulations, but
21 we can't necessarily anticipate every single circumstance. So at
22 that point you have to make reasonable judgments about what -- or
23 the Zoning Administrator has to make reasonable judgments about
24 how to interpret those things and, you know, if need be, the
25 Zoning Commission may need to make adjustments to better guide the

1 Zoning Administrator in making these decisions, that happens too.
2 That's why we've made some of the changes that we've made.

3 MR. RUEDA: Sure. But in this case, you have language
4 in the definition that --

5 COMMISSIONER MAY: Thank you. I'm not asking anymore
6 questions.

7 MR. RUEDA: Okay. Thank you. Sorry.

8 COMMISSIONER MAY: Sorry. Okay. Mr. Hill, you're on
9 mute.

10 CHAIRPERSON HILL: Commissioner May, just for me, what
11 was your second question again?

12 COMMISSIONER MAY: The first question was, what happens
13 if the porch were enclosed? The second one, what happens if the
14 areaway were filled in to leave, essentially, just a stairway
15 access point to the door or even filled in entirely, right, what
16 would happen -- what would the building height measuring point be
17 at that point?

18 CHAIRPERSON HILL: Okay. Okay. All right. Mr. Smith,
19 do you have any questions?

20 MR. SMITH: No questions.

21 CHAIRPERSON HILL: Vice Chair John?

22 VICE CHAIR JOHN: Thank you, Mr. Chairman. I have a
23 question for Mr. Rueda about B308.2, and how do you interpret the
24 second part of that paragraph that talks about the excavations
25 projecting from the building's façade, other than the exception to

1 grade. How do you interpret that section?

2 MR. RUEDA: Just a second, I apologize, I'm going to
3 pull that up so I can read it while we're talking.

4 VICE CHAIR JOHN: That's the section that says where the
5 BHMP shall be established (audible interference) natural or
6 finished grade, whichever is the lower in elevation at the mid-
7 point of the building façade of the principal building that is
8 closest to a street lot line. Then the Regulation says for any
9 excavations projecting from the building's façade, other than an
10 exception to grade, the elevation of the mid-point of a building
11 façade shall be equivalent to the lowest such elevation excluding
12 existing driveways. How does that factor into your analysis?

13 MR. RUEDA: It factors in exactly the same way, which is
14 to say that -- it's where the argument began with -- or the
15 discussion began with the Office of the Zoning administrator,
16 which is that the excavation in this case under the porch, is
17 defined by a retaining wall that's about 42 inches high. And that
18 retaining wall projects, I want to say, 7 feet, I may be
19 corrected, but it's more than 5 feet from the face of the façade.

20 And so therefore it cannot be considered an exception to grade.
21 That's where we started, right? But then in the end, if you look
22 at the -- if you move to the definition of exception to grade,
23 right, it only contemplates those excavations as areaways or
24 window wells. But in either case, right, that excavation exceeds
25 the allowed amount for it to be considered an exception to grade.

1 And so you have to measure at the lower of the two, the lower of
2 the -- the more restrictive measurement of either natural or
3 finished grade, which in this case is finished grade.

4 VICE CHAIR JOHN: Okay. Thank you.

5 CHAIRPERSON HILL: Okay. Mr. Green, do you have any
6 questions for the appellant?

7 MR. GREEN: No. No questions.

8 CHAIRPERSON HILL: Mr. Sullivan, do you have any
9 questions for the appellant?

10 MR. SULLIVAN: No, we do not.

11 CHAIRPERSON HILL: Okay. Mr. Green, would you like to
12 give your presentation?

13 MR. GREEN: Yes, Chairman, I'd like to begin, if that's
14 okay?

15 CHAIRPERSON HILL: Yes. Hey, Mr. Moy, you were going to
16 submit the slide deck, right?

17 MR. MOY: Yes. It's not up yet?

18 CHAIRPERSON HILL: No.

19 MR. MOY: Okay. Let me pursue that. I thought that may
20 have been done.

21 CHAIRPERSON HILL: If you have it, can you email it to
22 the Board?

23 MR. MOY: Yes, I'm working on that now.

24 CHAIRPERSON HILL: Okay. All right, Mr. Green.

25 MR. GREEN: Okay. Thank you. Good afternoon, Chairman

1 Hill and members of the Board, the Advisory, the Neighborhood
2 Commission 1C Appeals, the Zoning Administrator.

3 The Zoning Administrator's approval of building permit
4 B2005159 -- first is improper designation of the building height
5 measuring point, BHMP, in violation of Subtitle B Section 308.2 --
6 308.2 --

7 CHAIRPERSON HILL: Mr. Green. Mr. Green. Could you
8 kind of lean -- could you lean in a little bit more to your
9 computer maybe or speak up a little bit more clearly?

10 MR. GREEN: Should I speak up?

11 CHAIRPERSON HILL: Yes.

12 MR. GREEN: Okay. Sorry about that. I'll just
13 continue, you know, the ANC 1C has appealed the building permit on
14 the following basis: Improper designation of the building height
15 measuring point, BHMP, in violation of Subtitle B, Section 308.2.

16 The improper designation of the area under the porch at the face
17 of the building is an areaway in violation of Subtitle B100.2.
18 And then third, improper designation of the above area under the
19 porch as an exception to grade in violation of Subtitle B100.2.

20 I'd like to point out that Mr. Rueda's testimony with
21 reference to Sections 205.4 lot occupancy, lot area and gross
22 floor area certainly exceed the scope of the appeal under 302.3 --
23 302.13. Nevertheless, if upon review of the testimony today as
24 well as submissions by the parties, it will be clear that the
25 building height measuring point was properly determined.

1 And so, in short, whether or not the structure
2 underneath the porch is considered an areaway or not, the building
3 height measuring point was properly determined in this and the
4 Zoning Administrator did not err. So at this point I'd like to
5 ask Mr. LeGrant to offer his testimony now and I will start my
6 questions.

7 So, good afternoon, Mr. LeGrant. I'd ask you to state
8 your name for the record. Mr. LeGrant?

9 MR. LEGRANT: Can you hear me now?

10 MR. GREEN: Yes.

11 MR. LEGRANT: Okay. Matthew LeGrant, Zoning
12 Administrator of DCRA.

13 MR. GREEN: Mr. LeGrant, you're familiar with building
14 permit B2005159, correct?

15 MR. LEGRANT: I am, yes.

16 MR. GREEN: Okay. At issue in this appeal is the
17 building height measuring point. When I refer to BHMP, I'm
18 referring to that, okay?

19 MR. LEGRANT: That's fine, yes.

20 MR. GREEN: Okay. Let me pause here, Chairman. Is it
21 possible to pull up the slide deck? You're on mute, sir.

22 CHAIRPERSON HILL: Yeah, Mr. Young, it's now in Exhibit
23 32 and for the Board it's also now in -- and everyone else, it's
24 now in Exhibit 32.

25 MR. GREEN: Okay. Thank you. If Mr. Young could move

1 | to that last slide, we're just dealing with the zoning definitions
2 | at this point, so it's page 7 of the slides.

3 | So what I'd like to do right now just for the -- before
4 | we get to the actual descriptions, I would like Mr. LeGrant to
5 | provide some context and framework in terms of, obviously, the
6 | building height measuring point. So Mr. LeGrant, as you see in
7 | the description in our slide 7, it's Regulation 308.2. Can you
8 | advise how this is relevant with respect to this appeal?

9 | MR. LEGRANT: Yes. Thank you, Mr. Green. So it applies
10 | -- the BHMP, or building height measuring point, is the location
11 | that determines where the measurement is taken, where we start the
12 | measurement for building height from a vertical plane. It's
13 | established at the adjacent (audio interference) whichever is
14 | lower, at the mid-point of the building façade or principal
15 | building that is closest to the street line.

16 | MR. GREEN: And so I think one of the issues in today's
17 | testimony talks about exception to grade, which is identified in
18 | 308.2. And so can you help us understand what that means by
19 | exception to grade with respect to this project?

20 | MR. LEGRANT: Absolutely. The exception to grade -- the
21 | Regulation says, you measure the building height measuring point,
22 | you fix that at the side of the building, the grade whichever is
23 | lower, but then there's a carve out of exceptions. If it's an
24 | exception to grade, as a areaway or a window well, then you
25 | discount that, you don't take that feature into account in

1 measuring the building height. The BHMP instead resides in the
2 bank of earth next to that exception to grade.

3 MR. GREEN: So, okay, I think I'd like to just kind of
4 maybe -- I think it would be helpful at this point, I'd ask Mr.
5 Young to bring us to the very first slide, which is a drawing of
6 the -- thank you. So I'm -- this is a submission of the existing
7 conditions, Mr. LeGrant. So what has been identified in the
8 submissions and talked about -- and I'm unable to point to it, but
9 we're talking about, if you look in the upper left-hand corner,
10 I'm unable to zoom, but we're talking about what has been talked
11 about as an areaway, the structure under the porch. So what I
12 wanted to ask you -- in your -- to draw your attention to that
13 location there, and can you walk us through in the approval of the
14 project, how you looked at that area underneath the porch?

15 MR. LEGRANT: Okay. Right. As the Board and everyone
16 can see in this side elevation, the north elevation shows the
17 basic mass of the existing building along with this porch feature
18 in the front and steps leading up to the porch. This drawing that
19 we'll get to later does not show the area underneath the porch,
20 this area that's been referred to as the excavation or an areaway,
21 but it is below that porch feature.

22 MR. GREEN: And so did you -- I think in the original --
23 in the submissions it talked about a non-conforming areaway with
24 respect to how you determine -- can you talk about that?

25 MR. LEGRANT: Sure.

1 MR. GREEN: In terms of your assessment originally.

2 MR. LEGRANT: Right. If we go to the definition of
3 finished grade and natural grade -- the exceptions for finished
4 grade and natural grade there is a window well that projects no
5 more than 4 feet from the building face and an areaway that
6 provides direct access to entrance and exterior associated stairs
7 or ramps projects no more than 5 feet from the building face. So
8 a compliant areaway would be -- looking at this drawing further
9 would be no more than 5 feet out perpendicular from the face of
10 the building in order to be compliant.

11 In this particular case, however, this area under the
12 porch, if one considers this as an areaway for discussion, then it
13 exceeds that 5 feet, I believe the figure is 7 feet and change.
14 So it meets all of the aspects of an areaway. There's an entrance
15 to this cellar level, it has stairs and ramps, a stair going down,
16 so it becomes -- it's actually non-conforming in terms of that 5-
17 foot measurement, it's a greater figure than that.

18 MR. GREEN: So as a non-conforming areaway, in your
19 original assessment, where would the BHMP be measured?

20 MR. LEGRANT: Well, as I originally determined, treating
21 the feature as an areaway, albeit a non-conforming areaway, then
22 it still qualifies as an exception to grade. So rather than go
23 down to the bottom of that feature, which again, is underneath the
24 porch (audio interference) to the right of that at the -- where
25 there's a retaining wall that holds in the soil from that

1 | subterranean feature, to be the point of the grade on that -- the
2 | BHMP is measured from.

3 | MR. GREEN: Did your assessment of that areaway change?

4 | MR. LEGRANT: So at the time of my response to Mr.
5 | Rueda, I accepted it based on the photographs that I had seen that
6 | it had been an areaway, but I did change my assessment following
7 | that.

8 | MR. GREEN: And what did your change -- what was your
9 | change in determination? Or what was your change in opinion, if
10 | you will, (audio interference)?

11 | MR. LE GRANT: First, as is my practice, when I receive
12 | appeals for substantive responses, I re-review the project and my
13 | determination, it's not uncommon. As the Board is aware upon
14 | filing appeals, issues raised which may cause my office to re-
15 | review the plans anew. In some cases, the facts confirm my
16 | original determination, or I find that a party brings issues that
17 | require reassessment.

18 | Sometimes I have met with the property owners and
19 | developers and say they must amend their plans based on the
20 | information presented.

21 | MR. GREEN: And so what did you determine after your re-
22 | review?

23 | MR. LE GRANT: Okay. So upon my review, the structure
24 | in question I determined is not an areaway. The subsurface space
25 | here is not open to the -- at the top, nor is it covered by a

1 grate or a guard. It's covered by a solid plain of a wooden porch
2 level that protects the space from precipitation. I will read the
3 definition of areaway where it's helpful to understand here.

4 The definition of areaway, set forth in the definition
5 section of the Zoning Regulations is as follows: A surface space
6 adjacent to a building that is open at the top or protected by a
7 grating or guard and it provides passageways accessing the
8 basement, the cellar door.

9 Here the subsurface space is not open at the top, nor
10 covered by a grate or guard. It's covered by a solid porch as I
11 describe, and therefore, it now does not appear it fits into the
12 areaway category.

13 MR. GREEN: So the fact that it's now -- the fact that
14 your opinion is that it is not an areaway, did that, in fact,
15 change the BHMP?

16 MR. LEGRANT: No, it did not.

17 MR. GREEN: And for the benefit of the Board, the BHMP
18 still remained the same in your opinion?

19 MR. LEGRANT: Yes.

20 MR. GREEN: I'd like to draw -- because the areaway is a
21 structure underneath the porch, which is defined, I'd like to --
22 Mr. Young if you could go to page -- of our slides, it's page 6,
23 it's sort of a close-up diagram, if you will, of the structure
24 here.

25 So Mr. LeGrant, this is one of the slides that was

1 submitted by -- and certainly kind of -- can you help us
2 understand maybe how this is relevant to the discussion in terms
3 of your opinion and how it relates to this appeal?

4 MR. LEGRANT: Sure. So this is a plan view now looking
5 down at the top of the front of the building, and you can see the
6 stairs and the existing cellar condition, which is located to the
7 left, I'm sorry, the existing cellar condition, the stairs down to
8 the cellar -- to this subterranean -- space and the door into the
9 main building. And then -- the second drawing, number 2, existing
10 first floor shows the covered porch above it. And it shows this
11 porch, of course, completely covers that rectangular space such
12 that it is not open to the sky in any argument whatsoever.

13 MR. GREEN: So, Mr. LeGrant, when did you make this
14 determination that it wasn't an areaway for the benefit of
15 context?

16 MR. LEGRANT: After receiving the appeal.

17 MR. GREEN: And did you memorialize this change in any
18 way?

19 MR. LEGRANT: I don't believe so, no, not, not -- only
20 in preparation for this appeal.

21 MR. GREEN: And so did you notify anyone of your change
22 in the opinion?

23 MR. LEGRANT: I don't believe I did, no.

24 MR. GREEN: Okay. And just why not? Can you explain?

25 MR. LEGRANT: I'm sorry, say that again?

1 MR. GREEN: Yeah, why not? This change in opinion, why
2 not notify them or memorialize it?

3 MR. LEGRANT: Because it had no relevance. You know, if
4 it changed the BHMP, which was at issue here, I would have had
5 them to evaluate defending the appeal and would have obviously
6 notified the parties. If instead now that it appears to be more
7 of an extension of (audio interference) just below all subsurface,
8 that it doesn't change the BHMP, it's still the soil, I mean the
9 grade -- the natural grade outside to the front of the feature, so
10 that's where I concluded.

11 MR. GREEN: Okay. I'm sorry to have Mr. Young and the
12 Board and the parties, can you go back to the first existing
13 conditions, which is the very first slide, if you will. So we're
14 back on this slide, Mr. LeGrant. I just have a few more questions
15 and --

16 In the testimony and certainly submissions, the Zoning
17 Commission case 17-18 was discussed, can you just give us a brief
18 background on the context of that particular case and how it --

19 MR. LEGRANT: Sure. As I think the Board and many
20 parties here now that my office was involved in the summer of 2018
21 in the text amendment of 17-18, the Zoning Commission adopted,
22 ultimately adopted amendments to clarify the regulations for
23 definitions of basement, cellar, BHMP and then added the
24 definition for areaway, which is right here.

25 MR. GREEN: And so, you know, you had testified earlier

1 and I'm just curious -- it's tough to see, but the stairs and the
2 landing that go to that lower structure, is that used as a basis
3 for determining BHMP?

4 MR. LEGRANT: No. No. There's specific exclusion for
5 the stairs that lead to such a feature.

6 MR. GREEN: And the ANC in its filings argue the BHMP
7 must be taken from under -- underneath the porch, which we've
8 heard by Mr. Rueda, the face of the building; is that accurate?

9 MR. LEGRANT: No.

10 MR. GREEN: And why not, Mr. LeGrant?

11 MR. LEGRANT: Okay. So when we examined the BHMP, it's
12 established that the adjacent natural finished grade -- in looking
13 at the drawings here for this case -- this point, the adjacent
14 natural finished grade is represented. And I -- at the bank of
15 soil in the front of the porch, so however you want to call it,
16 the areaway, the subsurface area, it's excluded, it's not
17 relevant. It's -- you then take a -- you take a perpendicular
18 line from the building façade at the middle of the front of the
19 building to where this earthen embankment in the front yard is,
20 which is a very common practice, if you have an area which is
21 either excluded as an exempt excavation areaway or as this case
22 now, where I feel more comfortable to say it's an extension of the
23 cellar, because it's basically enclosed, it has a porch roof --
24 the porch landing acts as a roof, it still does -- the BHMP
25 location was as (audio interference) it continues to be, I think,

1 at the correctly cited location.

2 MR. GREEN: Okay. Thanks, Mr. LeGrant. So, Mr.
3 LeGrant, based on your review of the plans, your experience and
4 determination, does building permit B2005159 conform to the Zoning
5 Regulations as requested for the building height measuring point?

6 MR. LEGRANT: Say the last part again, I'm sorry.

7 MR. GREEN: Does building permit B2005159 conform to the
8 Zoning Regulations with respect to building height measuring
9 point?

10 MR. LEGRANT: Yes.

11 MR. GREEN: Just one second, Mr. Chairman, I just want
12 to take a look at something really quickly. All right. I have no
13 further questions for Mr. LeGrant, but before I open it up to
14 parties and the Board, I would just like to bring up a couple of
15 points that Mr. Rueda's testimony seeks to discuss and it's
16 notified in our filings, the BZA appeal 19950, it's brought out in
17 DCRA's filings and it's very clear that this (audio interference)
18 project is certainly (audio interference) many factual reasons,
19 including that there wasn't a subsurface area and as well as the
20 change from condition 17-18. But I think it's an attempt to
21 relitigate that -- those issues there.

22 So I don't think -- and it's our opinion that the Zoning
23 Administrator did not, you know, offer -- and really the Board
24 should -- and the Board has said even in that case, that each case
25 has to be looked at on an individual basis. So it can go back and

1 attempt to use somehow incorporating information for the appellant
2 and the parties don't quite get the full picture of both the
3 distinction in that case, as well as this case. And so I think --
4 that's really our position and so it's very clear. So I have no
5 further questions for Mr. LeGrant and open it to the Board if they
6 have any further questions.

7 CHAIRPERSON HILL: All right. I'm just waiting for Mr.
8 Young to drop that slide deck. Okay, great, so I can see
9 everybody.

10 Mr. LeGrant, I just have a couple of quick questions, to
11 make sure I understood. You have determined in Subtitle B100.1
12 there are exceptions to grade, right? And those exceptions are a,
13 a window well that projects no more than 4 feet from the
14 building's face and b, an areaway that provides direct access to
15 an entrance and excluding associated stairs or ramps projects no
16 more than 5 feet from the building face. So if this were an
17 areaway, that would have been the exception, correct?

18 MR. LEGRANT: Yes.

19 CHAIRPERSON HILL: And what you're saying, again, is
20 that it's not an areaway and your -- either way the BHMP is being
21 measured from the same point, correct?

22 MR. LEGRANT: Correct.

23 CHAIRPERSON HILL: Okay. And then -- I'm looking at
24 your exhibits and the testimony. So, right. That BHMP is the
25 ground that the stairs are coming down to, that first floor,

1 correct?

2 MR. LEGRANT: The stairs are coming down from.

3 CHAIRPERSON HILL: Right. Down from to the ground?

4 MR. LEGRANT: Yes. Yes.

5 CHAIRPERSON HILL: Okay. All right. Let's see,
6 Commissioner May, do you have any questions?

7 COMMISSIONER MAY: Yeah, just to clarify something. Mr.
8 LeGrant, you had originally thought or had considered that the
9 space under the porch was an areaway but, subsequently, concluded
10 it was not. And then I did hear you say that it was an extension
11 of the cellar; is that right?

12 MR. LEGRANT: Yes.

13 COMMISSIONER MAY: Okay. But, I mean, this is in public
14 space; is it not?

15 MR. LEGRANT: I don't believe it is, but actually --
16 well, let's see if it is, it doesn't matter.

17 COMMISSIONER MAY: Right.

18 MR. LEGRANT: If it's an areaway or the grade points --
19 sometimes building encroach into public space. But the reference
20 where you, ultimately figure out your BHMP can be or cannot be --
21 can be on public space or not.

22 COMMISSIONER MAY: Right. Okay. And I mean -- so if
23 it's part of the cellar then, essentially, it's part of the
24 building in your view?

25 MR. LEGRANT: Yes, sir.

1 COMMISSIONER MAY: Okay. And if there were -- you know,
2 say there was no areaway but there was -- there were four solid
3 walls around the porch, which is not an unusual circumstance
4 either, where would the building measuring point be?

5 MR. LEGRANT: I believe it would be in the same place,
6 because that feature -- if you look at the porch and then as you
7 drop down from the porch landing down directly to the ground,
8 there's a bit of an open area, but then you hit the retaining
9 walls, which are solid and at those -- that I think it's 1 or 2
10 inches to 2 feet, if they have enclosed that to make it
11 conditioned space, they probably -- certainly could do so, but I
12 don't think it would change my analysis.

13 COMMISSIONER MAY: Okay. Is there any natural grade up
14 against the face of the building except at that face of the porch?
15 Because sometimes there's a little bit of -- you know, there's
16 six inches on either side of the porch that's -- where there's
17 actually soil?

18 MR. LEGRANT: I think it's important and again, I point
19 to the appellant, is natural grade doesn't have to necessarily
20 just be dirt, it can be a improved surface. The key of the grade
21 measurement is what in a vertical plane is the level of the ground
22 or with or without an improvement.

23 So I don't believe -- if some previous property owner
24 had paved the entire lot with concrete, which I'm not at all
25 advocating, and then they refaced with this, it would have the

1 same result whether it's soil or at that point outside, for
2 example, the retaining wall was not on soil, it was covered with
3 bricks or something. So even now, it's the same BHMP.

4 COMMISSIONER MAY: Okay. Thank you.

5 CHAIRPERSON HILL: Mr. Smith?

6 MR. SMITH: Okay. Mr. LeGrant, just for clarification
7 on my part, I am having some audio issues. Are you -- in your
8 interpretation, from what I'm hearing you said to Mr. May, you
9 would consider the area underneath the porch as cellar as part of
10 the building?

11 MR. LE GRANT: Correct.

12 MR. SMITH: Okay. So a follow-up question to that, what
13 would you interpret as a cellar with a properly condition space?

14 MR. LEGRANT: Could you repeat that last part, I'm
15 sorry, again?

16 MR. SMITH: Under your interpretation (audio
17 interference) what is considered -- what building space is
18 considered a cellar; does it have to conditioned space?

19 MR. LEGRANT: No, it does not. In my experience as an
20 administrator, some cellars are conditioned and they're
21 weatherized and the elements are kept out and heated and cooled,
22 but in some cases they are not.

23 MR. SMITH: So, another follow-up question and this is a
24 hypothetical. I have a conforming areaway and as a property
25 owner, I come in and later build a deck above that areaway, would

1 | that areaway then be considered under your definition, a cellar?
2 | Because it's not -- let's say I build a deck and it does have
3 | walls as opposed to singular poles, would that area -- I mean,
4 | that deck, be considered a cellar?

5 | MR. LEGRANT: As you said, a hypothetical, so I always
6 | like to see each drawing -- the drawings and the proposal of
7 | exactly the particular case, but based on what you're saying,
8 | similar to this case, if there was an opening from the area
9 | underneath the walls of the building into this space that used to
10 | be an areaway that's now covered with decking, that yes, the
11 | areaway classification would go away because it's no longer open
12 | to the sky and I think arguably the case could be made that that
13 | is an extension to the cellar.

14 | MR. SMITH: Okay. I don't think I have any additional
15 | questions, Mr. Chair.

16 | CHAIRPERSON HILL: Okay. Ms. John?

17 | VICE CHAIR JOHN: Thank you, Mr. Chairman. Mr. LeGrant,
18 | you probably answered this, but using this slide, can you explain
19 | to me where the finished grade would be? So I understand that
20 | this is the natural grade that we're showing here where it says
21 | (audio interference) and that means it's undisturbed and so where
22 | would you put the finished grade?

23 | MR. LEGRANT: I'm sorry, are you going to bring up --
24 | Mr. Young's going to bring up the drawing?

25 | CHAIRPERSON HILL: Mr. Young, could you bring up the --

1 | yeah, thank you.

2 | MR. LEGRANT: Thank you.

3 | CHAIRPERSON HILL: And I guess go to that first slide.

4 | MR. LEGRANT: Okay. Board Member John, you're saying at
5 | the front of this -- from the building -- from the porch, where
6 | the BHMP is now. So the situation is this, it's similar to lots
7 | of other cases, the finished grade and the natural grade are
8 | synonymous because in this particular application a finished grade
9 | would be if they changed that soil location, they either pile on
10 | more dirt or they excavate it down, then it would be a change to -
11 | - from the natural grade to a finished grade. But because there
12 | is no such excavation proposed, I would say okay, there's no
13 | finished grade that would differ from the natural grade, so the
14 | natural grade is still at that point as I described.

15 | VICE CHAIR JOHN: So maybe I'm incorrect. When I looked
16 | at the drawings, I assumed that the floor, what you're now calling
17 | the cellar was below what you now call the natural grade.

18 | MR. LEGRANT: Yes.

19 | VICE CHAIR JOHN: And why isn't that floor, which is
20 | lower, a finished grade?

21 | MR. LEGRANT: Okay. The way my office treats grade is
22 | the new definition set forth in the Zoning Regulations is,
23 | basically, it is outside a building footprint. I never would go
24 | under -- I never look at what the ground level or grade is
25 | underneath a building. It's not relevant to the Regulations here,

1 especially for the BHMP, our grading point is to (audio
2 interference) from the grade outside of a building.

3 VICE CHAIR JOHN: And to follow-up, the building is
4 included -- is the area under the (audio interference)?

5 MR. LEGRANT: Yes.

6 VICE CHAIR JOHN: Okay. (audio interference) I'm trying
7 to -- definition of a building as opposed to the porch above.

8 MR. LEGRANT: Correct. To be frank, I have to use the
9 closest category that makes most sense. Here, the retained walls
10 function as walls and the porch above it functions as a roof,
11 therefore it's enclosed. Now, regarding -- it's not fully
12 enclosed, but that category makes more sense to me than an areaway
13 because an areaway says it's open to the sky or covered by a grade
14 and that's not the case here.

15 VICE CHAIR JOHN: Thank you, Mr. LeGrant.

16 MR. LEGRANT: Chairman Hill, you're muted.

17 CHAIRPERSON HILL: Okay. Great. Can everybody mute
18 when I'm talking or maybe it's just (audio interference) I don't
19 know, then I'll mute myself again. And to you, Mr. LeGrant.
20 Okay. Great. Thanks.

21 Mr. LeGrant, can you tell me again the difference
22 between a basement and a cellar and how that's defined and when it
23 counts against FAR?

24 MR. LEGRANT: Certainly. The -- a cellar is a
25 subterranean level of a building -- it's greater than 5 feet below

1 the first-floor level and if it's a cellar then a, it's not
2 counted as a story and b, for FAR calculation purposes, which is
3 not relevant here in this RF-1 zone because there is no FAR
4 limitations, in those zones that have FAR then it's relevant. As
5 opposed to a basement which is if it's greater than -- it's 5 feet
6 or greater than as compared to the first-floor level from the
7 grade of the building, it becomes a story and it's charged as FAR
8 in those zones that have FAR regulations.

9 CHAIRPERSON HILL: Okay. Great. Thank you. And if you
10 could mute, thanks. Okay. Let's see, I'm going to go backwards -
11 - oh no, I'm not. Okay. Ms. Ferster, do you have questions, or
12 do you want Mr. Rueda to ask them?

13 MS. FERSTER: If Mr. Rueda has questions, he can ask
14 any. I have none.

15 MR. RUEDA: I just have one question. Did I understand
16 you that the footprint of the building is now what you're
17 considering the point at which you measure grade and not at the
18 building façade?

19 MR. LEGRANT: Well, the -- to answer that, the BHMP as
20 DCRA has asserted is, as appeared in the pre-building permit, is
21 most logically calculated as being in front of this feature we
22 talked about, the porch feature, instead at the bottom of that
23 subsurface feature.

24 MR. RUEDA: You mean the grade at the base of the
25 façade, is that the feature you're referring to?

1 MR. LEGRANT: The grade at the base of the façade, which
2 one could argue that the bottom of the subsurface feature, whether
3 you call it an areaway or not.

4 MR. RUEDA: Okay. Can I ask another question?

5 CHAIRPERSON HILL: Sure, go ahead.

6 MR. RUEDA: So why didn't this interpretation also
7 inform -- why doesn't this interpretation also inform the rear
8 year pushback?

9 MR. GREEN: Mr. Chairman, can I just object in terms of
10 what the rear yard and how this -- in terms of relevance --

11 MR. RUEDA: (Audio interference.)

12 MR. GREEN: -- of measurement, but that's my objection
13 in general.

14 CHAIRPERSON HILL: Okay. I mean, you can go ahead and
15 answer the question Mr. LeGrant.

16 MR. LEGRANT: Thank you, Chairman Hill. Mr. Rueda,
17 that, of course, is a different Regulation. The pop back rule,
18 the 10-foot rule refers to construction at the rear of a building
19 and you have to figure what is the rear of the building when some
20 of those features are present. I will add that my calculations of
21 those involve, for example, a balcony or a deck off the back of a
22 building, so as not to be included in the 10-foot measurement.
23 Those are all above grade features, so they're not at all
24 comparable to the situation at hand.

25 MR. RUEDA: That's fine. I'm done.

1 CHAIRPERSON HILL: Okay. Yeah, sure. Ms. John?

2 VICE CHAIR JOHN: Mr. LeGrant. So I'm still trying to
3 wrap my head around this. So -- and I'm not trying to ask a
4 hypothetical, but maybe I am. But as a general rule then you
5 would say, if that area underneath the porch was not closed in,
6 right, it would not be a cellar?

7 MR. LEGRANT: Right. I guess to make -- to help make a
8 distinction, if there's no porch above it, the porch was gone or
9 never built --

10 VICE CHAIR JOHN: Right.

11 MR. LEGRANT: -- then you have this area open to the
12 sky, then arguably one could say it might be a non-conforming
13 areaway. My experience as an administrator, when people come in
14 and they do a -- like I call a sunken patio, with the dimension of
15 10 feet or something, oh now, we do go to the bottom of those
16 features, a sunken patio, because they're open to the sky, they're
17 not enclosed in any way, that forms the lowest level to measure a
18 BHMP from. I don't know if that's helpful or not.

19 VICE CHAIR JOHN: Well, I was thinking of a situation
20 where it's the same diagram that we have here except that the
21 space is not conditioned, it's just dirt, that would not be a
22 cellar?

23 MR. LEGRANT: I'm trying to understand your question.
24 You're saying that if it was -- if it was or was not conditioned
25 that it was relevant?

1 VICE CHAIR JOHN: Yes. I don't want to discuss this
2 prior case, because we look at each case separately. But let us
3 assume that this space under the porch was not conditioned, didn't
4 have the four walls and the floor was not finished, it was just
5 dirt, that would not be a cellar?

6 MR. LEGRANT: I would say it's not a cellar because it
7 doesn't have a floor.

8 VICE CHAIR JOHN: Okay. All right. Thanks.

9 CHAIRPERSON HILL: Mr. Smith?

10 MR. SMITH: I have a question -- a general question
11 about a building façade versus a building appurtenance. And
12 ignore the interpretation in the District, what is considered to
13 be an appurtenance?

14 MR. LE GRANT: Appurtenance is not a defined term and so
15 there are a series of features that project off a building and
16 which the Zoning Regulations do address, awnings, chimneys and so
17 forth. But when we get to these porches or stoops or stairs or
18 landings that come in 1,000 different configurations, so I have to
19 look at them case by case.

20 MR. SMITH: Okay. Case by case, when measuring the
21 BHMP, if there is a chimney or a balcony or something relative in
22 nature, the measuring point of (audio interference) BHMP, do you
23 take it from the furthest projection or "appurtenance" for the
24 building façade itself?

25 MR. LEGRANT: I would say the building façade. A

1 chimney or something that's projecting, like an eave I would --
2 because they're carved out as -- in those rules that speak to how
3 those are treated, how much they can project into the yard, for
4 example, then it doesn't make sense for me to treat them as a
5 façade --- as the façade point with which to measure the BHMP
6 from.

7 MR. SMITH: And historically, you considered a porch a
8 building appurtenance and not the front of the building itself?

9
10 MR. LE GRANT: I'm hesitant to say. Again, porches come
11 in all different configurations and so, in this particular case, I
12 still assert that it makes most sense to go the BHMP that we have
13 described (audio interference) and held up by that retaining wall
14 in front of this feature.

15 MR. SMITH: Okay. Thank you. No further questions, Mr.
16 Chair.

17 CHAIRPERSON HILL: Mr. Sullivan, does the property owner
18 have any questions of Mr. LeGrant?

19 MR. SULLIVAN: No. Thank you.

20 CHAIRPERSON HILL: Mr. Rueda or Ms. Ferster and/or the
21 ANC, you will have an opportunity to rebut. Ms. Ferster, do you
22 want to go, or do you want Mr. Rueda to do it?

23 MS. FERSTER: Is the property owner going to present
24 anything in support of the opposition to the appeal?

25 CHAIRPERSON HILL: I'm sorry. Hold on a minute, I

1 | didn't even (audio interference). Mr. Sullivan, do you have a
2 | presentation?

3 | MR. SULLIVAN: I do -- I don't have a presentation, but
4 | I do have an argument --

5 | CHAIRPERSON HILL: Okay.

6 | MR. SULLIVAN: -- to make if --

7 | CHAIRPERSON HILL: Thanks, Ms. Ferster, it's already
8 | been a (audio interference) a day. So -- okay, please, Mr.
9 | Sullivan, if you could go ahead with your testimony.

10 | MR. SULLIVAN: Okay. So I'm not going to repeat,
11 | obviously, the technical rationale of the Zoning Administrator, I
12 | think he's made his case on that. And in our case, we're in
13 | complete agreement with that, that the -- in fact, we think it's
14 | actually pretty simple, the front of the building includes the
15 | porch structure because of the characteristics of that structure.
16 | And also, I think that's starkly different from the purported
17 | precedent from the appellant of 19950, which did not have such a
18 | manufactured, excavated structure, specifically, without a floor,
19 | without a door, with no way to get into the building from that
20 | space.

21 | And I think the -- the door and the floor and the roof
22 | over this space is actually very critical and, in this case, the
23 | Zoning Administrator has made a reasonable judgment based on the
24 | plain language of the definition of building, which leads to an
25 | imminently reasonable and appropriate conclusion in this case.

1 Height measurement, I think, is only meaningful in a
2 relative sense. So the elevation itself of the grade is
3 meaningless unless -- or the height measurement of a house is
4 meaningless except as it's perceived in relief, the difference
5 between the ground and the top of that building.

6 And in this case, if you look at the grade down the
7 block and I'm not -- in response to Mr. Rueda's comment, I'm not
8 asking you to amend the Regulation. I'm not saying that you just
9 look -- you get a general feel for the grade and measure from that
10 point. I'm saying this is an explanation of why it makes so much
11 sense and why the Regulations in this case work and why the Zoning
12 Administrator's reasonable judgement works for that.

13 What the appellants seem to be advocating here is that
14 measured height is dependent not on the level of that natural
15 grade, but rather on the unseen depth of a manufactured space
16 within the building, in this case. And you could see how that
17 could lead to an absurd result down the street. If you look at
18 the street from the front, height measurement could be determined
19 by whether or not -- could be determined by the depth of that
20 structure, which in this case is inside the building under the
21 porch.

22 If you put the house that was the subject of case 19950,
23 I think it's 2928 King Street, next to this house on this block,
24 you'd have the same result. The buildings would be about the same
25 height and they'd be measured about the same way, because they're

1 measured from the grade, the natural grade and it is the (audio
2 interference) higher of the natural unfinished grade. And they're
3 both measured the same way, so I don't think there's any conflict
4 between the Zoning Administrator's position in that case and this
5 case.

6 Regarding Commission Order 17-18, which has been raised
7 several times here, a key purpose of that order, in my opinion,
8 and I was a close watcher of that case too and I was involved in
9 some of the cases that led to that amendment, was to stop the
10 blatant manipulation of the elevation of grade for the benefit of
11 an owner. So, essentially, to be able to raise the height of a
12 building, they raise the grade. That's not happening here. In
13 this case, the property owner is working with the existing
14 situation and the existing grade. So under 17-18 -- before 17-18
15 or after 17-18, you get the same result here and there's no
16 manipulation here. And in this sense, I think Mr. Rueda conflates
17 the concept of natural unfinished grade with the concept of
18 exceptions to that grade. So there's an exception to that grade
19 separate from the grade.

20 I could change, in my opinion -- and I don't know the
21 Zoning Administrator's opinion on this exactly because I haven't
22 done it -- I could change an exception to grade, there's nothing
23 that says I can't change that, I can't change the grade. So I
24 could shrink an exception to grade, but I can't raise the
25 elevation thereof. And the definitions of natural unfinished

1 grade use the word elevation, they rely on elevation.

2 So if I have an exception to grade, I have an exception
3 to grade. Mr. Rueda uses a much more general term of the more
4 restrictive situation. There's nothing in the Regulation, in my
5 opinion, that says the more restrictive situation. It's just
6 based on grade and it's specifically focused on elevation.

7 One need only look at the building section or the view
8 from the street. Nobody would look at this building and say, oh
9 that building is three-stories high. So they want you to reach
10 what I think is an artificial conclusion.

11 I don't think I have anything else. I think this is
12 just purely based -- one thing, I want to talk about permitted
13 projection. The reason why permitted projection is sort of
14 critical here is because the measurement point is based on the
15 façade, the building façade. And the building façade excludes
16 permitted projections and permitted projections are defined as
17 those projections which are specifically listed in Subtitle A.
18 And this is not one of those, so for that reason, it's not
19 excluded from the definition of building façade for that
20 particular reason. So then when you combine that with, what is
21 the definition of building? And -- it's a structure requiring
22 permanent placement on the ground that has one or more floors and
23 roofs supported by columns or walls.

24 I think it's a reasonable judgment of the Zoning
25 Administrator to say, based on the floor, based on the door, based

1 on the walls, although they be not entirely closed in, this is
2 part of the building.

3 The reason I brought up conditioned and lighted as
4 factors, it's because those specific qualifications are included
5 in the definition of what a adequate building connection is and
6 that was for a totally different purpose and that was to address a
7 totally different "manipulation," if you will, a totally different
8 form of abuse maybe, by a property owner trying to gain advantage.

9 But that's not required here, so I just -- I just think -- I
10 mean, overall I think it's an extremely reasonable judgment by the
11 Zoning Administrator which has led to an appropriate result.
12 Thank you.

13 CHAIRPERSON HILL: Okay. Does the Board have any
14 questions of the property owner and if so, Commissioner May, I'll
15 start with you. No.

16 Mr. Smith, do you have any questions? No.

17 Ms. John, you have any questions? No. Ms. Ferster, do
18 you have any questions?

19 MS. FERSTER: I mean, that's like an argument of
20 counsel, so I'll make my own closing argument at the appropriate
21 time.

22 CHAIRPERSON HILL: Okay. Mr. Rueda, do you have any
23 questions? No. Okay. All right. So then I'm back Ms. Ferster
24 with rebuttal.

25 MS. FERSTER: Yes. And that brings us to the point of

1 the slides that Mr. Rueda would like to use to illustrate his
2 rebuttal testimony. We sent -- you know, before the beginning of
3 this hearing, we sent three slides and I just sent a fourth slide
4 that he would like to use to illustrate his remarks in rebuttal,
5 and I would ask that we would be allowed to present them.

6 CHAIRPERSON HILL: Okay. Let me ask a couple of
7 questions. So -- and this is more just for -- well, first of all,
8 which exhibit, Mr. Rueda, are you trying to pull?

9 MR. RUEDA: Which exhibit -- can you repeat the question?

10 CHAIRPERSON HILL: Yeah. Which exhibit are you trying
11 to pull up?

12 MR. RUEDA: Well, I have exhibits that we included with
13 the testimony and we also have exhibits that were just submitted,
14 so that would be (audio interference).

15 MS. FERSTER: Sorry. Can I clarify about the -- can I
16 clarify that?

17 MR. RUEDA: Yes. Yes.

18 MS. FERSTER: So the slides that we submitted were not
19 filed in the zoning record yet, because -- so they don't have
20 exhibit numbers to them. We submitted them as demonstrative --
21 early today, we just emailed them to Mr. Young and to the parties
22 and they're simply the -- Mr. Rueda's markups of DCRA's slide
23 deck. So they're not in exhibits yet, they will simply be used as
24 demonstrative and if at the end of Mr. Rueda's testimony, you find
25 it helpful and want them in the record, we would add them to the

1 record, but right now they have no exhibit number in.

2 CHAIRPERSON HILL: Okay. Yeah. Thanks, Ms. Ferster.
3 Well, first of all -- well, I'm going to go to OAG because I'm
4 just trying to make sure I do this correctly. So, OAG, I mean, is
5 this -- is there any issue doing this? Meaning, is this rebuttal
6 testimony or is this testimony that I have to start again with,
7 because the -- is this testimony or is this rebuttal testimony?

8 MS. NAGELHOUT: I think the Board has gone through the
9 presentation of each party's direct case. So then you would ask
10 the appellant if they have any rebuttal and -- so I'm wondering,
11 is the ANC going to do anything or are we just talking about the
12 intervenor sort of stepping into the shoes of the ANC here? It's
13 usually only the appellant who offers rebuttal testimony and then
14 at the end you can ask each of the parties if they have a closing
15 statement here. But it sounds like the intervenor maybe wants to
16 put on some rebuttal in lieu of the ANC?

17 MS. FERSTER: (Audio interference.)

18 CHAIRPERSON HILL: Ms. Ferster, give me -- give me a
19 second, Mr. Ferster. So, I mean, I'm looking at least, you know,
20 what I think is correct where it says, "rebuttal evidence from the
21 appellant followed by rebuttal evidence from the parties in
22 support of the appeal in the order indicated in sub-paragraph 3 of
23 this paragraph." And so that's why I'm kind of following and
24 either way we'll -- but that's not answering my question, Ms.
25 Nagelhout, which is, I'm going to let them do rebuttal, because

1 that's what I think they're allowed to do and because they're an
2 intervenor, I mean, you can tell me not, and/or I'm sure the ANC
3 would allow them to give rebuttal in their stead, which the ANC
4 commissioner seems to be nodding her head already, which I'll go
5 ahead and take that. So either way, I think they're going to get
6 to do what they want to do.

7 What I'm trying to figure out first is, is this rebuttal
8 testimony or is this new testimony?

9 MS. NAGELHOUT: What you should be asking for now is
10 rebuttal testimony from the intervenor, meaning testimony that
11 responds to what the parties have been saying.

12 CHAIRPERSON HILL: Got it.

13 MS. NAGELHOUT: And then there should be an opportunity
14 for cross, Board questions and cross-examination from the other
15 parties of the rebuttal testimony.

16 CHAIRPERSON HILL: Okay. So I guess and -- I guess for
17 ease we'll go ahead and do this, because I'm just trying to figure
18 out again what we would have done if we were in the hearing room.

19 And so Mr. Rueda, you would have possibly had -- you would be
20 marking up the slides that -- and I can ask my Board members what
21 they think, but you would be marking up the slides, perhaps, that
22 would have been given in testimony and this would be your
23 rebuttal, right.

24 I guess what confuses me a little bit just from a point
25 of what I'm trying to do is that, if you -- and I'm not going to

1 get too into the weeds on this one, but I'm just kind of talking
2 this through because you guys keep coming to me before -- or come
3 before us in other cases like -- you know, if you had already
4 marked up the slides beforehand, it's not necessarily rebuttal, so
5 that's what I'm trying to figure out.

6 So -- but nonetheless, I don't have them in front of me,
7 so I guess you'd have to -- we'd have to allow them into the
8 record, right? And this would now be rebuttal and they'll have
9 cross of rebuttal anyway, so I don't think it's necessarily a
10 problem right now.

11 But so, Mr. Moy, how do we get those into the record --
12 well, before we do this and I guess people are going to have their
13 opinions and I'll go around the table to get your opinions, you
14 would have to submit this into the record, correct, Mr. Moy, so we
15 could see it?

16 MR. MOY: Yeah, I believe -- just to follow-up on Ms.
17 Ferster, those filings are in the record, that she said she
18 uploaded, and I believe the staff has noted for me they are
19 Exhibits 31D through 31F, so you may want to take a look at that,
20 if that is what we're discussing. So those are new.

21 MR. RUEDA: And G.

22 MR. MOY: Yeah.

23 MR. RUEDA: G is relevant to what they were talking
24 about.

25 MR. MOY: Okay. That was the last one that was just

1 uploaded, so we're going up to 3G.

2 MS. FERSTER: I just checked, yeah, they're all there.
3 They're all there.

4 CHAIRPERSON HILL: I only have through 31F. Let me see
5 if I can reload. Okay. All right, Mr. Rueda. So they're all
6 there. Which ones would -- which ones would you like pulled up?
7 Do you want to just do it one at a time?

8 MR. RUEDA: So I'd like to be able to refer to my
9 exhibits that were included originally, so A is relevant to this
10 question of weatherization by the Zoning Administrator. G is
11 relevant to show the excavated area that they say is, you know,
12 doesn't somehow change the existing configuration of the
13 excavation. But there's no excavation in front of the footprint
14 of the building, which --

15 CHAIRPERSON HILL: Okay. Okay. That's good. I got
16 you. So I'm just trying to think of a plan here. So which ones
17 do you want Mr. Young to pull up -- why don't you do them one at a
18 time, right?

19 MR. RUEDA: Yes. I have to figure out technologically
20 here what I'm going to do.

21 CHAIRPERSON HILL: I'll tell you what, why don't -- can
22 we all take a quick break and -- we'll take a quick break and then
23 Mr. Rueda why don't you -- Mr. Young if you would stay here with
24 Mr. Rueda and just kind of let -- Mr. Rueda let Mr. Young know
25 what slides you'd like to pull up and in which order and we'll

1 | come back in like 5, 10 minutes -- 10 minutes. Oh, Ms. John?

2 | VICE CHAIR JOHN: Thank you. I don't have Exhibit G,
3 | mine stops at F.

4 | CHAIRPERSON HILL: If you reload, Ms. John -- like X out
5 | and then reload, it will come up. Okay. We'll come back in like
6 | 10 minutes and Ms. John, if you can't find it then Mr. Rueda will
7 | be showing us anyway.

8 | VICE CHAIR JOHN: Thank you, Mr. Chairman.

9 | (Whereupon, the matter recessed at 1:14 p.m.; reconvened
10 | at 1:24 p.m.)

11 | CHAIRPERSON HILL: All right. Mr. Moy, you want to call
12 | us back in.

13 | MR. MOY: Thank you, sir. After a quick break, the
14 | Board is back in session -- in its hearing session and the time is
15 | at or about 1:24.

16 | CHAIRPERSON HILL: Okay. And I'm sorry, I misguided
17 | this, I should have -- we probably should have taken a quick lunch
18 | break or something, but now I guess everybody is going -- we'll
19 | just fight through it.

20 | Mr. Rueda, are you ready?

21 | MR. RUEDA: Sure. I mean, I have a couple of points
22 | that I want to try to reinforce based on what I heard from the
23 | testimony of the administrator and the property owner.

24 | CHAIRPERSON HILL: Okay. You want to just tell us what
25 | you want to bring up?

1 MR. RUEDA: Exhibit E please. And so Exhibit E -- well,
2 actually this is G. I'm sorry, I made a mistake too, Paul,
3 before. Anyway, Exhibit E here is showing the existing condition
4 of the property to try to reestablish for the Board what is
5 considered natural grade. Which if you think about the excavation
6 associated with any project and as an architect, the design of
7 buildings, right, that, you know, are in residential flat zones or
8 any sort of rowhome community, you have appurtenances or porches
9 that are added to create different effects, one of which is to
10 disguise the apparent height of a building. And so the
11 Regulations, rightly, ask that measurement be at the base of the
12 façade, which in this case is easily accessed under the porch,
13 right. And you can see in the markup that I present, you know, of
14 the existing condition, right, which would show the natural grade
15 and the BMP here is shown at the ground that is currently
16 described -- that currently exists and has been there for more
17 than five years, coincident with the definition of natural grade,
18 right. Which is that where there are existing improvements on a
19 lot, you establish elevation at the ground exclusive of the
20 improvements or adjustments to the grade made in the five years
21 prior to applying for a building permit, exceptions to natural
22 grade are set forth, right, you know, as exceptions to grade,
23 which we've established are from areaway projections or window
24 well projections.

25 And so if you consider this an areaway that doesn't

1 conform because it has a cover, then you could measure the
2 defining projecting wall of the retaining wall greater than six
3 feet from the façade, right, that areaway would be conforming as
4 an areaway with a cover, but it projects further than the amount
5 that it would be considered an exception to grade, okay.

6 And so, if you look at the diagram that was marked up
7 you can see that when you measure in the existing condition from
8 the area -- from the ground underneath the porch, you get 35 --
9 less than 35 feet, which is compliant, right. And so the building
10 was designed as intended for the RF zone and the improvement would
11 basically, you know, of the addition, right, the newest story
12 would be on top of an existing three-story building easily
13 measured, in this case, at the base of the façade.

14 Now if you pull up Exhibit A, please, sir. You can see
15 in the series of photographs that are taken of the adjacent
16 condition which is, essentially, what's proposed on the
17 neighboring condition, if you scroll through the photo -- can I
18 scroll through the photographs or do you? So the first one, if
19 you look here at this exhibit right here, you can see where the
20 BHMP is taken based on the natural grade at the mid-point of the
21 façade -- of the building façade adjacent to -- so the ground
22 adjacent to the mid-point of the building façade. Essentially,
23 we're talking about that point there which is 8 feet below the
24 first floor. If you continue to scroll through these -- and you
25 can see in that picture, by the way, that there's a screen door --

1 the envelope of the cellar that does not extend under the porch as
2 stated by the administrator and followed up by the property owner.

3 If you just continue through it just will quickly show
4 the nature of how this is not a weatherized area. You can see
5 that water runs from the stairs to the area drain in the -- in
6 this excavated area that is used for storage, right, and so not
7 part of the building and therefore, you know, not included as is
8 suggested to be how you measure the building height for this
9 building, which is a three-story building.

10 Now if you go to Exhibit G, I'll just -- we can flash
11 that up. Okay. So Mr. LeGrant, in pulling up another exhibit,
12 referred to the grade being shown at the side of the porch and not
13 -- you know, agreeing that there was no representation of the
14 excavated area, which I have done here for the Board, to show that
15 the porch, you know, as an appurtenance, as a permanent projection
16 to this façade, right, is forward, obviously, of the building
17 façade. And you can measure, as I show here, that the -- the
18 distance from this excavated new elevation that is proposed to
19 lower the basement floor an additional 27 inches, so you have more
20 than 10 feet from the grade, adjacent to the building façade,
21 right, you have 10 feet, which is twice the amount that is allowed
22 for it to be considered a cellar.

23 And you can see that the height when measured to the new
24 story, right, is 41 foot 2, right, which is beyond, you know, by 6
25 -- you know, it's beyond the 35-foot mark and, obviously, includes

1 the additional density of the additional story beyond the 3-foot
2 limit of RF-1 zone.

3 And to the point that is being repeated by the
4 administrator and the property owner in offering all these
5 hypotheticals about, you know, if the four enclosing walls of the
6 porch, is the area underneath them therefore considered a cellar,
7 or a basement for that matter, right? They're excluding that area
8 under the porch using the idea that the front wall of this porch
9 space is enclosed, right, and so therefore you have this apparent
10 grade that can be a reasonable point of measure when looking up
11 and down the block.

12 And I will point to the Board to say that that was
13 exactly the case that the ANC made in 19950, that because there
14 was an artificial berm that was installed by the property owner,
15 right, and there was some debate about whether or not the property
16 owner -- whether that existed before he bought the property or
17 after he bought the property, right, and it was a very favorable
18 measurement, because they had raised the grade point under the
19 porch at the façade by more than 2 feet in order to get an
20 additional story, right.

21 Because you'll remember too that previously you measured
22 to the ceiling, so there was a lot of manipulation of ceilings,
23 which 17-18 eliminated by measuring to the finished floor level
24 elevation, okay. And so when you consider that in that case there
25 was a limiting wall, and you could not access the façade because

1 of the wall at the front of the porch.

2 We argued, if you measure from the grade at the face of
3 the porch, you'll see that all of these buildings are 34 foot 6
4 inches tall, right. And that you should be able to assess
5 building height from the face of the porch. Mr. LeGrant and the
6 Board rejected that notion completely and said that you must
7 always measure at the building façade.

8 And so we are faced today with a case where that is no
9 longer the case and it is suddenly reasonable to measure -- from,
10 you know, a perceived grade location outside of the building
11 façade, which we argue is not correct based on these new -- newer
12 guidelines that are -- excuse me, not even guidelines, Regulations
13 that were meant (audio interference.)

14 And if you look at the drawings that we have marked up,
15 you can easily see the height of the building as it's proposed,
16 and it should not be approved.

17 I will also say that these comments of, you know, Mr.
18 May -- excuse me, Commissioner May, in his remarks did accept
19 that, you know, it might be reasonable to measure at the face of
20 the porch given the circumstances that I just described. However,
21 you should always measure at the back façade. And understanding
22 that there's a lot of give and take and different scenarios, the
23 idea that you could somehow put a deck over a foundation wall and
24 suddenly consider that a cellar to me is disingenuous to the point
25 of the Regulations and I don't think that the Board should accept

1 that argument and stick with the idea that the façade is fully
2 visible underneath this porch and is, you know, renovated as part
3 of the proposed work to include a light, a window and another
4 exterior door back at that face.

5 And even if they were to change that at this point,
6 right, to say okay, well now we've proposed that -- we're not
7 going to measure to the bottom of the finished grade that we're
8 showing here, our finished condition, right, whether they shrink
9 the areaway, as Mr. Sullivan proposed that you could do, right, so
10 that you had a 7 foot areaway projection that you then reduced in
11 size to project to 5 feet, less than 5 feet so that it could be
12 considered an exception to grade, thus giving you a higher
13 measurement point. I'll take you back to B308.2, which is the
14 definition for how you measure building height, which says that
15 you must measure from the lower of the natural grade, which we
16 have shown in the previous exhibit is at the current elevation of
17 the excavated area that allows access to the basement, right, and
18 not at the finished condition, right. if they were to propose
19 enclosure of this area underneath the porch so that they could be
20 considered weatherized, right, or conditioned or even interior,
21 right. None of those descriptors apply in the actual condition.

22 So when you look at this area under the porch you cannot
23 confuse it, as they are trying to with these different
24 manipulations of the language of the Regulations, by saying oh
25 well, it's reasonable because of how it looks to measure at the

1 face of the porch, when it's clear from the Regulations that there
2 is no other place other than at the façade, except where there is
3 an exception to grade. And Mr. LeGrant can't come to you today to
4 say that it's either an exception to grade or an areaway, right,
5 because he's considering now that the roof cover provides it --
6 makes it part of the building and that it can no longer be
7 considered an areaway, even though the response to the now
8 appellant and intervenor, right, was that it could be considered
9 an areaway, right, non-conforming in his mind -- or in his
10 determination, excuse me, as an exception to grade and not just a
11 non-conforming areaway because it was covered, right.

12 So there's a lot of gamesmanship here with the words of
13 the Regulations and it's very tedious information, I understand
14 that, and I'm asking that the Board separate the hypotheticals and
15 look at the words of the Regulations to understand that it was
16 proposed and amended in the Regulations to disallow such
17 manipulation to allow a fourth story in an RF-1 zone, which is
18 what this is. Any way you color it, this is a fourth story to an
19 existing three-story building that has a porch in front of it to
20 disguise the apparent height because it's a residential family or
21 flat neighborhood, right.

22 And I think I'll conclude on that because -- I'll just
23 conclude on that. Thank you. I can't hear you.

24 CHAIRPERSON HILL: I said, thank you, Mr. Rueda.

25 Mr. Green, do you have any questions for Mr. Rueda?

1 MR. GREEN: No, Chairman. Thank you.

2 CHAIRPERSON HILL: Mr. Sullivan, do you have any
3 questions from Mr. Rueda?

4 MR. SULLIVAN: No. Thank you.

5 CHAIRPERSON HILL: Commissioner, do you have any
6 questions for Mr. Rueda? No. You're shaking your head no. Okay.

7

8 Does the Board have any questions for Mr. Rueda? No.
9 Everybody is shaking their head no. Okay. Then -- let me go look
10 at my little cheat sheet here.

11 So, Ms. Nagelhout, I forget how closing arguments go.
12 Like, in an appeal does the appellant get the last word?

13 MS. NAGELHOUT: If there's a law on that, I'm not
14 remembering it off-hand. I think you can pick the order you want.

15

16 CHAIRPERSON HILL: Okay. Well, we'll go ahead -- it
17 says closing arguments in order established in paragraph 2 through
18 paragraph 5, which seems to me --

19 MS. NAGELHOUT: It's probably the same order that you
20 went in in the first place, so appellant, intervenor, DCRA,
21 property owner.

22 CHAIRPERSON HILL: Yeah. Okay. Ms. Ferster, would you
23 like to provide a conclusion? Well, actually before the
24 conclusion, I did have a question.

25 I'm not trying to open this all the way back up again,

1 but Mr. LeGrant, in terms of again, the building height measuring
2 point shall be established at the adjacent finished -- at the
3 adjacent natural or finished grade, whichever is lower in
4 elevation. Can you just again, clarify to me why that's not
5 finished grade?

6 MR. LEGRANT: The finished grade, I guess, that the
7 appellant is asserting or the --

8 CHAIRPERSON HILL: Yeah, what's -- why is what the
9 appellant is asserting is the finished grade, which is the bottom
10 of that cellar, that's not the lowest point to measure the
11 building height from?

12 MR. LEGRANT: Right. As I believe I testified to --
13 once I considered the -- that point as to be part of the cellar
14 and part of the building because it has -- it's covered with a
15 roof and has walls, then it no longer is a grade feature that is
16 relevant for measuring building height measuring points. I do not
17 go into the interior of a building to find the grade point; I go
18 outside the building to figure it out.

19 Then the analysis is, is the grade changing? What's the
20 new grade? And that would be the finished grade. That's not
21 happening here, so the final point, the BHMP is the natural grade
22 outside the retaining wall in front of the porch.

23 CHAIRPERSON HILL: Okay. All right. Thank you. All
24 right. Ms. Ferster, do you have any conclusions you'd like to
25 add?

1 MS. FERSTER: Yeah. So just to check in, I just want to
2 make sure that the ANC did not want to make a closing statement
3 first.

4 CHAIRPERSON HILL: Sure. Commissioner, do you want to
5 make a closing statement first?

6 MS. FAULKNER: I do not have an additional closing
7 statement. Thank you.

8 CHAIRPERSON HILL: All right. Thank you. Ms. Ferster?

9 MS. FERSTER: Yes. And I'll be brief because I think
10 the issue here is whether or not the building height measuring
11 point that was selected by the Zoning Administrator conforms with
12 the Zoning Regulations which requires, you know, a parsing of the
13 Zoning Regulations themselves. I would suggest that we would all
14 -- and the parties would benefit from -- and the Board would
15 benefit from addressing this question of the interpretation of the
16 Zoning Regulations made by the Zoning Administrator via proposed
17 findings of fact and conclusions of law, so that we can
18 incorporate the testimony here and analyze it in the context of
19 the Regulations.

20 That said, I will just briefly say that I think this
21 hearing has been very helpful in that it has clarified the issues
22 and narrowed them before the Board, so we now know the whole issue
23 of areaway and whether it's conforming or non-conforming is not
24 the basis for the Zoning Administrator's determination, that the
25 building height measuring point can be placed at the base of the

1 porch.

2 And I would simply, you know, reference the two
3 Regulations as being dispositive in this case and the first, of
4 course, is the rule of measurement in B308.2, which makes very
5 clear that building height measuring point must be established at
6 the mid-point of the building façade of the principal building
7 that is closer to the street line or the lot.

8 So the question is, as Mr. Rueda has said, the building
9 façade is the exterior wall underneath the porch and not the area
10 outside of this, you know, well that has been called a non-
11 compliant areaway. And if you go back to, again, the definitions
12 of building façade, I think it's very clear that a building façade
13 is defined as an exterior vertical plane, face or side of a
14 building exclusive of any permitted projections.

15 And so the issue as Mr. LeGrant has stated is, is this
16 porch a permitted projection? And as Mr. LeGrant has also stated,
17 some porches are, and porches aren't, and it is a judgment call.

18 And the problem we have here is we haven't gotten from
19 the Zoning Administrator any real defined standard for making that
20 distinction, because the guidance that the Zoning Administrator
21 offered is well, if it has walls and a door, even if it's open to
22 the elements, it is, you know, a part of a building, it's not a
23 permitted projection. Whereas, Mr. Rueda has, I think, made the
24 important case that the porch and that the area more notably,
25 which we describe as a shed under the porch, cannot in any way be

1 described as part of the building, because it is clearly open to
2 the elements, it's not conditioned space and it can't be used as
3 such unless some pretty substantial renovations are made.

4 So I would submit that these two Regulations make pretty
5 clear that this area under the porch is not a part of the
6 building, it's an open shed and if you -- as Mr. Rueda has said,
7 if you start allowing any open area under a porch to be considered
8 an extension of a building, you're starting to make some judgments
9 that make no sense in terms of how the Zoning Regulations define
10 projections or appurtenances.

11 And the fact -- you know, I will, again request that we
12 be permitted to submit the post-findings of fact and conclusions
13 of law so that we can, you know, actually, you know, analyze the
14 testimony and evidence in this record against the actual text of
15 the Zoning Regulations.

16 CHAIRPERSON HILL: Okay. Thank you, Ms. Ferster. Mr.
17 Green, do you have a conclusion?

18 MR. GREEN: Yes, just very briefly, Chairman. Thank you
19 everyone for the Board for the time today.

20 I just wanted to bring up a couple of points that were
21 raised. Very briefly is that there is -- really, it's a fairly
22 cut and dry decision in terms of where the building height
23 measuring point is to be determined. And in this case, that had
24 been correctly determined by the Zoning Administrator's through
25 his testimony, as well as the drawings show exactly one where that

1 building height measuring point was to be determined. And it is
2 in conformity with 308.2.

3 In this case, it's very clear that the proposed
4 structure is under the 35-foot limit for the zone. It's only 34
5 (audio interference). So the Zoning Administrator, in this case,
6 did not err in making that determination.

7 What is also important which I'd like to reiterate is
8 under either interpretation, whether it be non-conforming or an
9 areaway, the building height measuring point decision, that
10 decision (audio interference). And the Zoning Administrator had
11 testified to that.

12 Lastly, much was made -- much discussion and argument
13 about BZA Appeal 19950, I think, rightfully so that's -- it's
14 inapplicable here, and really this appeal should stand on its own
15 (audio interference) and given the fact that there has been an
16 amendment and a change and certainly Mr. LeGrant's determination
17 is in conformity of that.

18 So after all of the review and testimony today, we would
19 ask that the Board deny this appeal. Thank you.

20 CHAIRPERSON HILL: Okay. Mr. Sullivan?

21 MR. SULLIVAN: Thank you, Mr. Chairman. First of all, I
22 would just like to note that the property owner would definitely
23 not be in favor of delaying the proceedings for a draft order. I
24 think the Board has plenty of information.

25 Second, I think the decision is squarely based on the

1 regulations and, specifically, it's based on first, the definition
2 of building, which we've been through and the Zoning Administrator
3 has stated that grade cannot be inside the building, it's outside
4 the building.

5 Also, the definition of building façade and within the
6 definition of building façade there's an exception for permitted
7 projections, which would take it out of façade, which we have
8 stated the porch structure is not a permitted projection.

9 And there are specific -- it's B323 that lists the
10 permitted projections, and this structure would not be included in
11 any of those categories. So it's not just something that the
12 Zoning Administrator makes up on a case-by-case basis, they're
13 actually in the regs as well, those exceptions.

14 Could somebody say there's something about this case
15 that's not tied up perfectly as you'd like it to be? Sure. I
16 think that's in every case and as Commissioner May stated, that
17 the Regulations don't -- and I certainly know well, don't hit
18 every single situation, everything's different. But did the
19 Zoning Administrator make a reasonable judgment in this case or
20 was it unreasonable? Certainly not. And I think the conclusion
21 bears that out as well -- or the result of that conclusion bears
22 that out as well.

23 But in any event, I don't think anybody could say that
24 the appellant or the intervenor has made a case or met their
25 burden to overturn a Zoning Administrator decision. Thank you.

1 CHAIRPERSON HILL: Okay. I'll turn to my fellow Board
2 members concerning the findings of fact and conclusions of law
3 issue. I don't necessarily need anything. I think that the
4 record is full, and I think that, you know, we can if -- you know,
5 I'm not necessarily interested in making a decision right now, but
6 I think, you know, having an opportunity to go back and take a
7 look at all the testimony would be enough for me.

8 However, I'm open to -- if that's something that we
9 would like to require the parties to submit, and that's also while
10 we're putting forth on the Board and I will ask going in the order
11 that I normally do with you, Commissioner May?

12 COMMISSIONER MAY: Yeah, I don't see a need for findings
13 of fact and conclusions of law. I do think that we have what we
14 need in the record. I would be willing to deliberate and decide
15 this today, but I would not want to push it if my fellow Board
16 members are not prepared to do so.

17 CHAIRPERSON HILL: Okay. That's another item on the
18 table now. Mr. Smith, first of all, the conclusion of facts and
19 findings -- findings of fact and conclusions of law question and
20 then deliberation. Where are you on both issues today?

21 MR. SMITH: On the first question, I think we have
22 sufficient, you know, supplemental information for that matter.

23 When it comes down to the second question, I would prefer to
24 look through the information again for us to make a final
25 determination and for us to put this off for a (audio

1 interference).

2 CHAIRPERSON HILL: All right. Ms. John?

3 VICE CHAIR JOHN: Thank you, Mr. Chairman. So I'm fine
4 with the record as is, because it's fairly thorough, and I would
5 benefit from additional time to make a decision. So I'm not
6 prepared to decide today.

7 CHAIRPERSON HILL: Okay. All right. Then that makes
8 that two issues, so we're not going to ask for findings of fact
9 and conclusions of law and we're not going to deliberate today.
10 We will put this off for deliberation.

11 Mr. Moy, when would be an appropriate time? I don't
12 know about Commissioner May's availability.

13 MR. MOY: Okay, Mr. Chairman, I'm assuming, unless you
14 tell me otherwise, this is being scheduled for a decision meeting
15 session? There is no hearing on February the 17th, so the
16 earliest could be either next week or February 24th for a meeting
17 session. Otherwise, the other date, which is a good day, which
18 would be March the 3rd.

19 CHAIRPERSON HILL: I don't know about you guys, but
20 depending upon if Commissioner May is available, I'd rather do it
21 sooner rather than later, because it will be fresh in our brains
22 and so, I would say like the 10th. Commissioner, are you
23 available for a decision?

24 COMMISSIONER MAY: Do we have any sense of what time of
25 day it would be? Because I would not be able to do it first

1 | thing, I would only be able to do it later in the day at like 2
2 | o'clock.

3 | CHAIRPERSON HILL: Mr. Moy, how many cases do we have
4 | next week?

5 | MR. MOY: For March the 10th, we have 11 cases on that
6 | day.

7 | CHAIRPERSON HILL: Good God. Okay, I think we're going
8 | to make it past 2 o'clock, Commissioner May. Why don't we go
9 | ahead then, and we'll schedule this for, you know, whenever we
10 | can. Are you kind of free, Commissioner, after 2 o'clock, is that
11 | what you're trying to say?

12 | COMMISSIONER MAY: Yeah, 2:00 p.m. or after.

13 | CHAIRPERSON HILL: Okay. So, Mr. Moy, we'll go ahead
14 | and schedule this for a decision and I'll kind of read in and
15 | we'll figure all out the logistics for after 2:00 p.m. next
16 | Wednesday on the 10 and we'll just see what falls. Like, you
17 | know, we won't break up -- if Commissioner May is flexible, we'll
18 | just -- the soonest break we have after 2 o'clock we'll meet up
19 | with the Commissioner May and he's shaking his head yes.

20 | COMMISSIONER MAY: That works. Yes, thank you.

21 | CHAIRMAN: Well, thank you all very much. I mean, thank
22 | you all for your testimony, Mr. Rueda, Ms. Ferster, Commissioner
23 | Faulkner, thank you so much for bringing this up. And, you know,
24 | it really is -- this building height measuring point continues to
25 | be an issue that, you know, needs further clarification and this

1 helps kind of define that clarification, so everybody knows, so I
2 do appreciate it, and also the Zoning Administrator and the
3 property owner.

4 So, thank you all very much and have a nice day.

5 MR. MOY: Okay, for the record, Mr. Chairman, the record
6 is closed, correct?

7 CHAIRPERSON HILL: I'm sorry. The record is closed.
8 The case is closed. We're only going to be coming back for
9 deliberations. Thank you.

10 VICE CHAIR JOHN: Thank you.

11 CHAIRPERSON HILL: And then, so Mr. Moy, do we have
12 anything else before the Board today?

13 MR. SULLIVAN: Thank you.

14 CHAIRPERSON HILL: You're welcome. Everybody's welcome.

15 MR. MOY: No, sir. Nothing from the staff.

16 CHAIRPERSON HILL: Okay. All right. Everybody have a
17 good day and see you next week.

18 VICE CHAIR JOHN: Thank you.

19 CHAIRPERSON HILL: Bye-bye.

20 (Whereupon, the above-entitled matter went off the
21 record at 1:56 p.m.)

22

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C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DCBZA

Date: 02-03-21

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