

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

2 Office of Zoning

3 Board of Zoning Adjustment

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9 PUBLIC MEETING OF THE BOARD OF ZONING ADJUSTMENT

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12
13 10:00 a.m. to 3:00 p.m.

14 Tuesday, March 8, 2016

15
16 441 4th Street, N.W.

17 Jerrily R. Kress Memorial Room

18 Second Floor Hearing Room, Suite 220 South

19 Washington, D.C. 20001

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4 FREDERICK L. HILL, Vice-Chairperson

5 JEFFREY L. HINKLE, Board Member

6 PETER MAY, Zoning Commission

7 CLIFFORD MOY, Board Secretary

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

2 CHAIRPERSON HEATH: The hearing will please
3 come to order. Good morning, ladies and gentlemen.
4 We're located in the Jerrily R. Kress Memorial
5 Hearing room at 441 4th Street Northwest. Today's
6 date is March 8, 2016 and we're here for the public
7 meeting and hearings of the Board of Zoning
8 Adjustment of the District of Columbia.

9 My name is Marnique Heath, Chairperson.
10 Joining me today is Fred Hill, Vice Chairperson,
11 Jeffrey Hinkle who will be here shortly who is also a
12 board member, and Peter May, Member of the Zoning
13 Commission sitting in as a member of the board today.

14 Please be advised that this proceeding is
15 being recorded by a court reporter and is also being
16 webcast live. Accordingly we must ask you to refrain
17 from any disruptive noises or actions while in the
18 hearing room.

19 The Board's hearing procedures and how we
20 will process applications can be found on the table
21 by the back door. All individuals wishing to testify
22 today will need to do two things. The first is prior
23 to testifying, each person who wants to address the
24 board will fill out two witness cards, two witness
25 cards, and give them to the court reporter seated to

1 my right prior to testifying.

2 The second is you'll now need to stand and
3 take the oath, which will be administered by the
4 Board Secretary, Mr. Moy.

5 MR. MOY: Thank you, Madam Chair. Good
6 morning.

7 [Oath administered to the participants.]

8 CHAIRPERSON HEATH: Thank you, Mr. Moy. I
9 apologize that we're getting a late start this
10 morning. We're still waiting on one more board
11 member who should be joining us shortly. But I think
12 we'll be able to begin our case load for today.

13 Mr. Moy, are there any preliminary matters
14 coming before the Board?

15 MR. MOY: Yes, we do, Madam Chair. Good
16 morning. Good morning, Members of the Board.

17 This is for the record, for the transcript
18 with regards to cases originally scheduled on today's
19 docket. First, Application No. 19172 of DGS of D.C.
20 has been withdrawn by the applicant. Number two,
21 Application No. 19187, this is of 1212 through 1216
22 4th Street, LLC., at the applicant's request has been
23 postponed and rescheduled to March 15th. Third,
24 Application No. 19202 of Alon Eckhaus has been
25 rescheduled to March 22nd, 2016. Two other cases,

1 Madam Chair, Application No. 19199 of Thomas and
2 Whitney Paxon has been rescheduled to April 19th,
3 2016, and 19213 PVS International, LLC. has been
4 rescheduled to April 26th, 2016. Thank you.

5 CHAIRPERSON HEATH: Okay. Thank you. All
6 right. So I think first, Mr. Moy, now that we're all
7 here we can call up our appeal case. And then we'll
8 proceed to our meeting cases and then hearing cases.

9 MR. MOY: Yes, indeed. Thank you. That
10 would be Application -- this is Application No.
11 19207. This is the appeal of ANC 6C as captioned and
12 advertised. This is the appeal of the October 1st,
13 2015 decision by the Zoning Administrator, DCRA, to
14 issue Building Permit No. B, B as in bravo, 1509391
15 and revised as B1512716 to allow the construction of
16 a second story addition with balcony to a one-family
17 dwelling in the CAP, C-A-P/R-4 district, 518 6th
18 Street Northeast, Square 835, Lot 29.

19 CHAIRPERSON HEATH: Okay. Would the parties
20 to this case please come forward? Good morning.
21 Please introduce yourselves.

22 MR. ECKENWILER: My name is Mark Eckenwiler.
23 I'm the Commissioner for Single-Member District 6C-04
24 and the authorized representative for ANC 6C in this
25 appeal.

1 CHAIRPERSON HEATH: Please make sure your mic
2 is on.

3 MR. RODRIQUEZ: Hello. My name is Edwin
4 Rodriquez. I have applied to be an intervener in
5 this matter and I reside at 520 6th Street, the
6 adjoining property to 518, which is at issue.

7 CHAIRPERSON HEATH: Okay.

8 MR. ATKINS: I'm Thomas Atkins. I'm co-owner
9 of the home at 520 6th Street an intervener with Mr.
10 Rodriquez.

11 CHAIRPERSON HEATH: Okay. Thank you.

12 MR. LeGRANT: Good morning, Matt LeGrant,
13 Zoning Administrator, DCRA.

14 MR. TONDRO: Good morning, Maximilian Tondro
15 representing the Zoning Administrator, DCRA.

16 CHAIRPERSON HEATH: All right. We didn't
17 receive any responses from the property owner or DCRA
18 on this and so I wanted to, since you're here, hear
19 from you first to see what your position is on this
20 appeal.

21 MR. TONDRO: Yes. Good morning, Madam Chair,
22 members of the Board. I actually have with us two
23 exhibits, which I'd like to pass around. This
24 permit, these two permits, were withdrawn and I can
25 go into further detail. They were surrendered by the

1 permit holder back in January, and therefore
2 terminated without -- and no longer valid. And that
3 was, I'm showing first of all the first exhibit is
4 the cancellation of the permit, the surrender by the
5 permit holder, and then second of all also an e-mail
6 that was sent by the Zoning Administrator to the
7 appellant indicating back in January that this was
8 the case and that therefore the permit had been
9 withdrawn and was no longer valid.

10 CHAIRPERSON HEATH: It was withdrawn in
11 January?

12 MR. TONDRO: It was withdrawn in January,
13 yes. And I spoke with the appellant, I want to say
14 two weeks ago, who raised a question and I explained
15 what the circumstance was. It appears that the
16 appellant desires, above all, that this be revoked
17 instead of surrendered. And I explained that that
18 was -- and again, I can go into further detail later
19 on, but just as a prece (sic), that that was under
20 the construction codes. There's nothing in the
21 Zoning Regulations that governs this issue, and but
22 that if he wanted to withdraw his appeal we would be
23 happy to support him on that matter. Thank you.

24 CHAIRPERSON HEATH: Okay.

25 MR. TONDRO: So, Madam Chair, members of the

1 Board, just to be absolutely clear, therefore DCRA
2 believes that since the permits have been withdrawn,
3 have been surrendered, are no longer valid and have
4 not been valid since January, that therefore the
5 appeal is basically moot, which is again what I've
6 already explained to the appellant, but appellant
7 wanted to, I believe, be able to address you on this
8 issue.

9 CHAIRPERSON HEATH: Okay.

10 MR. ECKENWILER: Madam Chair, before I
11 respond, I wonder if I might just ask one preliminary
12 question of the respondent.

13 CHAIRPERSON HEATH: Sure.

14 MR. ECKENWILER: And that is, is there a
15 specific provision under 12A-DCMR, Section 105.6, any
16 of those subparagraphs pursuant to which the
17 respondent alleges that this permit has been rendered
18 null and void and that this case is as a result,
19 moot?

20 MR. TONDRO: Madam Chair, Members of the
21 Board, as I pointed out before, that is the
22 construction codes. That is not within the
23 jurisdiction of the Board. DCRA has determined that
24 the permit is null and void. It was surrendered,
25 therefore I think that's my response right there.

1 Thank you.

2 MR. ECKENWILER: Madam Chair, ANC 6C
3 vigorously opposes this motion. I have with me a
4 written memorandum of law. And I'm happy to pass
5 that up to the Board if I may?

6 CHAIRPERSON HEATH: Please. If you could
7 give it to the Board Secretary?

8 MR. ECKENWILER: Madam Chair, I don't know --
9 the memorandum of law is fairly short. It's under
10 two pages. I don't know if you want to take time to
11 read it or I'd be happy to summarize the argument for
12 you.

13 CHAIRPERSON HEATH: If you could summarize
14 for us?

15 MR. ECKENWILER: Yes. The argument is as
16 follows. There are specific provisions set forth,
17 notwithstanding Mr. Tondro's claim that the
18 construction codes are irrelevant here. In fact as
19 DCRA full well knows, in fact it has many times
20 before this Board submitted what they call a notice
21 to revoke. It's referred to in the regulations, a
22 notice of revocation. That is in fact the
23 appropriate mechanism that is specifically set forth
24 in the D.C. Municipal Regulations for revoking a
25 permit.

1 Now at various times, both in their previous
2 statements and then today in Mr. Tondro's summary,
3 different words have been thrown around. The word
4 surrender appears in Section 105.6. Surrender is
5 relevant only when the permit is revoked within five
6 days after issuance because of a clerical or
7 administrative error. So that's clearly not what
8 happened here. It's been well over five days. This
9 appeal was filed well over five days after issuance.

10 And the gist of the opposition is that DCRA
11 is not at liberty to invent new mechanisms. There is
12 a very straight forward mechanism they've used many
13 times, this Board is undoubtedly familiar with. They
14 issue a notice to revoke, or notice of revocation.

15 To my knowledge they have failed to do so in
16 this case, and Madam Chair, the reason we are here
17 this morning unfortunately, is that both in this case
18 and in many other cases DCRA takes this seat-of-the-
19 pants approach where they just make up procedures.
20 What's really remarkable to me is they even have
21 asserted documents they filed with the D.C. Council
22 for purposes of oversight this year, so within the
23 past few weeks.

24 They said, even if a permit is surrendered
25 that it can still be revived by the code official.

1 So I don't see how something is moot if that which is
2 surrendered can be brought back to life. And I don't
3 know where that would leave us in terms of
4 prosecuting this appeal. And that's the gist of the
5 argument. I'm happy to answer any questions you may
6 have.

7 CHAIRPERSON HEATH: So just to be clear, you
8 want DCRA to revoke the permit?

9 MR. ECKENWILER: Madam Chair, what I would
10 actually like, and the reason we filed this appeal is
11 I ask this board to order that the relevant permits,
12 and there are actually two at issue --

13 CHAIRPERSON HEATH: Correct.

14 MR. ECKENWILER: -- be revoked.

15 CHAIRPERSON HEATH: Okay.

16 MR. TONDRO: Madam Chair, Members of the --

17 CHAIRPERSON HEATH: Yes.

18 MR. TONDRO: I can respond more fully when
19 you desire.

20 CHAIRPERSON HEATH: Sure. Sure. Actually, I
21 don't know if the Board has any other questions of
22 the appellant. If not, I'd like to hear from you on
23 the revocation.

24 MR. TONDRO: Thank you. As I said before,
25 DCRA believes that the issue is raised in this

1 appeal, that the permit 1509391 and the subsequent
2 revised permit 1512716, were erroneously issued as
3 the proposed construction exceeded lot occupancy
4 requirements for the R-4 zoned district, which is the
5 fundamental issues raised by appellant. This issue
6 has been addressed by the surrender of the permits on
7 January the 7th. And therefore DCRA respectfully
8 requests that the Board deny this appeal as moot.

9 The Zoning Administrator had originally
10 issued the permits on the basis of an erroneous plat.
11 But in response to Commissioner Eckenwiler's
12 complaint the ZA first instituted a stop work order
13 and required the permit holder to provide a
14 professional survey confirming the dimensions of the
15 existing building. When this survey was provided by
16 the permit holder and made it clear that yes, there
17 was a lot occupancy -- I should point out that the
18 lot occupancy was, I think, in the range of two feet
19 or three feet over. It was still over, but we're not
20 talking about a 20 percent difference. Not to say
21 it's a de minimis. It was a difference. But it was
22 something that we needed a survey from to determine,
23 from the permit holder.

24 At that point the ZA notified the permit
25 holder that the permit was erroneously issued and

1 that we would revoke the permit unless they agreed to
2 surrender the permits immediately and also cancel all
3 their building -- their outstanding building permit
4 applications that had been based on that erroneous
5 building plat. With the forfeiture, I should point
6 out, of all fees that had been paid at that time,
7 both for the permits that they had received as well
8 as for the permit application. So there was a
9 consequence to the permit holder at that time.

10 The permit holder decided to surrender the
11 permits, and the ZA notified Commissioner Eckenwiler
12 of the permit surrender and provided the survey that
13 had been submitted by the permit holder in response
14 to the ZA to Commissioner Eckenwiler, and those two
15 exhibits I just provided you this morning, first of
16 all was the letter of cancellation that was signed
17 and notarized by the permit holders. And second of
18 all is the e-mail that was sent by the ZA to
19 Commissioner Eckenwiler, notifying him at that time.

20 Subsequent to which the permits were shown as
21 withdrawn in the PIV system as updated on January
22 20th, because there was a processing time required by
23 IT. The permits could not be shown as revoked
24 because that has a specific legal meaning that
25 requires official notice and appeal rights to the

1 permit holder under Section 105.6 of the Construction
2 Code. And again, I would like to emphasize, this is
3 all of the -- the Zoning Regulations are completely
4 silent on the issue of revocation. That is something
5 that is addressed only by the Construction Codes.

6 MR. MAY: I just, I don't think you should
7 harp on that. Okay? Because if that's the tool by
8 which a zoning permit, or rather a permit that is
9 being revoked for zoning purposes, is being revoked,
10 then it seems to me it's completely applicable here.
11 So I mean, if you want to make, you know, your
12 argument on other merits I think that's perfectly
13 sensible. But to simply say, oh, it's part of the
14 building code and not the zoning code, you know,
15 okay. And then, you know, if that really is the case
16 then maybe you just need to submit for a modification
17 of the Zoning Regulations so that we don't have this
18 problem in the future.

19 MR. TONDRO: Thank you, Commissioner May. I
20 hear you. I would respectfully point out that my
21 concern, if I hadn't made it clear enough was that we
22 do have an administrative appeal process for
23 interpretation of the Construction Codes, and I worry
24 somewhat to the extent that we end up in a situation
25 where the entity, the administrative appeals body

1 that is charged with interpreting the Zoning
2 Regulations is now going to interpret the building
3 code, the construction code.

4 I hear where you're going and I'm going to
5 address what you're addressing. But I am somewhat
6 concerned about the fact that there might be a
7 decision by the Board that's going to interpret what
8 the construction codes are when I believe that's
9 outside their jurisdiction and potentially could
10 create conflicting issues.

11 MR. MAY: Okay. But my basic point is, here
12 you know, you're basically saying that the means by
13 which this revocation or you know, I mean, the means
14 by which the code can be executed this is outside the
15 realm of zoning. But it is prompted by zoning. So
16 how do we get to understand that process if not
17 delving into the building code? I mean, you know,
18 for lack of a specific process defined in the Zoning
19 Regulations, we have to go somewhere.

20 MR. TONDRO: Yes, I understand and I will
21 respond to that.

22 MR. MAY: Okay.

23 MR. TONDRO: If I can just --

24 MR. MAY: All right.

25 MR. TONDRO: -- also just emphasize that I

1 think there is this issue of, at the very least,
2 overlapping jurisdiction, the potential, if the
3 zoning -- the Board of Zoning Adjustment is to
4 reinterpret the construction codes we end up with
5 potential conflicts that I don't think we can --

6 MR. MAY: Yeah, I mean, I don't think that's
7 where our intention is. Our intention is to
8 understand how it is that this process can be
9 executed one way or another. Right?

10 MR. TONDRO: Yes. Thank you, Commissioner
11 May. I hear you. The permits that were shown, as
12 they were shown in the PIV system, were shown as
13 withdrawn. Okay? Which is defined by Webster's,
14 which is the go-to source when there's no definition
15 in the Zoning Regulations as quote, "The act of
16 taking back or away something that has been
17 previously granted," unquote. And another
18 alternative meaning in Webster is withdrawal is a
19 synonym of revocation, all right, but is not the
20 same.

21 And the reason for that is because the
22 construction codes have a very formal process that's
23 laid out for revocation and that involves a 10 day
24 notice period, during which time, I should point out,
25 that the permit remains valid. So you issue a notice

1 of revocation, the permit remains valid for 10 days
2 after service, so we have to remember that the 10
3 days are also the service period before that happens.
4 The permit is valid that entire time.

5 After that, appeal rights kick in so the
6 permit may be revoked, but at that point there is a
7 60 day period, obviously, under the Zoning
8 Regulations at that time. We're talking about
9 incredibly long and lengthy process.

10 What happens instead and what has been a
11 long-standing practice and what has happened here
12 before the Board, the Board has accepted before,
13 circumstances where a permit holder will come in and
14 consign, surrender their permit and that will be the
15 end of it. And the benefit of that for -- the reason
16 it's been an established practice is because it
17 brings the whole issue to a close immediately.

18 So in this particular case on the same day
19 that the permit holder provided us with a survey that
20 indicated they were over lot occupancy, we alerted
21 them that as a result of that, that they would have
22 to either surrender the permit that day, that very
23 day before they left DCRA, or alternatively we would
24 begin the process to notice to revoke. But that
25 would be, again, we would still be a long ongoing

1 process.

2 They decided to revoke -- to surrender their
3 permit and gave it to us. And as you say, that is
4 the form that they filled out at this particular time
5 to indicate precisely what it was that they did.

6 The ZA, and again DCRA has done this for --
7 it's been a long-established practice for the simple
8 factor that it brings things to a close and ends the
9 process at that time. The permit is no longer valid.
10 They're not able to build, they're not able to do
11 anything. If they pursue anything there would be
12 illegal construction claims. So it's a -- you know,
13 I am having a -- I understand Commissioner
14 Eckenwiler's desire to have a specific provision in
15 the construction code that specifically calls out the
16 process by which that can happen. But there are many
17 processes that are not so laid out in either building
18 code or the Zoning Regulations.

19 In this particular case, this is again a
20 long-standing practice and I was just speaking with
21 somebody today about a different circumstance where a
22 permit holder came in, they had bought the property
23 from a prior permit holder, right. That permit -- so
24 in other words, the seller of the property had just
25 obtained a permit and then sold them the property.

1 They buyer of the property decided they didn't want
2 that permit. They wanted to continue the use that
3 was still -- that had been the use before, that was
4 still outstanding. So they came in and they said, we
5 want to surrender. We want to terminate this permit.

6 I believe where appellant is going is the
7 idea that if a building owner wants to go and
8 surrender a permit, which again is their right that
9 they have. They have the -- why do they not have the
10 ability to surrender that permit that they have a
11 right to say, I don't want this anymore, that they
12 would have to go and have us go and issue a formal
13 notice to revoke and go through that whole process?
14 That's the only way that we can possibly terminate a
15 permit?

16 I think that goes down a very very slippery
17 slope. We have made a situation here, we have a
18 notarized statement by the permit holder stating that
19 they cannot, that they have given up the permit, that
20 the permit is cancelled. It is null and void. I am
21 not sure what more that we need at this point than
22 that. Therefore DCRA respectfully requests that the
23 Board deny the appeal.

24 CHAIRPERSON HEATH: Can a surrendered permit
25 be revived by DCRA?

1 MR. TONDRO: Not that I am aware of. So I'm
2 not quite sure what document it is that appellant is
3 referring to in this particular case. I would point
4 out the only circumstance where that has happened,
5 and I can relay it based on personal experience, that
6 we realized there was a certificate of occupancy that
7 had been issued erroneously. Erroneously because
8 there was a minor -- it was an issue of timing, that
9 they hadn't gotten the inspection entirely signed off.

10 We had them come in, they surrendered their
11 certificate of occupancy and we kept it because in
12 that particular case the issue was able to be
13 resolved by simply completing the inspection. We
14 then, rather than tearing up -- keeping that
15 cancellation, which is the same form that you saw
16 today, rather than keeping the cancellation of the
17 certificate of occupancy and making them get a brand
18 new certificate of occupancy, we opted to return the
19 certificate of occupancy and tore up their
20 cancellation.

21 But that was only in that particular context,
22 right? That's not what we're dealing with right
23 here. In this case we have this form and this form
24 has been entered into the system. That was a very
25 different situation, if I may.

1 CHAIRPERSON HEATH: Okay.

2 MR. ECKENWILER: Madam Chair --

3 MR. MAY: Hold on a second, Mr. Eckenwiler.

4 Let me ask a few questions if you don't mind.

5 CHAIRPERSON HEATH: Sure.

6 MR. MAY: So you say that the process of
7 surrendering a permit is long-established, right? So
8 how often is it the sort of circumstance where you
9 bring them in and basically say, surrender your
10 permit or we will revoke?

11 MR. TONDRO: I have been with the agency for
12 about a year. I can tell you I think in my personal
13 experience it's been about -- I think there's three
14 over the course of this year that relate to zoning.
15 I know with building code I think it happens a lot
16 more frequently with the building code.

17 MR. MAY: Okay. And -- yeah.

18 MR. TONDRO: Sorry, Commissioner May. And
19 just to clarify too, in terms of our previous back
20 and forth, I just want to clarify again, as my
21 understanding in the circumstances, there is a lot
22 more common for building permits to be surrendered
23 under the context for the building code issues that
24 they wanted, for whatever reason they want to just
25 terminate the building permit as opposed to for

1 zoning issues. So that was one of the reasons why
2 I've been concerned about it.

3 MR. MAY: Okay. So what is the current state
4 of the site?

5 MR. TONDRO: I believe they have -- after
6 they terminated their building permit applications as
7 well, they submitted a new building permit
8 application, and that one that was based on that
9 survey that they provided, and that is still under
10 review as I understand.

11 MR. MAY: So you haven't reviewed it for
12 zoning?

13 MR. TONDRO: No, I believe the zoning is not
14 yet complete. The review is not yet complete.

15 MR. MAY: Okay. But my question really goes
16 to the current state of the site as opposed to the
17 site of current state of the permit because we saw
18 some photos in the record that indicate that the site
19 is in pretty bad shape and that the neighboring house
20 has actually been damaged.

21 MR. TONDRO: Yes, as I understand, I think it
22 was October the 29th, there was a stop work order
23 that was imposed and I believe that that is still in
24 -- that's still in the system so they're not allowed
25 to do any work.

1 MR. MAY: But we still don't know what the
2 site looks like, whether it's still piled up with
3 building materials and --

4 MR. TONDRO: I'm not sure. I think the
5 parties who requested to intervene, since they are
6 the next door neighbors they can probably indicate
7 more what the current status is. As I understand --

8 MR. MAY: Okay.

9 MR. TONDRO: -- the rear wall has also been
10 largely demolished so I think that that's a later
11 stage than what is shown in some of those
12 photographs.

13 MR. MAY: Okay. So I will ask them about the
14 state of the property. It is a little bit -- I
15 understand that you're not the building code
16 inspector, but it would be helpful if you're here
17 representing DCRA if we actually knew that you
18 understood the state of the actual conditions of the
19 property. And it demonstrates that you're doing the
20 kind of -- you know, that DCRA as a whole is doing
21 the kind of due diligence and inspecting the property
22 that is appropriate. But that's okay. We'll let
23 that pass.

24 So the last question I have is, you know,
25 this appeal has been -- I mean, it was filed some

1 time ago and your actions were taken in January, and
2 you have arguments as to why this appeal is moot at
3 this point. Why isn't any of that in the record
4 already? Why are we getting this today? Why didn't
5 we get this in advance? Why didn't you document for
6 us the fact that you do this all the time, and that
7 you've done it three times in the last year that
8 you're aware of for zoning purposes. I mean, it
9 would be helpful for us to have that in advance to
10 understand this. And for the, you know, for the
11 appellant to make a counter argument for the
12 intervener to make the counter argument if they need
13 to.

14 MR. TONDRO: I apologize for that. I think
15 the issue was that it appeared that the appellants
16 wanted to be able to discuss this issue in front of
17 the board, and therefore we decided to go forward
18 with that as opposed to issuing a motion to dismiss.
19 I apologize for not providing the documents and the
20 evidence that you would have liked to have had
21 earlier. I apologize for that.

22 MR. ECKENWILER: May I make a statement?

23 MR. MAY: Hold on a second. You know, I
24 mean, this is not the sort of issue that I think we
25 want to keep revisiting in the future. We'd like to

1 get it all settled here and I think the clarity of
2 the record is exceptionally important. And I think
3 that that -- I mean, I don't want to just make you do
4 extra work for no purpose, but I think in order to
5 put this to bed we're going to need to have that
6 written argument ultimately.

7 MR. TONDRO: I understand. If that is what
8 the Board would prefer I would be happy to go and
9 provide that.

10 MR. MAY: Okay. All right. Thank you, Madam
11 Chair.

12 CHAIRPERSON HEATH: All right.

13 MR. HILL: Commissioner. So, I'm just a
14 little confused, again, just the permits being
15 surrendered or the two permits are being surrendered
16 and you'd like the Board to go ahead and, you know,
17 move to revoke this. Now, why is it that you want us
18 to do that? Like what rights are you concerned that
19 you're losing in terms of if they were just to
20 surrender everything and this would just to go away?

21 MR. ECKENWILER: Mr. Hill, I think that's
22 addressed, if you look at page 2 of our memorandum in
23 opposition to the motion to dismiss. In the middle
24 of that page there is a paragraph that says, "A
25 further reason to doubt the mootness." And that is a

1 specific citation to the document submitted to the
2 D.C. Council by DCRA in which they state -- and I've
3 handed up -- I apologize. I did not have enough
4 copies of this. I've given one to the respondent,
5 I've handed one copy to Mr. Moy with the relevant
6 passage highlighted.

7 "The code official may restore a permit or
8 issue a new one if the permit has been revoked or
9 surrendered."

10 So DCRA has on the record before the D.C.
11 Council, taken the position that even when a permit
12 has been surrendered, under some mystical, magical,
13 made up process that appears nowhere in the
14 regulations, at least nowhere relevant to this case,
15 that they may nevertheless, you know, its corpse may
16 be reanimated. And that is our concern is that moot
17 isn't really moot if that is in fact DCRA's position.
18 So either what they told --

19 MR. HILL: Okay, okay, that's okay. I'm
20 sorry. I just want to ask Mr. Tondro. Mr. Tondro,
21 is that true, and how long does this go on?

22 MR. TONDRO: My apologies. First of all, I
23 haven't seen this particular document that's cited.
24 I will note that there is an ellipses before and I
25 will note that Commission Eckenwiler did just say in

1 reading it, that if the permit has been revoked or
2 surrendered it may be revived.

3 Again, I don't know the specifics. It may be
4 that Commissioner Eckenwiler misspoke. It happens to
5 all of us. I'm not sure what the full quotation is
6 of that, again, because I haven't seen the document.
7 I apologize for not having seen the document before.

8 MR. ECKENWILER: I'm sorry, I've handed him
9 the document. There's no ellipsis. This is the
10 original document. I've handed them a copy thereof.

11 MR. TONDRO: I'm sorry. If we look at page 2
12 of the document, the paragraph as I understand is the
13 legal memo that was issued in BZA 19207, page 2 --

14 MR. ECKENWILER: Mr. Tondro, I'm referring to
15 this document here. I handed Mr. LeGrant a copy. At
16 the bottom it says, page 39. That is from the
17 oversight response to the D.C. Council from DCRA
18 and --

19 MR. HILL: Okay. So your concern is it could
20 be revived. It could come back. Right.

21 MR. ECKENWILER: Well, or to put it another
22 way, Mr. Hill, that this is a made up process and it
23 puts us into terra incognita. I have no idea what it
24 means for the permit to be surrendered under this
25 make believe process that it does not exist under the

1 regulations. There is a process under the
2 regulations. We know what it is. It's laid out
3 there very, very clearly and it is inexplicable to me
4 that DCRA chooses not to follow that clearly laid out
5 process.

6 I have many other things to respond, to say
7 in response to what Mr. Tondro said.

8 MR. TONDRO: Mr. Hill --

9 MR. HILL: Okay.

10 MR. TONDRO: -- if I may just respond?

11 MR. HILL: Sure.

12 MR. TONDRO: Just to fulfill -- and I
13 apologize for confusing the two documents. I now
14 have this document.

15 Looking at it on the top where it was
16 highlighted, at least in the issue that I have, "The
17 code official may restore a permit or issue a new one
18 if the permit has been," please note, "revoked or
19 surrendered." In other words, there is no
20 distinction made by DCRA contrary to what the
21 appellant is stating, between this issue of being
22 revived only if it was surrendered. DCRA has not
23 made that statement. They have simply stated that
24 under certain circumstances, as I understand just as
25 OAH may go and revive a permit that has been either

1 revoked or surrendered. So in other words, there is
2 no distinction. There is no closing that would be
3 brought that would bring this particular statement by
4 DCRA that would render this null and void by simply
5 revoking it because it's the same status under
6 revocation or surrender.

7 MR. HILL: Okay. Okay. All right. Thank
8 you.

9 MR. MAY: Can I ask another question? Mr.
10 Tondro, did you indicate that they've actually
11 demolished the back wall, now, of the property?

12 MR. TONDRO: I believe so. I believe that
13 that was done back in the autumn, as I understand.

14 MR. MAY: Back in the fall.

15 MR. ECKENWILER: Commissioner May, can I --
16 if I may speak?

17 MR. MAY: Hold on one second. I mean, in
18 theory of they demolish that one-story addition in
19 the back the lot is conforming with regard to lot
20 occupancy and they could go to 60 percent lot
21 occupancy without any zoning relief.

22 MR. TONDRO: I believe that that is the
23 intent of the owner, precisely.

24 MR. MAY: Okay.

25 MR. ECKENWILER: Commissioner May, I want to

1 help clarify the current condition of the property.
2 The rear addition, the one-story addition, remains
3 intact. There has not been any substantial
4 alteration to that.

5 However, the owner and applicant illegally
6 demolished the rear wall, the rear façade, at the
7 third story.

8 MR. MAY: Right.

9 MR. ECKENWILER: That was outside the scope
10 of the permit or permits that were in effect at the
11 time, and that was one of the basis, it's my
12 understanding, on which the -- well, one of the
13 various stop work orders was issued.

14 MR. MAY: Okay. I think it would be helpful.
15 I mean, we don't want to get into the business of
16 enforcing the building code or building permits. But
17 I think that given the way these various actions
18 revolve around the zoning relief I think it actually
19 would be helpful to understand from DCRA what you
20 understand the condition of the property to be in
21 whatever you submit. Just so we know that you know
22 what the condition is.

23 I mean, it makes perfect sense to me that the
24 applicant, you know, given the circumstance that
25 they're in, that they would go in and they would get

1 a permit to demolish the back addition. And then
2 once that's down they'd go in and get a permit to,
3 you know, expand the property to full 60 percent lot
4 occupancy. And I don't know that there's anything
5 legally problematic with that.

6 But it would be problematic if they went in
7 and did an illegal demolition in order to do that.
8 So, and I mean, it's also -- I mean, we're talking
9 about something that is not a very hard relief to
10 get. So it's truly inexplicable, but you know, we
11 don't have the actual property owner here at the dais
12 so I, you know -- although I'd want to ask him that
13 question, or her that question, if they were here.

14 MR. TONDRO: And, Commissioner May, what
15 question was that in specific you would like to
16 understand? I mean --

17 MR. MAY: Why didn't they just, you know,
18 apply for the relief that they needed. You know,
19 it's a relatively simple level of relief to get based
20 on --

21 MR. TONDRO: I can't provide a statement for
22 them.

23 MR. MAY: Yes.

24 MR. TONDRO: I can say that as I understand,
25 the demolition that occurred of that historic façade,

1 which as I understand was against -- one of the
2 reasons they got the stop work order put in, they
3 said they didn't quite understand what the rules
4 were. I'm just relaying what it is that --

5 MR. MAY: I understand.

6 MR. TONDRO: -- we have been told.

7 MR. MAY: I appreciate it.

8 MR. TONDRO: And that that was a similar
9 issue in terms of the lot occupancy. Again, I will
10 say that the lot occupancy on this particular one,
11 we're not talking about a magnitude of 20, 30 feet.
12 We're talking about a magnitude of a couple feet. So
13 it would be the kind of thing that had they wanted to
14 do that --

15 MR. MAY: Right.

16 MR. TONDRO: -- they could have done it. Or
17 alternative usage which is what they had stated --

18 MR. MAY: Right.

19 MR. TONDRO: -- I believe, was that they
20 would come in, they would demolish, they would apply
21 for to demolish the existing structure, which is over
22 lot occupancy, bring it within lot occupancy, and
23 that is, as I understand, that was one of their game
24 plans.

25 MR. MAY: Right. Okay. All right. I'm done

1 with questions.

2 CHAIRPERSON HEATH: Okay. All right. I
3 believe, I don't know if you had any other comments
4 you wanted to make Mr. Eckenwiler.

5 MR. ECKENWILER: Thank you, Madam Chair. I
6 just wanted to sort of touch a few of the highlights
7 here. Perhaps best if we go in reverse order.

8 Mr. Tondro has spent a lot of time talking
9 about, you know, these -- the lack of provision in
10 the Zoning Regulations. But the truth is, this is in
11 12A, it's in the construction code. It makes
12 specific reference to the Zoning Regulations, and
13 that being a, you know, a violation of Zoning
14 Regulations being a basis for the revocation of a
15 permit. So it's clearly applicable here.

16 More to the point, and to go to Commissioner
17 May's concern, I don't think the Board is being asked
18 here to engage in interpretation of this provision of
19 Title 12A. It's a simple factual question. Does
20 DCRA contend that it has taken an act in conformity
21 with these provisions. It has certainly done that in
22 the past for this Board. Either they have, they've
23 issued a notice of revocation in conformity with the
24 actual written law as opposed to just making it up as
25 they go along, then that's really all there is to you

1 know, the applicability of Section 105.6 in Title
2 12A. This does not require this Board to go down
3 that path of having to interpret things outside of
4 Title 11.

5 One remarkable thing Mr. Tondro said here,
6 one point you know, was about the passage of time.
7 You know, he's talking about the 10 days and the 60
8 days for appeal. I really do think the Board needs
9 to keep in mind, we would not be here had DCRA acted
10 timely. I spent -- personally I spent five weeks
11 personally alerting Mr. LeGrant to the problem with -
12 - not just sort of generally saying I think there's a
13 zoning issue here. On October 15th, so that's two
14 weeks after this permit was issued, I e-mailed him to
15 say, I believe this exceeds the allowable lot
16 occupancy.

17 And I sent him additional information
18 thereafter. So I don't think it lies in the mouth of
19 DCRA here to complain about the passage of time, or
20 you know, how much time may be involved, you know, in
21 the future.

22 Similarly you know, this strawman about well,
23 you know, the permit might be valid during these
24 periods of, you know, potential periods of appeal.
25 The fact is, there's stop work orders in place.

1 Mr. Tondro also made reference to an e-mail
2 exchange I had with Director Bolling at DCRA. As you
3 can see at the bottom of page 1 of our memorandum of
4 law in opposition to the motion to dismiss, my
5 response to Director Bolling was to ask of her the
6 same question I posed this morning, which is, what
7 specific provision of law did DCRA rely upon in its
8 supposed withdrawal or cancellation or revocation, or
9 however it is they're styling it.

10 And her response was that she didn't know and
11 she really didn't much care and it wasn't a priority
12 and she would refer that question to general counsel
13 and have them look at it, but they really weren't
14 going to frankly spend a lot of time worrying about
15 the niceties of the law. I'm paraphrasing here, but
16 that was the gist of it and I never heard back.

17 So I don't want there to be any impression
18 left that I was silent and that I ratified Director
19 Bolling's statement or any of the other statements
20 that DCRA has made. I have, at every turn, not only
21 questioned them but invited them to cite to me the
22 specific legal authority upon which they rely. And
23 they nevertheless fail to do so.

24 So that's, I think that's all I have at the
25 motion. Oh, just one other point here. Mr. Tondro

1 said multiple times, couple feet over. The drawings
2 here, and I think this is clear both from our initial
3 application, the voluminous attachments thereto, and
4 the official plat that was submitted as Exhibit A to
5 our prehearing statement, this structure is five
6 feet, five feet longer than would be the point at
7 which it's only 60 percent. So we're not talking a
8 little bit. And I don't want to spend time on the
9 merits now, but a lot of that goes to the many
10 fraudulent statements made by the applicant in
11 connection with these permit applications.

12 Just to sum up, Madam Chair, really, I would
13 just like to see DCRA in this case, do something
14 right, get right with the law, follow the law, follow
15 the explicit law, and not simply ask the appellant or
16 this Board to take it on faith that they know what
17 they're doing when there are in fact specific
18 provisions laid out in the regulations and this all
19 could have been over months and months ago.

20 So, Madam Chair, again I reiterate, we oppose
21 in the strongest possible terms, their motion to
22 dismiss and we would like to be heard on the merits.
23 Thank you.

24 CHAIRPERSON HEATH: Thank you. Go ahead, Mr.
25 May.

1 MR. MAY: So, Mr. Eckenwiler, I'm curious, if
2 this had all been resolved when it was first raised
3 to DCRA's attention, if they had had the, you know,
4 withdraw your permit or we're going to revoke it
5 conversation when you first e-mailed them on the
6 topic, and they went ahead and surrendered what would
7 you have done then?

8 MR. ECKENWILER: I think I would have asked
9 DCRA to do what they have done in innumerable cases
10 before, which is simply issue their notice to revoke.
11 That's the appropriate practice.

12 MR. MAY: Okay. So let me ask you this, I
13 mean, you keep referring to the law, but law -- I
14 mean, the building code is a regulation not law,
15 right?

16 MR. ECKENWILER: I would say it's both. I
17 think regulation is law. It's not a statute but it
18 is --

19 MR. MAY: It's not a statute, right.

20 MR. ECKENWILER: It is the law, nevertheless.

21 MR. MAY: Sorry. So a statute, regulation,
22 policy, practice, right? You've been in government,
23 you know. Right? That's the process.

24 There are a lot of things that are not
25 defined in regulation, and so then it comes down to

1 policy. And policy and can be waived or policy can
2 be stretched. And then there's the actual practice,
3 right? And so one of the things that occurs
4 regularly in government is that you do things
5 consistently. And if it's things that are not well
6 defined, if you are doing them consistent with policy
7 and not in contradiction to regulation policy, law,
8 but you're doing them consistently, you're in better
9 standing.

10 We have heard testimony today. We don't have
11 real evidence to back it up yet, but we have heard
12 testimony today that this is a regular practice. And
13 I'm wondering if you think that that, I mean, do you
14 think that that's a reasonable argument that because
15 they have been doing this, it seems to me that if
16 we're talking about DCRA giving someone a choice of
17 surrendering their permit, or going through all of
18 the process associated with the revocation with all
19 the periods and the responses and everything else,
20 and the time delay, right, there's 10 days plus
21 there's time for appeal. And all of those
22 complications, isn't there a certain sensibility
23 about the, you know, doing the surrender or we'll
24 revoke strategy with an applicant who is not -- whose
25 permit is not up to snuff?

1 MR. ECKENWILER: Thank you, Commissioner May.
2 I really don't want to sidetrack this hearing. I
3 appeared before the council on Monday of last week to
4 point out that there are a great many things that are
5 standard practice at DCRA that in fact profoundly
6 legally deficient and injurious to the residents of
7 the District of Columbia. Not just in my SMD or in
8 ANC 6C. So I question the premise that just because
9 DCRA does something a lot that it's legal, advisable,
10 or in any way judicious. I think the contrary is the
11 case.

12 MR. MAY: All right. I have questioned their
13 practice as many times over the years myself.

14 MR. ECKENWILER: As well you should. On the
15 issue of surrender, recall that there is a specific
16 provision, and this is mentioned, it's on page 1 of
17 our memorandum in opposition of the motion to
18 dismiss. There is provision for surrender. So the
19 regulations do in fact talk about surrender, but they
20 only talk about it in one very narrow circumstance.

21 So we know what surrender means under the
22 regulations. That is not what is going on here.
23 What we have is a separate process with a notice to
24 revoke.

25 MR. MAY: Right. But I mean, isn't there

1 some basic sensibility about being able to surrender?
2 I mean, if you apply for the building permit and you
3 decide you're not going to do it, I mean, if you
4 elect to withdraw that, I mean, isn't that a sensible
5 thing? Shouldn't you be allowed as a citizen to be
6 able to withdraw your permit?

7 MR. ECKENWILER: It's an interesting
8 proposition. However, I want to go back to the fact
9 that DCRA has now said, well you know, even if the
10 permit is surrendered we can bring it back to life.
11 So I --

12 MR. MAY: Well, but I'm not so clear that --
13 I'm not so sure that that is truly clear here.

14 MR. ECKENWILER: Well, they've said that.
15 Whether or no that's correct is --

16 MR. MAY: I mean, did they say that
17 specifically here today?

18 MR. ECKENWILER: Yes. That's --

19 MR. MAY: No, I read that.

20 MR. ECKENWILER: Yes.

21 MR. MAY: And there are lots of -- there are
22 a couple of "ors" in there that qualify that
23 statement. Reissue or issue a new permit, right?
24 Something like that. Yeah.

25 MR. ECKENWILER: May restore a permit.

1 MR. MAY: "Restore a permit or issue a new
2 one if the permit has been revoked or surrendered."
3 I don't know whether permit -- restore a permit
4 applies to being revoked or being surrendered. I
5 don't know if issue a new one applies to being
6 revoked or surrendered, or all applied to all
7 circumstances.

8 MR. ECKENWILER: And, Commissioner --

9 MR. MAY: You say this actually was in
10 response to questions from counsel?

11 MR. ECKENWILER: It is in response to
12 questions, oversight questions from counsel.

13 MR. MAY: Oversight questions. So I don't
14 regard this as truly definitive anyway. I mean
15 they've said that, you know, they could issue a new
16 permit. Maybe the practice is only issue a new
17 permit if they've actually surrendered it. It seems
18 to me nonsensical, frankly, that somebody could
19 withdraw it and then ask for it to be restored. I
20 mean, I would think there would be some consequences
21 for withdrawing it.

22 MR. ECKENWILER: Commissioner May, I think
23 your questions here simply underscore the fact that
24 perhaps DCRA itself doesn't quite know what its
25 own --

1 MR. MAY: Right.

2 MR. ECKENWILER: -- policy, you know, call it
3 what you will, what it actually means.

4 MR. MAY: Okay.

5 MR. ECKENWILER: And given that profound
6 uncertainty, that is why ANC 6C would ask the Board
7 to deny the motion to dismiss because you're
8 venturing into uncharted territory, territory that
9 DCRA itself cannot map out for you.

10 MR. MAY: Right.

11 MR. ECKENWILER: And that we instead go to
12 the merits on this case. Thank you.

13 MR. MAY: So I would just ask for DCRA in
14 whatever you submit that you submit any kind of
15 documentation you can, or accounting for past
16 decision making with regard to surrenders, whether
17 anything has actually ever been restored after a
18 surrender, or in fact every time that something has
19 come back to life it's come back as a new permit.

20 MR. TONDRO: Yes. And if I can just address
21 just a couple of issues there, just to follow up?
22 And I will include this also in the writing.

23 First of all, I believe the section of the
24 building code that the appellant is referring to that
25 refers to surrender is 105.6.1.1. That's a very

1 narrow provision that provides only to summary
2 revocations. Surrender in that case is a satiation
3 where if the building code officials determine that
4 there was a permit was issued in error by DCRA then
5 they can require it to be surrendered and brought
6 back. That doesn't define it entirely.

7 Finally, I would point out again following
8 what you had indicated, Commissioner May, that I
9 think in the absence of a clear statement that it is
10 not possible to surrender, I would point out that
11 104.1 does provide the code official the discretion,
12 the obligation to interpret the construction codes.
13 But I will get into that more when we -- in my
14 writing, in my brief.

15 MR. MAY: Okay. Thank you.

16 CHAIRPERSON HEATH: Okay. Did you -- you had
17 a comment you wanted to make.

18 MR. RODRIQUEZ: Right. Just a quick comment.
19 Addressing Commissioner May's question about the
20 condition of the property right now, our property,
21 520 6th Street, has been damaged in two places in the
22 party wall based on demolition work. And we're very
23 concerned about that because right now there is an
24 active permit for underpinning in effect that was
25 issued in October of 2015, and after reviewing the

1 permit file for the underpinning, we have noticed
2 that there is no monitoring plan that's part of the
3 permit, and no SIER, S-I-E-R, has been identified by
4 the owner so that DCRA is not even in in compliance
5 with its own administrative bulletin issued on
6 December 11th, 2015 relating to underpinning. And so
7 we're very concerned about that.

8 I also wanted to mention that the original
9 permit that's under appeal was actually issued on
10 July 2nd. It was revised in October because the
11 original permit was rife with misrepresentations that
12 DCRA failed to capture until we pointed it out to
13 them. And on July 31st, October 13th and October
14 19th, we asked Mr. LeGrant to perform a lot occupancy
15 calculation and received absolutely no response.

16 The owner had already conducted a lot survey
17 in June of 2015, even before the original permit had
18 been issued, and it wasn't until the Washington Post
19 wrote an article about this incident that Mr. LeGrant
20 reached out to the owner to obtain a lot occupancy
21 survey that had been done in June, 2015. And instead
22 of filing something to make this appeal moot, they
23 wait until today. I have had to take the day off of
24 work, when they could have prevented this hearing
25 from going forward by filing something with you

1 today.

2 So I think that DCRA's practices really are
3 detrimental to the citizens of the District of
4 Columbia.

5 CHAIRPERSON HEATH: Thank you. Make sure
6 your microphone is on.

7 MR. ATKINS: With regard to the state of the
8 property, I just want to say that it was on October
9 29th when they demolished the third floor wall, that
10 they broke a party wall. Before DCRA could respond
11 to that they had, the next morning, demolished the
12 second floor wall.

13 Just this week, as our home is made of a soft
14 brick, the water over the past few months come into
15 our home. And our insurance carrier says our home
16 cannot be repaired until the sides of their interior
17 wall are repaired. When we came home on Wednesday
18 evening we had -- DCRA had, several months ago,
19 lifted the stop work order to remove the trash and to
20 repair a down spout from the third floor that had
21 come loose and was dangling in our grapevine above
22 our kitchen door and allowing water to pour down in
23 the very broken area from the third floor, flooding
24 our kitchen and basement.

25 When DCRA lifted that stop work order the

1 owner came out, removed some of the trash that was
2 back there, and removed the entire down spout,
3 leaving it on the roof, not as the stop work order
4 had directed them to replace it.

5 When we came home Wednesday, we were out of
6 town, there was a storm I guess, and we looked out of
7 our kitchen window. The down spout had been blown
8 off the extended roof and was now at our kitchen door
9 vertically. I mean, horizontally, caught in the now
10 in the grapevine. So we couldn't open the back door.

11 We called DCRA, sent an e-mail with a photo
12 of this episode and was told that someone would come
13 out to look at it and see what they could do. That
14 was Wednesday. Finally it just toppled out of my
15 grapevine onto my sidewalk on the backyard, and were
16 able to just put it back over on their property.

17 So this just -- that's a real-time picture of
18 what's going on.

19 CHAIRPERSON HEATH: It's like a mess. All
20 right. Thank you.

21 So does the Board have any other questions?
22 If not we will continue this and we'll ask that DCRA
23 submit your motion to dismiss all of the statements
24 that you've made today into the record, and we will
25 continue this in order to address the motion to

1 dismiss. We'll also address the motion that you've
2 made to be an intervener at that time because I know
3 we haven't addressed that today.

4 But Mr. Moy, can we get a date?

5 MR. MOY: Yeah. Two things, Madam Chair.
6 The next date where Mr. May is going to be with the
7 Board is Tuesday, April the 5th. So staff would
8 suggest a continued hearing on the 5th of April.

9 As to the filings from DCRA, Madam Chair,
10 would you care for any responses from the parties?

11 CHAIRPERSON HEATH: Sure.

12 MR. MOY: Because that affects their
13 submittals.

14 CHAIRPERSON HEATH: We have a statement from
15 the appellant already, but we'll allow you to respond
16 once you receive their motion.

17 MR. TONDRO: Madam Chair, the Zoning
18 Administrator has just indicated to me that he will
19 be out of town that day. If you believe that is --
20 that is if the Board would like to be able to
21 question him then we presumably have to have another
22 day or we can proceed without him if that wouldn't --

23 MR. MAY: Mr. LeGrant, can your deputy attend
24 in your absence?

25 MR. LeGRANT: My deputy is not that familiar

1 with this case. If there is a question I'd be
2 preferred to be here myself.

3 MR. MAY: Okay.

4 CHAIRPERSON HEATH: What would be the next
5 date, Mr. Moy?

6 MR. MOY: All right, Madam Chair. So, oh
7 perfect, I just wanted to double-check. All right.
8 April the 12th. Mr. May will be here April the 12th.
9 So working backwards then, responses to DCRA's filing
10 would be due let's say a week before. It would be
11 April the 5th, all right? And for DCRA to make their
12 filing March the 29th. So that gives everyone one
13 week. That should be sufficient. Unless I'm told
14 otherwise.

15 CHAIRPERSON HEATH: All right.

16 [Pause.]

17 MR. MOY: And, Madam Chair, if the
18 interveners -- if the Board has taken any status of
19 them do you still want the other two parties to
20 provide service to them? See where I'm at? Yeah.
21 Or not?

22 CHAIRPERSON HEATH: Yeah, I'm fine to grant
23 them intervenor status.

24 MR. MOY: Okay.

25 CHAIRPERSON HEATH: Does the Board have any

1 issues with that?

2 MR. MAY: No.

3 CHAIRPERSON HEATH: Okay.

4 MR. MAY: Makes sense.

5 CHAIRPERSON HEATH: Okay. All right. Okay.

6 MR. MOY: All right.

7 MR. ECKENWILER: Madam Chair, so far as I'm
8 aware, I'm able to attend on April 12th, but I can't
9 tell you to a metaphysical certainty that I don't
10 have a conflict. I don't have my full calendar with
11 me here today. But let's -- if that's, you know,
12 agreeable to the Board, let's say that. And if I
13 become aware later today that I have a conflict I'll
14 let Mr. Moy know promptly.

15 CHAIRPERSON HEATH: That's fine.

16 MR. ECKENWILER: Thank you.

17 MR. MAY: Madam Chair, thank you. I just
18 want to say that, and to assist DCRA in whatever you
19 submit, I think one of the things that we were
20 hearing about this case and what's been presented by
21 Mr. Eckenwiler and what we've heard in testimony from
22 the intervener, is that there are some areas in which
23 DCRA did not perform, at least to the expectations of
24 Mr. Eckenwiler and the intervener. And I think that
25 it would be helpful for us to know that the property

1 is, you know, is safe and is properly secured. I
2 mean, granted that's not going to be the basis for
3 our decision but I think that demonstrating that DCRA
4 is acting appropriately to make sure that the
5 property is safe and that everything from here on out
6 is going to be done appropriately would be useful as
7 we continue our deliberations.

8 I mean, we're often called upon here and at
9 the Zoning Commission to weigh on DCRA enforcement
10 matters, and we defer to DCRA for the areas where
11 they, you know, it really is appropriately in DCRA's
12 domain. But when something like this occurs and it's
13 so close to the case it actually is helpful to
14 understand that part of the context.

15 CHAIRPERSON HEATH: Okay.

16 MR. HILL: And so, Mr. Tondro, does that mean
17 that you can help the intervener get in contact with
18 somebody at DCRA that might be able to facilitate the
19 drainage spout that's shooting on to their porch?

20 MR. TONDRO: Yes, I would be happy to
21 facilitate that to the extent that I can. Yes.

22 MR. HILL: Thank you.

23 CHAIRPERSON HEATH: Okay. All right. Thank
24 you. We're going to take a two-minute break and then
25 we'll come back with our decision. Yeah.

1 Okay. All right. So we won't take a break
2 then.

3 [Off the record discussion.]

4 MR. MOY: All right. Thank you, Madam Chair.
5 So back to the decision meeting session, two cases.
6 The first is Application No. 19124 of Eye Street, E-
7 Y-E, JV LLC., and the Board last heard this on
8 December 8th, 2015. And this was subsequently
9 rescheduled from February 2nd to today, March 8th.

10 And participating on the decision is Vice
11 Chair Hill, Mr. Hinkle, and Mr. Hood.

12 MR. HILL: Well, Madam Chair, since you
13 weren't here the last time I can go ahead and start.
14 I guess we can go ahead and start the discussion. I
15 mean, I was, you know, pretty much prepared to
16 deliberate on this prior to the letter from NCPC
17 coming in concerning the interpretation by the Zoning
18 Administrator concerning the Height Act and who was
19 kind of, you know, the decision maker. And I think
20 there is some doubt that I have in terms of that,
21 that the ZA is the person who is to determine this.
22 And I think there's more something that Mr. Hinkle
23 might have to add there on this subject.

24 But as far as the other relief that was
25 requested, I mean, I'm pretty much in line with

1 everything on there. I think the project was very
2 unique in that there was the -- I don't know whether
3 it was warehouse or what it was. There was something
4 of the historic nature that they had to save in the
5 alley, which then made the project -- they were
6 unable to build above that.

7 There was some opposition from a neighbor in
8 terms of noise and construction. And that, to me,
9 seemed to be really something that would have
10 happened regardless of how the project, you know,
11 some project would have moved forward. And then so I
12 didn't really have a whole lot of -- I didn't take a
13 whole lot of merit with that particular piece of
14 opposition.

15 You know, Office of Planning is in approval
16 of the relief, as is DDOT and the ANC. I guess where
17 again I would be sitting right now is -- and I'd like
18 to hear from my colleague there, on the issue
19 concerning the height and the setback relief, but I
20 would be in line with granting everything other than
21 the setback relief at this point.

22 MR. HINKLE: Yeah. Thank you, Mr. Hill. I
23 tend to agree that this is actually an interesting
24 project and has a lot of merits to it. And you know,
25 I'm in agreement with the other relief, the court

1 relief that's being requested. I think the case has
2 been made for that. But as you mentioned my agency,
3 the National Planning Capital Planning Commission
4 submitted a letter to the record and noting the
5 inconsistency between how the Zoning Administrator
6 and my agency, as well as the other federal family of
7 agencies, interprets penthouse setback requirements
8 within the heights of the building act. And so I've
9 got a few pages to read, actually, so hopefully it
10 won't bore you too much.

11 But the Height Act, which is a federal law,
12 establishes a ceiling on the height of buildings
13 within the District. And then the Act allows for
14 penthouse structures above that allowed height. And
15 an amendment to the Height Act was enacted by
16 Congress in 2014 to now allow up to a 20 foot high
17 penthouse that can be used for human occupancy which
18 is something that penthouses weren't able to be used
19 for before.

20 So of note, the amendment did not modify the
21 one-to-one setback requirement for penthouse
22 structures as well as ventilation shafts and tanks as
23 they're called out in the Act, and further did not
24 modify the list of rooftop elements that are exempt
25 from this requirement, which includes spires and

1 towers and domes and minuets, and pinnacles, as well
2 as smokestacks, which we get a lot of today.

3 And the Height Act is fairly explicit on the
4 setback requirements for penthouses. It states, and
5 I'm going to quote the Act specifically that,
6 "Penthouses, ventilation shafts and tanks shall be
7 set back from the exterior walls distances equal to
8 the respective heights above the adjacent roof." So
9 that's pretty straight forward language as far as I'm
10 concerned.

11 But the Height Act does not define the term
12 exterior walls, and that's kind of the issue that we
13 have in front of us now. And as such the term is
14 pretty much left open to interpretation. And as
15 noted both in NCPC's letter to this case and the
16 applicant's supplemental filing on the issue, this
17 interpretation has been in discussion between NCPC,
18 District agencies, as well as other stakeholders for
19 a pretty long time, even going back as long as 1973.
20 But the discussion became more focused in the
21 District when the District convened a task force to
22 help develop the revised Zoning Regulations back in
23 2007. And since this time NCPC has worked pretty
24 diligently with the Office of Planning and the Zoning
25 Commission to ensure that a mutual understanding of

1 what an exterior wall is and what the required
2 setback requirements under the Height Act are.

3 So this includes what I would call a pivotal
4 letter in 2009 from NCPC to the Chair of the Zoning
5 Commission. And this is when NCPC was participating
6 on the zoning rewrite task force, and this letter
7 stated that NCPC's interpretation of what constitutes
8 an exterior wall under the Height Act included walls
9 facing streets, walls facing alleys, and any wall
10 facing an open court that's open to a street.

11 And this interpretation was consistent with
12 the Zoning Commission's rulemaking action, which is
13 number 0806B that they took on February 7th, 2011 to
14 adopt amendments to the Zoning Regulations that would
15 create a new chapter that consolidates and restates
16 all of the existing provisions that are within the
17 regulations concerning the height of buildings within
18 the District.

19 In particular what was then proposed as
20 Section 403.2 of subtitle B contains similar language
21 as in NCPC's 2009 letter. And I'll quote the Zoning
22 Commission order which states that a structure listed
23 under, and then they had a series of subtitles, must
24 be set back greater than or equal to its height above
25 the roof on which it is situated from. And then it

1 includes any wall facing a public street, any wall
2 facing a public alley, and any wall facing a
3 courtyard open to the street. So that's pretty
4 consistent with where NCPC is as well.

5 And then at this time and in NCPC's review of
6 the rulemaking action, NCPC noted that the proposed
7 section 404, which actually dealt with a new proposed
8 special exception was not explicit in restricting the
9 new special exception relief in the setback
10 requirements to those structures that are below the
11 allowable height in the Height Act. And thus NCPC
12 requested that language be added to clarify the
13 issue.

14 And in response to this request the Zoning
15 Commission order states, and again I'm quoting it,
16 "The Height Act does not allow for similar relief
17 from its setback requirements applicable to certain
18 structures granted height waivers." Which are of
19 course is penthouses, ventilation shafts, and tanks
20 that are mentioned in the Height Act.

21 Then the order continues and states that the
22 Commission does not believe it necessary to make this
23 point in the Zoning Regulations. So essentially the
24 Zoning Commission is saying that the Height Act does
25 not allow the special exception to occur and thus we

1 don't even need to write it within the regulations
2 itself.

3 So while acknowledging that the Zoning
4 Administrator has a responsibility to interpret the
5 height act from the District regulatory perspective,
6 it's pretty clear from the language of this 2011
7 Zoning Commission order that the Commission itself
8 believed that the Height Act does not allow for the
9 special exception relief.

10 And I'm not really going to run through the
11 whole history on this issue since 2011, but NCPC has
12 remained consistent since at least 2009 and up to its
13 letter in this case, which this letter we noted that
14 recent comments to the Zoning Commission, which was
15 back in this past September on the proposed penthouse
16 regulations, which is Case 14-13, that "Any portion
17 of the penthouse located on a building whose rooftop
18 is at the maximum height of the Height Act requires a
19 one to one setback. And that setback must be
20 provided from exterior walls." Which includes,
21 again, walls facing streets, alleys, and courts open
22 to streets.

23 And then at that time and through
24 communications with the Office of Planning, NCPC felt
25 assured that the proposed special exception relief

1 for penthouse structure setbacks was not applicable
2 for penthouse structures that are on roofs that are
3 at the maximum height allowed under the Height Act.

4 So now at the request of the Board for in
5 this case, the applicant provided a number of
6 examples where over the years either the BZA or the
7 Zoning Commission has allowed setback relief from
8 penthouses that are above the height allowed within
9 the height act. And I've looked at these and some I
10 even voted on to approve and I have some reasons for
11 that. And I have a whole write up on each of those
12 if the Board cares to hear.

13 However, I can note a few cases from just
14 this past year where proposed penthouses have been
15 redesigned under the PUD process in order to meet
16 setback requirements of the Height Act. And these
17 redesigns were in response to comments either NCPC
18 provided in its review of the Zoning Commission's
19 proposed actions, or were agreed upon and done by the
20 applicant in order to receive the Zoning Commission's
21 proposed action for approval.

22 And I'll just note three cases. One was
23 Zoning Commission Case 1514, which was a D.C. Water
24 Headquarters building. The applicant in this case
25 proposed an architectural -- I'm sorry, architectural

1 embellishment or a parapet, and this was removed from
2 the plan at the request of the Zoning Commission.
3 And when the applicant did this they wrote that they
4 believed that the revised roof plan complies with the
5 building height and setback requirements above the
6 Zoning Regulations in the 1910 Height Act.

7 Second case is Zoning Commission Case 14-19,
8 and again in reviewing the PUD as referred to it by
9 the Zoning Commission, NCPC noted a minor violation
10 of the Height Act penthouse setback requirements.
11 And in response the applicant again revised the plans
12 to be, and I'll quote, fully consistent with the
13 setback requirements of the Height Act.

14 And then I guess the third case I'll use as
15 an example, the Zoning Commission Case 15-11. And
16 this was another PUD reviewed and referred to NCPC
17 for comment. And in this case NCPC noted again a
18 minor violation of the penthouse setback requirements
19 within the Height Act. And again the applicant
20 modified its plans and wrote that they are now, and
21 I'll quote, "Proposing a penthouse that fully
22 complies with the one-to-one required setback of the
23 Height Act," end quote.

24 But really, all of these cases that have been
25 discussed, the ones I just noted and the ones that

1 the applicant provided in their brief, are not
2 necessarily dispositive of the issue today because
3 really what we're dealing with today with this
4 application is a new set of local regulations that
5 were developed in response to this amendment to the
6 Height Act. And so this is the first BZA case where
7 NCPC staff, which I sit on this Board and represent,
8 believes that the requested penthouse setback relief
9 is truly in conflict with the intent of what that
10 amendment was designed to do.

11 So after a year of study by both the Office
12 of Planning and NCPC, which was directed by Congress,
13 the Height Act was amended in really a very simple
14 way, to allow human occupancy within penthouses that
15 are up to 20 feet in height. Very simple. The
16 amendment did not modify the Height Act's requirement
17 for penthouses to be set back, which is a setback
18 from all exterior walls, distances equal to their
19 respective heights of the roof.

20 So the intent of this amendment which they
21 said it to allow human occupancy within penthouses
22 that sit on rooftops that are at a maximum height
23 allowed under the Act. The amendment is silent on
24 penthouse height, use, massing for any penthouses
25 that sit on the roof that is below the maximum

1 rooftop height allowed under the Height Act. So
2 that's purely a District and Zoning Commission issue.

3 So where are we here? So I want the Board to
4 really think closely about what two separate
5 interpretations of the Height Act means as they
6 relate to the definition of exterior walls and to
7 penthouse setbacks. And what does this really mean
8 to the physical form of the city when implemented?

9 To NCPC, which approves federal development
10 projects in the District, the physical development
11 restrictions within the Height Act actually reflect
12 national interests in the form and the character of
13 the Nation's Capital. This is in particular how
14 building height and penthouse structures with their
15 setbacks from the building's edge, contribute to the
16 visual qualities of city streets and vistas, as well
17 as the settings in and around the historic and
18 cultural sites.

19 Then the Zoning Administrator, looking at the
20 exact same act as NCPC, interprets what an exterior
21 wall is differently from NCPC and other federal
22 agencies and as well as differently from how it looks
23 at exterior walls under the existing Zoning
24 Regulations for those structures that are below the
25 allowed height under the Height Act.

1 But the result is to apply the restrictions
2 on penthouse setbacks different on private structures
3 than on public buildings. And so you know, what we
4 have is this result of you know, different
5 applications of the penthouse setback requirements
6 that are, you know, actually degrading the visual
7 qualities of the District streets and vistas. And
8 you know, if you think about it you could have a
9 federally owned building with its penthouses set back
10 from the edge of the roof, and then immediately next
11 to it a privately held building that may have
12 received some penthouse setback relief from this
13 Board, actually, and now has no penthouse setback.
14 You know, and there's unequal visual quality there
15 that evolves.

16 So really, what I'm asking the Board to
17 consider and why should we have this setback
18 restriction within the Height Act at all if it only
19 restricts certain federal projects within the
20 District. That, to me, does not make sense. You
21 can't have a law that protects the visual qualities
22 of a city street scape and the important vistas of
23 this nation's capital, as well as the light and air
24 of its residents and workers and visitors, but only
25 have it apply to a small percentage of public

1 structures that are built. And if that's the case,
2 why have the law? I mean, that's the bigger
3 question.

4 So really, as you said, Mr. Hill, what this
5 Board is being asked to do today is really to clarify
6 if the new special exception relief for setbacks
7 under the new penthouse regulations can be applied to
8 the penthouses that sit on roofs that are at the
9 maximum allowed height under the Height Act. And I
10 believe this new special exception relief cannot be
11 applied, simply because the Height Act is very simple
12 and clear in its language on what and how rooftop
13 element are to be setback.

14 And then interpreting the requirements of the
15 Height Act in different ways would result, as I
16 mentioned it, different approaches to the built
17 environment, and thus really makes the law kind of
18 moot or irrelevant in my opinion. So I cannot
19 support this case, obviously. Even with --

20 MR. HILL: No, you can't support the
21 penthouse relief.

22 MR. HINKLE: Correct, right. As I mentioned.
23 I think the applicant made the case for the court
24 relief.

25 MR. HILL: Right. Yeah, and I am -- thank

1 you very much for the extensive explanation that you
2 did. I mean it's really important now because you
3 know, these are all new things that we're going to be
4 seeing in front of us in terms of like the one to one
5 setback and what is an exterior wall. And I agree
6 with you, and I agree with what you are stating is an
7 exterior wall.

8 And so, you know, there were a couple of
9 conditions in terms of what the ANC had if we were to
10 move forward with this. And I would actually just
11 make a motion now that, to approve the -- well, I'd
12 like to read some of the conditions. I mean, the
13 conditions that they had or some of the ANC
14 conditions was that they would go ahead and maintain
15 the maintenance, the applicant shall provide for the
16 upkeep and maintenance of the immediate surrounding
17 area, including the area around the development of H
18 Street, Eye Street, and 6th Street. The applicant
19 shall be responsible for maintenance of the alley
20 between H and Eye Street. The applicant shall bear
21 the responsibility including but not limited to the
22 cleanliness, repair, maintenance, and security of the
23 alley. Use of the alley shall be amenable, shared
24 by all neighbors. Additionally the occupant of the
25 building shall see to it that there is no unwanted

1 loitering and solicitation activities in the alley.

2 The ANC had hoped that they were going to
3 also share in the responsibility and the maintenance
4 for the park. But I don't think that that's
5 necessarily in our purview and be able to put as a
6 condition in there. However, the applicant did agree
7 to the previous condition. The applicant also did
8 agree to the ANC's condition about establishing a
9 community space permanently in the proposed new
10 development, and the applicant further went to say
11 that the space shall be entered from the alley. So
12 that, to me, meant that, you know, it would be inside
13 the building itself and accessible from the outside.

14 So I understand the applicant is here. Could
15 you please come forward? And if you could please
16 just introduce yourself?

17 MS. SHIKER: Yes. Good morning. My name is
18 Christine Shiker with the law firm of Holland and
19 Knight. I'm representing the applicant in this case
20 and I wanted an opportunity to be able to respond on
21 the Height Act issues. We did brief this issue
22 thoroughly and I want to make sure that the points in
23 our briefing were pointed out to the Board in such a
24 manner that you could consider them as well.

25 MR. HILL: Okay. And then, Ms. Shiker, if

1 you could also I guess speak to the conditions of the
2 ANC. I mean, you can see where this is going right
3 now I suppose, but please, go ahead.

4 MS. SHIKER: Yes. So I wanted to make sure
5 that the Board did receive our pretty extensive
6 briefing on this matter. We -- it has been a
7 longstanding position and legally correct that the
8 Zoning Administrator is the interpreter of the 1910
9 Height Act. I appreciate everything that Board
10 Member Hinkle has said about NCPC's involvement in
11 crafting the new Zoning Regulations for when setbacks
12 are required. But the Zoning Administrator through
13 the Organization Acts from the delegation from the
14 commissioners who ultimately became the mayor, to the
15 Zoning Administrator and DCRA, that is the final
16 arbiter of the 1910 Height Act. Both this Board and
17 the Zoning Commission in multiple cases in which we
18 have cited have stated that, and conclude that the
19 Zoning Administrator in fact interprets the 1910
20 Height Act, and that the Zoning Commission has found
21 that it is not to interpret the 1910 Height Act, nor
22 is the Board of Zoning Adjustment.

23 That would be the first thing I would point
24 out. The Office of Attorney General has agreed with
25 that position and I understand in the Office of

1 Planning's report that was put in there, and that is
2 kind of the legal position of the District is that
3 the Zoning Administrator is the interpreter.

4 Secondly, as Mr. Hinkle pointed out, there
5 was a very simple modification to the 1910 Height
6 Act. It did not change the one to one setback that
7 has been in there since 1910. Therefore to now say
8 that somehow by changing the Zoning Regulations we
9 change the longstanding and consistent interpretation
10 of the 1910 Height Act applying to street walls,
11 exterior walls that join streets, which has been the
12 legal position historically, it seems incorrect to me
13 to change that based on a zoning regulation change.
14 We are all here because we know we have a Zoning
15 Regulations special exception that we need. So we
16 know that we have to get relief under the Zoning
17 Regulations but the 1910 Height Act did not change in
18 that position. And so to change the longstanding and
19 consistent interpretation over the many, many, many
20 decades it seems unfair at this point to change that
21 without any further action or changes to the 1910
22 Height Act.

23 I'll also step back and make sure that
24 everybody understands the differentiation on the
25 exterior walls. For the 1910 Height Act an exterior

1 wall has been interpreted to be a wall that adjoins a
2 street. In this case there is a street wall. The
3 penthouse that we are talking about today is set back
4 more than 65 feet from that street wall. This is not
5 a situation in which a setback has been flagrantly
6 disregarded. It is exceptionally set back from the
7 street wall. It is in interior court wall that it is
8 not set back from and it is on, Eye Street I think
9 it's just a matter of a foot that it's not set back
10 due to the very limited constraints which we went
11 through in detail in our hearing on December 8th.

12 I do believe that in that hour of testimony,
13 walking through each one of the areas where the
14 setback is not meet -- is not met, excuse me, is not
15 -- was clear that we establish the standards under
16 the special exception. And the Office of Planning
17 agreed with that.

18 I will also point out that this Board, since
19 these regulations have been approved, has also
20 granted relief from setbacks on you know, fronting on
21 to alleys. And so that's because you have to get a
22 special exception under the Zoning Regulations. But
23 again, an exterior wall for purposes of the 1910
24 Height Act is a wall that adjoins a street.

25 With respect to the conditions in our

1 prehearing submission that is in the record, we did
2 agree to -- although the conditions weren't related
3 at all to the relief requested, you know, the
4 penthouse or the court relief. We did agree to the,
5 for the first couple of conditions we said that we
6 would be having the community space. It is accessed
7 from the alley. It is interior to the building. It
8 is part of our preferred uses that we have under the
9 DD and China Town District.

10 We also will maintenance the immediate public
11 space fronting our building. The one condition that
12 we could not agree to was maintenance of this park
13 that was off-site because it wasn't related to the
14 application. But I believe that would answer your
15 questions on the conditions from ANC.

16 MR. HILL: Okay. Thank you. Mr. Hinkle, do
17 you have anything?

18 MR. HINKLE: Well, I mean, we could go back
19 and forth because we've been doing that for 30 years
20 or 40 years now. So I don't think I need to
21 respond --

22 MR. HILL: Okay.

23 MR. HINKLE: -- at this point.

24 MR. HILL: Okay. Then I'll continue with my
25 motion, which is, again, to approve the Application

1 No. 19124 of Eye Street as amended pursuant to 11-
2 DCMR-33 -- oh, sorry, 3103.2 and 3104.1 for a
3 variance for closed court width and area requirements
4 under 776 and to allow the construction of a new
5 mixed use residential building in the DD/C-3-C
6 district at premises on Square 453 and Lot 40, 50,
7 815, through 819, 821, 835, and a portion of the
8 public alley to be closed. And with the conditions
9 as stated earlier.

10 MR. HINKLE: I'll second.

11 MR. HILL: The motion has been made and
12 seconded.

13 [Vote taken.]

14 MR. HILL: And then, Mr. Moy, I think there's
15 an absentee, is that correct?

16 MR. MOY: Yes, Mr. Vice Chair. We do have an
17 absentee ballot vote from Mr. Anthony Hood, who is
18 also, as I said, participating.

19 I'd like to read this, Mr. Vice Chair, if I
20 may?

21 MR. HILL: Please do.

22 MR. MOY: Mr. Hood votes to approve the
23 relief for the closed court with an area under
24 Section 776. And he votes to deny the request for
25 relief for the rooftop structures. And he has a very

1 brief comment that I would like to read for the
2 record, which he says, "I am going to deny the
3 setback relief. All setbacks should be met. The
4 applicant should move things around to meet the
5 setback, especially in the front." And he has this
6 word here which is not legible for me. But he picks
7 up with, "The habitable space and move things to meet
8 setbacks. The habitable space is a want and not a
9 need."

10 So again, his vote is to approve the roof
11 structure relief under 776, but to deny the request
12 for the roof structures under Sections 411 and 771.1.
13 That's his vote.

14 MR. HILL: Okay. Thank you, Mr. Moy.

15 MR. MOY: So then I would gather then the --
16 Mr. Hinkle seconded the motion, right? So, and then
17 of course with the two conditions as you've just
18 cited. So the final vote would be, then, three to
19 zero to two, correct? This is on the motion of Vice
20 Chair Hill. Seconded, Mr. Hinkle. Also in support,
21 Mr. Hood. Board member not participating, board seat
22 vacant, and this motion would carry.

23 MR. HILL: Can I get a summary?

24 MR. MOY: This had to be a full order.

25 MR. HILL: Oh, full order. Okay.

1 MS. GLAZER: Mr. Chair, Mr. -- or, Mr. Vice
2 Chair, I just want to be clear, I did not hear in
3 your original motion that there was a motion to deny
4 the setback relief. Was that part of it? I heard a
5 motion to approve of the relief.

6 MR. HILL: I'm sorry, I neglected to just
7 even mention it. But I would make a motion to deny
8 the setback relief.

9 MS. GLAZER: Oh, was that -- so you're -- I
10 think we should clarify for the record what the
11 motion is exactly, what relief is being approved,
12 what isn't being approved.

13 MS. SHIKER: And if I may, I would ask that
14 you clarify. There were areas of relief at the rear
15 of the building that are not one of the three areas
16 that Mr. Hinkle pointed out. One, he pointed out
17 streets, open courts opening to streets, or alleys
18 and there actually are courts at the back of the
19 property as well. And that is not listed in any of
20 the NCPC documents so we would ask that you clarify
21 every area of relief or if it's just the ones on the
22 court fronting on Eye Street, because the ones that
23 we focus on mostly in the hearing were at the rear of
24 the building on a court, not fronting on an open
25 court to a street, and so we would ask that because

1 we did absolutely satisfy the standard in discussing
2 each of those, that the Board consider at least a
3 partial grant of relief information they believe that
4 the ones on the front of the building don't comply
5 with the 1910 Height Act.

6 MR. HINKLE: If I may? I think the applicant
7 is correct but I'm not quite sure how to point out
8 which pieces are next to the court at the alley
9 versus the others. Would the applicant come up and
10 point that out? Do you want to come up and point
11 that out?

12 MS. SHIKER: I'd be happy to.

13 MR. HINKLE: Your latest exhibit with plans
14 is 36, I believe.

15 MS. SHIKER: That is correct, and if you go
16 to Exhibit B on Page -- looking for a page number.
17 Sixteen. On page 16 you will see that on the west
18 building we have two setbacks from the side portion
19 of the building that do not front on to Eye Street,
20 as well as on the rear of the east building we have
21 three setbacks that front on a very large court that
22 then opens to an alley but does not open to a street.

23 So at a minimum those do not fall within the
24 1910 Height Act provisions as Mr. Hinkle has outlined
25 that NCPC is now interpreting it. And we would ask

1 that you at least approve those based on the very
2 difficult mechanical and core constraints that we had
3 on this property, many of them due to the historic
4 preservation and the needs of maintaining the
5 warehouse building that fronts on the alley. I think
6 you may recall that we walked through that in great
7 detail with the architect.

8 [Pause.]

9 MR. HINKLE: So if I could ask the applicant
10 just for clarification, page 16 of Exhibit 36, it's
11 the 12-foot zero-inch setback --

12 MS. SHIKER: Correct.

13 MR. HINKLE: -- that you're pointing out, as
14 well as the 15-foot, six-inch setback.

15 MS. SHIKER: That is correct. As well as
16 then on the east building the eight and the 6-9, as
17 well as the 8-8, all at the rear of the building
18 opening on to that very large court. Those would be
19 the five. And then the two 15-3s and the 11-3s would
20 be the ones that fall within NCPC's view.

21 MR. HINKLE: I agree with that.

22 MR. HILL: Would you like me to -- it's more
23 clear than mine.

24 MR. HINKLE: Do we have to deny the others,
25 or how do we structure this?

1 MR. HILL: To deny --

2 [Off the record discussion.]

3 MR. HINKLE: Do we have to rescind our
4 previous vote? I'll let you do that.

5 MR. HILL: All right. So I'd like to rescind
6 our previous vote. Now, Mr. Hinkle, if you wouldn't
7 mind making a clarified motion?

8 MR. HINKLE: Well, hopefully this will
9 clarify it. I'm not sure. So I'll make a motion to
10 approve Application 19124 of Eye Street to JV, LLC.,
11 as amended pursuant to 11 DCMR, Subsection 3103.2 and
12 3104.1 for a variance from the closed court width and
13 area requirements under Subsection 776, and a special
14 exception from the roof structure setback
15 requirements under Subsection 411 and 777.1,
16 specifically for those setbacks identified on Exhibit
17 36, page 16 that are identified as setback of 12 feet
18 zero inches, and another setback of 15 feet, six
19 inches. And then on page 18 of Exhibit 36, the
20 setbacks adjacent to the open court identified as
21 eight feet, zero inches, six feet, nine inches, and
22 eight feet, eight inches.

23 And this is to allow the construction of a
24 new mixed use residential building in the DD/C-3-C
25 district at premises located on Square 453 and Lots

1 450, 815 to 819, 821, 835, and a portion of a public
2 alley to be closed. And that includes the conditions
3 as previously identified. How is that?

4 MR. HILL: Thank you. I second.

5 MS. GLAZER: Excuse me. There should be a
6 motion to deny the part of the relief too, that's
7 being denied. That should be part of it.

8 MR. HINKLE: Is that all one vote or -- okay.

9 MS. GLAZER: It probably should be.

10 MR. HINKLE: I'll add to it to -- and as part
11 of the motion I'll add a motion to deny the other
12 relief requested for setbacks.

13 MR. HILL: I second. All those in favor.

14 MS. GLAZER: Mr. Chair.

15 MR. HILL: Okay.

16 MS. GLAZER: I think we have another issue
17 here with the absentee ballot that was presented by
18 Mr. Hood. It may not conform exactly to what the
19 Board is clarifying the motion is.

20 MR. MOY: I could add to that, Mr. Vice
21 Chair.

22 MR. HILL: Please.

23 MR. MOY: I just got a voice message from Mr.
24 Hood.

25 MR. HILL: I see.

1 MR. MOY: And his voice message that was
2 whispered into my ear moments ago was that he was
3 agreeing with the motion that was being presented by
4 the Board.

5 MR. HILL: Okay. No, I can understand. I
6 mean, I didn't understand how that was going to go
7 also because he was denying --

8 MR. MOY: Yeah, he's listening to this --

9 MR. HILL: Yeah.

10 MR. MOY: Yeah.

11 MR. HILL: The miracles of the internet.

12 MR. MOY: Thank you.

13 MR. HILL: So with that being the case I
14 second the motion.

15 MR. MOY: Yes.

16 [Vote taken.]

17 MR. HILL: And then there's the absentee
18 vote.

19 MR. MOY: That's correct, that would give a
20 final vote of three to zero to two. So your motion
21 carries and this would be a full order.

22 MR. HILL: Okay. Thank you. Thank you.

23 CHAIRPERSON HEATH: Thank you.

24 MR. HILL: Ms. Shiker you've earned your
25 money today. You know.

1 CHAIRPERSON HEATH: And with that we'll take
2 a quick five minute break.

3 [Off the record from 11:04 a.m. to 11:49
4 a.m.]

5 MR. MOY: Okay. According to my record,
6 Madam Chair, we have two hopefully very brief
7 decisions to go before we get to the hearing cases.
8 That would be Application No. 19183 of gosh --

9 CHAIRPERSON HEATH: Singh.

10 MR. MOY: Yeah, S-I-N-G-H. Thank you very
11 much. This was filed for two variance relief on the
12 minimum lot area requirements under 401.3. This is
13 to permit the construction of two flats, each on a
14 new nonconforming lot in the R-4 District, 1440
15 Newton Street Northwest, Square 1440, Lot 844. There
16 is, in your record, what the Board requested, which
17 was to update the amended relief, I believe. And
18 that should be filed under Exhibit 36.

19 Participating on the vote is yourself, Madam
20 Chair, Vice Chair Hill, and Mr. Turnbull, who has
21 submitted an absentee ballot.

22 CHAIRPERSON HEATH: Okay. Thank you, Mr.
23 Moy. And so as you pointed out, the applicant has
24 submitted the application form that was requested at
25 the hearing. Again, Exhibit 36. And so this case

1 was heard last week and I believe they've met all of
2 their requirements. We also have support from Office
3 of Planning, ANC 1A, Department of Transportation and
4 a letter in support with 11 signatures. So given
5 that I will make a motion that we approve the request
6 for the two variances for minimum lot area
7 requirements to permit the construction of two flats
8 at 1440 Newton Street Northwest, Application No.
9 19183.

10 MR. HILL: And I second.

11 CHAIRPERSON HEATH: The motion has been made
12 and seconded.

13 [Vote taken.]

14 CHAIRPERSON HEATH: And we have an absentee?

15 MR. MOY: Yes, Madam Chair. We do have an
16 absentee vote from Michael Turnbull, and his absentee
17 vote is to approve with any condition as the Board
18 may impose, which there is none here. So that would
19 give a final vote of three to zero to two. This is
20 on your motion, Chair Heath, to approve the requested
21 relief, variance relief from 401.3 for a lot area and
22 lot width. Seconded the motion, Vice Chair Hill, and
23 of course Mr. Turnbull. Member not participating and
24 a board seat vacant. So it's three to zero to two.
25 Right?

1 CHAIRPERSON HEATH: Okay. All right.
2 Summary order.

3 MR. MOY: Summary order. Thank you.

4 CHAIRPERSON HEATH: Okay.

5 MR. MOY: Okay. Last for decision is a
6 request for a time extension to Application No.
7 18701B. This is 1247 ESE, LLC. Then what should I
8 add? Oh, I would just say here that this property is
9 located in an R-4 district at 1247 E Street
10 Southeast, Square 1019, Lot 43. And again, this is a
11 request for a two year time extension.

12 CHAIRPERSON HEATH: Okay.

13 MR. MOY: Which I believe would take it to
14 February 27th, 2018.

15 CHAIRPERSON HEATH: Correct. All right. So
16 based on the information that the applicant has
17 submitted I think that they've met the requirements
18 for time extension and they've made the case that the
19 area hasn't -- that development in the area has been
20 slow to come and that there is specifically, I think
21 they stated, three new development projects that are
22 going to help with them being able to secure a
23 restaurant tenant for this first floor space. And so
24 they think that the two year extension will be
25 helpful in that regard.

1 And so unless you have any other comments.

2 MR. HILL: No, I agree. The applicant was
3 talking about, right the renovations taking longer
4 than accepted, and that -- expected, sorry. And
5 that, right, the market for the restaurant hasn't yet
6 developed, so.

7 CHAIRPERSON HEATH: Okay. So then I will
8 make a motion that we approve the request for time
9 extension under Application No. 18701B of 1247 ESE,
10 LLC.

11 MR. HILL: I second.

12 CHAIRPERSON HEATH: The motion has been made
13 and seconded.

14 [Vote taken.]

15 CHAIRPERSON HEATH: So, the motion carries.
16 Mr. Moy.

17 MR. MOY: Yes, staff would record the vote as
18 four to zero to one. This is on your motion, Madam
19 Chair, to approve the request for a two-year time
20 extension. Seconding the motion, Vice Chair Hill,
21 also in support Mr. Peter May and Mr. Jeffrey Hinkle,
22 board seat vacant. Motion carries.

23 CHAIRPERSON HEATH: Summary. Yes.

24 MR. MOY: Thank you.

25 CHAIRPERSON HEATH: Thank you. And you can

1 call our first hearing case.

2 MR. MOY: Okay. I believe -- okay. Going on
3 the agenda that's available to the public then the
4 first case would be Application No. 18772A. This is
5 the application of MR Gallery Square, LLC., as
6 captioned and advertised for special exception relief
7 on the number of roof structures pursuant to 411.4 to
8 permit a restaurant use on the penthouse of a hotel
9 in the DD/C-3-C district. This is housing priority
10 area B, 627 through 631 8th Street Northwest, Square
11 453, Lot 59.

12 And I believe the plans are shown in the
13 record under Exhibits 9A through 9C.

14 CHAIRPERSON HEATH: Okay. Thanks. All
15 right. If you all could introduce yourselves,
16 please?

17 MS. SHIKER: Yes, good morning. My name is
18 Christine Shiker with the law firm of Holland and
19 Knight representing the applicant.

20 MS. BLOOMFIELD: Good morning, Jessica
21 Bloomfield with the law firm of Holland and Knight.

22 CHAIRPERSON HEATH: Your mic is not on.

23 MS. SIRCAR: Anita Sircar, Davis Carter
24 Scott, architect of record.

25 MR. CORBY: My name is Karl Corby. I'm

1 representing Afia Art Square (phonetic), who is the
2 neighboring property owner of the development going
3 on.

4 CHAIRPERSON HEATH: Okay.

5 MS. SHIKER: We also, so this is -- we have
6 not met yet so he's not part of our direct
7 presentation. We have Conrad Cafritz from Cafritz
8 Interest, as well as Aaron Katz from Modus Hotels
9 representing the ownership.

10 CHAIRPERSON HEATH: Okay. All right. Thank
11 you.

12 Let's see, so this application was before us
13 previously and received relief. But you're coming
14 back to us in order to incorporate a restaurant use
15 at the rooftop based on the new regulations?

16 MS. SHIKER: That is correct. So we were
17 before the Board in 2014 for a variety of areas of
18 relief. It's a very, very small site. It's 8,000
19 square feet, an in-fill site.

20 We were granted the relief, the building
21 permit application was filed, and a building permit
22 was issued in July of 2015. The building is under
23 construction right now with the adoption of the new
24 approved penthouse regulations. The owner of the
25 property is looking to use some of the space within

1 the identical footprint of the penthouse, not
2 changing the penthouse, but to allow restaurant use
3 within -- which is required as a special exception.
4 The owner is also hoping to take advantage of the new
5 regulations to lower a section that was previously 18
6 and a half feet, to 10 feet. It's a screen wall
7 around a generator. It allows for a lower scale
8 generator to go in. It meets the setback
9 requirements from the alley and it exceeds the
10 setback that was approved by the Board. It used to
11 be 18 and a half feet and about a five foot setback.
12 Now it's set back six feet and it's only 10 feet. So
13 it reduces the extent of the relief that had been
14 granted by the Board.

15 And so we are pleased that we have the Office
16 of Planning's support. We have unanimous ANC support
17 as well on this special exception, and we have no
18 objection from DDOT.

19 CHAIRPERSON HEATH: So we also saw in your
20 statement, that the ANC asked you to maintain a
21 window and a door on the south façade at the
22 penthouse. The ANC didn't mention that in their
23 letter.

24 MS. SHIKER: That is correct. The ANC
25 didn't, but we committed to the ANC. The discussion

1 that was had was with respect to gallery place
2 condominium units across the way. They just wanted
3 to know the extent of the holes, the doors and the
4 windows, the permeations between what they might be
5 able to see from their views. And so they were fine
6 with the window and the door, so we agreed we would
7 keep them at that, we would not increase those, and
8 therefore we submitted what our commitment was to the
9 ANC on that.

10 CHAIRPERSON HEATH: Okay. All right. Does
11 the Board have any other questions?

12 MR. MAY: So we don't have a -- as far as I
13 could tell we don't have anything in the record
14 regarding the previously approved plans for the
15 penthouse. Is that in there?

16 MS. SHIKER: We have a slide that we can put
17 up that shows the previously approved plan and the
18 current plan.

19 MR. MAY: Okay.

20 MS. SHIKER: We didn't submit the plans
21 because the way ISIS works is the approved plans were
22 in the electronic record.

23 MR. MAY: The approved plans, under a
24 different case number.

25 MS. SHIKER: The cases are linked because

1 it's Case A.

2 CHAIRPERSON HEATH: Oh, right.

3 MR. MAY: Right.

4 MS. SHIKER: But we --

5 MR. MAY: Okay.

6 MS. SHIKER: -- put this for ease of
7 discussion.

8 MR. MAY: Yeah, I mean, we -- okay. Thank
9 you. We should make note of that because the system
10 that we draw from is not directly from ISIS.

11 MS. SHIKER: Okay.

12 MR. MAY: So somebody in the staff office
13 needs to make sure that we're getting all the stuff
14 that we need.

15 MS. SHIKER: Okay.

16 MR. MAY: I'm not sure how we do that, Mr.
17 Moy, but all right, go ahead.

18 MS. SHIKER: All right. So on the left you
19 see the approved penthouse plan.

20 MR. MAY: Right.

21 MS. SHIKER: It was a single unit and the
22 dashes between the northern most stair was a roof
23 that covered space, so that portion of the penthouse
24 was included in the FAR, you know, the FAR
25 calculation for the .37 FAR credit, and was also

1 included in the setback relief because we had a
2 single unit.

3 What we have done on the right-hand side,
4 which is the proposal is simply put walls onto that
5 section that was previously included as the floor
6 plate of the penthouse. It was 2,610 square feet
7 before all inclusive, and now it's, again, 2,610
8 square feet all inclusive.

9 MR. MAY: But you said it was the same
10 footprint. It's not the same footprint.

11 MS. SHIKER: It is the same footprint because
12 the penthouse under zoning includes the section under
13 those dash, because it was a single structure and
14 that was a roof on the penthouse.

15 MR. MAY: Okay. But I'm talking about the
16 generator area.

17 MS. SHIKER: Oh, so that -- yes. So the
18 footprint of the stairs, the space that could be used
19 for occupiable space and the elevators is exactly the
20 same. The one change that we do propose is on the
21 northwest corner, so the upper left-hand corner.
22 Before we had a generator that was 18 and a half
23 feet. It was a generator that was an enclosed with
24 an 18 and a half foot screen wall with the new
25 regulations allowing to have a second height for

1 penthouse screen walls around mechanical equipment.
2 We are able to incorporate a smaller lower scale
3 generator that's more efficient, and it has a lower
4 height. And so that would be at 10 feet and then set
5 back 10 feet from the rear as well as being set back
6 in excess of -- it was just over five feet was the
7 setback before. Five feet to the 18 and a half feet
8 tall. Now we'd have a 10 foot tall and setback six
9 feet. So the extent of the relief that was granted
10 is less.

11 MR. MAY: But you changed the footprint.

12 MS. SHIKER: Of the mechanical equipment on
13 the screen wall, correct. The footprint of the --

14 MR. MAY: You changed the footprint. Just
15 say, you changed the footprint, okay?

16 MS. SHIKER: Yeah. So the footprint of what
17 we were trying to occupy under the special exception
18 is the same.

19 MR. MAY: Okay. So I mean, this is the sort
20 of thing where, you know, why we question some of the
21 statements that we get.

22 MS. SHIKER: Yes.

23 MR. MAY: I mean, the footprint clearly
24 changed. Now, did it get better? Maybe it got
25 better. I also question -- I mean, I don't have to

1 go into this in any great detail, but why didn't you
2 ask for this the first time around because you might
3 have gotten relief for uneven wall heights if you
4 were in fact going to put in a more efficient
5 generator. But that's not what's before us now.

6 MS. SHIKER: The mechanical hadn't been fully
7 designed at that point so it wasn't known at that
8 time.

9 MR. MAY: I see. Okay. So explain to me the
10 relief that was actually granted before.

11 MS. SHIKER: So we had a variety of relief
12 that was granted before.

13 MR. MAY: I'm just talking about setback
14 relief.

15 MS. SHIKER: Oh, okay.

16 MR. MAY: Here on the roof.

17 MS. SHIKER: Sure. So we had setback relief
18 along the -- I wish we had a pointer. Yes, that
19 would be great. Thank you. Starting on the west
20 wall.

21 MR. MAY: Uh-huh.

22 MS. SHIKER: How does this work? No setback
23 was required abutting the interior lot line.

24 MR. MAY: Because?

25 MS. SHIKER: Because it was an interior lot

1 line, and the Zoning Administrator has interpreted
2 over the years under the Belmont --

3 MR. MAY: Under the old regulations.

4 MS. SHIKER: Yes, under the old regulations.
5 Today, no setback is required on this lot line right
6 here because this is not in a historic district and
7 it's permitted the same height and density under the
8 Zoning Regulations. Okay?

9 MR. MAY: Okay.

10 MS. SHIKER: Setback relief was granted for
11 this section here, because this is a court facing on
12 to an alley. And the Zoning Administrator has, under
13 the old regulations, interpreted that setback relief
14 is required, and so we came to the Board to get
15 setback relief for this section. Well, that section
16 there. Okay?

17 MR. MAY: Right.

18 MS. SHIKER: On the -- setbacks are met
19 towards the alley, and setbacks are fully met across
20 H Street.

21 MR. MAY: Uh-huh.

22 MS. SHIKER: On this side no setback under
23 the old regulations was required here. However,
24 setback relief was required along this wall and so we
25 got setback relief there and there.

1 Under the new regulations setback relief
2 would be required here.

3 MR. MAY: Right.

4 MS. SHIKER: Because this is a historic
5 district.

6 MR. MAY: Correct.

7 MS. SHIKER: And there is a contributing
8 building. We are set back more than one to one from
9 that lot line. The same relief applies to this court
10 line here, and so the relief is no different. It's
11 still set back eight feet, five eighths inches.

12 MR. MAY: Right.

13 MS. SHIKER: So when I -- the floorplate of
14 this section is identical to the floorplate of this
15 section.

16 MR. MAY: Okay. So what was the intended use
17 of that space before?

18 MS. SHIKER: Well, it really wasn't fully
19 designed at the time. You can see we had the
20 elevator, we had a mechanical room. The intent was
21 to use the roof terrace and we talked about what
22 beautiful views we'd be getting from this roof
23 terrace, so there was an elevator lobby that would
24 have come out. Again, it wasn't fully designed at
25 the time.

1 MR. MAY: Right.

2 MS. SHIKER: You can see the bathrooms were
3 back here. There would have likely been some storage
4 in there as well. What dictated kind of this wall is
5 this right here, which is an exhaust that comes up
6 through the building all the way through, and has to
7 be located kind of generally in this plane. So from
8 a design perspective, since the wall was going to
9 come here, they designed it to be, you know, as
10 unobtrusive and fit within the building as much as
11 possible. This building is not in the historic
12 district but it is located adjacent to a historic
13 district, so there were discussions with the Historic
14 Preservation Office to make sure that the penthouse
15 was fully designed and incorporated with the same
16 type of materials and design aesthetic. And so this
17 is kind of the ultimate configuration that came out
18 that was approved by the BZA.

19 MR. MAY: Okay. So is there actually
20 mechanical space above that habitable space?

21 MS. SHIKER: Yes. There is. There is some
22 roof air handling units.

23 MR. MAY: Is it over the entire area?

24 MS. SHIKER: No.

25 MR. MAY: No? Okay. I mean, the reason I

1 have a problem with this is that if this were coming
2 before us today and you were asking for all this
3 relief I would be opposed to it.

4 MS. SHIKER: Uh-huh.

5 MR. MAY: Because of the extent of the
6 habitable space that's incorporated. And I can't
7 help but feeling like you got away with one here
8 because you knew that these changes were coming and
9 habitable space was likely, and so now you got your
10 relief and then you're coming back to get your
11 restaurant.

12 However, I'll put all that stuff aside. The
13 thing that I am concerned about, though, is that you
14 know, when you're abutting historic property that's
15 not likely to be redeveloped to the same height, we
16 were very concerned that we shouldn't be granting
17 relief in those circumstances, and that's another
18 reason why we allow walls of different heights, so
19 that you can step things back if you need to, to
20 reduce the impact.

21 So I am skeptical at least about that. And
22 this is why I needed to have all of this explained,
23 why you thought, you know, the relief wasn't -- why
24 it was granted before. Again, you know, if I had sat
25 on this case before I'm not sure I would have granted

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1 this amount of interior space. I mean, did you
2 demonstrate that that interior space is accessory to
3 the outdoor space? In other words, it's 20 percent
4 or less?

5 MS. SHIKER: Well, I mean [speaking off
6 microphone].

7 MR. MAY: Because the only way you can have
8 rooftop habitable space before in any way, shape, or
9 form, is if you're below the Height Act height and if
10 it was accessory to exterior use. Exterior use. So
11 did you demonstrate that in the previous case?

12 MS. SHIKER: We did not get into a detailed
13 discussion about that. However, there was discussion
14 that there would be some type of lobby. We would not
15 exceed that 20 percent of the roof deck at the time.
16 It's a hotel building. But the mechanical sections
17 were not developed at that time. And I will say this
18 was back from 2014. So it's almost two years ago
19 that we did this case.

20 MR. MAY: Right. But the zoning -- but the
21 Height Act had been modified at that time and you
22 knew the Zoning Regulations were coming.

23 MS. SHIKER: They definitely were not here
24 yet and --

25 MR. MAY: They were not here.

1 MS. SHIKER: And I understand. I mean, this
2 is -- you know, Commissioner May, this is a very
3 small site. This is 8,000 square feet.

4 MR. MAY: I understand.

5 MS. SHIKER: This penthouse is like 1,600
6 square feet within the habitable space. This is not
7 an exceptionally large penthouse and in order --

8 MR. MAY: It has nothing to do with how large
9 the area is. It has to do with how visible that
10 building is and how visible that portion of the
11 building is. And I think the previous case, although
12 I didn't sit on it, I think probably demonstrates how
13 seriously the BZA and the Zoning Commission take the
14 setback requirements now that habitable space is
15 possible.

16 MS. SHIKER: Uh-huh.

17 MR. MAY: And so --

18 MS. SHIKER: No, I understand that. And
19 again, you know, the penthouse was designed to be
20 fully compatible within the building. The Board did
21 not express concerns at the time that they approved
22 the relief when we did talk about bringing people up
23 and having the access. At the time -- can you please
24 go back to the other slide?

25 Because we were only permitted very limited

1 space as we've talked about, just really to provide
2 the egress and the access, we had you know, provided
3 this covered area to provide, you know, more use of
4 the roof deck. And so the form of the penthouse with
5 the exception of the mechanical, which we are trying
6 to make better based on the new regulations, is very
7 much the same. I will also point out restaurant use
8 is a preferred use in this district. So bringing a
9 restaurant to -- it's in the DD/China Town. I
10 understand --

11 MR. MAY: But it's a special exception on the
12 roof.

13 MS. SHIKER: I'm sorry?

14 MR. MAY: But it's a special exception on the
15 roof.

16 MS. SHIKER: Correct. Which is why we're
17 here before the Board today.

18 MR. MAY: Right.

19 MS. SHIKER: To say that there will be no
20 adverse impact because that's the only standard --

21 MR. MAY: Yeah.

22 MS. SHIKER: -- that's been identified.

23 MR. MAY: Right. Okay. I think I'm done
24 with my questions and pestering.

25 CHAIRPERSON HEATH: All right. All right.

1 So then if the Board doesn't have any other questions
2 I think we're probably okay to not hear any other
3 presentation. I'm not sure what you had planned, but
4 we -- I'd like to hear from Office of Planning to see
5 where they stand on this.

6 MR. COCHRAN: I think we stand on our
7 recommendation that you approve the requested relief.

8 CHAIRPERSON HEATH: Okay. Thank you.

9 MR. COCHRAN: Special exception, rather.

10 CHAIRPERSON HEATH: Correct. Okay. And as
11 you pointed out, Ms. Shiker, we do have a letter of
12 approval from the ANC and from Department of
13 Transportation as well. Is there anybody here from
14 ANC 2C? All right.

15 Is there anybody here wishing to speak in
16 support of this application? Anyone in support?
17 Anyone wishing to speak in opposition?

18 MR. CORBY: I'm not necessarily in
19 opposition.

20 CHAIRPERSON HEATH: Okay.

21 MR. CORBY: I just --

22 CHAIRPERSON HEATH: You just want to make a
23 statement?

24 MR. CORBY: Being the neighboring tenant and
25 knowing that the alley behind is already tight and

1 small and like you had mentioned, the condominiums
2 across the way. I have concern. One, because
3 there's already a hotel going in and not knowing what
4 the impact on the alley is going to be. And now two,
5 they're adding a restaurant on top of that. It's
6 just, I question it and I have concern. That's all.
7 I just --

8 CHAIRPERSON HEATH: Okay. [Simultaneous
9 speech.]

10 MS. SHIKER: If I may. We have always, when
11 we originally came to the Board of Zoning Adjustment
12 for this application, we've always proposed square
13 footage for restaurant space. The square footage is
14 now being allocated somewhat differently to allow
15 some of it to go into the penthouse, if in fact the
16 special exception is granted.

17 DDOT did a very detailed analysis and we
18 actually had a separate hearing just on the
19 transportation issues on how this would work with
20 people coming to the hotel and to the restaurant.
21 And it was found that it was -- that there would be
22 no adverse impact based on the different modal
23 splits, based on the different statements and DDOT,
24 the district agency, also found that there is a
25 belief that a lot of the traffic for the restaurant

1 will be the hotel users and this is a very vibrant
2 neighborhood with lots of walkers. So we anticipate
3 it will be something that's served by the
4 neighborhood.

5 But the evaluation of the square footage of
6 the restaurant use was actually evaluated in the
7 first BZA case. And so we don't anticipate that
8 there would be any additional adverse impacts. And
9 in fact there's no additional parking triggered as a
10 result of this penthouse, even though penthouse space
11 does trigger parking. The space has been able to be
12 reallocated so that it wouldn't generate any new
13 parking requirements.

14 MR. CORBY: Okay.

15 CHAIRPERSON HEATH: Could you state your name
16 again, for the record, please?

17 MR. CORBY: Karl Corby, K-A-R-L C-O-R-B-Y.

18 CHAIRPERSON HEATH: Okay.

19 MR. CORBY: As the representative for Afia
20 Art Square, the owner of the neighboring building.

21 CHAIRPERSON HEATH: Okay. Thank you. All
22 right. Is there anyone else wishing to speak in
23 support or opposition?

24 Okay. Then does the Board have any other
25 questions?

1 All right. Then we'll turn back to you for
2 any closing you'd like to make.

3 MS. SHIKER: We would just ask that the Board
4 consider this at its earliest time for deliberation
5 as the building is under construction. And if we
6 will move forward with the special -- with the
7 restaurant use we need to move forward quickly on
8 that. Thank you.

9 CHAIRPERSON HEATH: Okay. All right. Then,
10 is the Board ready to deliberate? All right.

11 I will -- unless anyone has anything else
12 they want to -- do you want to start?

13 MR. MAY: Yes, since I'm the one who is
14 cranky about this.

15 CHAIRPERSON HEATH: Yes.

16 MR. MAY: So, as I said before, I don't think
17 I would have supported the setback relief,
18 particularly on the left side. I assume that that's
19 -- is that west? I don't think I would have
20 supported that first time around and I would have
21 sort of sent it back to the drawing board, try to
22 figure out a way to get to the -- to meet the setback
23 in that circumstance. But I'm also generally not
24 inclined to relitigate relief that's already been
25 granted, even if I don't necessarily agree with it.

1 So, you know, in the circumstances I would be willing
2 to support it. But again I would just remind the
3 applicant and counsel that setbacks are a whole new
4 ballgame now and that we need to watch them very
5 carefully when we're talking about incorporating
6 habitable space on a rooftop. The idea is that the
7 penthouses would always be set back and would always,
8 you know, there would be really no perceived
9 difference as a result of having that habitable space
10 on the roof and we would simply be allowed to make
11 better use of the roof space.

12 And that's what the intention is here. It's
13 not to try to game the system and get as much as you
14 can out of it, so, but this one will -- I'll go along
15 with it because the Board previously granted the
16 other relief.

17 CHAIRPERSON HEATH: Any other comments? All
18 right. Then I will make a motion that we approve the
19 request for special exception for Application No.
20 18772A of MR Gallery Square.

21 MR. HINKLE: Second.

22 CHAIRPERSON HEATH: The motion has been made
23 and seconded.

24 [Vote taken.]

25 CHAIRPERSON HEATH: The motion carries. Mr.

1 Moy.

2 MR. MOY: Madam Chair, I believe before I
3 give the final -- well, I will. This is on the
4 motion of Chairperson Heath to approve the
5 application for the special exception relief under
6 411.4. Seconding the motion was -- was it Mr.
7 Hinkle? Yes, thank you. Also in support Mr. Peter
8 May and Vice Chair Hill, board seat vacant and the
9 motion carries. And I believe, although I don't know
10 if I misspoke earlier that their plans were under
11 Exhibit 9A through C, but I think they were revised
12 or updated under Exhibit 30, Tab C. Is that correct?
13 Thank you. The motion carries, Madam Chair.

14 CHAIRPERSON HEATH: Summary order. Thank
15 you.

16 You can call our next case, Mr. Moy, when
17 you're ready.

18 MR. MOY: All right. That would be
19 Application No. 19194 of Utku Aslanturk, A-S-L-A-N-T-
20 U-R-K, as captioned and advertised for special
21 exception relief under Section 223, not meeting the
22 lot occupancy requirements under 403.2, open court,
23 406 and nonconforming structure 2001.3. This is to
24 build a three-story rear addition to an existing one-
25 family dwelling in an R-4 district, 229 10th Street

1 Southeast, Square 944, Lot 39.

2 And I believe it was amended to add 404.1 so
3 that the applicant can confirm that.

4 CHAIRPERSON HEATH: Would you please
5 introduce yourselves?

6 MS. FOWLER: Hi, I'm Jennifer Fowler. I'm
7 the architect.

8 MR. ASLANTURK: Utku Aslanturk, the owner.

9 CHAIRPERSON HEATH: Okay. And can you
10 confirm the relief being requested?

11 MS. FOWLER: Yes. The application was
12 revised from the initial filing. We originally had a
13 three-story rear addition, and based on neighbor and
14 ANC feedback we revised to include a two-story
15 carriage house at the back of the property with a
16 covered walkway connection and we reduced the
17 addition size in footprint and height to a two-story.
18 And in that case we had to add the rear yard relief.

19 CHAIRPERSON HEATH: Okay.

20 MS. FOWLER: Yes.

21 CHAIRPERSON HEATH: And you presented to
22 HPRB?

23 MS. FOWLER: Yes.

24 CHAIRPERSON HEATH: And have they granted
25 approval?

1 MS. FOWLER: Yes, they have.

2 CHAIRPERSON HEATH: All right. Does the
3 Board have any questions on this? All right. Go
4 ahead.

5 MR. MAY: Yeah, I'm just curious. This
6 carriage house, I mean, it's been designed in the
7 plans that I see to function as a separate apartment.
8 Is that what the intended use is?

9 MS. FOWLER: We're not sure yet if we're
10 going to make it a separate legal apartment or if
11 it's going to be more of an in-law suite.

12 MR. MAY: Okay. I mean, the question, it's
13 not an issue for us, but the question would be access
14 to it, right? I mean, is that an alley off which you
15 can actually have a dwelling unit?

16 MS. FOWLER: Yeah. I don't know if you --

17 MR. ASLANTURK: Yeah, there is an access that
18 is a 25 or 30 foot alley in the back side.

19 MR. MAY: Okay.

20 MR. ASLANTURK: Also there is like one -- the
21 first floor, half of the first floor is like a
22 garage.

23 MR. MAY: Right. Yeah. I saw what was in
24 the plans. All right. That's all.

25 CHAIRPERSON HEATH: Okay.

1 MR. MAY: Actually, I do have another
2 question. I mean, it's portrayed as an addition to
3 the existing garage. Is that existing garage a
4 masonry garage that you're adding to, or is it --

5 MS. FOWLER: It's a concrete block --

6 MR. MAY: Concrete block. Okay.

7 MS. FOWLER: -- garage, I believe. And so
8 we're going to potentially rebuild it.

9 MR. MAY: Okay.

10 MS. FOWLER: From the ground up, based --
11 depending on the foundations.

12 MR. MAY: Right. Understood. Okay. Thank
13 you.

14 CHAIRPERSON HEATH: Okay. All right. Okay.
15 So I think with that the Board is satisfied that
16 you've answered all our questions and we have
17 reviewed the information in the record and the
18 application looks complete based on what we've seen
19 so far. So if you're okay with us proceeding on
20 without hearing a full presentation we will.

21 MS. FOWLER: Okay. That's fine. Thank you
22 so much.

23 CHAIRPERSON HEATH: All right. Does Office
24 of Planning have anything further to add?

25 MR. THOMAS: Nothing further to add, Madam

1 Chair. Karen Thomas for the Office of Planning and
2 we will stand on the record of our report. Thank
3 you.

4 CHAIRPERSON HEATH: Thank you, Ms. Thomas.

5 We also have a letter of approval from ANC
6 6B, and it sounds like you did quite a bit of work
7 with them in getting to your revised application, so
8 we appreciate that. We also have a letter of no
9 objection from Department of Transportation and
10 several letters in support both from adjacent
11 neighbors and other neighbors. It looks like we also
12 recently received a letter of support from Capitol
13 Hill Restoration Society. Looks like that was just
14 added to the record.

15 Is there anybody here wishing to speak in
16 support of this application? Anyone in support?

17 Anyone in opposition? No opposition? All
18 right. Then we would normally turn back to you for
19 closing but there's probably no reason for you to add
20 anything additional.

21 MS. FOWLER: Yeah, no additional comments,
22 thank you.

23 CHAIRPERSON HEATH: Is the Board ready to
24 deliberate? All right. Then I will make a motion
25 that we approve the request for special exception for

1 Application No. 19194 as amended.

2 MR. HILL: I second.

3 CHAIRPERSON HEATH: The motion has been made
4 and seconded. Any further discussion?

5 [Vote taken.]

6 CHAIRPERSON HEATH: The motion carries.
7 Thank you.

8 MR. MOY: Staff would record the vote as four
9 to zero to one. This is on the motion of Chairperson
10 Heath to approve the application, the amended
11 application as shown on revised plans under Exhibit
12 23. And seconded the motion, Vice Chair Hill, also
13 in support Mr. Peter May and Mr. Jeffrey Hinkle,
14 board seat vacant. Motion carries, Madam Chair.

15 CHAIRPERSON HEATH: Summary.

16 MR. MOY: Thank you.

17 CHAIRPERSON HEATH: Thank you. You can call
18 our next case, Mr. Moy, when you're ready.

19 MR. MOY: Yes, that would be Application No.
20 19197 of Nicholas Rubenstein and Jen Shu, and as
21 captioned and advertised for relief for variances
22 from the lot occupancy requirements under 403.2,
23 nonconforming structure provisions, 2001.3. This is
24 to renovate an existing one-story garage into a two-
25 story one-family dwelling, R-4 district, 1317 Naylor

1 Court Northwest, Square 367, Lot 863.

2 CHAIRPERSON HEATH: Hi. If you could
3 introduce yourselves? Make sure your mic is on when
4 you do. You'll see a glowing green light.

5 MS. BLOOMBERG: There we go. Now it's
6 glowing. I'm Janet Bloomberg with Kube Architecture.

7 MR. DOUGHERTY: Matthew Dougherty with Kube
8 Architecture.

9 MR. RUBENSTEIN: I'm Nicholas Rubenstein, I'm
10 one of the owners.

11 MS. SHU: I'm Jen Shu, one of the owners.

12 CHAIRPERSON HEATH: Okay.

13 MR. SALTER: And I'm Dr. Salter, one of the
14 neighbors.

15 CHAIRPERSON HEATH: Okay. Did you submit a
16 letter to us? You did? Okay. Say your name again,
17 please?

18 MR. SALTER: Dr. David Salter, S-A-L-T-E-R.

19 CHAIRPERSON HEATH: Thank you. All right.
20 One second. All right. I'm pretty clear on the
21 information that you've submitted to the record and
22 in your file.

23 Does the Board have any questions? Okay.
24 All right. And it appears we're not going to need a
25 full presentation from you. We may come back to you

1 with questions, but if you're okay with us proceeding
2 on we will.

3 MS. BLOOMBERG: Yes, that's fine.

4 CHAIRPERSON HEATH: All right. Does Office
5 of Planning have anything further to add on this?

6 MS. BROWN-ROBERTS: No, Madam Chair.

7 CHAIRPERSON HEATH: Okay. I noticed in your
8 report you referred to relief from rear yard. The ZA
9 memo didn't mention rear yard.

10 MS. BROWN-ROBERTS: I'm sorry. I think that
11 was in error.

12 CHAIRPERSON HEATH: Okay. All right. Thank
13 you for clarifying. Okay. Any other questions of
14 Office of Planning?

15 MS. BROWN-ROBERTS: Or maybe I could clarify.

16 CHAIRPERSON HEATH: Sure.

17 MS. BROWN-ROBERTS: The building, the
18 existing building does not meet the rear yard --

19 CHAIRPERSON HEATH: Because of its
20 nonconformity?

21 MS. BROWN-ROBERTS: Conformance. Right.
22 Right.

23 CHAIRPERSON HEATH: Okay.

24 MS. BROWN-ROBERTS: So I think that was that
25 was what you're saying, what you just mentioned.

1 CHAIRPERSON HEATH: Go it. Okay. All right.
2 Okay.

3 We have a letter of support from DDOT and
4 also from ANC 2F. Is there anyone here from ANC 2F
5 on this application? Okay.

6 And as I noted, we have a letter in support
7 from both adjacent neighbors. Dr. Salter, you're one
8 of the adjacent neighbors. So you're wishing to
9 speak in support, we'll allow you to speak at this
10 time.

11 MR. SALTER: Yes, I'm --

12 CHAIRPERSON HEATH: Or are you opposition?

13 MR. SALTER: Yes and no.

14 CHAIRPERSON HEATH: Okay.

15 MR. SALTER: I'm in support of the plans.

16 CHAIRPERSON HEATH: Okay.

17 MR. SALTER: There's a concern that I have
18 that I'd like to raise in front of the Board.

19 CHAIRPERSON HEATH: Okay. You can do that at
20 this time.

21 MR. SALTER: All right.

22 CHAIRPERSON HEATH: We'll give you three
23 minutes if you need it.

24 MR. SALTER: Thank you very much. I won't
25 waste your time. My name is Dr. David Salter. My

1 wife and I live at 1315 Naylor Court, which is the
2 property adjacent.

3 We've seen the plans for the development at
4 1317 and it's a property with which we share a party
5 wall. The property line between 1315 and 17 goes
6 right through the middle of the wall giving each
7 party 50 percent ownership. We're concerned about
8 the manner in which the owners of 1317 are intending
9 to develop the property for two reasons and we'd like
10 to have your support advice on this.

11 It appears from the plans of 1317 the owners
12 intend to obliterate four of windows that are
13 approximately 60 square feet by the new construction.
14 The light, air, and interior historic space in this
15 building will be compromised. It was built in 1899
16 and listed on the National Register.

17 So understanding that in terms of party wall
18 law that neither owner can use the wall in a manner
19 that impairs the other's easement or interferes with
20 his or her property rights.

21 Our second issue is that according to the
22 plans we reviewed the existing I beams in the garage
23 are going to be used to support the weight of the
24 second story addition. These old beams currently
25 carry very little weight. We have no data to confirm

1 that they are sufficient anchored within the shared
2 wall to support a second story. They're not an
3 integral part of the wall of 1315 that we share, and
4 they were inserted into the wall after the fact,
5 about 100 years ago when a garage was constructed
6 using existing walls. They don't go through the
7 entire wall which itself is three bricks thick. So
8 it's conceivable that they're sitting on 1.5 bricks
9 throughout the garage.

10 We're concerned that should the wall where
11 these beams are inserted fail to support the proposed
12 additional weight the structural integrity of the
13 entire wall will be affected on both sides. So while
14 we support the concept and massing of the building we
15 are concerned about these two issues and my wife and
16 I wanted to be able to present this to you today.

17 CHAIRPERSON HEATH: Okay. Where are your
18 windows that you said they're --

19 MR. SALTER: I believe that you may have a
20 copy of an illustration that I shared yesterday. But
21 you can see --

22 CHAIRPERSON HEATH: Oh, this one.

23 MR. SALTER: -- our windows are on the second
24 floor. And if you wish I can pass -- this is a copy
25 that was made through your office.

1 MR. MAY: We just got that. I think that's
2 the same thing that was submitted in the record. I
3 think we have that.

4 CHAIRPERSON HEATH: Okay.

5 MR. HILL: It's 33.

6 CHAIRPERSON HEATH: Thirty-three.

7 MR. MAY: Yeah. Madam Chair, may I ask a
8 question?

9 CHAIRPERSON HEATH: Sure.

10 MR. MAY: So, Mr. Salter, on the -- it's hard
11 to tell but somewhere in the documents I have it
12 seems to indicate that you might actually have a
13 freestanding wall on the other side. Is that
14 correct?

15 MR. SALTER: On our alley side?

16 MR. MAY: The other side from where the
17 building that we're talking about today.

18 MR. SALTER: You're talking about our
19 building or the one --

20 MR. MAY: Yeah. I mean, the property that's
21 where they're seeking relief. They have that and
22 then you have your house, what's over here?

23 MR. SALTER: That is another building that I
24 believe shares a party wall as well.

25 MR. MAY: So you have a party wall on that

1 side?

2 MR. SALTER: Yeah, I don't own that building,
3 but that's correct.

4 MR. MAY: But it's immediately adjacent to
5 you?

6 MR. SALTER: The building where they're going
7 to be building is immediately adjacent.

8 MR. MAY: No, the other side.

9 MR. SALTER: It's the next one down.

10 MR. MAY: No.

11 MR. SALTER: We're on a corner.

12 MR. MAY: You're at a corner.

13 MR. SALTER: Right.

14 MR. MAY: Okay. So along one side of your
15 property -- well, you have -- so that means you have
16 two party walls and you have two alley walls?

17 MR. SALTER: No, we have one wall on one side
18 of an alley and one wall on the front, the other
19 side. The wall that is between the buildings is a
20 shared party wall.

21 MR. MAY: Right. And I'm not concerned about
22 that.

23 MR. SALTER: Okay.

24 MR. MAY: The wall that's parallel to that
25 wall. Right? You have four walls.

1 MR. SALTER: Right.

2 MR. MAY: This one is the party wall.

3 MR. SALTER: Right.

4 MR. MAY: What is this wall? Is that on the
5 alley?

6 MR. SALTER: To the other neighbor.

7 MR. MAY: No, on the other side of your
8 house. Your house has four walls.

9 MR. SALTER: Right.

10 MR. MAY: One is a party wall. What is the
11 other wall? Is that a party wall?

12 MR. SALTER: We have one party wall.

13 MR. MAY: You have one party wall. And
14 what's on the other wall? What's outside the other
15 wall? It's an alley?

16 MR. SALTER: Right.

17 MR. MAY: Correct. Okay. It's not totally
18 clear from the information that I have in the record
19 that that's the case. That's why I'm -- sorry to
20 be --

21 MR. SALTER: No, no, that's all right.

22 MR. MAY: -- going over it repeatedly. So do
23 you have windows on to the alley there?

24 MR. SALTER: We do, on the front.

25 MR. MAY: Okay. And so are you aware of the

1 concept of an at-risk window?

2 MR. SALTER: I do for a freestanding wall,
3 not a party wall. The walls --

4 MR. MAY: It happens on party walls too.

5 MR. SALTER: Yeah. Well, we didn't know. We
6 don't know.

7 MR. MAY: Yeah.

8 MR. SALTER: We wanted your input into this
9 and thought that this would be something that would
10 be worth discussing with you.

11 MR. MAY: Right. Okay. So with regard to
12 the construction issue that you raised and the
13 structural ability of the wall to support the steel
14 beams, and so I would turn that back to the
15 applicant's architect to talk about how the, you
16 know, what you've done to make sure that the
17 structure of this proposed reconstruction is
18 appropriate.

19 MS. BLOOMBERG: Well, when we get to the
20 permit drawings we'll submit full structural
21 drawings. We've already had a structural engineer
22 out a couple weeks ago, who did calculations and
23 confirmed that it will indeed hold the beam with the
24 extra added floor, but that will be put into the
25 drawings in a signed format by the engineer when we

1 submit for permit. So we did already look into it,
2 but it will be, you know, completely written up and
3 signed and all of that, legally, and submitted to
4 DCRA.

5 MR. MAY: I'm sure you will. Okay. Thanks.

6 CHAIRPERSON HEATH: Okay. Thank you, Dr.
7 Salter. All right.

8 Is there anyone else here wishing to speak in
9 support or opposition to this application? Okay.

10 Then we'll turn back to the applicant if you
11 have any other comments or closing remarks you'd like
12 to make.

13 MS. BLOOMBERG: I'll just point out that we
14 also have Historic Preservation Review Board approval
15 for concept, so actually every agency that's seen it
16 so far has approved it, including the ANC.

17 CHAIRPERSON HEATH: Thank you. Is the Board
18 ready to deliberate on this? I think we've addressed
19 the comments of the adjacent neighbor appropriately
20 and with that I'm fine to approve this. So I will
21 make a motion that we approve the request for
22 variances from lot occupancy requirements and
23 nonconforming structure requirements to renovate an
24 existing one-story garage into a two-story one-family
25 dwelling under Application No. 19197.

1 MR. HILL: I second.

2 CHAIRPERSON HEATH: The motion has been made
3 and seconded. Any further discussion?

4 [Vote taken.]

5 CHAIRPERSON HEATH: The motion carries.
6 Thank you.

7 MR. MOY: Staff would record the vote as four
8 to zero to one. This is on the motion of Chairperson
9 Heath to approve the application for the relief
10 requested as shown on plans under Exhibit 6. And
11 seconded the motion, Vice Chair Hill. Also in
12 support Mr. Peter May, Mr. Jeffrey Hinkle. Board
13 seat vacant, motion carries, Madam Chair.

14 CHAIRPERSON HEATH: Thank you. Summary.

15 MR. MOY: Thank you.

16 CHAIRPERSON HEATH: You can call our next
17 case.

18 MR. MOY: Yes. Application No. 19198 of
19 Peter Lord and Rebecca Larson. And this is request
20 for special exception under 223, not meeting lot
21 occupancy 403.2, open court 406, nonconforming
22 structure requirements 2001.3. This is for a two-
23 story rear addition to an existing one-family
24 dwelling, R-4 district, 230 12th Street Northeast,
25 Square 1010, Lot 74.

1 CHAIRPERSON HEATH: Good afternoon. Could
2 you introduce yourself?

3 MS. FOWLER: Hi. My name is Jennifer Fowler.
4 I'm the architect representing the owner.

5 CHAIRPERSON HEATH: Thank you. All right.
6 Has this been before Historic --

7 MS. FOWLER: This is most likely going to be
8 on the staff signoff.

9 CHAIRPERSON HEATH: Oh, really? Okay.

10 MS. FOWLER: Because it's a small scale.

11 CHAIRPERSON HEATH: Okay. All right. This
12 looks pretty straight forward, so again I don't think
13 we're going to need a full presentation from you
14 unless the Board has any questions.

15 All right. Then if you're okay with us
16 proceeding on, we will.

17 MS. FOWLER: Yeah. I wish they were all this
18 easy. Thank you.

19 CHAIRPERSON HEATH: I know. We do too.

20 MS. FOWLER: Thank you.

21 CHAIRPERSON HEATH: Does Office of Planning
22 have anything further to add?

23 MS. RAPPOLT: Nothing further. We continue
24 to stand on the record in support of the application.

25 CHAIRPERSON HEATH: Okay. Thank you. All

1 right. We also have a letter of no objection from
2 DDOT and a letter of approval from ANC 6A. Is there
3 anyone here from ANC 6A? No? All right.

4 And we have letters in support from both
5 neighbors adjacent to this property. Is there anyone
6 here wishing to speak in support of this application?
7 Anyone in support? Anyone in opposition? All right.

8 Then we'll turn back to you if for some
9 reason you want to make a closing.

10 MS. FOWLER: No additional comments. Thank
11 you.

12 CHAIRPERSON HEATH: Okay. All right.
13 Thanks. Then I will make a motion that we approve
14 the request for special exception to construct a two-
15 story rear addition on an existing one-family
16 dwelling under Application No. 19198.

17 MR. HILL: Second.

18 CHAIRPERSON HEATH: The motion has been made
19 and seconded. Any further discussion?

20 [Vote taken.]

21 CHAIRPERSON HEATH: Motion carries. Thank
22 you.

23 MR. MOY: Staff would record the vote as four
24 to zero to one. This is on the motion of Chairperson
25 Heath for the relief requested as shown on plans

1 under Exhibit 7. And seconded the motion, Vice Chair
2 Hill. Also in support, Mr. Peter May, Mr. Jeffrey
3 Hinkle. Board seat vacant. Motion carries, Madam
4 Chair.

5 CHAIRPERSON HEATH: Thank you. Summary.

6 MR. MOY: Thank you.

7 CHAIRPERSON HEATH: Thanks.

8 MR. MOY: Okay. Application No. 19210 of
9 Atlantic Gardens Redevelopment, LP. This is
10 captioned and advertised for special exception relief
11 from the child development center requirements,
12 Section 205, to permit an increase on the number of
13 children and staff for an existing child development
14 center, from 20 children to four staff to 33 children
15 and nine staff in the R-5-A district, 4226 through
16 4228 4th Street Southeast, Square 6207, Lot 30.

17 CHAIRPERSON HEATH: Good afternoon. Would
18 you introduce yourselves, please?

19 MS. PRICE: Allison Prince with Goulston and
20 Storrs.

21 MR. HAGLER: Royace Hagler with United
22 Planning Organization.

23 CHAIRPERSON HEATH: Okay. Thank you. Okay.
24 So you currently have 20 children, four staff, and
25 you're increasing to 33 and -- 33 children and nine

1 staff?

2 MR. HAGLER: Yes, that's what we would like
3 to do.

4 CHAIRPERSON HEATH: Okay. All right. And
5 age range, zero to five?

6 MR. HAGLER: Zero to three.

7 CHAIRPERSON HEATH: Zero to three. Okay.
8 All right. Do you have any interest in increasing --
9 Office of Planning noted as a part of their condition
10 that the ages would range from zero to five.

11 MR. HAGLER: We have zero to five but
12 currently we have zero to three, and that's what we
13 intend for the near future. We are an early Head
14 Start program.

15 CHAIRPERSON HEATH: Okay.

16 MR. HAGLER: Which is zero to three.

17 CHAIRPERSON HEATH: Okay. Understood. All
18 right. Does the Board have any other questions?
19 Okay. All right. Then with that then I don't think
20 we're going to need a full presentation from you. So
21 if you're okay with us proceeding on, we will.

22 MS. PRICE: We're fine with you proceeding on
23 the record.

24 CHAIRPERSON HEATH: Thanks. Does the Office
25 of Planning have anything further to add?

1 MS. ELLIOTT: Good afternoon.

2 CHAIRPERSON HEATH: It is afternoon.

3 MS. ELLIOTT: Madam Chair, Members of the
4 Board. Just one really quick update since OP filed
5 the report. We have been in contact with OSSE to
6 discuss this application and they have actually sent
7 someone out to the property for an inspection and
8 have determined that they can accommodate up to 40
9 children at -- up to 40 children at this site.

10 So what's being requested is within the realm
11 of possibility with OSSE. So besides that we'll go
12 ahead and stand on the record of our report, which is
13 recommending approval of this request. And when it
14 comes to the condition we're fine with it being
15 revised so that it reflects the age -- excuse me, age
16 group of zero to three which has been requested by
17 the applicant.

18 CHAIRPERSON HEATH: Okay. All right. Then
19 as you've stated we'll accept the condition of Office
20 of Planning just to read the student enrollment shall
21 not exceed 33 ranging in age from zero to three and
22 we'll leave off the Office of State Superintendent of
23 Education comment at the end. And I see you nodding
24 your head so I assume you're okay with that
25 condition. Okay. All right. All right. Thank you.

1 We also have a letter of no objection from
2 DDOT and a letter recommending approval from ANC 8D.
3 I assume there's nobody here from ANC 8D. All right.
4 Is there anyone here wishing to speak in support of
5 this application? No support.

6 Anyone in opposition? All right. Then we'll
7 turn back to the applicant if you have anything you'd
8 like to add as a part of closing.

9 MS. PRICE: Nothing to add.

10 CHAIRPERSON HEATH: Okay. Then unless the
11 Board has anything you'd like to add I will make a
12 motion that we approve the request for special
13 exception from the childcare development center
14 requirements to permit an increase in the number of
15 children and staff, and including the condition as
16 I've previously stated from Office of Planning for
17 Application No. 19210.

18 MR. HILL: Second.

19 CHAIRPERSON HEATH: The motion has been made
20 and seconded. Any further discussion?

21 [Vote taken.]

22 CHAIRPERSON HEATH: The motion carries.
23 Thank you.

24 MR. MOY: Four to zero to one. This is on
25 the motion of Chairperson Heath to approve the

1 special exception relief under Section 205, not to
2 exceed 33 children, nine staff, the age range of to
3 zero to three ages. Did I say that right? Age --

4 CHAIRPERSON HEATH: Age zero to three.

5 MR. MOY: Age zero to three. Oh, thank you.
6 And seconded the motion Vice Chair Hill. Also in
7 support Mr. Peter May, Mr. Jeffrey Hinkle, board seat
8 vacant and that's it.

9 CHAIRPERSON HEATH: Okay.

10 MR. MOY: The motion carries.

11 CHAIRPERSON HEATH: Thank you. Summary. And
12 we're going to take a quick break. Okay. So we'll
13 take a quick 10 minute break.

14 [Recess from 12:44 p.m. to 12:57 p.m.]

15 CHAIRPERSON HEATH: All right. We're going
16 to come back to order. Think we have four cases left
17 on our docket today and we're going to go a little
18 bit out of order for the completion of our cases.
19 We're going to make Case No. 191901 last on our
20 docket, and so we're going to resume now with Case
21 No. 19167 and then we will hear 19220, and then
22 19196.

23 MR. MOY: Thank you, Madam Chair.

24 CHAIRPERSON HEATH: Mr. Moy, if you could
25 call our next case.

1 MR. MOY: Thank you, Madam Chair. So that
2 would be parties to the table to Application No.
3 19167 of SK Asset Group, LLC. This, Madam Chair, was
4 originally advertised for variance from the lot
5 occupancy requirements under 403.2 and the off-street
6 parking requirements under 2101.1. This is for a
7 three-story flat in the R-4 district, 445 M Street
8 Northwest, Square 513, Lot 161.

9 I'd like to also add that I believe it was
10 amended and I'd like confirmation from the applicant.
11 It was amended to add special exception relief from
12 the height requirements under 400.23, and there is a
13 self-certification to that affect. So we have
14 revised plans as shown on Exhibit 29, although I do
15 know that there was additional drawings. I'm
16 assuming they were revised, that were submitted on
17 March 7th under Exhibit 33. So if the applicant can
18 confirm all that then we're good to go.

19 MR. BELLO: Good afternoon, Madam Chair.
20 Toey Bello.

21 MR. MASEMBWA: Good afternoon, Chair and
22 Board. Kanyi Masembwa, Executive Member for SK Asset
23 Group.

24 MR. McMEANS: And Stuart McMeans, the other
25 owner also.

1 CHAIRPERSON HEATH: Okay. All right. So you
2 added 400.23 for height?

3 MR. BELLO: That's correct.

4 CHAIRPERSON HEATH: Did you advertise with
5 height included? Did you advertise height as part of
6 --

7 MR. BELLO: Well, the ANC and the neighbors
8 are certainly aware that we are asking for height.
9 So they're supportive of the application also,
10 supports that relief.

11 CHAIRPERSON HEATH: Okay. We don't have an
12 ANC report on this. But you did meet with them?

13 MR. BELLO: Yes, he did. I'll let him
14 testify.

15 MR. MASEMBWA: Yes, Madam Chair. Last
16 Tuesday, which would have been March the 2nd, and if
17 you may indulge me, check the calendar for the prior
18 week, we met with the ANC twice. The ANC, on my
19 correction, March 1st, and the 23rd of February.
20 Actually, that's wrong. Not before -- the 25th of
21 February, which was a Thursday, with the ANC Zoning
22 Committee, which Mr. Toye Bellos was present for and
23 I made the presentation and we requested it and we
24 also shared with the ANC support from both neighbors,
25 which we didn't have in writing at the time. But

1 then subsequent for the ANC meeting, the ANC 6
2 meeting, which was held on the 1st of March last
3 Tuesday, which I and my business partner Mr. McMeans
4 attended. I presented again to the ANC and we got
5 full support.

6 And at that point they had the written
7 supports from both adjacent neighbors.

8 CHAIRPERSON HEATH: Okay. Did they indicate
9 that they were going to send a letter at that time?

10 MR. MASEMBWA: Yes. I didn't get a
11 commitment on when, but yes, they did.

12 CHAIRPERSON HEATH: Okay. All right. So
13 we're going to need you to talk about the relief
14 you're requesting for height.

15 MR. MASEMBWA: Yes.

16 CHAIRPERSON HEATH: So, I don't know if the
17 Board wants to hear anything else from the applicant
18 as a part of their presentation. Okay. So --

19 MR. MAY: I mean, it's really, the height is
20 the biggest question. Why is that necessary?

21 MR. MASEMBWA: Okay. Well, thank you. If I
22 may proceed. In the handout that I provided to the
23 secretary, there's three sets within the -- or
24 sections of the set, and the one that shows the
25 height variance between the adjacent two houses or

1 properties, you can see that the height is not much
2 different and then subsequent to that first page the
3 second and third page to that shows the street view.

4 The reason why we're asking for a variance in
5 the height restriction is because once we finish the
6 -- the architect -- we finished the drawings with the
7 architect well over a year, but there had been some
8 hold up and some things that did not allow us to come
9 before the Board and submit our drawings prior to
10 today. And subsequently we were caught in essence,
11 once all the drawings were finished with the R-4
12 zoning codes changing last June.

13 So our original height has always been 37.8
14 feet high, and so there's never been a change and we
15 were finished well before the zoning change. So
16 we're asking, since we were coming before the Board
17 instead of incurring additional costs and other I
18 guess challenges to go back and make the revisions,
19 we're asking the Board for the exception since we are
20 showing that we're consistent with pretty much that
21 street where there are houses that are already three
22 stories high, excluding the basement, above grade.
23 And so this would not make this any -- this addition
24 and development would not make this uncommon for that
25 street or for that neighborhood.

1 MR. BELLO: Madam Chair, if I might add? The
2 applicant submitted a revised hearing statement as
3 Exhibit 27, and it outlines how the application meets
4 each provision that will allow the granting of the
5 special exception under 400.23.

6 [Pause.]

7 CHAIRPERSON HEATH: All right. So your
8 argument is that because your plans were already
9 completed when the Zoning Regulations were passed
10 that you feel that's your hardship? That revising
11 your -- have you worked with -- have you talked with
12 your architect about modifying the drawings to meet
13 the regulations?

14 MR. MASEMBWA: Yes, but we were also -- the
15 other hardship would be that we've gone through the
16 Historic Preservation review and had received
17 favorable, I'm not sure of the proper word. But we
18 received their approval if you will.

19 So we believe that going through that
20 process, you know, we would incur a hardship if we
21 have to go back and change and modify the drawings.

22 CHAIRPERSON HEATH: You wouldn't necessarily
23 have to change the design to change the -- to modify
24 the height.

25 MR. MASEMBWA: Well, we believe that we would

1 as it relates to the window sizing and for the
2 mansard roof and the design because we went back and
3 forth with the Historic Preservations Office a couple
4 of times with revisions prior to the zone changing.

5 MR. BELLO: If I might add, Madam Chair. I
6 think what the applicant is trying to articulate is
7 that the project was well into design phase and
8 approved by Historic Preservation long before the
9 amendment to the R-4 zone to set new height
10 limitations. The application was also filed at DCRA
11 and it would -- the application would otherwise have
12 been vested but for the retroactive dragnet of the R-
13 4 provisions that set back the dates which the new
14 regulations were applicable.

15 But actually I just want to focus on the
16 relief here is a special exception and that the
17 provisions of those special exceptions are met. The
18 Board would consider approving the project and we
19 believe that it meets every provision of that special
20 exception.

21 MR. MAY: Madam Chair.

22 CHAIRPERSON HEATH: Sure.

23 MR. MAY: So tell me about the HPRB approval.
24 Was that, did you have to go through full
25 presentation or was it consent calendar?

1 MR. MASEMBWA: I believe it may have been
2 consent calendar. And please forgive the lack of
3 understanding completely what that means. I know --

4 MR. MAY: Did you actually make a
5 presentation or did they vote on your project without
6 you having to make a presentation?

7 MR. MASEMBWA: And that's what I was going to
8 say. I know the architect had many discussions and
9 met with but I don't recall a full presentation. Do
10 you? I don't believe --

11 MR. MAY: All right. Well, the Office of
12 Planning ought to be able to answer that. And it may
13 be in what was -- what's in the record, I just -- you
14 know, when you're dealing with 10 cases it's hard to
15 remember which one is which.

16 So but you had not -- when did that approval
17 come?

18 MR. MASEMBWA: I would have to go back and
19 look at the records. We had, was it 2014, because we
20 submitted -- yeah. For the record it would be hard
21 for me to give you an exact date only because I
22 wasn't --

23 MR. MAY: So I mean, there was a provision
24 for projects that have already gotten some level of
25 approval, I thought, to be vested under the change in

1 the height. Is that not correct? I mean, it's hard,
2 again, hard to remember. We've changed so many
3 Zoning Regulations in the last year and a half. But
4 I thought there was a provision that if you've
5 already gotten an HPRB approval that you would be
6 okay. So it sounds like you didn't have that HPRB
7 approval.

8 MR. BELLO: Well, I think you're correct.
9 And I can look into that and verify that for you.
10 But this application in the way of a background was
11 actually started in 2014.

12 MR. MAY: You know, when you actually start
13 thinking about it and when you actually start doing
14 anything about it, I mean, it really doesn't matter.
15 It's when you actually file things and when things
16 are approved that are important and that's why I'm
17 asking questions about that.

18 I mean, you may have put pen to paper, you
19 know, 15 years ago. It wouldn't matter.

20 MR. MASEMBWA: Well, I can definitively say
21 which approval. I'm not sure, if you don't mind me
22 saying, Commissioner May.

23 MR. MAY: Yeah.

24 MR. MASEMBWA: That we got the approval from
25 the Historic Preservation Office well before the

1 zoning code change, because I have another project
2 and I was keeping timeline of that.

3 However, I don't know which of the two that
4 you asked about for the Historic Preservation, I'm
5 not sure if there was a full formal presentation but
6 we did get the approval well before the zoning codes
7 had changed. I can guarantee that.

8 MR. MAY: All right. So we'll get some
9 clarification from the Office of Planning about how
10 it was approved and the timing of that. And did you
11 know if you have concept approval or final approval?

12 All right. Well, if you don't know for sure
13 then we'll ask the Office of Planning. Hopefully
14 they can provide that information because that's
15 relevant.

16 MR. MASEMBWA: Well, it was final because we
17 submitted it to DCRA, so it was final.

18 MR. MAY: Okay.

19 MR. MASEMBWA: And I do understand you have
20 to do that before DCRA and --

21 MR. MAY: Right. You were correct, and I
22 think you're correct about that.

23 MR. MASEMBWA: And we initially submitted
24 because I am actually the one who submitted the
25 drawings, back in June. But then because of the new

1 requirements to submit them through project dock --

2 MR. MAY: Right.

3 MR. MASEMBWA: -- it got pushed back and they
4 said, oh, you didn't push the submit button and that
5 cost us two, three months because I had some other
6 projects and I finally got an e-mail said, hey, we're
7 waiting. I'm like, so I talked to them so I can --

8 MR. MAY: Okay.

9 MR. MASEMBWA: -- definitively say it was
10 approved before then.

11 MR. MAY: Okay.

12 MR. HILL: Just to be clear because I got two
13 numbers. Is it 36 and a half or 37 and a half in
14 terms of the height?

15 MR. MASEMBWA: Thirty-seven. What we were
16 told by DCRA, where the measurement, they said the
17 law hasn't changed in terms how you measure. But
18 previously they were measuring -- so the 36 came from
19 measuring inside the highest ceiling of the top floor
20 versus now DCRA says you have to measure from the
21 roof floor on the roof floor. So --

22 MR. HILL: That's right. You've got a --

23 MR. MASEMBWA: -- it never changed.

24 MR. HILL: Is it 37, or 37 and a half?

25 MR. MASEMBWA: Yes, sir.

1 MR. HILL: 37 and a half?

2 MR. MASEMBWA: So 37.8 is what measuring it
3 from the roof floor, yes. Where previously we were
4 showing 36 and a half from the inside ceiling height.

5 MR. HILL: Okay. I got it. Thanks.

6 MR. MASEMBWA: Sorry.

7 MR. HILL: That's all right.

8 CHAIRPERSON HEATH: Okay. And we have some
9 questions of Office of Planning so we'd like to ask
10 them at this time.

11 MR. JESICK: Great. Thank you, Madam Chair
12 and Members of the Board. The Office of Planning
13 supports the lot occupancy and parking variances that
14 have been requested. And at the time of our written
15 report we didn't have enough information to make a
16 recommendation about the height. Very recently the
17 applicant did submit additional information
18 addressing the special exception criteria for the
19 height that they've requested, and the Office of
20 Planning can support relief for the height special
21 exception.

22 And I just want to reiterate something that's
23 already been mentioned this morning that it is a
24 special exception test without any sort of hardship
25 requirement. And we feel that they have met the

1 standard for the special exception. Thank you.

2 CHAIRPERSON HEATH: And do you know about the
3 timing of their HPRB?

4 MR. JESICK: I'm not aware of when they went
5 to the HPRB, no.

6 CHAIRPERSON HEATH: Okay. All right. Well,
7 thank you.

8 Board, any questions of Office of Planning?
9 Any other ones? Okay. All right.

10 I think I already indicated that we don't
11 have a letter of support from ANC 6E, but you
12 indicated that they granted support at their meeting.
13 Okay. And we also have a letter of no objection from
14 Department of Transportation, and a letter of support
15 from an adjacent neighbor.

16 Is there anyone here wishing to speak in
17 support to this application? Anyone in support?
18 Anyone in opposition? No, opposition. Okay. Then
19 we'll turn back to the applicant for any closing.

20 MR. BELLO: We'll just rest on the record,
21 Madam Chair. Thank you.

22 CHAIRPERSON HEATH: Does the Board have any
23 other questions? Are we ready to deliberate? Okay.
24 All right. Based on the information that we've
25 received during this hearing regarding the issues

1 around height and Office of Planning's approval as
2 noted today, I am now in support of this application
3 and so I will make a recommendation or make a motion
4 that we approve the request for variances, from lot
5 occupancy and parking, and the special exception for
6 height for Application No. 19167.

7 MR. HINKLE: I'll second.

8 CHAIRPERSON HEATH: All right. Thank you.
9 The motion has been made and seconded. Any further
10 discussion?

11 MR. MAY: Yes, Madam Chair.

12 CHAIRPERSON HEATH: Go ahead.

13 MR. MAY: So, you know, based on the
14 representations today that this has already gotten
15 through all the necessary HPRB approvals and that
16 there was substantial back and forth, I mean, I'm
17 willing to go along with it but frankly I'm not happy
18 about it. I don't think that this is -- I think that
19 actually reducing the height of this building would
20 improve the elevation along M Street and I think that
21 the, you know, the right thing to do would be to
22 redesign it and to -- I mean, you have the
23 flexibility. You have 10-foot ceiling heights on two
24 out of the four floors and nine foot on the other
25 one. I mean, there's enough room to take three feet

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1 out of this without having an undue compromise on the
2 quality of interior space. And, you know, this is
3 such a narrow property and it's going very tall and,
4 you know, the proportions of the front façade are
5 such that it actually would benefit from shrinking
6 some of that. There's a lot of brick in a façade
7 that would otherwise, you know, be taken up mostly by
8 windows.

9 I just, I think that HPRB could have done a
10 better job, or HPO staff, whoever reviewed it, to try
11 to push this down because there clearly flexibility
12 to push it down.

13 As far as the standards go, I mean, the only
14 standard that really goes to that is adverse -- the
15 resulting building as viewed from the street, alley,
16 or other public way shall not substantially visually
17 intrude upon the character, scale, and pattern of
18 houses along the street frontage.

19 This would be a different case if it was
20 actually abutting one of those taller houses, and
21 it's not. It's flanking two very small buildings.
22 It's 15 feet taller than the one building immediately
23 to the east. And I think that it is intrusive, but
24 based on the representations that the ANC supports
25 that the fact that the immediately abutting neighbors

1 support it and -- or don't object to it, and Office
2 of Planning's support, I'm willing to go along. But
3 I'm, as I said, I'm not happy about it. I guess I
4 just haven't been happy to day.

5 CHAIRPERSON HEATH: It's not your day.

6 MR. MAY: Not my day. That's, you know, lack
7 of lunch. Anyway, thank you.

8 MR. HILL: It's funny, Commissioner May. I
9 also -- I actually will agree with you that you know,
10 I mean, the ANC is in support and you know, it's gone
11 through the, you know, the Office of Planning is in
12 support. And also, I was -- you know, that the two
13 houses over, if again it was up against that house
14 then it wouldn't kind of stick out as much. However,
15 I also am not going to stop this in that I -- again
16 if the ANC -- you know, if the neighbors, both
17 adjacent neighbors are in support of it but it would
18 have been -- if they could have lowered it down to
19 you know, whether -- I don't know whether it would
20 have made it a whole lot different in terms of, to be
21 quite honest, just the way it looked, you know, even
22 a, you know, a foot and a half, I don't necessarily
23 think it would. I guess, that's the other problem
24 that I'm having that you know, if it's down another
25 foot and a half it's not, I don't think, going to

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1 change --

2 [Discussion off the record.]

3 MR. HILL: So, I'm going to go with my
4 colleague, however, which is that I'm going to be
5 hangry about going, you know, forward. Thank you.
6 But yes, I'm in support.

7 CHAIRPERSON HEATH: All right. All right.

8 [Vote taken.]

9 CHAIRPERSON HEATH: So the motion carries.

10 MR. MOY: Staff would record the vote as four
11 to zero to one. This is on the motion of Chairperson
12 Heath to approve the amended relief requested.
13 Seconded the motion, Mr. Hinkle. Also in support Mr.
14 Peter May, Vice Chair Hill. Board seat vacant. Four
15 to zero to one and I'm going to use the now submitted
16 drawings as your current drawings, revised drawings
17 for the record. Motion carries, Madam Chair.

18 CHAIRPERSON HEATH: Thank you. Summary.

19 MR. BELLO: Thank you.

20 CHAIRPERSON HEATH: Thanks.

21 MR. MOY: The next application before the
22 Board is 19220. So parties can come to the table.
23 This is the application of the Department of General
24 Services of D.C. as advertised for a special
25 exception relief on the rooftop mechanical equipment

1 requirements under 411.11. This is to allow the
2 installation of a new rooftop mechanical equipment to
3 an existing school building in a C-2-A/R-4 district,
4 1445 C Street Southeast, Square 1060, Lot 820.

5 CHAIRPERSON HEATH: Could you please
6 introduce yourselves? Your mic is not on.

7 MR. PICKEN: Kevin Picken with the Department
8 of General Service.

9 MR. NEWMAN: Tony Newman with Marshal Mitisan
10 (phonetic), the architect.

11 CHAIRPERSON HEATH: All right. Does the
12 Board have any questions of the applicant? All
13 right. Okay. All right. So it appears that your
14 file is complete based on what we've seen so far and
15 it doesn't seem that the Board has any questions at
16 this time. So we're not going to need a full
17 presentation from you. If you're okay with us
18 proceeding on we may come back to you with questions.

19 MR. PICKEN: We are.

20 CHAIRPERSON HEATH: Okay. Office of Planning
21 is here with us. Do we -- do you have anything that
22 you'd like to add?

23 MS. FOTHERGILL: No, we rest on the record in
24 support of the application. Thanks.

25 CHAIRPERSON HEATH: Okay. All right. Does

1 the Board have any questions of Office of Planning?
2 Okay. We also have a letter of no objection from
3 Department of Transportation and from a letter
4 recommending approval from ANC 6B. No letters in
5 support or opposition, I believe.

6 All right. Is there anyone here wishing to
7 speak in support of this application? Anyone in
8 support? Anyone in opposition? No opposition.
9 Okay.

10 Then we'll turn back to you if you have any
11 closing remarks you'd like to make. You haven't had
12 to say much at all.

13 MR. PICKEN: We do not.

14 CHAIRPERSON HEATH: Okay. All right. So is
15 the Board ready to deliberate on this?

16 MR. MAY: Yeah, if it's Tuesday we must have
17 a DGS case. Always a school building, always needing
18 rooftop relief.

19 CHAIRPERSON HEATH: Mechanical, uh-huh.

20 MR. MAY: Maybe -- well, I mean, was this one
21 actually timely filed or is one of the one that's
22 already like well through the pipeline and you
23 discovered it later?

24 MR. PICKEN: I believe it's that case.

25 MR. MAY: What's that?

1 MR. PICKEN: It is that case, yes.

2 MR. MAY: It is that case. So hopefully, you
3 know, with all this extra angst associated with
4 coming back after the fact that actually at some
5 point DGS is going to get fully caught up and process
6 these things in advance of --

7 MR. PICKEN: I think that's our process
8 moving forward. I think there's one or two more in
9 the pipeline.

10 MR. MAY: I'm hoping. Not that we don't love
11 seeing you but, you know, you don't want to catch us
12 on cranky days.

13 CHAIRPERSON HEATH: All right. Luckily we
14 had a snack time, so. Yeah, Commissioner May is a
15 little bit happier. All right. Okay.

16 Then I will make a motion that we approve
17 this -- that we approve Application No. 19220, DGC of
18 D.C.

19 MR. HINKLE: I'll second.

20 CHAIRPERSON HEATH: Motion has been made and
21 seconded. Any further discussion?

22 [Vote taken.]

23 CHAIRPERSON HEATH: The motion carries.
24 Thank you.

25 MR. MOY: The vote, the final vote is four to

1 zero to one. This is on the motion of Chairperson
2 Heath to approve the request for special exception
3 relief under 411.11. These are plans as shown on
4 Exhibit 6. Seconded the motion, Mr. Hinkle. Also in
5 support, Mr. Peter May, Vice Chair Hill. Board seat
6 vacant. Motion carries, Madam Chair.

7 CHAIRPERSON HEATH: Thank you. Summary.

8 MR. MOY: Thank you.

9 CHAIRPERSON HEATH: Thanks.

10 MR. PICKEN: Thank you.

11 MR. MOY: Okay. Parties to the table to
12 Application No. 19196 of 1247 ESE, LLC. This is, or
13 rather was captioned and advertised for variance
14 relief on the minimum lot dimension requirements
15 under 401.11. This was to -- or rather this is
16 proposed to convert a lower level storage space into
17 a residential unit, R-4 district, 1247 E Street
18 Southeast, Square 1019, Lot 43.

19 And I believe, Madam Chair, in your case
20 records there was a letter from the Capitol Hill
21 Restoration Society that was submitted yesterday and
22 I believe that's your Exhibit No. 32.

23 CHAIRPERSON HEATH: Uh-huh. I do see that.
24 Thank you, Mr. Moy.

25 Would you all introduce yourselves, please?

1 MR. SULLIVAN: Good afternoon, Madam Chair.
2 My name is Marty Sullivan with Sullivan and Barros.

3 MR. HATEM: My name is Hatem Hatem. I am the
4 managing partner of 1247 ESE, LLC.

5 CHAIRPERSON HEATH: Okay. All right. So
6 this is the same property as was granted time
7 extension?

8 MR. SULLIVAN: Yes, that's correct.

9 CHAIRPERSON HEATH: Okay. Okay. All right.
10 Let me see. Have you seen the letter from Capitol
11 Hill Restoration Society?

12 MR. SULLIVAN: We have.

13 CHAIRPERSON HEATH: All right. Okay. Does
14 the Board have any questions of this applicant? All
15 right. All right.

16 So it appears that we're not going to need a
17 full presentation from you on this, so if you're okay
18 with us proceeding?

19 MR. SULLIVAN: Yes. Happy to stand on the
20 record. Thank you.

21 CHAIRPERSON HEATH: Does Office of Planning
22 have anything further to add?

23 MS. BROWN-ROBERTS: No, Madam Chair, and
24 we'll stand on the record.

25 CHAIRPERSON HEATH: Okay.

1 MS. BROWN-ROBERTS: Thank you.

2 CHAIRPERSON HEATH: Thank you.

3 MR. MAY: Madam Chair, I do have one question
4 of the applicant.

5 CHAIRPERSON HEATH: Sure.

6 MR. MAY: So the project as it is right now
7 meets parking requirements because there are four
8 parking spaces. Is that right?

9 MR. HATEM: That's correct. There is four
10 parking spaces.

11 MR. MAY: So where are they? I'm familiar
12 with the building. There's like a garage door kind
13 of thing, you go through there?

14 MR. HATEM: Yeah, so you go through those two
15 garage doors.

16 MR. MAY: Yeah.

17 MR. HATEM: And inside there's a big
18 courtyard.

19 MR. MAY: Right.

20 MR. HATEM: And you have four parking spaces
21 in that courtyard.

22 MR. MAY: Okay. And that's fully accessible
23 and it's fully used by the existing apartment?

24 MR. HATEM: That is correct. It's fully
25 accessible and currently there is two cars that park

1 there on a regular basis.

2 MR. MAY: Uh-huh. But there's room, there
3 are zoning compliant parking spaces for four cars
4 back there?

5 MR. HATEM: That's correct.

6 MR. MAY: Okay.

7 MR. SULLIVAN: I'm not certain if we meet the
8 20 foot -- there's four spaces that are accessible,
9 but I don't know that there's 20 feet behind the end
10 of the space.

11 MR. MAY: Right.

12 MR. SULLIVAN: If you turn them a certain way
13 you would have that 20 feet.

14 MR. MAY: Right.

15 MR. SULLIVAN: So there's probably, if you
16 turned it some way you'd have two fully compliant,
17 but you have four full sized. They're nine by 19.
18 They probably just don't have the 20 feet between the
19 back of the space and the building. But I'm not sure
20 about that.

21 MR. MAY: So, if we go from four units --
22 well, the previous case didn't grant any parking
23 relief, right?

24 MR. SULLIVAN: No. No, and there was no
25 need. The four units have been there since prior to

1 1958. So what --

2 MR. MAY: So there is actually not parking
3 requirement, you're just adding one.

4 MR. SULLIVAN: That's correct.

5 MR. MAY: Okay. All right. I mean, it's too
6 bad. I'm really interested in knowing how that's
7 laid out in the back, just out of curiosity because
8 it is an unusual property. You don't usually have a,
9 sort of a tunnel through the building that gives you
10 access to the rear court.

11 MR. SULLIVAN: I don't know if the plat --
12 does the plat?

13 MR. MAY: Yeah, it doesn't really show very
14 much. I mean, you know, maybe if you looked at it
15 from Google Earth or something, but --

16 MR. SULLIVAN: If you see, this is OP's photo
17 of it. This is a --

18 MR. MAY: Yeah, right. Yeah, I'm familiar
19 with the property.

20 MR. SULLIVAN: They park in -- when you go
21 through that, the first space would go straight --

22 MR. MAY: Yeah.

23 MR. SULLIVAN: -- into it and the next one
24 would go. So they're --

25 MR. MAY: Do you back out of those spaces, or

1 can you turn around in the back?

2 MR. HATEM: You actually can -- you can turn
3 in the back in that courtyard.

4 MR. MAY: Okay.

5 MR. HATEM: So they don't back out, back in.

6 MR. MAY: Uh-huh.

7 MR. HATEM: So they go inside, they can make
8 a turn --

9 MR. MAY: Right.

10 MR. HATEM: -- and get out. Now, I'll leave
11 it to Marty on what exactly the nine by 19 -- what is
12 the setback required for a space.

13 MR. MAY: No, that's fine, again because it's
14 the four units are effectively grandfathered and
15 adding one space. I mean, it -- I mean I guess we
16 could, you know, if we really wanted to get into the
17 finer points of this we could require you to
18 demonstrate compliance with that on some level or get
19 documentation from DCRA that it doesn't need it.
20 It's probably not worth it for what we're being asked
21 here. Thank you.

22 CHAIRPERSON HEATH: All right. Okay. So I
23 don't know if I said this already but we do have a
24 letter recommending approval from ANC 6B and a letter
25 of no objection from DDOT. Is there anyone here from

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1 ANC 6B? We also have two letters in support from
2 neighbors and then of course the letter that I
3 mentioned from Capitol Hill Restoration Society in
4 opposition.

5 Is there anyone here wishing to speak in
6 support of this application? Anyone in support?

7 Anyone in opposition? No opposition. Okay.

8 Then, is the Board ready to deliberate on
9 this? All right.

10 Then we'll conclude the hearing. Anybody
11 want to make a motion, or have any comments?

12 MR. HILL: Thank you, Madam Chair. I thought
13 that again the application was complete and that I
14 agreed with how Office of Planning thought that the
15 standard was being met. I thought that the Capitol
16 Hill Restoration Society, I think it was the Capitol
17 Hill Restoration Society, kind of their objection,
18 it's a space that is already there now and that the
19 restaurant didn't need and it was just kind of for
20 storage. And the fact that the ANC is also in
21 approval of the application, as well as DDOT, I would
22 then make a motion to approve Application 19196 of
23 1247 ESE, LLC., pursuant to 11-DCMR-3103.2 for a
24 variance from the minimum lot dimension required
25 under 401.11 to convert lower level storage space

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1 into a residential unit in the R-4 district at
2 premises 1247 E Street Southeast.

3 CHAIRPERSON HEATH: Second. The motion has
4 been made and seconded. Any further discussion?

5 [Vote taken.]

6 CHAIRPERSON HEATH: The motion carries.
7 Thank you.

8 MR. MOY: Staff would record the vote as four
9 to zero to one. This is on the motion of Vice Chair
10 Hill. Seconded the motion, Chairperson Heath. Also
11 in support of the motion, Mr. Peter May, Mr. Jeffrey
12 Hinkle, board seat vacant, motion carries four to
13 zero to one as shown on approved plans which is under
14 Exhibit 8.

15 Full order or summary order, Madam Chair?

16 CHAIRPERSON HEATH: I'm sorry. Summary.

17 MR. MOY: Thank you.

18 CHAIRPERSON HEATH: Thanks.

19 MR. MOY: The next and final case before the
20 Board is Application No. 19101 of Darryl O.A.
21 Sulekoiki. I think that's how it's pronounced. As
22 amended for special exception relief on the parking
23 requirements under 2116.5 and the inclusionary zoning
24 requirements pursuant to 2606.1. This is to
25 construct eight flats on eight record lots in the R-4

1 district, 2112 through 2126 3rd Street Northeast,
2 Square 3561, Lots 42 through 49.

3 CHAIRPERSON HEATH: Could you all please
4 introduce yourselves?

5 MR. BROWN: Hello, Madam Chair, Members.
6 Patrick Brown from Greenstein DeLorme and Luchs on
7 behalf of the applicant.

8 MR. SULEKOIKI: Good afternoon, Madam Chair.
9 My name is Darryl Sulekoiki from Katy Group, Inc.
10 (phonetic).

11 CHAIRPERSON HEATH: Sulekoiki?

12 MR. SULEKOIKI: Sulekoiki.

13 CHAIRPERSON HEATH: Koiki, okay. Thank you.

14 MR. TALABI: Good afternoon. My name is Hiya
15 Talabi with Katy Group, Inc.

16 MR. SMART: Good afternoon. Eric Smart with
17 Bolan Smart Associates, here with the applicant.

18 MR. HOLCOMB: My name is Richard Holcomb.
19 I'm the adjoining neighbor at 2110 3rd Street
20 Northeast.

21 MR. BOYER: Good afternoon. My name is
22 Robert Boyer, that's B-O-Y-E-R. I am also the
23 adjacent homeowner at 2110 3rd Street Northeast.

24 CHAIRPERSON HEATH: Okay. All right.

25 MR. MOY: Madam Chair, before you begin I

1 believe that this application was amended to add
2 required parking under 2117.9, but we perhaps should
3 get a clarification on the total relief being
4 requested.

5 CHAIRPERSON HEATH: Okay.

6 MR. BROWN: Madam Chair, before I assume
7 responsibility for the case, it was originally the
8 variance from the IZ requirements and there's a
9 special exception from the IZ requirements. And
10 prior counsel also amended the application to include
11 the parking relief from 2117.9C to allow a required
12 parking spot to be put on an adjoining property.

13 I had, at the request of board staff, I've
14 updated the zoning self-certification to include the
15 parking relief. And when we did our positing we also
16 amended the notice, the hearing notice that was
17 posted at the property to include the new additional
18 Parking relief. And the record contains the new
19 zoning self-certification, revised certification as
20 well as the affidavits of posting and maintenance for
21 the property that comply with the rules.

22 So, and I think it would be worth, and again
23 I wasn't involved in the case previously, but I think
24 the two neighbors here, while their participation is
25 welcome, I don't believe either one of them have

1 requested party status and so that we just have that
2 understanding that they are not in fact parties, but
3 persons and entitled to the rights and privileges
4 that come with that. And we're more than happy to
5 have them sit here and join us at the table. They
6 get a grade for perseverance as well, for sticking
7 with it. So more than happy --

8 CHAIRPERSON HEATH: That's fine.

9 MR. BROWN: -- to have them at the --

10 CHAIRPERSON HEATH: Sure. We would have
11 called them up at some point to come to the table.
12 So --

13 MR. BROWN: Yeah, so --

14 CHAIRPERSON HEATH: -- we're fine with them.

15 MR. BROWN: -- we might as well all be close
16 at hand with the understanding of their status.

17 And I don't want to spend a lot of time
18 hearing from me, but I would like to kind of put --
19 and Mr. Sulekoiki will --

20 MR. SULEKOIKI: Koiki.

21 MR. BROWN: Koiki. Koiki. Sorry. Will
22 testify as the applicant. Mr. Smart is an economic
23 analysis expert having to do with real estate
24 matters. Either now or when we present his testimony
25 I'd like him to be recognized as an expert witness.

1 He's appeared before this Board and others and his
2 resume is in my prehearing statement and I think
3 speaks for itself.

4 But if you'd like to address that issue now,
5 and I think his testimony is extremely important to
6 the Board's consideration of this case.

7 CHAIRPERSON HEATH: I would agree. You've
8 presented to the Board as an expert witness
9 previously?

10 MR. SMART: Yes, I have.

11 CHAIRPERSON HEATH: Okay. Then we'll accept
12 him again as an expert witness.

13 MR. BROWN: Thank you. Again, going back to
14 two items of relief, the special exception from the
15 IZ requirements and putting in context and you'll see
16 a picture upon the screen, and I think even the
17 Office of Planning recognized the unusual
18 circumstances we have here, that -- and we'll provide
19 some background information. I think it's important
20 to understand that.

21 But you've got an eight flat, 16-dwelling
22 unit property that's been built. And permits were
23 issued for all those structures prior to it being
24 determined by the Zoning Administrator's office after
25 the fact that IZ was a requirement, and so that we

1 have a situation, again, unusual, unique, where the
2 IZ requirements are being applied retroactively to a
3 project --

4 MR. MAY: Hold on a second. Inclusionary
5 Zoning Regulations apply no matter what. They're not
6 something that gets applied after the fact. They're
7 not being applied after the fact here. It is very
8 clear from the reading of the Inclusionary Zoning
9 Rules that it applied from the beginning. Now you
10 can argue that somebody missed it or that DCRA might
11 not have caught it. But I don't think you can argue
12 that it is being retroactively applied.

13 MR. BROWN: Well, and the point I'm making is
14 -- and I don't dispute that the IZ rules applied and
15 should have been applied. And I'm not even saying
16 that my client shouldn't have known those rules. But
17 we're faced with the circumstances and I'm not --
18 we're not going to resolve this case by finding fault
19 on anybody's part.

20 But the fact of the matter is that this
21 structure was permitted and largely built before my
22 client was notified that he had an IZ requirement.
23 That creates certain circumstances that are -- and
24 we're not claiming a hardship in a variance sense.
25 But those circumstances are in fact relevant to the

1 central issue of the economic --

2 MR. MAY: I don't dispute the relevance of
3 the argument that you're going to make. You just
4 can't argue that they're being retroactively applied.
5 They applied in the beginning, they apply now.
6 That's all.

7 MR. BROWN: We have different language but
8 we've reached the same place, so I accept that.

9 And then for purposes of I think the easiest
10 task we have today is the parking relief, where we're
11 simply trying to move a required parking spot from
12 one lot to the adjacent lot, primarily because the
13 initial lot, Lot 42, is a triangular irregularly
14 shaped lot that pinches off such that the rear yard
15 does not accommodate a parking spot.

16 I will put in the context that this project,
17 eight flats, and has 14 parking spots. So it's got
18 excessive parking. So we're not talking about any
19 diminution of the parking level, and in fact just
20 where that parking is going to be located, and in
21 fact could be located at any one of a number of
22 spaces that are not required to meet the one-unit --
23 one parking space for each flat.

24 With that I think you've heard enough from
25 me. I'll turn this over and give you some background

1 of how we got to the current situation.

2 MR. SULEKOIKI: Good afternoon again, Madam
3 Chair, Mr. Hill, Mr. May, good afternoon.

4 Just to give you background, in 2006 I was
5 contracted to buy this property. And when the market
6 started turning plus the fact that the owners at that
7 time, they had [garbled speech] on the property that
8 they couldn't clear, so that we could settle on time.
9 So I pulled out of the deal. I couldn't move
10 forward.

11 And in 2012 they came around, they gave me a
12 call. They said am I still interested, and I said
13 yes. And that was when the process began.

14 And in 2012 I think it was sometime in
15 August, because I had done some research on the
16 property before, my due diligence started way back
17 then, I had all the information I needed and I knew
18 what I wanted to do with it. At that time I wasn't
19 aware of any IZ requirement or anything. The only
20 thing I knew was these were six big lots, and in
21 order for it to work for me I needed to subdivide
22 them into eight lots, 16 units.

23 And this is just replicating something that
24 I've done before on R Street, which was not too far
25 away. About maybe six, seven blocks. So I put

1 pretty much took those plans, brought them forward to
2 use them on this property.

3 In August I had some discussions with Mr.
4 Justin Bello because we were working on the project
5 to get 3404 13th Street. So I sent him an e-mail
6 that I needed to talk to him to get his approval,
7 flex approval because dividing those lots, especially
8 with the arch shape of the last lot, there was no way
9 I could get an evenly divided 1,800 square foot lot.
10 So I subdivided them into eight lots and they were
11 short by less than two percent. So I knew back then
12 that I needed to get a flex authorization approval
13 from the Zoning Administrator.

14 So, and I proceed. I sent him an e-mail, but
15 unfortunately for me it was that particular week, if
16 I'm not mistaken, that he had to leave the zoning
17 department to go take charge of another department
18 within DCRA. And I met with him. He said I should
19 go ahead and forward my e-mail to Mr. LeGrant, which
20 I did.

21 I sent the e-mail to Mr. LeGrant. I didn't
22 get any response and after a few days I made calls to
23 his office. I must have called him at least about
24 five or six times between the day we sent the
25 information and -- sorry, the day I sent the e-mail

1 in, until I finally got a response from him that we
2 should -- I should come in and meet with him,
3 November 26th, I think it was. Which I did.

4 On November 26th, I sat down with Mr.
5 LeGrant. We went over the project. And my e-mail,
6 which I think you have in your record, was quite
7 specific. I said, I needed flex authorization and
8 whatever zoning possibilities that may be out there
9 for me because I'm not quite familiar with the entire
10 zoning code.

11 We had the discussion went on for at least
12 about 30 to 45 minutes and he asked me all the
13 questions and said, okay, what do you want me to do?
14 I said, listen, I need you to tell me what I needed
15 to do to move forward with this project. And he
16 said, okay. He looked at it and asked all kinds of
17 questions and said, okay. A determination letter
18 will probably follow after this, but I need you to go
19 and develop a full subdivision plot and bring it
20 back. Okay. Which, I said okay.

21 And I went back to my office, called my
22 architect and engineer up and I said, okay, we
23 finally got this on track. And then we proceeded.
24 And after that we didn't -- I think it was within two
25 or three weeks I was ready and I started calling him,

1 sending e-mails, nothing. I'm pretty sure you have
2 all my e-mails in file. I think we submitted all the
3 e-mails.

4 And in January -- and at this point I had to
5 submit information --

6 MR. HILL: Excuse me. I'm sorry to interrupt
7 you. When was the phone call, you said? Or when did
8 you speak with Mr. LeGrant first? When did you start
9 talking to him?

10 MR. SULEKOIKI: November 26th was when I had
11 the first meeting with him. Of 2012.

12 MR. HILL: What year?

13 MR. SULEKOIKI: 2012.

14 MR. HILL: 2012.

15 MR. SULEKOIKI: Right.

16 MR. BROWN: And that was before you purchased
17 the property.

18 MR. SULEKOIKI: That was before I went to
19 settlement. I already had the property under
20 contract.

21 MR. HILL: And you're citing an e-mail from
22 where?

23 MR. SULEKOIKI: From 2012.

24 MR. HILL: No, I'm sorry. Do you know where
25 it is in the exhibits?

1 MR. BROWN: It's probably in the -- and I can
2 -- yeah, it's in the original statement of the
3 applicant.

4 MR. SULEKOIKI: I think it's got an e-mail.
5 On my document I wrote Exhibit 1 on it. And I think
6 it's Exhibit No. 6 on the BZA case number.

7 CHAIRPERSON HEATH: Six. Yeah, Exhibits 1
8 through 7.

9 MR. SULEKOIKI: Okay. If you look down on
10 that page, this is at the beginning of the page, this
11 is me writing Mr. LeGrant, and then referring him to
12 my e-mail from Justin -- to Justin Bello. And we
13 actually discussed this e-mail in detail.

14 And if you continue on you will see all the
15 subsequent e-mails that went back and forth with Mr.
16 LeGrant and some other members of the Zoning
17 Administrator staff.

18 Anyway --

19 MR. HILL: Okay. I got it. Back in November
20 of -- sorry, in 2012. And in 2012.

21 MR. SULEKOIKI: That's correct.

22 MR. HILL: Okay. Thank you.

23 MR. BROWN: And did you find it in Exhibit 6
24 of the --

25 MR. HILL: Yeah, I did.

1 CHAIRPERSON HEATH: Yeah.

2 MR. HILL: Thank you.

3 MR. SULEKOIKI: And I think it was February,
4 the following year, February 13th, while I was still
5 trying to get an approval and I was getting pressed
6 by my bank and I needed to close. So I proceeded to
7 close on the property because he had already given me
8 his verbal approval and there was no order
9 requirement that I know of at that time.

10 And we went ahead and settled, and during the
11 settlement I had to title the property, which is
12 normal in the industry in the sense that for every
13 condo project that we do we set up a single entity
14 name to hold title to the property. And that does
15 not always mean that the single entity is the one
16 that will -- because the contract that I had back in
17 2006 was to be purchased by Katy Group and/or
18 Assigns. And this time around was the same thing,
19 Katy Group and/or Assigns.

20 So when all my documents were prepared,
21 especially bringing in the plans and permit from
22 projects that I knew will fit on that particular lot,
23 we pretty much just to save cost we inherited, kind
24 of recycled the plans again. And the documents were
25 very clear. They showed clearly Katy Group, Inc. as

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1 the owner there. And all along talking to Mr.
2 LeGrant, there was no mixing of words and that wasn't
3 my first time of talking to him. It was Katy Group.
4 All my e-mails, everything, Katy Group.

5 But when we submit -- when we kept try to get
6 his approval, at least get his attention so that we
7 can move the process forward, we never got anything
8 back. And on March 20, 2010, I sent him another e-
9 mail to, I think it was Mr. LeGrant, Ms. Kathleen
10 Beeton, Mamadou Ndaw was another zoning reviewer if
11 I'm not mistaken, Usman Pa (phonetic) who was my
12 primary expediter. I copied everybody because at
13 that point I was very frustrated because I didn't --
14 I mean, I was paying interest on my loan, current
15 cost, and all that. And I was waiting for a response
16 and I didn't get anything.

17 So on March 20 I sent a new request, still
18 nothing. Then April came by again and all this time
19 while the e-mails were going, I was also making phone
20 calls. In April again, I sent another e-mail, urgent
21 e-mail to Ms. Beeton as just pretty much pleading
22 with her, saying listen, I mean, I'm paying money on
23 this. My employees are waiting to start work on
24 this. This is costing me a lot of money.

25 And she, luckily for me, responded and said,

1 okay, send me what you have and I think she went and
2 spoke with Mr. LeGrant. And on the 23rd the e-mail
3 is there, she responded and said, okay, I've spoken
4 to Mr. LeGrant and he actually approved -- he agreed
5 that he gave you the verbal approval and the process
6 can move forward.

7 So we had to go ahead at that point,
8 submitted all the plats for final approval, which was
9 signed off on during that time, and started preparing
10 for the permit submission.

11 At this point, when we got to the point of
12 planning for the permit subdivision, I turned the
13 information over to Mr. Talabi sitting next to me
14 here, who does the permit application and all that.

15 At that point I was not as right on point or
16 I wasn't really engaged with the permitting process
17 heavily at the beginning because I knew I had to do
18 certain things for them to get the process moving.
19 So I [gargled speech] which was like getting my
20 permit, my finances in place, engineering, consent,
21 consent letter signed by my neighbors. And that
22 turned out to be a very tough deal. We couldn't -- I
23 mean, even up to today the consent letter is what I
24 will say, if you ask me as what is really generated
25 all this hatred. But that is something that I don't

1 think you guys want to hear about for now, but you
2 probably will hear about it later.

3 And we proceeded with that. We submitted the
4 permit application. And in retrospect I wish that --
5 I mean, stayed, paid more attention to it because I
6 will have known what names and what names were not
7 used to file the permit application because what I
8 found out when we got the letter from the Zoning
9 Administrator on November 14th, I think it was, 2013,
10 after we had actually started construction, after the
11 build -- 2014, after the building permit had been
12 issued and all that, was that we used two different
13 names to file the application.

14 And I was quite surprised when I heard that
15 from Mr. LeGrant and his attorney. And I said, okay,
16 if we used two different names, I mean, why did they
17 let that go? I mean, this is not something -- I
18 mean, I've been dealing in the District since 1998,
19 okay. And I'm familiar with it. They have system in
20 place that when you submit your application, if the
21 name on the application does not match the name on
22 the deed, they will immediately turn it back. Okay?

23 Yes, I agreed my assistant made a mistake on
24 the permit expediter. They used different names.
25 And the different names that they used, because

1 although I knew about the Kady Group almost, I will
2 say probably I think it was when we got the first
3 citation from I think it was Mr. Gonzalez, [garbled
4 speech] and the original control guide and said --
5 called me up and said, Darryl, I know it's you but
6 the name on the permit says Kady Group, but the name
7 of the property says something else.

8 So I turned to him and said, dude, what's
9 going on? I mean, why don't you tell me what the
10 issue is? And at that point I said, look, when we
11 get on the computer to enter the name, especially if
12 they have done something on the system before, it
13 just prepopulates with whatever information they had
14 the last time they used it. So I just let that go.
15 But I think in trying to correct it, something, it
16 went into the files. I can let him talk to that
17 affect.

18 I tried to get the correct name, okay. Right
19 and come directly to me, just went into the file.
20 Unfortunately, it went into the Kady Group file. The
21 original contract file in 2006. And in 2006 there
22 was the assignment of right of ownership from Kady
23 Group to Eckington Station, LLC. Eckington Station,
24 LLC. has nothing to do with the development. But the
25 permit department accepted it.

1 And going back to check, and I said, I mean,
2 all this was not actually known to me because we had
3 continued construction at that point. So when we got
4 the letter I started talking to Mr. LeGrant and they
5 brought all those things out as the reasons. And I
6 said, wait a minute, apart from meeting with Mr.
7 LeGrant I met with Ms. Kathleen Beeton, his
8 assistant. I met with -- I met with at least four
9 zoning reviewers.

10 MR. HILL: And when was that?

11 MR. SULEKOIKI: Oh, over the -- over, I would
12 say, over seven or nine months' period from when I
13 was chasing Mr. LeGrant to when the permit was
14 issued, because each time a reviewer had a question
15 they will call the office and ask --

16 MR. HILL: Okay. Just give me that range.
17 I'm sorry, what year? I'm just trying to figure out
18 where you are.

19 MR. SULEKOIKI: I would say between January
20 2013. Okay. To until we got the first permit in
21 September, October -- October 2013. Okay. Because
22 all along you will see in some e-mail, especially the
23 last one for Lot 42, 2126, there was a lengthy
24 conversation with Janet Anderson. Okay. Who, I
25 think approved the zoning requirement review, who

1 reviewed the documents for the last two phases. And
2 it was very clear she referred to the original plat
3 and also said to the affect that my lots as sized was
4 less than the 1,800 required for R-4, and directed me
5 back to go back to Mr. LeGrant.

6 And at that point in time she suggested that
7 I may have to go seek relief from BZA. And I had to
8 tell her that wait a minute, why BZA? We've already
9 gone through this. Mr. LeGrant granted me a verbal
10 approval. Ms. Beeton came in and talked to Mr.
11 LeGrant. Mr. LeGrant, and granted the final
12 approval.

13 So all that on each one of those reviewers
14 had the same question. And then name and everything
15 never changed. It was always Kady Group that they
16 had on the application. Just for the fact that
17 Kensington Place, LLC. was the deed, the name on the
18 deed. But that, I didn't think was an issue, okay,
19 because in the past I have at least about seven or
20 eight other permits that we had submitted with proper
21 name filled out as the owners of the property. But
22 when it gets to DCRA sometimes they will go back and
23 say listen, this is not the name on the property
24 because you had not the information is not being
25 recorded at the deed of -- at the records -- Deed of

1 Records office yet. So they are to use the names of
2 the previous owner for some of the permits.

3 Okay. So we went through that back and
4 forth. But the key is, after going through all that
5 then I have to start digging. I say, wait a minute,
6 I mean, after so many years of doing this in D.C.,
7 how come somebody is trying to get me for this? Then
8 I went and looked.

9 And number one, I found out that I'm not even
10 -- I mean, yes, we're supposed to present the correct
11 information on the permit application. I take full
12 responsibility for not having that correct name.

13 Okay. But we did not think that was enough, because
14 number one I waited, wasted almost six, seven months
15 just to get an approval for the plat, which was a
16 pain by itself.

17 Then after that we went through the entire
18 permit process, okay, talking to various reviewers.
19 Not once did one person bring up the use of the wrong
20 name on the application, and not once for over I will
21 say, [garbled speech] or thereabout, did anybody
22 mention IZ.

23 I sat with Ms. Beeton, Janet Anderson,
24 Mamadou, we discussed it. And if you saw my e-mail
25 to Janet Anderson on the last permit approval you

1 will see where I noted. I reiterated the fact that
2 there were eight lots, 16 units.

3 Okay. At this point if I knew by any
4 imagination that IZ was required, number one I would
5 not have wasted almost six months waiting for
6 approval of a plat. I would have taken advantage of
7 the bonus density offered by the regulation to
8 provide -- because the regulation would have granted
9 me one additional lot. And that one additional lot
10 will amount to me being able to do 18 units. And 18
11 units, the lots, I mean, the overall size will have
12 accommodated it and I will have come out way ahead.
13 I think you have my financials as submitted in the
14 exhibit. I think it's Exhibit D if I'm not mistaken.

15 MR. BROWN: In the prehearing statement.

16 MR. SULEKOIKI: In the previous one. So we
17 did all that and then on November 14th, 2014, I got
18 this letter from the Zoning Administrator saying that
19 I was not in compliance with the IZ requirement,
20 which was quite a shock to me. In all my years of --
21 I'll be honest with you. All my years of building in
22 D.C. I have never had to deal with such a thing. I
23 was scared like hell.

24 So I didn't know what to do. I ran around,
25 talked to people, and they finally introduced me to a

1 lawyer who got everything started. We went in to
2 talk to Mr. LeGrant. And when we got there and we
3 had the discussion and he said we bounced so many
4 ideas back and forth to try and see what I could do
5 to at least come up to meet their requirement,
6 because at this point 97 percent -- or sorry, the
7 first eight units were about 97 percent complete.
8 And the remaining -- the fifth one, the fifth
9 building which had two more units, was at that point
10 about 65. I think I misspoke in one of my e-mails
11 that I said was 70. Was about 65 percent complete.
12 And the remaining four buildings or three buildings
13 were just concrete foundations. Okay.

14 And to get you to understand how this thing
15 really came about, we had eight lots, 16 units all
16 together. I went to Capitol Bank to get a loan.
17 Capitol Bank said, listen, based on the market and
18 based on your relationship with us, we know you're a
19 conservative guy, blah, blah, blah, they give me all
20 this run. And they said, listen, the best we can do
21 for you is to finance eight units at the beginning,
22 four buildings. And I said, okay.

23 And if you look on the record you will see
24 where I provided that information also. And the loan
25 they gave me at the beginning only allowed me to do

1 four buildings, eight units. And the intent was,
2 we're going to start with 2112, which was -- because
3 we broke it down into a four-unit part phase. And
4 the reason for breaking it down into four-unit part
5 phases is very simple. It's the market. Because
6 after the recession of 2008, the lending institutions
7 changed their regulations. They did a search that
8 any project that is 50 percent that -- sorry, that
9 all projects have to be 51 percent sold before they
10 could finance it. And I knew 16 lots would take me
11 at least about six, seven months to just sell the 51
12 percent.

13 So just going in we decided, we're going to
14 do it in phases. So we're going to do one phase at a
15 time. So that was what we started with, and we tried
16 to get the first two buildings, which was next to my
17 neighbor's house. And I went to them, talked to
18 them. That didn't work out too well. We got
19 delayed.

20 So in the meantime I came back, I told him, I
21 said, listen this is the situation. I think we're
22 going to have to submit all the phases because we
23 don't know which one is going to get approved because
24 knowing how DCRA does, it's sometimes they do it
25 right, sometimes they don't do it right. So really

1 it depends on who you're dealing with there. So we
2 submitted the rest of them. So fortunately they came
3 out at random, but we started the one that became
4 available at that point.

5 So after, I mean, all this time, especially
6 from November 14 to when we got the, what is it
7 called, letter from the Zoning Administrator, it
8 wasn't just a letter. It was a stop work order.
9 Okay? And although they claim the stop work order
10 was only on the C of O only, okay, but it wasn't a C
11 of O because everything else we tried to do at that
12 time was shut down. The permitting office said --
13 the inspection office said no, we can't get the
14 inspection. You have to go to zoning and get a
15 release before we could get inspection.

16 We called the zoning office and talked to
17 them and they would tell, come back and say, wait a
18 minute, it's only on C of O, not on everything. So
19 we have to deal with that.

20 Then my lender also has to be informed of
21 this situation. I got one or two letters from them
22 threatening me that they were going to foreclose on
23 me, because at that point with the stop work order on
24 the project for over 30 days, I mean, that's a
25 default. So because I've had the relationship with

1 them they just kept pushing it. We kept just pushing
2 it on and on, on and on.

3 And after meeting with Mr. LeGrant and Mr.
4 Maximilian Tondro, they said okay, give us -- send us
5 an explanation and hopefully let's find a reason to
6 see if we can just, instead of taking two units, take
7 one unit. And I said, okay, fine.

8 We talked about ideas, about redesigning the
9 remaining four -- three foundations. I went back to
10 my architect, spent tons of money to try and
11 redesign, come up with ideas. We couldn't because
12 the foundations were, they were way just too far
13 ahead, or everything was in place.

14 So anyway, to cut a long story short, nothing
15 was working and we had to believe that something was
16 going to happen, until we just -- we got dragged out
17 until we lost the rights to our appeal, the stop work
18 order decision. So which will have been a good
19 initial way to start the process. And we couldn't do
20 that.

21 And then we went back and forth, and I had to
22 start doing all kinds of calculations to see how I
23 can satisfy my lender, at the same time satisfying
24 the requirement of IZ, and I just couldn't pull it
25 through. I tried everything just couldn't do it.

1 And my lender was threatening they were going to do
2 this, they were going to do that.

3 So fortunately Mr. LeGrant came around and
4 said okay, we're going to release four units so that
5 your lender doesn't foreclose on you. At least that
6 will allow you to pay off some of your loan, which I
7 was very grateful for. And that got us going because
8 I had equity loan from other project that I was also
9 using at this time because I really couldn't draw any
10 money from my account until I was able to remove the
11 C of O. So the stress was so much. I mean, it was
12 really, really tough.

13 And after that I mean, I had a huge health
14 issue that I have to go into the hospital for. I was
15 in the hospital for like three -- two, two and a half
16 weeks. And when I came out, I had a big surgery.
17 When I came out that was when I had to go for the ANC
18 hearing. Okay? And I called my attorney. I said,
19 listen, I understand I needed to go for an ANC
20 hearing and present my case. And she said, oh yeah,
21 that's true that this is what you need to do.

22 Then I, while investigating I found out that
23 ANC hearing on my case had already been heard maybe
24 once or twice before. And there was so much negative
25 information about the project at that time that I

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1 wasn't even aware of. And when we went for the ANC
2 hearing that I was able to attend, I mean, it was
3 like if they had a gun they probably will have blown
4 my head off, which I was quite surprised because I
5 didn't know I had gotten so many people mad.

6 And to try to explain myself I had my
7 daughter over there trying to explain my situation
8 because I wasn't in a position to do much of the
9 talking. I had all kinds of baggage on me at that
10 evening that if you saw me you would think I was some
11 kind of a homeless, or I mean, it was terrible.

12 But anyway, one thing that stuck on my mind
13 was while they were trying to present, my daughter
14 and Ms. Cynthia Giordano, one of the chairperson or
15 commissioner said, listen, we don't want to hear
16 about whatever your problem is with the Zoning
17 Administrator. And I said, I mean, that really stuck
18 with me. And I'm saying, has anybody -- not a single
19 one of them has picked up the phone to day okay,
20 Darryl, come on, tell us your side of the story.
21 What really happened?

22 I waited six, seven months just to get a
23 subdivision approved. Okay. And after that I talked
24 to all the reviewers. Not a single person brought
25 the issue of IZ. Okay. And if they had brought it

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1 up I will have taken care of it without any problems
2 because when you look at it, I mean, I will have
3 gotten a bonus density. That will have allowed me to
4 do two extra units. Those two extra units will have
5 gone to IZ and at the end of the day, because the way
6 the real estate market is, if you can squeeze a
7 little bit of square footage round there, the
8 location is great, the product is great, you can
9 still get your returns without any doubt.

10 And luckily for me, I'm not going to sit here
11 and say the market did not favor me a little bit.
12 Yes, it did. Okay. But the key is, at the end of
13 the day where am I in terms of the numbers? It's not
14 where I need to be after, this is going to be the
15 fourth year for something that should have taken two
16 years at most.

17 So I did everything I could, and I even gave
18 them the opportunity -- I told Mr. LeGrant, I said
19 listen, this regulation -- because at that point I
20 went back and researched the entire regulation. And
21 I found out that, listen, it only calls for 10
22 percent of a wood frame structure to be given out of
23 the net square footage to be given out to IZ. Which
24 10 percent in my situation amounts to 1.4 units,
25 meaning not completely two full units.

1 And I said, listen, I'm going to be in
2 serious negative here in addition to the fact that
3 I'm not getting any bonus density. Okay? You are
4 going to be getting additional square footage that I
5 could be making some money on. They're going to be
6 taking it away from me. Why don't you take one of
7 the bigger units because I have a unit that will have
8 resulted in probably about 400 negative net square
9 footage to the IZ, but would still have been a very
10 sizable unit. I said, why don't you take that? I
11 even offered, I said listen, if you don't want to do
12 the two, take one. If you don't want to do one, how
13 about if I provide an off-site replacement, because I
14 had another property on 12th Street, 2900 12th
15 Street, which at that point was being designed.

16 And I said, listen, I can give you the exact
17 2,400 square foot. Go and redesign it. I give it to
18 you on that property so that you have that. And I
19 asked them, I said listen, how about if I do that
20 will I still be able to get my bonus density that I
21 did not get yet because you said you are not -- me
22 not getting it. But he told me, he said, listen, I'm
23 not in power to do that. I'll have to go to the BZA
24 to get that permission to do that. And I did
25 everything I could. And I just find I think I will

1 default to my attorney to finish it up.

2 And if I may, there is one more thing, sorry.
3 On the parking, do you mind me if I say something
4 quickly about the parking?

5 CHAIRPERSON HEATH: No.

6 MR. BROWN: And could you put the --

7 MR. SULEKOIKI: Screen.

8 MR. BROWN: -- drawing up?

9 MR. SULEKOIKI: Okay. All right. I think if
10 you remember I mentioned Ms. Janet Anderson having
11 approved it. Right here where the arrow is right
12 here is where the parking approved for Lot 42. It's
13 actually located on Lot 43. Okay?

14 And this is how it was approved. But after -
15 - once we started construction, and this is another
16 interesting story. The Washington Business Journal
17 picked up on my story and printed it, published it.
18 Two weeks after that it was like all hell broke
19 loose. I was getting a code enforcement inspector on
20 my job at least one every other day. They were
21 checking everything and anything that could go wrong.
22 Okay? At the end of the day they said this was not
23 compliant, that Mrs. Janet Anderson should not have
24 granted me this parking space.

25 And I said, okay, what do I do? They said I

1 needed to go to BZA. So I came up with a proposal,
2 okay? And I said, okay, because you see all this
3 retaining wall back here? We made adjustment to the
4 retaining wall. We pulled some of them back and we
5 created three additional space. We moved the one
6 parking space that was there before, we turned it
7 around, created three additional space so that -- and
8 that gave us two extra parking lots from the initial
9 approval.

10 But when you look at it, it's not like we did
11 anything out of the ordinary. Okay? This is the
12 D.C. Atlast from 1950, or thereabout. If you notice
13 in bubble you will see the curb cuts. The curb cuts
14 has been there since 1950. Okay? And Mrs. Yvonne
15 Moore, that lives on the alley just right behind me
16 used to park and still does -- she and her husband
17 used to park their vehicle there and they said
18 they've been parking their vehicles there for a long
19 time. And you will see the vehicles coming up.

20 This is one of their vehicles. Okay? This,
21 if you look at it, all the area behind the curb cuts,
22 I didn't -- this was before we built. I didn't put
23 the curb cut there. I did not. The curb cut was
24 there, the paving was there, there was a building
25 there before. What the asphalt paving was used for,

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1 I don't know. But that's how we found it. Okay?

2 And then, after we revised the permit we
3 decided to proceed to take advantage of it. Okay?
4 So that was when we -- this is another vehicle,
5 looking at it from another angle. Okay? And you can
6 see, they have two vehicles there. You see how much
7 space you have on the left and on the right? It's a
8 huge space. And that is what we are trying to take
9 advantage of and use the same curb cut that's already
10 in existence to access the new parking area that is
11 being created. We haven't done anything out of the
12 ordinary.

13 Yes, we did not get -- we haven't gotten the
14 approval. Not that we did not, because we applied
15 for a public space access, just to cross that
16 existing pavement. We applied but we did not get it.
17 Okay. They said we needed to wait until zoning
18 approves the parking because it crosses two lots.
19 That the zoning says, yes, we should come back to
20 them. But before we knew what was happening, it just
21 got out of their hands, the the people at the top,
22 they got hold of it and up until now, up until this
23 moment, I don't know where all the negative energy is
24 coming from because there are so many people against
25 this project. It's unbelievable.

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1 And I have yet to see this project has caused
2 them harm. To see one person that said this project
3 has caused them harm or has done something wrong.
4 No. We've had tons of inspectors on the project.
5 Okay? I still can't find, apart from the fact that
6 no, you cannot use the public space to access your
7 private parking space, this is something that was
8 already existing before.

9 MR. MAY: Can I ask you a question about
10 parking?

11 MR. SULEKOIKI: Yes, sir.

12 MR. MAY: So, can you bring up a plan that
13 shows it? So I understand the curb cut. If you can
14 see my little light dot there.

15 MR. SULEKOIKI: That's all right.

16 MR. MAY: That's the end of the curb cut,
17 right? Which theoretically might give you access --
18 this is a not very bright pointer. Do we have
19 another one?

20 MR. BROWN: Do we need to turn the lights
21 down?

22 MR. MAY: No, I think the pointer needs some
23 help. This one isn't much better.

24 MR. BROWN: Is there one up here?

25 MR. MAY: It was there for a second, but

1 there's nothing to it. Oh, wait a minute. Here we
2 go. Let's see what we get here. I guess this isn't
3 too better. No. All right. Well, never mind.

4 So you have the one parking lot that's
5 perpendicular to the alley, right?

6 MR. SULEKOIKI: That's correct. That's
7 correct.

8 MR. MAY: I understand that one. That's
9 behind Lot 43.

10 MR. SULEKOIKI: Right.

11 MR. MAY: And that's accessible. The one
12 that's immediately below that, right, it kind of
13 aligns with that curb cut.

14 MR. SULEKOIKI: That's correct.

15 MR. MAY: But then you're proposing to put in
16 two more that are below that, that would require
17 additional paving of the public space in order to
18 access it.

19 MR. SULEKOIKI: That's correct.

20 MR. MAY: And I think that's what the
21 complication is with providing that.

22 MR. SULEKOIKI: Yes. Yes, sir. I perfectly
23 understand and agree with that. If you go back, let
24 me bring this back up again. Okay.

25 You see where the curb is right here?

1 MR. MAY: Correct.

2 MR. SULEKOIKI: Okay. You see behind it, up
3 to the tree.

4 MR. MAY: Uh-huh.

5 MR. SULEKOIKI: As a matter of fact around
6 the tree, they had asphalt there before.

7 MR. MAY: Okay. So the fact that somebody
8 was doing something that was unacceptable before and
9 nobody called them out on it, doesn't mean that it's
10 okay now.

11 MR. SULEKOIKI: I perfectly agree with you.

12 MR. MAY: Okay.

13 MR. SULEKOIKI: I don't doubt it. But here
14 is the situation. I'm bringing 16 families on to --

15 MR. MAY: I understand the desire for the
16 parking.

17 MR. SULEKOIKI: Right. Right.

18 MR. MAY: It's a question of whether you can
19 provide it within the rules --

20 MR. SULEKOIKI: Right.

21 MR. MAY: -- that are set out by DDOT when it
22 comes to crossing public space.

23 MR. SULEKOIKI: Exactly.

24 MR. MAY: And I'm just trying to point out
25 what the issue is there. The fact that there's an

1 existing curb cut there, yeah, that gives you some,
2 you know, some greater latitude. You're not going to
3 have to apply for a parking -- I mean, for a curb
4 cut, I guess. But it doesn't give you the ability to
5 create a driveway across the public space to access
6 two more spaces like that.

7 MR. SULEKOIKI: Yeah. I agree with you. I
8 don't doubt that.

9 MR. MAY: Okay.

10 MR. SULEKOIKI: But see, the reason for doing
11 that is not because I just wanted to do it. It's
12 because this has been granted to somebody that I
13 bought a property from before, and I have to go to
14 DDOT myself to verify. Let me show you this. This
15 is on Capitol Hill. Okay?

16 MR. MAY: No, no, no, no, no, no. No. No.
17 No.

18 MR. SULEKOIKI: No, no, you see the reason
19 I'm saying this, the reason I'm saying this is this
20 came before BZA. Okay? If you look at it it's not -
21 - I mean, this was well debated. Okay? This is BZA
22 information. Okay? It was well debated and that was
23 --

24 MR. MAY: Okay. So do we have this? Do you
25 have this submitted into the record?

1 MR. SULEKOIKI: No. I can --

2 MR. MAY: Okay. I mean, do we know that they
3 got a public space permit to do that?

4 MR. SULEKOIKI: No, they didn't get one.
5 That's the key because they said they can go ahead
6 and use the existing -- because they didn't want to
7 give them a new curb cut. They said they can use the
8 existing curb cut.

9 MR. MAY: So DDOT did approve that one?

10 MR. SULEKOIKI: Yes, to go across, because I
11 built it. I built the house, I bought the house
12 because --

13 MR. MAY: You built that one?

14 MR. SULEKOIKI: Yes, on the corner of --

15 MR. MAY: I know where it is. I can
16 recognize it from here. All right. Well, we'll ask
17 DDOT to talk to the requirements of the parking. I
18 mean, the thing about it is that the fact that
19 something was approved before like this doesn't
20 guarantee that it's approvable now, either from us or
21 from DDOT.

22 MR. SULEKOIKI: I completely agree.

23 MR. MAY: Okay.

24 MR. SULEKOIKI: I couldn't disagree at all.
25 But the fact is if somebody will have told me at the

1 beginning and say, dude, you cannot do this, I have
2 no problems. I mean, this is --

3 MR. MAY: So --

4 MR. SULEKOIKI: If you take your --

5 MR. MAY: Can I ask another question about
6 this?

7 MR. SULEKOIKI: Yes.

8 MR. MAY: You originally -- bring up that
9 other plan that you -- that somebody approved
10 mistakenly with two spaces.

11 No. Here we go. That. So no, no, no, not
12 that one. The other version of it that had the two
13 spaces in parallel that were on lot 43 entirely.
14 There we go. That one.

15 All right. So can you explain to me why
16 you're not coming to us requesting relief to do that?

17 MR. SULEKOIKI: It's my number one option.
18 My number one option to --

19 MR. MAY: Your number one option is to do
20 that, not the --

21 MR. SULEKOIKI: To keep this. This is my
22 number one option, to keep this.

23 MR. MAY: Okay, but --

24 MR. SULEKOIKI: Okay. If this is not -- I'm
25 sorry. I take that back, correct myself. My number

1 one option is to add the two more.

2 MR. MAY: So that you have four spaces and
3 your number two option is to do this and have two
4 spaces.

5 MR. SULEKOIKI: Exactly. Okay. I'm not
6 asking for two more -- I mean, because when you look
7 at it --

8 MR. MAY: Okay. So I don't know that -- I
9 mean, the way they're drawn there, I'm not sure that
10 they're zoning compliant because you can't -- the one
11 space is blocking the other. But that's probably
12 correctable depending on what's happening in your
13 yard.

14 MR. SULEKOIKI: The way it's drawn, the one
15 space is not blocking the other because you can come
16 in using the -- let me go back to this so that --

17 MR. MAY: So you can use the public space?

18 MR. SULEKOIKI: Yeah.

19 MR. MAY: But I thought they all had garage
20 doors across the back?

21 MR. SULEKOIKI: Okay. Right. You see -- no,
22 let me go back to this one. Yeah, this one here. If
23 you look on the --

24 MR. MAY: Can you make that a little larger
25 so we can all see it?

1 MR. SULEKOIKI: Not to use this. I hate this
2 thing.

3 MR. MAY: There you go. Use the slider at
4 the bottom. There you go. Thank you. Okay.

5 MR. SULEKOIKI: All right. You see right
6 there where you have the 11.7, the dimension at the
7 bottom of the red.

8 MR. MAY: Yes.

9 MR. SULEKOIKI: You can -- we can use it to
10 come in. That's the whole idea, we can come in from
11 that.

12 MR. MAY: That's unfenced and we require you
13 to have a little bit of public space paved to access
14 that.

15 MR. SULEKOIKI: You see, that area is --

16 MR. MAY: I know. I'm not asking if it's
17 already paved.

18 MR. SULEKOIKI: Yeah. I'm sorry. Yeah.
19 That's correct.

20 MR. MAY: I mean, because you would need
21 permission to do that.

22 MR. SULEKOIKI: That's correct.

23 MR. MAY: Okay. So while we're talking about
24 this generally and your treatment of public space, it
25 was in DDOT's report that other things that you did

1 in public space having to do with stoops and area
2 ways and so on were not permitted. Can you address
3 that?

4 MR. SULEKOIKI: Yes. As a matter of fact,
5 let me show you. This is my building permit review
6 document. Okay? This states when they were
7 permitted. Let me take you down to -- okay, this is
8 permits that was application that I printed out.
9 This is for one of the lots.

10 If we go down there, you see right there,
11 DDOT review and DDOT approval, 1031. Okay? And
12 there is nothing on this project that went -- that we
13 did not comply with. Okay? And if you go further
14 down you have the other lots. Every single lot or
15 every single phase -- here it is again, approved.
16 Every one of them.

17 MR. MAY: All right. So I mean, it says very
18 clearly in the DDOT report, steps, area ways, and
19 lead walks and public space for these eight lots have
20 not been permitted. So when -- do we have anyone
21 here from DDOT? No, we don't.

22 All right, so I think we'll want to get DDOT
23 to weigh in on what you're -- you know, the thing
24 about this is that this is very summary information
25 and sometimes things are -- it's not clear exactly

1 what's being permitted there. And so, but what
2 you're telling us is that you submitted full public
3 space plans and they were fully approved by DDOT.

4 MR. SULEKOIKI: I will tell you that I
5 submitted full set of drawings and we went through
6 the process. Which one was public space, which one
7 is building permit, the only thing I was interested
8 in is, guys, I needed to get me a building permit.
9 Make sure you satisfy all the conditions, which they
10 came back and said they did. And that was proven by
11 the issuance of the building permit.

12 And for the four years that we've been there,
13 for the four years --

14 MR. MAY: Oh, and the fact that you've been
15 there doing that a really long time doesn't mean
16 anything.

17 MR. SULEKOIKI: No, I --

18 MR. MAY: The fact that you may not have
19 properly gotten permits for public space according to
20 what DDOT says, I mean, stuff like that happens all
21 the time and people get away with it because there
22 aren't public space inspectors going out there and
23 doing it. It's only the people in the neighborhood
24 who pay attention who catch things like that.

25 MR. SULEKOIKI: That is true. But in this

1 case I've had public space inspectors. Okay?

2 MR. MAY: Okay. So do you have their
3 inspection reports?

4 MR. SULEKOIKI: That they came? Oh, yes.

5 MR. MAY: Yeah.

6 MR. SULEKOIKI: As a matter of fact --

7 MR. MAY: So you may want to enter those into
8 the record, because I mean, we will request that DDOT
9 provide some --

10 MR. SULEKOIKI: Oh yes.

11 MR. MAY: -- more backup on their statement
12 that these have not been permitted.

13 MR. SULEKOIKI: Right.

14 MR. MAY: And it would be helpful even for
15 them if in fact --

16 MR. SULEKOIKI: Yeah.

17 MR. MAY: Maybe the left hand doesn't know
18 what the right hand is doing, I don't know. But
19 usually when they make statements like this in their
20 reports to us they're based on a full understanding
21 of the facts. So.

22 MR. SULEKOIKI: Right. Exactly.

23 MR. MAY: We'll see.

24 MR. BROWN: Mr. May, and I don't want to
25 undermine your comments on the front stoops and what

1 not. But typically the BZA doesn't concern itself
2 with public space matters.

3 Now, you've raised an important question but
4 I want to be careful that we don't drift too far
5 afield of the Board's jurisdiction. But you've
6 raised a good point on the parking. And certainly
7 the applicant has the Rhode Island Avenue option that
8 is his preference, with some questions raised. But
9 also the option of providing Lot 42 parking and Lot
10 43 by easement is a simpler approach, fewer parking
11 spaces.

12 MR. MAY: Which would also require DDOT
13 approval.

14 MR. BROWN: Yes.

15 MR. MAY: To pave a small portion of the
16 public space to do it.

17 MR. BROWN: Or if you go back to the parking
18 plan, all these other units have two spaces on them.

19 MR. MAY: Correct. It could easily be
20 provided on another one of those lots and that could
21 be the relief that you request. But you've got to
22 pick one.

23 MR. BROWN: Yes.

24 MR. MAY: Or give us the priority, I guess.
25 I mean, you know, we don't usually come in with a

1 case that you're seeking relief to solve it one of
2 three ways, right? It's usually one way. You know,
3 you can't solve it the way it's supposed to be done.
4 So what's your alternative? So maybe you want to
5 focus on what that best alternative is. And maybe
6 that is informed by what DDOT tells you about what's
7 possible in the public space permitting process.

8 And the only reason that I'm concerned about
9 the public space permitting process is that there has
10 been this, you know, more general -- there have been
11 more general statements about what has happened in
12 the construction of this property and we want to -- I
13 think it is important to us to understand that the
14 project has been -- I mean, your client is making the
15 argument that he tried to do everything that he could
16 and that he was led astray by incomplete reviews or,
17 you know, the errant permit expediter, or any of
18 these other things that are not his fault. And yet
19 what we have is testimony or evidence in the record
20 indicating that there are things that he was doing
21 that were not in compliance with the regulations, and
22 perhaps knowingly so.

23 So if there are areas where he has been
24 complying with the regulations and it is demonstrably
25 correct that he has, then I think you want to refute

1 some of those statements to the contrary to make sure
2 that, you know -- to make very clear that your client
3 is doing everything on the up and up. Because
4 frankly some of the evidence suggest otherwise. I
5 mean, the screw up on the, you know, the names in
6 which these things were applied for, you can read it
7 as -- you know, you can take it for what has been
8 alleged by the applicant that it was just an honest
9 mistake in the part of an expediter, or you could
10 take it as a deliberate dodge, trying to avoid having
11 this project be considered as separate buildings,
12 right?

13 I'm not making a judgment one way or the
14 other, but it's in your best interest to make the
15 case that your applicant is doing everything in, you
16 know, all good faith efforts.

17 MR. BROWN: Understood. And we've tried to
18 make that point. I mean, and the point that I think
19 he can reiterate this, is that at the end of the day
20 it doesn't matter what the name on the permits is
21 because from a zoning compliant standpoint they were
22 looking -- and I'll ask you the question. They were
23 looking at plans that showed --

24 MR. SULEKOIKI: Exactly. When you go in to
25 zone -- before the zoning reviewers, okay, they don't

1 look at the application. They look at for
2 compliance, your lot coverages, detailed information
3 on the permit. I know that information that is
4 provided to them. They deal 90 percent 95 percent of
5 the focus on the plans. Okay?

6 They review those plans and they ask
7 questions. And during the review of all the -- I
8 mean, remember we had eight separate buildings,
9 meaning we had eight separate reviews per building
10 because that's what we're required to do.

11 MR. MAY: I thought you did them two at a
12 time.

13 MR. SULEKOIKI: Yeah, phases. We did it in
14 phases --

15 MR. MAY: I mean, you submit them. The
16 drawings that you show here is two at a time.

17 MR. SULEKOIKI: Two at a time. But the
18 buildings are one each. So each one has a building
19 permit.

20 MR. MAY: I understand each one has a
21 building permit --

22 MR. SULEKOIKI: Right.

23 MR. MAY: -- but I mean, even as -- you're
24 not helping yourself here. I mean, I actually have
25 done zoning reviews. I did some work in the zoning

1 office, I mean, at the Zoning Administrator's office
2 a long, long time ago. I know how these things come
3 in. I know something about how the review occurs.
4 And, you know, systems have probably been automated a
5 bit since then. But, you know, it really is a basic
6 case of, you review what's in front of you. So if
7 you have a set of plans that has two buildings on it,
8 you're not necessarily going to connect it to the
9 other two buildings that are next to that. Or get to
10 the point where you realize, oh, this is a four phase
11 project.

12 I understand there was some indication on the
13 drawings that it was a phased project.

14 MR. SULEKOIKI: Okay. See, it's not just the
15 indication on the drawing that it's just a phase
16 project. When you go in there, I don't know the last
17 time you guys looked at the information [garbled
18 speech] on their website. They ask you, they ask
19 you, okay. Do you own the adjacent property? Are
20 you going to be doing anything in the next two to
21 three years?

22 MR. MAY: Uh-huh.

23 MR. SULEKOIKI: Okay. If the answers are
24 yes, okay -- so nobody can come back and say you are
25 hiding something. That's number one.

1 Number two, when you are talking to reviewer
2 and the reviewers are asking you, I need your consent
3 letter from the neighbor because you are going to be
4 sharing the same property line, and you tell them I
5 own the property. As a matter of fact, this permit
6 is in place also, and the question is, is oh, I'm not
7 reviewing that. So that's fine as long as you own
8 it. Okay? There was nothing we kept from anybody.
9 There was absolutely nothing because every one of
10 them, I talk to them, they call me. I mean, when all
11 this issue came about I went back to some of them.

12 To the extent that we had an issue with one
13 of the -- I had a question with Mr. LeGrant that Mr.
14 LeGrant said, oh, one of my reviewers made a mistake
15 because they had sent a code enforcer, enforcement
16 officer out there to find faults. Okay. They came
17 back with 15 items saying that we were deficient in
18 15 items. And it took almost, believe it or not,
19 four weeks to even get an appointment to sit down
20 with Mr. LeGrant to talk about it. At the end of the
21 day the only item that survived out of the 15 is the
22 parking that it caught. And they said, this should
23 not have passed.

24 And I asked Mr. LeGrant the question. I
25 said, listen, are you really out to get me? What

1 have I done wrong because this is not right, because
2 you saw all the e-mails. Nothing. You saw all the
3 evidence in the documentation. Nobody, okay, nobody
4 has come up and said this is what this guy did wrong
5 in terms of the way I, what is it called, whether I
6 shot -- my building design was wrong or the way I
7 approached the construction was wrong or something.
8 They don't have any record of that. And I've been
9 building in D.C. since 1998. Okay?

10 The only time I've been cited, if I'm not
11 mistaken, was 233 R Street, that they change the
12 regulation at that point. Okay? They gave me a
13 3,000 or \$3,000 fine saying that we put up
14 scaffolding without permit. And they made me pay the
15 \$6,000 up front before any hearing. That's the only
16 thing I can remember and we did -- I mean, because
17 I'm the kind of person that I want to make sure it's
18 better to do it right the first time. Rather than go
19 back and spend money to correct it. And literally
20 D.C. has gone -- I mean, it's like everything is
21 being turned over just to make sure that everything
22 is done right. Which I'm all for because I've been
23 there when things were really bad. And I'll be
24 honest with you, I'm here now and I'm glad. And
25 that's one of the reasons I chose not to use a third-

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1 party inspection, because I know how the third-party
2 works. I decided no. If I'm going to make a mistake
3 let the mistake be caught by a D.C. inspector.

4 MR. BROWN: Can I follow up? And this plan
5 here, showing eight lots --

6 MR. SULEKOIKI: Yeah.

7 MR. BROWN: -- eight plats, 16 units, was
8 that known during the permitting process of --

9 MR. SULEKOIKI: Yes. This is the key because
10 remember, if you look at the IZ regulation, the IZ
11 regulation in order to determine which property
12 qualifies for IZ and bonus density, in R-4 zone,
13 okay, you do not get bonus density like every other
14 category. Your bonus density comes in the form of
15 cutting the lot down from 18 to 15, which means the
16 only time the could have caught this will have been
17 at the subdivision time. That was when I was in
18 front of Mr. Matt LeGrant. Nothing came up. I mean,
19 that's -- I mean, no, if I did not go to him, if I
20 went to somebody else, okay, and they did a third-
21 party review and all that, I can understand. I went
22 to the caretaker of the Zoning Regulations for the
23 District of Columbia. And he could not tell me, he
24 did not tell me. And after that went to his
25 assistant. She did not tell me.

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1 So the question is who. I mean, I've heard
2 people say, oh, you did not do your due diligence.
3 The question is, what's the meaning of due diligence?
4 Who do I go to? After if I can't get the answer from
5 the number one and number two person, who else can I
6 get the correct answer from?

7 MR. MAY: I think that's why people have
8 zoning counsel.

9 MR. SULEKOIKI: Thank you, but that's why
10 they have zoning counsel, I understand. But the
11 zoning counsel, that means I have -- remember now,
12 I'm a business person. I will try -- I mean --

13 MR. MAY: People hire zoning counsel very
14 often, and when you're getting up into the 16-unit
15 realm, you know, we're not talking about a single
16 flat renovation or something like that. It is a
17 little different.

18 Now maybe this is not what you're used to
19 doing, but that's always a good reason to do it, to
20 get that outside counsel. You know, as much as you
21 might want to argue that they never brought it up,
22 they're not obligated to bring it up. I mean, yeah,
23 it would have been smart for them to do it. It would
24 have been really good for you if they had done it.
25 But it's your responsibility to understand the

1 regulations and to submit drawings that are compliant
2 with it, and to submit a whole package that's
3 compliant with it. It's not the Zoning
4 Administrator's job to make sure that you were doing
5 this at those early stages.

6 You know, he did make sure you're doing it
7 later on, which is why you're here.

8 MR. SULEKOIKI: Okay. But, okay, if you said
9 that --

10 MR. BROWN: If I could interject, Mr. May?
11 But didn't do it during the permitting phase which we
12 maintain --

13 MR. MAY: Yes.

14 MR. BROWN: -- it should have occurred.
15 That's where the Zoning Administrator is exercising
16 his regulatory --

17 MR. MAY: Yeah, I'm not sure that this is the
18 right place to litigate that issue.

19 MR. BROWN: No, I'm not saying. But --

20 MR. MAY: Yeah.

21 MR. BROWN: -- there's a certain reliance on
22 the system. Now you said --

23 MR. MAY: Right. But you know, again, I
24 mean, there were problems with the permitting process
25 just having to do with the fact that the way it was

1 submitted in pieces, right, that's part of the thing
2 that complicated it. I'm not saying that it was
3 deliberate or it was not deliberate, it just
4 complicated it.

5 MR. SULEKOIKI: Mr. May, here is another
6 thing. Okay. If you said the Zoning Administrator
7 is not responsible --

8 MR. MAY: I didn't say he's not responsible.
9 I said he was not responsible for informing you of
10 the inclusionary zoning requirements at the time that
11 you went in for your subdivision. That's what I'm
12 trying to say.

13 MR. SULEKOIKI: When you go on DCRA's
14 website --

15 MR. MAY: Yes.

16 MR. SULEKOIKI: -- which is the Zoning
17 Regulation website, you will see the zoning brochure
18 that says that when you read that first page it tells
19 you, your due diligence, doing your due diligence,
20 they ask you to go and talk to the Zoning
21 Administrator.

22 MR. MAY: Right.

23 MR. SULEKOIKI: Okay? If you don't
24 understand something have them look at it. And
25 that's just what I did because if I knew everything I

1 will have just said yes.

2 MR. MAY: So there was no mention of
3 inclusionary zoning in the material that you read?

4 MR. SULEKOIKI: Absolutely -- the one I saw
5 on the website that I have a copy of, I did not see
6 it.

7 MR. MAY: It was not mentioned anywhere?

8 MR. SULEKOIKI: I saw it after -- the one I
9 saw. I will get you a copy of it. I thought I had
10 it on this flash drive. I don't have it. I can
11 copy --

12 MR. MAY: Okay. So maybe you do want to
13 submit that.

14 MR. SULEKOIKI: I will. I will submit that.
15 Okay? It did not say anything.

16 And also there is additional -- in addition
17 to that, DCRA's operational manual, standard
18 operational manual for the employees. And it states
19 that before they accept any permit, whether it's
20 print, manual, or anything, they are supposed to vet
21 every single permit for name correctness that the
22 name of the property owner and the name of the
23 applicant are the same. They have three stages they
24 are supposed to do that.

25 If any of this had been done we will not be

1 here today because somebody will have pointed it out
2 to me, and I will have gladly gone back. But I mean
3 -- I don't mean I still have Mr. Smart.

4 CHAIRPERSON HEATH: Sure. We're going to
5 have to unfortunately continue this. Today we would
6 likely have to continue this anyway. But today we do
7 have a hard stop at 3:00 unfortunately because of
8 another obligation that I have. And so because your
9 neighbors are here and you've spent all day here
10 waiting for this, I do want to allow you opportunity
11 to speak in case you're not able to make it back when
12 we continue this hearing on another day.

13 So we typically would give you three minutes.
14 So at this point, because we're going to continue the
15 rest of the hearing, at this point I want to allow
16 you -- I assume you each want to speak. So we'll
17 allow you each three minutes.

18 MR. HOLCOMB: Thank you. I don't have a
19 whole lot to add other than to what I wrote in my
20 letter that I submitted. But I do want to just
21 reiterate the need for inclusionary -- or the
22 affordable housing element.

23 MS. SALTER: Excuse me, Madam Chair, did he
24 state his name for the record? I didn't hear it.

25 CHAIRPERSON HEATH: Not again. If you could

1 state it again?

2 MR. HOLCOMB: Sorry. My name is Richard
3 Holcomb.

4 CHAIRPERSON HEATH: Thank you.

5 MR. HOLCOMB: So the -- I guess I just want
6 to state my strong support for the concept of
7 affordable housing in the District and whether this
8 was -- you know, how this was -- this situation
9 happened, I really don't think it's really that
10 relevant.

11 And the second thing is the parking. And I
12 don't have a strong feeling that it shouldn't, you
13 know, that this exception shouldn't happen. But I
14 guess what I do have the problem with is the timing
15 of this. In my mind the inclusionary zoning and the
16 parking relief, this was known, should have been
17 known from the very beginning. And the use of public
18 space, those were all issues that should have been
19 settled before this even -- we even broke ground in
20 the permitting phase. And that didn't happen.

21 There was absolutely no chance for a
22 community input. And even -- and now I guess I'm
23 moving on to like gripes, and I'm going to try to
24 stay out of that, but I will -- Mr. Sulekoiki has
25 alluded to the fact that there's some issues between

1 us and I will strongly say that there has been damage
2 to my property. So I would say that there was --
3 there is somebody that has been effected by this
4 project.

5 But as far as the whole ANC process, ANC 5B
6 is not -- it's a big commission, and the presentation
7 should happen at the more single-member district
8 level before they come to the ANC as a whole, and
9 that's in the bylaws, and that really never happened.
10 So there really, other than, you know, kind of
11 showing up cold at a big ANC meeting, which Mr.
12 Sulekoiki made a comment that the chairperson, you
13 know, said she didn't want to hear it is because he
14 wasn't on the agenda. So I don't know. There has
15 been really no public input or opportunity for public
16 input, other than what we are doing here.

17 That's all I have to say. Thank you.

18 CHAIRPERSON HEATH: Thank you.

19 MR. BOYER: Thank you again. My name is
20 Robert Boyer.

21 I am the individual that did all the research
22 and studies that submitted most of the evidence. I
23 submitted to the BZA only what was a part of the IBZ
24 and the public space, because that's the information
25 that this case was all about. If we go back to March

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1 of 2013 when Mr. Sulekoiki -- I'm sorry for
2 pronouncing his name wrong, I'll just say the
3 applicant, certified a letter to us, a demand letter.
4 That is when all red flags came up for me as a
5 homeowner.

6 I then researched on Google, his name and his
7 company, and discovered the four LLCs that was
8 created in February of 2013. So I in turn spoke to
9 everyone in my neighborhood about, there's something
10 coming, I'm not quite sure what it is, but if he
11 would come and speak to the direct neighbors, then we
12 would all have some understanding.

13 The applicant refused and preferred to
14 actually argue with me personally about he has every
15 right to build, which I have no problem with him
16 bidding on his property. My big issue is the size of
17 this lot, and the information that we were provided
18 indicated that this would actually be eight
19 buildings, 16 units. My evaluation, because I am a
20 banker, I concluded that 16 units with two -- sorry,
21 two individual living, with the possibility of at
22 least two automobiles apiece. This is where the
23 whole process really started to spiral out of control
24 because I'm pulling all these calculation and
25 presenting it to the neighbors.

1 As of June of 2013 I requested Mr. -- sorry,
2 the applicant, again, to come to an [garbled speech]
3 meeting. We have two hours that we could have gave
4 him time to present his plans to the community, and
5 then he would have at least found out prior to
6 permitting about inclusionary zoning and affordable
7 housing, because that was a very big issue in 2013
8 for Eckington.

9 So for me personally, I spent three years
10 plus researching, submitting information, just based
11 on what this case is about. Anything prior that is
12 not about inclusionary zoning or parking, which I
13 have 500 photos and 1,000 pieces of documentation and
14 e-mails, and the reason why the Washington Business
15 Journal picked up on this story is because I
16 personally, the Friday before, I was headed to Reno,
17 Nevada, I contacted every individual that signed off
18 on this project to have an investigation into why
19 permits weren't issued for certain things. And the
20 Washington Business Journal did pick up on that e-
21 mail and the twitter. So this is why, by opposition
22 of what's happening, has gotten to this point of just
23 trying to ask this one individual to come and speak
24 to the community that he's going to build a project.
25 So thank you so much for your time.

1 CHAIRPERSON HEATH: Thank you. Is there
2 anyone else wanting to speak? Do you want to come
3 forward?

4 MR. MAY: Can I ask a question of --

5 CHAIRPERSON HEATH: Sure.

6 MR. MAY: -- Mr. Boyer? What was this demand
7 letter that you sent to the neighbors?

8 MR. BOYER: The demand letter actually came
9 directly to us, the homeowner, the adjacent --
10 because we're adjacent to the lot. And I didn't
11 bring that or submit that to --

12 MR. MAY: Well, what's he demanding of you,
13 if you have no contractual relationship with him.

14 MR. BOYER: Well, that -- okay. You can --

15 MR. HOLCOMB: If I could interject? It was
16 the approval for building along the property wall.
17 But he kind of cut and paste -- cut and pasted the
18 actual DCRA form. And then in verbal conversations
19 with us, he kind of told us he was going to need to
20 dig up three feet of our property in front of and
21 behind our house. And if you look at -- I guess
22 that's another point. It's gone now, but he is --
23 all of his drawings represented our home as being --
24 the footprint of our home as being as big or almost
25 bigger than his, which is not the case. It's a

1 factual misrepresentation.

2 So in order for him to dig down he had to go
3 behind our property. You know, he had to underpin,
4 go behind it and then in front, our column for our
5 front porch is like a foot and a half, almost two
6 feet in. So he would have had to retain that wall
7 and he didn't. So it all caved in.

8 But that's what we were talking about, the
9 demand letter.

10 MR. MAY: Okay. So I mean, and you're
11 calling it a demand letter but it was really the
12 standard notification having to do with underpinning
13 of an abutting neighbor?

14 MR. HOLCOMB: Actually, the first letter that
15 we received certified mail was not the standard
16 letter from DCRA.

17 MR. MAY: Right.

18 MR. HOLCOMB: This was a written letter from
19 Mr. Sulekoiki requesting basically us to give him the
20 right to dig three feet into our property. And from
21 that point, because it wasn't a standard letter or
22 form from DCRA, I actually went on to the site and
23 downloaded the DCRA form, and that's how we
24 discovered that bits and pieces of this form,
25 information was cut and pasted into the actual letter

1 that he sent to us in March 2013.

2 MR. MAY: Okay. Thank you.

3 CHAIRPERSON HEATH: Thank you. Could you
4 introduce yourself, please?

5 MS. MCDANIEL: Good afternoon. My name is
6 Betsy McDaniel. I live in ANC 5B, although I do not
7 live in this neighborhood. I just wanted to point
8 out, because I've heard some of the discussions at
9 the ANC meetings --

10 CHAIRPERSON HEATH: We'll give you three
11 minutes.

12 MS. MCDANIEL: I just need --

13 CHAIRPERSON HEATH: If you need it.

14 MS. MCDANIEL: -- one.

15 CHAIRPERSON HEATH: Okay. All right.

16 MS. MCDANIEL: I just -- did I -- oh. When
17 they came to the ANC last month about the parking I
18 found it very disturbing that -- I want to make sure
19 that you guys know this, even -- I'm not sure what's
20 in your purview and what's DDOT's, but that those
21 parking spaces are on Rhode Island Avenue. You know,
22 the address of the building is 3rd Street and there's
23 an alley, but those parking spaces are on Rhode
24 Island Avenue, which is an extremely, extremely busy
25 street.

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1 And he also mentioned that one of those
2 parking places would be for another property owner,
3 and not the owners of the building. So, I just
4 wanted you to be aware of that. Thank you.

5 CHAIRPERSON HEATH: Okay. You said one of
6 the properties he said was owned by --

7 MS. MCDANIEL: He said one of the parking
8 places would be for another property owner, not part
9 of his project.

10 CHAIRPERSON HEATH: Okay. All right. We'll
11 get some clarity on that.

12 MS. MCDANIEL: Thank you.

13 CHAIRPERSON HEATH: Thank you. Okay. I
14 think that's everybody so I don't think we're missing
15 anybody else wanting to speak. So we're going to set
16 this for a continued hearing.

17 MR. BROWN: If I could just, and time may not
18 allow it and our expert Mr. Smart is here, he'll be
19 back as needed, but if the Board members had any
20 questions on what they've seen so far of Mr. Smart's
21 presentation we could anticipate those preparing for
22 next time.

23 CHAIRPERSON HEATH: Not yet.

24 MR. BROWN: Okay.

25 CHAIRPERSON HEATH: Yeah. Thank you for

1 asking, though.

2 MR. MOY: Madam Chair, the next appearance
3 for Peter May would be April the 12th. Well, we
4 actually, it has --

5 [Discussion off the record.]

6 MR. BROWN: Is that April 12th?

7 CHAIRPERSON HEATH: April 5th, I think it's
8 going to be.

9 MR. MAY: I'm here on the 5th.

10 CHAIRPERSON HEATH: Okay.

11 MR. MAY: I'm also here on the 12th, but I
12 don't want to be here every week.

13 CHAIRPERSON HEATH: Okay.

14 MR. MAY: Not like you guys. But no, I was
15 coming in on the 12th for two decision cases.

16 CHAIRPERSON HEATH: Okay. This is going to
17 be longer, so the 5th?

18 MR. SULEKOIKI: The 5th.

19 CHAIRPERSON HEATH: April 5th.

20 MR. SULEKOIKI: April 5th.

21 CHAIRPERSON HEATH: Okay. And you all are
22 more than welcome to come back if you'd like.

23 MR. BROWN: Thank you.

24 MR. HILL: I suppose just as far as you know,
25 when you do come back I was a little curious about

1 the plans in terms of you said you had a project
2 similar to this before over on R Street.

3 MR. SULEKOIKI: That's correct.

4 MR. HILL: And so if that was the model I'd
5 be kind of curious because wasn't there IZ in that
6 model as well?

7 MR. SULEKOIKI: [Shakes head.]

8 MR. HILL: Okay. So I'd be curious of that
9 one, that project, if that's the model.

10 CHAIRPERSON HEATH: Was that a single family?

11 MR. SULEKOIKI: Exact same thing, town
12 houses.

13 CHAIRPERSON HEATH: Okay. And how many?

14 MR. SULEKOIKI: The first one was 12.

15 CHAIRPERSON HEATH: How many units?

16 MR. SULEKOIKI: Twelve, the first one.

17 CHAIRPERSON HEATH: Okay.

18 MR. MAY: So it was pre IZ.

19 MR. SULEKOIKI: Second one 12 as well. The
20 first one, I think must have been pre -- just about
21 2000 -- actually, before IZ, 2004, 2005.

22 CHAIRPERSON HEATH: Okay.

23 MR. SULEKOIKI: And the second one, which was
24 done three at a time -- I'm sorry. Three to one was
25 also was in 2008, 2009. Yeah.

1 MR. BROWN: Which is pre IZ.

2 CHAIRPERSON HEATH: Right.

3 MR. MAY: But it's three, two, one. It
4 wouldn't be subject to -- three, two, one is six in
5 total, right?

6 MR. SULEKOIKI: That's correct.

7 MR. MAY: It wouldn't be subject. You know,
8 I'm sorry to take just one more minute, which is to
9 make a suggestion on this. First of all, you know,
10 get clarity in what you're asking for for the
11 parking. So talk to DDOT, and if they're not going
12 to approve your preferred scheme to get the four
13 spaces, then go to something that they're going to be
14 okay with signing off on because we don't want to --
15 I don't want to spend -- waste time debating
16 something that isn't going to get past muster with
17 them.

18 Second thing is that you in -- you know, I've
19 seen some suggestions that you might be willing to do
20 a single unit of inclusionary zoning or that you
21 might be willing to do something off-site.

22 MR. SULEKOIKI: That's correct.

23 MR. MAY: So I think clarity on what you're
24 offering here would be helpful. I mean, maybe you're
25 offering us both choices, maybe you're offering one

1 or not the other at this point. But if you're saying
2 that, you know, we can grant full relief, we can
3 grant partial relief. And if you want to make a case
4 for partial relief, then you know, explain to us
5 exactly what you're doing and what it is. Don't just
6 say, well, we can do something else off site. Say,
7 we can do it off site. You know, it's under
8 construction at this time, it will be delivered at
9 this time. You know, be specific.

10 MR. SULEKOIKI: Okay.

11 MR. MAY: Or, and alternatively if you're
12 talking about just one unit, make the case for just
13 one unit of IZ here rather than having to do two.
14 Maybe that's, you know, the way you want to go. But,
15 you know, come back to us with clear choices.

16 MR. SULEKOIKI: Thank you, sir. Appreciate
17 it.

18 CHAIRPERSON HEATH: Thank you.

19 MR. SULEKOIKI: Thank you, ma'am.

20 CHAIRPERSON HEATH: So we'll see you on April
21 5th.

22 MR. SULEKOIKI: Mr. Hill, thank you.

23 CHAIRPERSON HEATH: Thank you.

24 [Whereupon, at 3:00 p.m., the Public Meeting
25 was adjourned.]