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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC HEARING AND MEETING
OF THE BOARD OF ZONING ADJUSTMENT

9:34 a.m. to 6:30 p.m.
Wednesday, July 19, 2017

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220-South
Washington, D.C. 20001

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1 Board Members:

2 FREDERICK HILL, Chairperson

3 CARLTON HART, Vice Chairperson

4 LESYLLEE WHITE, Board Member

5 PETER SHAPIRO, Zoning Commission

6 ROB MILLER, Zoning Commission

7 CLIFFORD MOY, BZA Secretary

8

9 Office of Attorney General

10 CHRISTOPHER COHEN, Esq.

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12 Office of Planning

13 STEPHEN MORDFIN

14 MAXINE BROWN-ROBERTS

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

2 CHAIRPERSON HILL: All right. Good morning,
3 everyone. The hearing will please come to order.
4 We're located in the Jerrily R. Kress Memorial Hearing
5 Room at 441 4th Street Northwest. This is the July
6 19th public hearing of the Board of Zoning Adjustment
7 of the District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chairperson, Lesyllee
10 White, board member, and representing the Zoning
11 Commission for some meeting cases, or one meeting case
12 I should say, is Peter Shapiro. And then joining us
13 later will be Rob Miller.

14 Copies of today's hearing agenda are available
15 to you and are located in the wall bin next to the
16 door. Please be advised that this proceeding is being
17 recorded by a court reporter and is also webcast live.

18 Accordingly, we must ask you to refrain from
19 any disruptive noises or actions in the hearing room.

20 When presenting information to the Board, please turn
21 on and speak into the microphone, first stating your
22 name and home address. When you're finished speaking,
23 please turn your microphone off so that your
24 microphone is no longer picking up sound or background
25 noise.

1 All persons planning to testify either in
2 favor or in opposition must have raised their hand and
3 been sworn in by the secretary. Also, each witness
4 must fill out two witness cards. These cards are
5 located on the table near the door and on the witness
6 table. Upon coming forward to the Board, please give
7 those cards to the reporter sitting to the table at my
8 right.

9 If you wish to file written testimony or
10 additional supporting documents today, please submit
11 one original and 12 copies to the secretary for
12 distribution. If you do not have the requisite number
13 of copies you can reproduce copies on an office
14 printer in the Office of Zoning located across the
15 hall.

16 The order of procedures for special
17 exceptions, variances, and appeals will also be, and
18 is listed in the bin as you enter in to the right.
19 The record shall be closed at the conclusion of each
20 case, except for any materials specifically requested
21 by the Board. The Board and the staff will specify at
22 the end of the hearing exactly what is expected, and
23 the date when the persons must submit the evidence to
24 the office of zoning.

25 After the record is closed, no other

1 information shall be accepted by the Board. The
2 District of Columbia Administrative Procedures Act
3 requires that the public hearing on each case be held
4 in the open before the public, pursuant to Section
5 405(b) and 406 of that act. The Board may, consistent
6 with its rules of procedures and the act, enter into a
7 closed meeting on a case for purposes of seeking legal
8 counsel on a case, pursuant to D.C. Official Code
9 Section 2-575(b)(4), and/or deliberating on a case
10 pursuant to D.C. Official Code Section 2-575(b)(13),
11 but only after providing the necessary public notice,
12 and in the case of an emergency closed meeting after
13 taking a roll call vote.

14 The decision of the Board in cases must be
15 based exclusively on the public record. To avoid any
16 appearance to the contrary, the Board requests that
17 persons present not engage the members of the Board in
18 conversation. Please turn off all beepers and cell
19 phone at this time so as not to disrupt the
20 proceedings.

21 Preliminary matters are those which relate to
22 whether a case will or should be heard today, such as
23 request for a postponement, continuance, or
24 withdrawal, or whether proper and adequate notice of
25 the hearing has been given.

1 If you're not prepared to go forward with the
2 case today, or if you believe that the Board should
3 not proceed, now is the time to raise such a matter.

4 Mr. Secretary, do we have any preliminary
5 matters?

6 MR. MOY: Good morning, Mr. Chairman, members
7 of the Board. I do have one quick announcement for
8 the record with respect to the docket for today. And
9 that is Application No. 19530 of David Lindsay and
10 Jane Lloyd has been withdrawn by the applicant. And
11 that's it from the staff, Mr. Chairman.

12 CHAIRPERSON HILL: Okay. Great. Thank you,
13 Mr. Moy.

14 If anyone is here wishing to testify, if you
15 wouldn't mind please standing and take the oath that's
16 going to be administered by the secretary?

17 MR. MOY: Good morning.

18 [Oath administered to the participants.]

19 CHAIRPERSON HILL: So, ladies and gentlemen,
20 just to let you know as far as the order with which
21 we're going to go, this morning we're going to do our
22 meeting cases first and we're going to hear the appeal
23 first since we have Commissioner Shapiro with us for
24 that. And then we're going to move on to the other
25 meeting cases that are on the docket. And then after

1 that, we're going to follow the hearing agenda, except
2 for we're going to hear the appeal of the two ANCs as
3 well as I think it's Muse. I can't remember the
4 number right in front of me, first. And then we'll
5 follow the docket after that.

6 So, with that being the case, Mr. Moy,
7 whenever you'd like to call the first meeting case,
8 please do so.

9 MR. MOY: Okay, Mr. Chairman, would you prefer
10 that I go straight to the calendar cases for decision,
11 or shall I tee up the two preliminary matters before
12 the Board for action?

13 CHAIRPERSON HILL: No, let's do the
14 preliminary matters afterwards --

15 MR. MOY: Okay.

16 CHAIRPERSON HILL: -- when Mr. Miller comes
17 up.

18 MR. MOY: That works. Okay. That would be --
19 I know this one. Oh, here we go. All right. For
20 decision-making, this is Appeal No. 19510 of Nefretiti
21 Makenta, captioned and advertised. This is the appeal
22 of the decision made on February 9th, 2017, by the
23 Zoning Administrator, Department of Consumer and
24 Regulatory Affairs, to issue Building Permit No.
25 B1603868, to permit construction of a third-floor

1 addition, roof deck, and rear deck to an existing
2 flat. This is in an RF-1 Zone at premises 3616 11th
3 Street Northwest, Square 2829, Lot 167.

4 As the Board is aware, the public hearing,
5 we're set -- was heard on June 14th and July 12th,
6 2017. And of course, set for decision for today, July
7 19th.

8 CHAIRPERSON HILL: Okay, great. Thanks. I
9 believe there is a preliminary matter which is DCRA's
10 motion to dismiss. Is the Board ready to deliberate?
11 Okay.

12 I can start on the motion to dismiss. We did
13 -- we held the motion to dismiss in abeyance so that
14 we could hear from the appellant. And my hope was in
15 doing so we could find more clarity as to the
16 specifics of how the Zoning Administrator erred.
17 After the -- after going through, and it was a long
18 appeal. I mean, we heard three hours of testimony, I
19 think it was. And so, after the extensive testimony
20 that we heard, I did not get any more further clarity
21 as to where the applicant was stating that the Zoning
22 Administrator erred.

23 If, depending upon how this goes, if we were
24 to approve the motion to dismiss, I still would like
25 to, for the record, speak a little bit on the merits

1 of the case. Again, as we did hold the motion in
2 abeyance and did listen to the entire case, I as I'm
3 restating again, didn't find any further clarity from
4 the applicant as to how the Zoning Administrator
5 erred. So, I would also now be in favor of approving
6 DCRA's motion to dismiss the appeal.

7 Any comments from the Board?

8 MS. WHITE: Mr. Chairman, yes. I'm also very
9 familiar with the case and recall the length of time
10 involved in hearing the testimony, and it was quite a
11 long day. But I'm also in agreement that I believe
12 that the DCRA's motion to dismiss should also be
13 granted because I did not see that the applicant was
14 able to provide sufficient information regarding her
15 case, indicating that the Zoning Administrator erred
16 in issuing the original permit.

17 So, I would be in agreement as well.

18 MR. HART: Mr. Chair, after reading the
19 information provided by the applicant -- excuse me,
20 the appellant, the intervener, as well as the DCRA, I
21 would be supportive of the DCRA motion to dismiss.
22 And this is really because the appellant, while they
23 stated a number of concerns that they had, that she
24 had, those concerns were not things that were
25 pertinent to the building permit that had been issued.

1 They were pertinent to -- well, I shouldn't say
2 weren't pertinent. They were involved other issues or
3 some general concerns, but what we had before us was
4 an appeal of this particular building permit that the
5 Zoning Administrator submitted. And I just, I did not
6 -- the appellant did not provide the information that
7 is necessary for us to be able to, well I felt, rule
8 in her favor.

9 I, therefore, would be supportive of the DCRA
10 motion to dismiss as well.

11 MR. SHAPIRO: Thank you, Mr. Chair. I'd
12 associate myself with all the remarks of my colleagues
13 and I would concur.

14 CHAIRPERSON HILL: Okay. Then I would go
15 ahead and make a motion to approve DCRA's motion to
16 dismiss.

17 MR. SHAPIRO: Second.

18 CHAIRPERSON HILL: Motion has been made and
19 seconded.

20 [Vote taken.]

21 CHAIRPERSON HILL: Motion passes, Mr. Moy.

22 MR. MOY: Staff would -- excuse me, record the
23 vote as four, to zero, to one. This is on the motion
24 of Chairman Hill to grant the motion to dismiss. This
25 is the appellee's motion to dismiss. Seconded the

1 motion, Mr. Peter Shapiro. Also in support of the
2 motion Vice Chair Hart and Ms. White. We have a Board
3 seat vacant. The motion carries, sir.

4 CHAIRPERSON HILL: Thank you. Yeah, sure.
5 Please.

6 MR. HART: Yeah. Just one comment. We did
7 actually get a document that was submitted by the
8 appellant, dated July 17th. We did not request any
9 information and I just wanted to see whether or not we
10 should be keeping that information on the, you know,
11 in the case file.

12 CHAIRPERSON HILL: Well, I appreciate that,
13 Mr. Hart. I mean, we -- I'm looking to OAG. We did
14 not request anything from anyone after, and we had
15 closed the hearing, so I would assume that that is not
16 going to be admitted into the record?

17 MR. COHEN: That's a decision that the Board
18 can make.

19 CHAIRPERSON HILL: Okay. So, we will not be,
20 unless the Board has any objection, we will not be
21 adding that into the record because we didn't ask for
22 more information. So, we can do that by consensus,
23 and I just did that.

24 Okay, fine.

25 MR. HART: Yeah, I just wanted to make sure

1 that we were clear on that because I, you know.

2 CHAIRPERSON HILL: No, I appreciate that. I
3 appreciate that.

4 So, I did want to just address a couple of
5 items, or at least I wanted to be clear as to how my
6 thought process was with this, if this case would have
7 gone to deliberation, because I just want it to be
8 very clear for the appellant as to how we would have
9 discussed this. And so, I appreciate just a little
10 bit of time to provide that further clarity.

11 I was really surprised. Out of all of the
12 information that we had been given, and how the
13 extensiveness of this -- the record was, how I felt
14 disorganized the applicant was, and how there was no -
15 - there was not any kind of an indication as to how
16 the Zoning Administrator had erred, and it was just
17 seeming to be more of kind of repeating what the
18 original case was about in terms of what we had
19 deliberated.

20 I understand that the applicant, at least some
21 of the reasoning why the applicant didn't make it to
22 the first ANC meeting concerning the case, as well as
23 the BZA meeting. However, I didn't necessarily find
24 those reasons particularly strong.

25 I do feel actually quite badly for the

1 intervener in that this is an ongoing process that
2 continues to not seem to have an end. And so, I just
3 wanted to provide further clarification from my
4 standpoint, and please, anyone add anything else they
5 would like to add. But that the case itself did not
6 have anything that I could even hang my hat on in
7 terms of, again, the error with which the Zoning
8 Administrator had done for the applicant.

9 So, I just wanted to put that out on the
10 record.

11 MR. HART: Mr. Chair, yeah. In the testimony
12 from last week, July 12th, and submitted exhibits, the
13 appellant noted that there were actually -- she
14 provided some information regarding the several issues
15 that she had regarding the parking spaces, and
16 impacting the parking area may have, on a tree, a
17 heritage tree that was on her property, and that were
18 not in the applicant's plans. We actually asked the
19 DCRA whether or not they typically had information
20 from other properties on a plan and they indicated
21 that they did not.

22 There were also some discussion about impacts
23 of rear deck supports and footers that seemed like it
24 was more of a building code issue. There were some
25 general light and air impacts that the applicant

1 described. Those were again just general, but not
2 pertinent to the particular building permit that was -
3 - that had been provided or had been approved.

4 And then that the appellant stated that the
5 Zoning Administrator didn't undertake an independent
6 review, or at least a comprehensive enough review, and
7 it felt as though the, again, the ZA provided, or the
8 DCRA council provided information to us regarding how
9 they go about doing the reviews for these permits.
10 And it seemed as though there were -- while there were
11 concerns that the appellant raised, concerns in her
12 mind that they raised, they weren't concerns that were
13 either under the purview of this building permit, or
14 under the purview of the BZA.

15 And I just felt that it was -- that there
16 weren't the appropriate level of information provided
17 as to what the errors were -- error, or errors were
18 that the ZA had in issuing the permit. And so, I
19 would have had a hard time supporting the appeal
20 itself.

21 And I just think that there were, while there
22 were things that were raised, they were not things
23 that were -- that the BZA would be hearing and either
24 approving or disapproving. It just were outside of
25 our normal purview.

1 MS. WHITE: No, I would concur with Mr. Hart's
2 comments. And the other thing is that, you know, the
3 appellant was pro se, but I would like to say, in
4 spite of the fact that she was pro se, I think we, as
5 a board did give her an opportunity to submit her
6 filings, and we did -- we had a couple of
7 postponements in order to accommodate the appellant in
8 order to give her an opportunity to make her case as a
9 resident of the District of Columbia.

10 So, but while, you know, we did that, you
11 know, you still have to meet the standards and prove
12 your case in terms of there being an error with the
13 permit that was issued by the Zoning Administrator.
14 So, I would concur with your comments.

15 CHAIRPERSON HILL: Okay, great. Okay. Thank
16 you. Thank you, colleagues.

17 Mr. Moy, so we're going to move on to our next
18 decision. And, Mr. Shapiro, thank you for joining us.
19 Thank you for coming down. And I think Mr. Miller is
20 going to be up next. And maybe we'll just take 30
21 seconds here for the handoff.

22 [Pause.]

23 CHAIRPERSON HILL: All right. Mr. Moy, I
24 think you had some preliminary matters for us.

25 MR. MOY: All right. Let's do that then. The

1 first of the two that I'm bringing before the Board
2 for action is, the first is Appeal No. 19027 of Rima
3 Calderon and William Sawicki. This appeal was
4 captioned for an appeal of the March 19th, 2015
5 decision by the Zoning Administrator to issue Building
6 Permits No. B1504436, which would renovate a hotel in
7 a DC/R-5-D District at premises 1731 New Hampshire
8 Avenue Northwest, Square 154, Lot 829.

9 As you're aware, Mr. Chairman and the Board,
10 the DCRA filed a request to reopen the record to allow
11 supplemental filing, requesting that the Board revisit
12 their reconsideration decision. And this is
13 identified under Exhibit 54, which was filed last
14 Friday, July the 14th.

15 CHAIRPERSON HILL: Okay, great. Thank you.
16 Is the Board ready to deliberate?

17 Okay. So, I have reviewed the record and the
18 request to reopen the record from DCRA. I see that
19 DCRA is here, so we'll see how this goes. But what we
20 have been informed in terms of from discussion with
21 the Office of Attorney General is, is that this is not
22 the correct way to kind of proceed with this request.

23 And actually, can DCRA come up if you wouldn't mind?

24 If you could please just introduce yourself?

25 MR. TONDRO: Yes. Good morning. Maximilian

1 Tondro on behalf of DCRA.

2 CHAIRPERSON HILL: Good morning, Mr. Tondro.
3 So, and I'm just going to turn to the Office of
4 Attorney General and they can kind -- and this is what
5 I got from, or what we got from discussing with OAG in
6 terms of how this is not the appropriate way, and that
7 we are going to need to dismiss this. But I'm going
8 to turn to OAG to kind of walk me through that, if you
9 wouldn't mind?

10 MR. COHEN: Sure. Currently the way the
11 filing is framed, it's requesting that the Board
12 reconsider the reconsideration order, not the
13 underlying original order that was issued on March
14 7th. The rules do not permit that specifically.
15 However, the rules do permit a motion to reopen the
16 record to reconsider that order; the original order
17 about the case for relief.

18 CHAIRPERSON HILL: Okay. Mr. Tondro.

19 MR. TONDRO: I guess I would ask if it was
20 possible for the Board to allow me to amend orally,
21 the motion to reflect that that was the desire, just
22 to explain the motion to reopen the record, request to
23 reopen the record for the motion to reconsider, which
24 was a motion to reconsider the original decision.

25 So, the intent was always to have it

1 reconsider the original order that was issued by the
2 Board.

3 CHAIRPERSON HILL: Okay. Well, two questions.
4 First, is that appropriate to be able to do that
5 orally?

6 MR. COHEN: That's okay. However, I will draw
7 the Board's attention to the fact that the DCRA would
8 have to make a motion to waive the 10-day requirement
9 under 700.2.

10 MR. TONDRO: Thank you. I hereby make an oral
11 motion also to waive the 10-day filing deadline. In
12 support of that I would point out that I did file the
13 original motion for reconsideration within the 10-day
14 period. I would also apologize again for the
15 confusion that was created. That's just my first go-
16 around on this kind of process.

17 CHAIRPERSON HILL: Okay. I mean, my problem
18 with it, I suppose, Mr. Tondro is right now it's like,
19 I don't feel 100 percent ready to move forward whether
20 or not I can -- because like, I already kind of got to
21 a point where I didn't think I was going to be getting
22 to the next point.

23 And so, I don't know about the Board. I mean,
24 is the Board ready to move forward with the
25 preliminary matter?

1 [Pause.]

2 CHAIRPERSON HILL: Okay. All right. So, Mr.
3 Tondro, we're going to ask you to go ahead and submit
4 a hard filing, and then that will give us another
5 week. And then we can go take a look at this again, I
6 guess, next week, because I don't have it in my brain
7 right now to get to the next point.

8 MR. TONDRO: I understand and I appreciate the
9 consideration. Again, I apologize for the confusion.
10 Thank you. I will do.

11 CHAIRPERSON HILL: Okay. Thank you. All
12 right. Mr. Moy, so we're -- what are we doing? So,
13 we're dismissing -- no, what are we doing? We're just
14 pushing it to next week?

15 MR. COHEN: Depending on when the filing come
16 in.

17 CHAIRPERSON HILL: Okay. We'll see what
18 happens when the filing comes in and whether we make
19 it to next week, or we make it to the week after that.
20 Okay. All right. Thank you.

21 Mr. Moy, are you good?

22 MR. MOY: Yes.

23 CHAIRPERSON HILL: Okay. Let's see. All
24 right. So, then that's preliminary matter. Or we're
25 waiting to --

1 [Pause.]

2 MR. MOY: Sorry, Mr. Chairman. All right,
3 this would be Application No. 19122A of 1600 I Street,
4 Corporation. This application was a request for a
5 two-year time extension of BZA Order No. 19122,
6 approving variances from the roof structure
7 requirements under Section 411.1, and the
8 nonconforming structure requirements under 2001.3, and
9 a special exception from the office use requirements
10 under Section 508.1, allowing the renovation and
11 expansion of an existing office building in an SP-2
12 District at premises 1600 I Street Northwest, Square
13 186, Lot 39.

14 So, what is before the Board is a request from
15 the applicant to waive a 30-day time period for
16 responses so that the Board can consider the request
17 for a time extension from September 6th, scheduled
18 date of September 6th, 2017, to an earlier decision
19 date of July 26th, 2017.

20 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
21 Is the Board ready to deliberate?

22 MS. WHITE: Yes.

23 CHAIRPERSON HILL: Okay. So, after going
24 through the record and understanding why the motion
25 was made, I didn't really have any particular issues

1 with it. I mean, the main thing that I was interested
2 in seeing was that the ANC had been aware of the
3 request, and we have gotten something from the ANC in
4 terms of their not only them being aware, that also
5 that they are in support of the -- thank you, thank
6 you, the two-year time extension. However, we're
7 going to get to that discussion on the 26th, but -- of
8 July, if this motion passes. So, I don't have an
9 issue with it. I would be fine with granting the
10 request to waive the 30-day period for responses. Any
11 comments?

12 MS. WHITE: I support it too, Mr. Chairman.
13 There doesn't seem to be any issues with giving them
14 an opportunity to request an earlier decision date for
15 the hearing.

16 CHAIRPERSON HILL: Okay. So, then I'll go
17 ahead and make a motion to approve the request to
18 waive the 30-day period allowed for responses.

19 MR. HART: Second.

20 CHAIRPERSON HILL: Motion has been made and
21 seconded.

22 [Vote taken.]

23 CHAIRPERSON HILL: All right. Motion passes,
24 Mr. Moy.

25 MR. MOY: Staff would record the vote as four,

1 to zero, to one. This is on the motion of Chairman
2 Hill to grant the waiver of the 30-day period allowed
3 for responses. Seconded the motion, Vice Chair Hart.

4 Also in support, Ms. White and Mr. Miller. We have a
5 board seat vacant, so that means, then, that this a
6 request for a two-year time extension would be
7 scheduled for decision making on July 26th, 2017.

8 CHAIRPERSON HILL: That's next week?

9 MR. MOY: That's correct, sir.

10 CHAIRPERSON HILL: Is that our last one of the
11 month?

12 MR. MOY: Absolutely.

13 CHAIRPERSON HILL: And then we're off for a
14 month?

15 MR. MOY: Yes, unless you want to come back in
16 August.

17 CHAIRPERSON HILL: No, that's okay. I like
18 that. That's great. Thank you.

19 [Pause.]

20 MR. MOY: All right. I believe the next item
21 for decision making, Mr. Chairman, is Application No.
22 19088A of 3701 14th Street, LLC. This is a request
23 for a minor modification of the plans approved in BZA
24 Order No. 19088, which would add a nonconforming
25 penthouse to the proposed four-story mixed-use

1 building in the MU-4 Zone at premises 3701 14th Street
2 Northwest, Square 2826, Lot 96.

3 CHAIRPERSON HILL: Okay, great. Thank you.
4 Is the Board ready to deliberate? Okay. I can start.

5 So, really, basically after reviewing the
6 record and the request for the minor modification, the
7 first thing was whether or not we agreed that it was a
8 minor modification. The Office of Planning, their
9 report, I thought was pretty thorough, and I would
10 agree with them that it was a minor modification. In
11 their report, they had requested an estimate for the
12 applicant for the IZ contribution, and the applicant
13 has provided not only an analysis as to how they get
14 to their number, but also I guess, a chart as to how
15 they're getting to their number for the IZ estimate.

16 I really just kind of want to hear from the
17 Office of Planning who is very gracious enough to join
18 us this morning in a meeting case about whether they
19 are comfortable with the way that the estimate is
20 being provided.

21 And before I turn to the Office of Planning,
22 does the Board have anything else they'd like to ask
23 of the Office of Planning? Or, is that good?

24 Okay. If I could turn to the Office of
25 Planning?

1 MR. MORDFIN: Good morning, Chair and members
2 of the Board. I'm Stephen Mordfin.

3 And the Applicant did submit their estimate.
4 It's based on the assessed value of the land, which is
5 the way it's supposed to be done. There was nobody in
6 our office yesterday when I received this message that
7 works on IZ for me to ask. However, the actual number
8 that the applicant will be required to pay will be
9 determined at the time of building permit application.

10 CHAIRPERSON HILL: Okay. And thanks, Mr.
11 Mordfin.

12 So, just again for my own education, how does
13 that work? So, when do they pay? I mean, I'm just
14 curious.

15 MR. MORDFIN: I don't know exactly how the
16 process works. It's in DCRA when it will be
17 determined how much they'll have to pay, and it's
18 related to their building permits, and I don't know
19 the process down there that --

20 CHAIRPERSON HILL: So, it's just, it's after
21 the building permit is issued they get the actual
22 number, which to multiple whatever it is against to
23 get to the amount?

24 MR. MORDFIN: Yeah. I don't know if it's
25 after or during the process. Somewhere during the

1 process --

2 CHAIRPERSON HILL: Okay.

3 MR. MORDFIN: -- it will --

4 CHAIRPERSON HILL: Okay. Okay.

5 MR. MORDFIN: The actual number of they will
6 owe, and then they will have to pay before they can
7 complete their process.

8 CHAIRPERSON HILL: Okay, great. Does anybody
9 have any questions for the Office of Planning? Okay,
10 all right. Thank you, Mr. Mordfin.

11 All right. So, then that being the case,
12 again, that was my big hurdle. Does the Board have
13 anything they'd like to add before I make a motion?

14 Sure, take your time.

15 MR. MILLER: Thank you, Mr. Chairman. Yeah,
16 on the -- I just wanted to add to the conversation you
17 were just having about the contribution to the Housing
18 Production Trust Fund. I mean, that was a requirement
19 that the Zoning Commission established when the
20 habitable penthouse spaces were permitted. So, the
21 Zoning Commission recognized that for an existing
22 building that gets a modification that includes
23 habitable space, they can't meet Inclusionary Zoning.
24 You know, on site Inclusionary Zoning requirements.
25 So, a contribution to the Housing Production Trust

1 Fund would be permitted and it was based on a long-
2 standing housing linkage policy that's associated with
3 the additional office density.

4 And so, it's all set forth in the regulations
5 as to when the estimate is made of that contribution,
6 as Mr. Mordfin said. It is at the time of prior to
7 the building permit. I think they can't get a -- I'm
8 not sure about this, but I think it's they can't get a
9 certificate of occupancy until that contribution is
10 completed.

11 So, I just wanted to ask if we are going to
12 proceed, which I'm ready to proceed and I'm supportive
13 of this, if the order can somehow reference this
14 requirement. I mean, it's a requirement of the law.
15 But if the order, I assume it may be a summary order
16 for this minor modification. But if the summary order
17 can somehow reference the IZ -- the Housing Production
18 Trust Fund contribution requirement so that
19 everybody --

20 CHAIRPERSON HILL: Okay. And you're asking
21 that of OAG there.

22 MR. MILLER: Yes. Yes.

23 CHAIRPERSON HILL: And I see them nodding
24 their head. Is that --

25 MR. MILLER: I was asking OAG and the Office

1 of Planning.

2 MR. COHEN: That's something that could be
3 included in the summary order.

4 MR. MILLER: So, I think that's helpful for
5 the public and for DCRA to know, to just have that
6 flagged. So, that's great. Thank you.

7 CHAIRPERSON HILL: Okay.

8 MS. WHITE: I'd be in support of that as well,
9 just to make sure that that's done because those funds
10 go towards affordable housing for the city. So, just
11 from a, you know, practical perspective, we want to
12 make sure that that money gets paid.

13 CHAIRPERSON HILL: Okay. Mr. Hart, do you
14 have anything to add? Okay. Then, I'll go ahead and
15 make a motion to approve Application No. 19088A as
16 read by the secretary, as well as in the summary order
17 making reference to the IZ component payment.

18 MS. WHITE: Second.

19 CHAIRPERSON HILL: Motion has been made and
20 seconded.

21 [Vote taken.]

22 CHAIRPERSON HILL: Motion passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as four,
24 to zero, to one. This is on your motion, Mr.
25 Chairman, to grant the request for minor modification

1 with the provision to be included in the summary
2 order.

3 Seconded the motion, Ms. White. Also in
4 support, Vice Chair Hart, Mr. Miller, we have a board
5 seat vacant. The motion carries.

6 CHAIRPERSON HILL: Thank you. I guess we can
7 do the summary order and then again mention the IZ
8 component.

9 MR. MOY: Absolutely.

10 CHAIRPERSON HILL: Thank you.

11 MR. MOY: The next case application before the
12 Board for a decision is Application No. 19512 of 1262
13 Holbrook Terrace, LLC as amended for special
14 exceptions under the alteration of a rooftop
15 architectural element requirement, Subtitle E, Section
16 206.1, and under the residential conversion
17 requirements of Subtitle U, Section 320.2, to
18 construct a rear addition and third-story addition to
19 convert a one-family dwelling into a three-unit
20 apartment house, RF-1 Zone at premises 1262 Holbrook
21 Terrace Northeast, Square 4055, Lot 48.

22 CHAIRPERSON HILL: Thank you, Mr. Moy. Is the
23 Board ready to deliberate?

24 The one thing that we had asked for was some
25 information from the ANC in terms of supplemental as

1 to whether or not the ANC was going to be in support.

2 I can't recall, did we get that? So, we didn't get
3 that. And then there was some discussion about --
4 well, I see someone from the ANC just raised their
5 hand, I suppose. So, we'll see if we get to that
6 point. Although, I suppose we can do that. Yeah,
7 sorry.

8 MR. HART: Yeah, Mr. Chair, it looks like the
9 applicant has actually submitted information regarding
10 the ANC meeting, and he basically said that the ANC
11 declined to vote on the application.

12 CHAIRPERSON HILL: Okay. I see that the ANC
13 is here, actually. So, could the ANC come forward,
14 and could the applicant come forward as well?

15 Good morning. If you could just state your
16 name for the record? You have to push the button
17 there.

18 MS. SHROPSHIRE: Keisha Shropshire, ANC 5D.

19 MR. SULLIVAN: Good morning. Marty Sullivan
20 on behalf of the applicant.

21 CHAIRPERSON HILL: Okay. Let's see now. So,
22 Commissioner Shropshire. Shropshire. Were you sworn
23 in earlier?

24 MS. SHROPSHIRE: No.

25 CHAIRPERSON HILL: Okay. Could I get -- and

1 anybody who came in late, if you could just stand, and
2 we're going to swear you in now. If you could just
3 stand there and you're going to promise to tell the
4 truth.

5 MS. SHROPSHIRE: Yes.

6 MR. MOY: Good morning.

7 [Oath administered to the participants.]

8 CHAIRPERSON HILL: Okay, great. Thank you.
9 And did you fill out your witness cards?

10 MS. SHROPSHIRE: I did.

11 CHAIRPERSON HILL: Okay, great. So, I suppose
12 I can just start with you. I mean, we had hoped to
13 get information from -- we had hoped that the
14 applicant was -- well, we had hoped that the applicant
15 was going to have an opportunity to meet with the ANC.
16 We have gotten information that the ANC is still
17 opposed, and I suppose you're here to kind of clarify
18 that?

19 MS. SHROPSHIRE: Yes.

20 CHAIRPERSON HILL: Okay. Could you clarify
21 that?

22 MS. SHROPSHIRE: So, we met again with the
23 applicant on July the 10th, and then they attended our
24 meeting on July the 11th, and at which point on July
25 the 10th there were residents that came out and they

1 expressed their continued opposition for the addition
2 of the third level. And so when we had our meeting on
3 July the 11th, there were two things that were
4 highlighted. One was that they were in opposition for
5 the third level because they believed that it
6 increased the density of the street, and they were in
7 support of two levels, but not three. And then there
8 was also a request during the meeting to modify the
9 color to make it consistent with the other residents
10 that were -- the other buildings or homes that are on
11 the street, instead of having a dark brick color to
12 have like more of a natural color.

13 And so, when we had held the ANC meeting on
14 July the 11th, since we were already in opposition, we
15 sort of need to submit something to say we're in
16 opposition again. So, I decided to come today to just
17 say that we were in opposition because the community
18 was not in support, still, with the addition of the
19 third level.

20 CHAIRPERSON HILL: Okay. Mr. Sullivan, before
21 I get to you I am kind of just curious of something.
22 So, and I'm going to turn to the Office of Attorney
23 General to understand -- it seems like there is
24 somebody here who had wished to speak. Now, we closed
25 the record. We closed the record and then we asked

1 for information from the ANC as well as the HTA, I
2 think. The Holbrook Terrace Association.

3 Holbrook Terrace Association didn't supply us
4 with any -- oh, no, they did, but they didn't supply
5 it on time. But they did give it to us. We had a
6 deadline. The ANC can submit whatever they want,
7 whenever they want it.

8 And so, is it possible for us to hear now from
9 someone who is coming down to speak?

10 MR. COHEN: I'd have to check up on that for
11 you.

12 CHAIRPERSON HILL: Okay. You have to check up
13 on that for me. Okay.

14 MR. COHEN: If that person is a representative
15 of the ANC --

16 CHAIRPERSON HILL: The person -- I don't think
17 the person is a representative of the ANC. So, okay.

18 Mr. Sullivan, so you heard everything that the
19 Commissioner had to say. Would you like to add
20 anything?

21 MR. SULLIVAN: No, I think that's accurate.
22 We tried from the time we left the last hearing to get
23 a meeting scheduled with the person that had testified
24 at that hearing, and we finally managed to schedule
25 that the day before the ANC meeting. And then none of

1 the issues had changed.

2 CHAIRPERSON HILL: Okay.

3 MR. SULLIVAN: The same people attended that
4 meeting as attended the previous meeting, and so
5 that's it.

6 CHAIRPERSON HILL: Okay.

7 MR. SULLIVAN: And the arguments, as I
8 understood them, sort of relate to character of the
9 street kind of arguments, even though the streets
10 pretty much -- it's got more apartment buildings than
11 it has single families. And there is an apartment
12 building on both sides of this building, and both
13 neighbors are in support.

14 So, the adjacent neighbors have submitted
15 letters of support.

16 CHAIRPERSON HILL: Okay. I understand.

17 MR. SULLIVAN: So, it's a wider community that
18 has an objection principally to the --

19 CHAIRPERSON HILL: Okay. So, Commissioner
20 Shropshire, are you the SMD for this?

21 MS. SHROPSHIRE: I am.

22 CHAIRPERSON HILL: Okay. And the vote was
23 four to three as I recall.

24 MS. SHROPSHIRE: In opposition.

25 CHAIRPERSON HILL: In opposition.

1 MS. SHROPSHIRE: At the ANC meeting.

2 CHAIRPERSON HILL: Right. At the original
3 one. And so, and I appreciate that it was in
4 opposition, but it was -- I mean, it was a split vote.
5 So, I'm just kind of curious. Can you tell us a
6 little bit about why you think it was split so
7 closely?

8 MS. SHROPSHIRE: I think that we lean heavily
9 on what the community's perspective is, and at that
10 time the community had not provided additional input
11 as to why specifically why they were opposing. It was
12 just that they wanted additional time to review the
13 case.

14 And so, since the ANC believed that the
15 community didn't have enough time to review, they were
16 saying, we will oppose this until we hear further from
17 the community. So, once we have that meeting, we were
18 able to come back and say, these are the reasons why
19 they're in opposition.

20 CHAIRPERSON HILL: Right. So, that's what I
21 recall and I guess the Board probably remembers also,
22 that that was -- and I can't remember the commissioner
23 that came down last time.

24 MS. SHROPSHIRE: It was our chairperson,
25 Commissioner Clarence Lee.

1 CHAIRPERSON HILL: Okay. And so, Chairman Lee
2 came down and then the representative from the HTA.
3 And it seemed again, what they had indicated to us,
4 and this is why I got a little confused in terms of
5 what was going on, was that it seemed to be like, if
6 they had more time, if they understood more, then
7 maybe, you know, the impression that I was getting was
8 kind of like, they could maybe get behind it.

9 I mean, again, the issue that I'm having with
10 it again is the four to three vote in terms of just
11 your own community there. And the pushback is from
12 the third unit, more or less it seems like. Correct?

13 MS. SHROPSHIRE: The third level. So, there
14 is going to be an additional level added. So, I think
15 that given that there -- on one side of the community
16 there are residential homes, which are two level, and
17 so at that point is where it starts with apartment
18 buildings. So, I think that because it's been
19 converted from a two-level home to a three-level
20 apartment building, there is opposition to adding more
21 density --

22 CHAIRPERSON HILL: Okay.

23 MS. SHROPSHIRE: -- to the street. Uh-huh.

24 CHAIRPERSON HILL: Okay. So, does the Board
25 have any questions for the commissioner?

1 MR. HART: Not for the commissioner but for
2 the applicant.

3 CHAIRPERSON HILL: Okay. Before I move on to
4 the applicant, so I don't know if -- and I mean, and I
5 just wanted to clarify for the people here that are
6 wishing to speak, we closed the record the time
7 before. And so, I know that you came down here now,
8 but unfortunately if I reopen the record to you, then
9 the applicant is going to have an opportunity to
10 bounce back. It's going to get, I think, more muddy.

11 Okay? And so, I'm sorry that I'm not going to be
12 able to reopen the record to allow your testimony. I
13 image that the ANC is here to represent you in that
14 regard.

15 And I am glad that you came -- that you're
16 being here early, meaning that anybody who is here --
17 anyway. You could have been here all the way to the
18 end of the day and heard this answer.

19 So, nonetheless, I'm sorry we can't open the
20 record to have further testimony.

21 So, you had a question, Mr. Hart?

22 MR. HART: Yeah, the ANC, Ms. Shropshire.

23 MS. SHROPSHIRE: Yes.

24 MR. HART: Stated that the ANC was looking at,
25 well, one a lower -- having one level removed, but

1 also having a different color of the brick. Mr.
2 Sullivan, are you looking at either one of those as
3 options, or are you still moving forward with what has
4 been submitted to us?

5 MR. SULLIVAN: We're moving forward. I'm
6 certain that the two stories doesn't work. And in
7 fact, both buildings on each side are at an equal or
8 higher height than this building. And I would have to
9 defer to the architect on the color because he
10 designed it in a certain way, presumably to fit with
11 the block, and he has his ideas about what works.

12 But, I'm sure we're open to that if we -- if
13 it was only -- but I don't know that it's part of the
14 case or a part of this case, but we can certainly be
15 open to it and continue discussion on that.

16 I think a lot of the buildings to the west are
17 darker, so I'm not sure how that fits.

18 MR. HART: Thank you.

19 CHAIRPERSON HILL: Ms. Shropshire, you had a
20 comment?

21 MS. SHROPSHIRE: Yes, during the time of our
22 meeting when we met with the community, he did agree
23 to lighten the color of the brick. So, it's a brick
24 and then there is additional siding. So, I think
25 there was a lot of discussion about it not looking

1 like a jail, or looking like a -- they had a
2 perspective about what it looked like if it was just
3 all dark and gray. So, they wanted to have a more
4 consistent color along the block.

5 CHAIRPERSON HILL: Okay.

6 MS. SHROPSHIRE: And he was in --

7 CHAIRPERSON HILL: Okay, no, that's great. So
8 he --

9 MS. SHROPSHIRE: He was in agreement with it.

10 CHAIRPERSON HILL: He's in agreement and he
11 was -- and Mr. Sullivan, you had, as you mentioned,
12 you now would be willing to consider that?

13 MR. SULLIVAN: Sure. Yeah.

14 CHAIRPERSON HILL: In terms of -- okay.

15 MR. SULLIVAN: I would take Ms. Shropshire's
16 word for that, and if we could submit something -- we
17 could have it before next week.

18 CHAIRPERSON HILL: Okay, so, let's see. I'm
19 sorry. Does the Board have any further questions for
20 anyone? All right. Okay. So, now thank you all very
21 much.

22 MS. SHROPSHIRE: Thanks.

23 CHAIRPERSON HILL: Is the Board ready to
24 deliberate?

25 Mr. Miller?

1 MR. MILLER: Thank you, Mr. Chairman. I just
2 wanted to note, I did not participate in this hearing
3 and I wasn't the Zoning Commission. Just that I
4 believe the Office of Zoning staff has an absentee
5 ballot from Commissioner May.

6 CHAIRPERSON HILL: Okay. Okay.

7 MR. MILLER: If you proceed.

8 CHAIRPERSON HILL: Okay. Well, I've got to
9 say, I'm not ready to deliberate now. You know, I
10 mean, I'm going to have to take another week. The
11 Commissioner came down, I wanted to take -- you know,
12 we got the -- we got your -- we didn't get anything
13 formal from you, and so this is now your formal
14 testimony. I understand what had happened with the
15 ANC meeting with the applicant, and I appreciate you
16 conveying that information to us. I'm glad that it's
17 the same information that we're hearing from the
18 Commissioner. But now that the Commissioner came down
19 I want to take a little bit more time to look at this
20 at least for another week.

21 And I did at least, you know, and Board, feel
22 free please to mention anything to the commissioner in
23 terms of the thought process. I mean, mine again is,
24 I'm going to again go back and look at the merits of
25 the application and, you know, the Office of Planning

1 and their report. And then again, I'm again just kind
2 of struggling with the -- you're really split
3 four/three, meaning it was -- if one went the other
4 way then it would have been four/three in approval.
5 And so, that's what I'm kind of just struggling with,
6 just a little bit?

7 MS. WHITE: Mr. Chairman, I don't have a
8 problem with waiting an additional week. I mean,
9 obviously you have to give great weight to the ANC and
10 as Mr. Chairman said, you know, the vote was close.
11 But I'm also comfortable with the fact that there are
12 some discussions continuing to go on regarding the
13 aesthetics of the building.

14 The third level is the issue at this point, so
15 I would be comfortable with waiting until the 26th to
16 issue a decision if that would be helpful.

17 MR. HART: I would -- I don't have a problem
18 waiting for another week.

19 CHAIRPERSON HILL: Okay. All right. Then,
20 we're going to go ahead and move this to a decision
21 for next week. And, thank you, Commissioner for
22 coming down. Appreciate the time. Sorry we can't
23 open it up for further discussion.

24 MS. WHITE: Thank you.

25 MR. SULLIVAN: Mr. Chairman.

1 CHAIRPERSON HILL: Sure, Mr. Sullivan.

2 MR. SULLIVAN: I believe we were afforded an
3 opportunity to respond to an ANC submission.

4 CHAIRPERSON HILL: Okay.

5 MR. SULLIVAN: But we didn't have the
6 opportunity to do that because it wasn't submitted.

7 CHAIRPERSON HILL: Uh-huh.

8 MR. SULLIVAN: Could the applicant submit
9 something by tomorrow or Friday in response to the
10 testimony today?

11 CHAIRPERSON HILL: I guess you -- well, I'm
12 just trying to make it easy for the commissioner also.
13 I mean, you know, if you went to -- Mr. Sullivan, can
14 you just respond to the testimony that was taken
15 today?

16 MR. SULLIVAN: Yeah, I won't rehash the case.

17 CHAIRPERSON HILL: Okay. Okay.

18 MS. SHROPSHIRE: Since the official --

19 CHAIRPERSON HILL: Yeah. That's fine. Like,
20 you came all the way down and I don't want to make you
21 have to do some paperwork when you go back. I mean,
22 we all have jobs. So, at least I do. And you do, I'm
23 sure, as well.

24 So, Mr. Sullivan is doing his job, so let's
25 see. Okay, is that good? So, we're going to leave

1 the record open for the one response from the
2 applicant to the testimony provided by the
3 commissioner. Is that clear, Mr. Moy and --

4 MR. MOY: Do you have a date you would want
5 the applicant to respond by, Mr. Chair?

6 CHAIRPERSON HILL: When do you need it, Mr.
7 Sullivan? Friday? Friday. Okay. All right great.
8 Thank you all very much.

9 Now, so we're not going to close the meeting.
10 We're not going to close the meeting portion yet, but
11 I do have to take a quick break. Okay? We're just
12 going to take a quick three minutes.

13 [Off the record from 10:27 a.m. to 10:33 a.m.]

14 CHAIRPERSON HILL: Mr. Moy, if we can get
15 started again?

16 Okay. So, during that break something was
17 pointed out to me by the Office of the Attorney
18 General, and it concerned the first preliminary matter
19 that we spoke about. I think it was the Sawicki case
20 and that a motion was actually not made. So, Mr. Moy,
21 if you could call that again, we haven't actually
22 ended the meeting portion of the hearing. So, if you
23 could recall that, and then we can do this
24 procedurally correct.

25 MR. MOY: All right. So, that would be Appeal

1 No. 19027 of Rima Calderon and William Sawicki. This
2 is the appeal with the March 19th, 2015 decision of
3 the Zoning Administrator to issue building permit No.
4 B1504436, which would renovate a hotel in the DCR-5-D,
5 or DC/R-5-D District at premises 1731 New Hampshire
6 Avenue Northwest, Square 154, Lot 829.

7 CHAIRPERSON HILL: Okay, great. Thanks. So,
8 and it did seem a little odd at the end. I wasn't
9 sure what we were actually doing.

10 So, DCRA is aware in terms of the way in which
11 this was filed and that there is a different way to
12 proceed, so then in order to make this clean, I would
13 make a motion to dismiss the request to reopen the
14 record. And then, we'll just wait to see if it comes
15 back again, which I am assuming it will. But so, I'm
16 making a motion again to dismiss the request to reopen
17 the record on Appeal No. 19027.

18 MS. WHITE: Second.

19 CHAIRPERSON HILL: Motion has been made and
20 seconded.

21 [Vote taken.]

22 CHAIRPERSON HILL: Motion passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as four,
24 to zero, to one. This is on the motion of Chairman
25 Hill to dismiss the request to reopen the record.

1 Second the motion, Ms. White. Also in support, Vice
2 Chair Hart, and Mr. Miller. Board seat vacant.
3 Motion carries.

4 CHAIRPERSON HILL: Thank you, Mr. Moy. All
5 right. So, that being the case, now we can close the
6 meeting portion of our day and move on to the hearing
7 portion.

8 And I believe, Mr. Moy, we're going to go out
9 of order. We're doing the appeals first.

10 MR. MOY: That's correct. Okay. So, we have
11 before the Board, these were two appeals that were
12 initially consolidated, so I'm going to read them as
13 appeal number 19410 of ANC 6C, and 19412 of ANC 6A.
14 This is the appeal of the September 7th, 2016 decision
15 by the Zoning Administrator, Department of Consumer
16 and Regulatory Affairs to issue Building Permit No.
17 B1307755, which would permit an 18-unit apartment
18 building in an R-4 District at premises 1511 A Street
19 Northeast, Square 10 -- rather, 1070, Lot 94.

20 [Pause.]

21 CHAIRPERSON HILL: All right. Good morning,
22 everyone. If you could please introduce yourselves
23 from my right to left?

24 MR. TONDRO: Maximilian Tondro on behalf of
25 DCRA, the Zoning Administrator.

1 MR. LeGRANT: Good morning. Matthew LeGrant,
2 Zoning Administrator, DCRA.

3 MR. ECKENWILER: Mark Eckenwiler, Commissioner
4 ANC 6C-04 on behalf of appellant, ANC 6C.

5 MS. FERSTER: Good morning. Andrea Ferster on
6 behalf of the appellant, Brian Alcorn in 19412, and on
7 behalf of the proposed intervener Alcorn and ANC 6A in
8 19505.

9 MR. ALCORN: Brian Alcorn, appellant, case
10 19412 in my own stead, as well as for ANC 6A.

11 CHAIRPERSON HILL: Are you a commissioner?

12 MR. ALCORN: I am not a commissioner.

13 CHAIRPERSON HILL: Okay.

14 MR. BROWN: Patrick Brown from Greenstein
15 DeLorme & Luchs, on behalf of the property owner
16 intervener in 19410 and 19412, and on behalf of the
17 property owner appellant in 19505

18 MR. BELLO: Toyé Bello on behalf of the owner
19 of the property.

20 MR. IGLESIAS: Carlos Iglesias on behalf of the
21 owner of the property.

22 MR. BROWN: So, Chairman, for the record.

23 CHAIRPERSON HILL: Yes.

24 MR. BROWN: The property owner, Mr. Dumarín
25 (phonetic), is in the back bench.

1 CHAIRPERSON HILL: Okay. That's all right.
2 We'll see how that goes. The property owner.

3 Okay. So, I guess the first issue before us
4 are the appeals for 19410 of ANC 6C, and then 19412 of
5 ANC 6A. So, this has been going on -- I shouldn't say
6 it's been going on a long time. I appreciate that you
7 all got postponed from way back when, and then there
8 was other issues that came up in terms of why this
9 didn't come before us sooner. I just so, just to let
10 you all know that we're aware of that.

11 Also, we've moved you guys up. So, you know,
12 you're first, right? And so, that being said, I guess
13 the first issue before us is the motion to dismiss the
14 appeal as moot. And after reviewing the -- and see
15 how the Board has any issue with this, but again,
16 after reviewing everything, I mean, the permit has
17 been revoked, so I don't see that there is necessarily
18 any issue here in terms of I would be, you know, in
19 favor of approving the motion to dismiss as moot, and
20 then moving on to the next appeal.

21 I mean, there was this whole -- there was the
22 appeal, there was another appeal, there was a cross-
23 appeal, and then we tried to think that the cross-
24 appeal wasn't happening, and then now there's now a
25 formal appeal, and so that is where I am. Does the

1 Board have any thoughts on that?

2 And I'm going to turn to -- and I'm going to
3 turn to the 15 people in front of us in a second to
4 see if you have any thoughts on that. But, does the
5 Board have any thoughts?

6 MS. WHITE: I mean, that seems to make the
7 most sense in terms of being able to move forward with
8 the issues.

9 CHAIRPERSON HILL: Okay, Mr. Brown, you looked
10 as though you wanted to say something?

11 MR. BROWN: Well, and when we were last
12 together on April 5th, I believe, we discussed this
13 without any resolution.

14 I think the critical point that Mr. Tondro
15 made then, that should be controlling, which I
16 actually agree with him on is that, he issued the
17 notice to revoke, or Mr. LeGrant issued the notice to
18 revoke, which was pending for 60 days, which is the
19 appeal period authorized.

20 We filed the appeal, and Mr. Tondro admitted,
21 and I think this is correct that once we filed the BZA
22 Appeal 19505, the notice to revoke did not become
23 effective. And so that the matter is held in
24 abeyance, and it was stayed as a result of the BZA
25 appeal.

1 So, I don't believe under any basis that the
2 notice to revoke, as much as I'd like it to go away,
3 mooted the underlying appeals. Because hypothetical,
4 the two underlying appeals, 19410 and 412 are
5 dismissed as moot now, and the notice to revoke is
6 found to be invalid, and so that the permit is now
7 effective and active.

8 Then we're back to square one with the two
9 appeals of the issuance of the permit. So, I don't
10 think the question is moot. Mr. Tondro may want to
11 add something to the discussion.

12 MR. TONDRO: Yes. Thank you, Mr. Brown. I'm
13 happy, on behalf of DCRA, to withdraw the motion to
14 dismiss as moot. I apologize. But in light of the
15 changed circumstance I would suggest that in doing so,
16 I would move in doing so that we considered the
17 appeal, the revocation first, so that if the Board
18 makes that decision on the revocation, whether the
19 revocation was justified, whether the ZA erred in
20 issuing that revocation, then at that point it will be
21 clear one way or the other as to what happens with the
22 remaining appeals, whether we hold then, 19410 and
23 19412 in abeyance until the Board decides 19505.

24 And I apologize, again.

25 CHAIRPERSON HILL: That's okay. I'm confused,

1 so it's all right.

2 Mr. Eckenwiler, you seem to be nodding your
3 head a little bit, and then also, Ms. Ferster, I'll
4 give you an opportunity as well.

5 MR. ECKENWILER: I'm pleased to say that I
6 agree in all particulars with what Mr. Brown said.
7 The permit has not been revoked so --

8 CHAIRPERSON HILL: Okay.

9 MR. ECKENWILER: So, this is not moot.

10 I also agree with the proposal that Mr. Tondro
11 has made. I think it serves the interest of economy
12 for the Board to hear 19505 first, and depending on
13 which way you go, maybe we don't even have to go
14 through the other ones. But obviously, that remains
15 to be seen.

16 CHAIRPERSON HILL: Okay. Ms. Ferster.

17 MS. FERSTER: The appellants in 19412 agree
18 that the owner's appeal of the permit revocation
19 should be the primary vehicle for adjudicating the
20 zoning issues here, and we also agree that our appeal
21 is not moot, but it should be held in abeyance until
22 after the permit revocation is decided.

23 We think it's -- given the objections that the
24 owner has made in their appeal of the permit
25 revocation, which includes some procedural objections,

1 as well as zoning objections, we feel that it is
2 possible that, although unlikely that the permit, if
3 the owner prevails in the permit revocation on the
4 procedural issues, that our appeal would be the
5 primary vehicle for adjudicating the zoning issues.

6 However, assuming that the owner -- if the
7 owner -- whoever prevails in the permit revocation
8 decision, prevails on the zoning issue, that would be
9 dispositive of both appeals, and therefore that would
10 resolve all the zoning issues in this case.

11 CHAIRPERSON HILL: Okay, thanks. Mr. Bello,
12 do you have any thought?

13 MR. BELLO: Not being an attorney, no.

14 CHAIRPERSON HILL: Okay. Sure.

15 MR. BROWN: I'm okay with what's been
16 proposed, holding the two --

17 MS. WHITE: In abeyance.

18 MR. BROWN: -- appeals in abeyance and --

19 CHAIRPERSON HILL: I got you.

20 MR. BROWN: -- proceeding on the first one.

21 CHAIRPERSON HILL: Okay. All right. Okay.

22 Well, that's the way we're going to go. Now, I'm just
23 trying to find -- okay. All right. So, we're going
24 to do that. We're going to go move on now to hearing
25 appeal 19505. And, Mr. Moy, you can't announce that.

1 Now, before we do that I'm just a little confused.
2 Mr. Bello, you weren't here the first time, I don't
3 think, right?

4 MR. BELLO: Yes, I was.

5 CHAIRPERSON HILL: Were you here the first
6 time?

7 MR. BROWN: He was sitting in the back.

8 CHAIRPERSON HILL: Oh, sitting in the back.
9 See, that's confusing to me. So, but you guys are
10 both on the same --

11 MR. BROWN: Yes.

12 CHAIRPERSON HILL: -- for the same team,
13 right?

14 MR. BROWN: Yes. Mr. Bello is being proffered
15 as both an expert witness in zoning and permitting
16 issues, as well as a fact witness. His CV is in the
17 record.

18 CHAIRPERSON HILL: Okay. All right. I was
19 just -- Mr. Bello, we've seen you before on your own,
20 so I was just a little confused. So, okay, thanks.
21 That provides clarification for me.

22 So, Mr. Moy, if you want to go ahead and I
23 guess what do we -- oh, yes. Sir, please. Sorry.

24 MR. HART: Just one question. Do we have to
25 make a motion for this case to make sure that this one

1 is actually, I don't know what you want to call it,
2 but --

3 CHAIRPERSON HILL: [Speaking off microphone.]

4 MR. HART: Or, I don't know, delayed. I'm not
5 sure what the procedure is, but --

6 MR. COHEN: Make a motion to hold that appeal
7 in abeyance.

8 CHAIRPERSON HILL: So, I would make a motion
9 to hold Appeal 19410 of ANC 6C, and 19412 of ANC 6A in
10 abeyance until after we hear Appeal No. 19505.

11 MR. HART: Second.

12 CHAIRPERSON HILL: Motion has been made and
13 seconded.

14 [Vote taken.]

15 CHAIRPERSON HILL: Okay, great. Step one.
16 All right. Okay. Mr. Moy.

17 MR. MOY: All right. So, before the Board
18 then is Appeal No. 19505 of 57th Street, Mews, Inc.,
19 captioned as an appeal of the decision made on
20 February 28th, 2017 by the Zoning Administrator,
21 Department of Consumer and Regulatory Affairs to
22 revoke Building Permit B1307755, to permit the
23 construction of an addition to a one-family dwelling
24 and conversion to an 18-unit apartment building, R-4
25 Zone, formerly a C-2-A Zone. This is at premises 1511

1 A Street Northeast, Square 1070, Lot 0094.

2 CHAIRPERSON HILL: Okay, great. All right.
3 So once again for the record, if everyone could
4 introduce themselves. And we have at least switched
5 one seat. From my right to left.

6 MR. TONDRO: Maximilian Tondro on behalf of
7 DCRA and the Zoning Administrator.

8 MR. LeGRANT: Matthew LeGrant, Zoning
9 Administrator, DCRA.

10 MR. ALBERTI: Nick Alberti, former chair of
11 ANC 6A and co-representative of the ANC in this case.

12 MS. FERSTER: Andrea Ferster, counsel for the
13 proposed intervener, Brian Alcorn, and also ANC 6A.

14 MR. ALCORN: Brian Alcorn, co-representative
15 of ANC 6A and in my individual capacity, petitioner to
16 the intervener.

17 MR. BROWN: Patrick Brown, Greenstein,
18 DeLorme, and Luchs on behalf of the appellant, 57th
19 Street Mews in 19505.

20 CHAIRPERSON HILL: Okay. I thought we were
21 getting to -- there's still stuff to go through.

22 MR. BROWN: Yes.

23 CHAIRPERSON HILL: So, there is a motion for
24 intervener status from Brian Alcorn, represented by
25 Ms. Ferster, and then the appellant has opposition to

1 the request for intervener status. So, just so I'm
2 clear on this, as well as the Board can help me out
3 whenever they'd like, we have the Zoning
4 Administrator, they're here. We have the appellant.
5 And then there's the ANC that is an automatic party.
6 And so now, Mr. Alcorn, you have requested intervener
7 status, and that representation is being done by Ms.
8 Ferster.

9 Could you explain to the Board why you should
10 be granted intervener status?

11 MR. ALCORN: Certainly. Thank you, Mr.
12 Chairman. I am directly and personally an affected
13 property owner. My family and I live in a rowhouse at
14 31 15th Street Northeast, the corner of 15th and A
15 Streets Northeast, which is less than 200 feet from
16 the property at 1511 A Street Northeast, and on the
17 same square. Development of the 1511 A property in
18 the manner property by the developer and the owner
19 would leave me injured and aggrieved in a manner
20 different from that of the general public. The
21 building as proposed would remove all semblance of
22 height and building bulk, conformity to property
23 surrounding it, forever spoiling the continuity and
24 neighborhood character my property enjoys and benefits
25 from.

1 The property as proposed will also exacerbate
2 the already scant on-street parking and potentially
3 inconvenience me by giving rise to illegal parking
4 across my driveway.

5 Finally, the property would introduce
6 additional noise the immediate vicinity of my home via
7 18 HVAC compressor units, utilization of the rooftop
8 terraces by property residents and their guests, and
9 would introduce more heavy traffic on to narrow
10 residential streets, including large vehicles for
11 commercial trash collection and moving, again,
12 affecting the enjoyment of my property within close
13 proximity.

14 These concerns are distinct from the ANC's
15 concerns, in my opinion.

16 CHAIRPERSON HILL: Okay. Mr. Alcorn, so where
17 exactly are you next to the -- you said you're within
18 the 200 feet, but where exactly are you?

19 MR. ALCORN: I would argue less than 200 feet;
20 perhaps 50 to 60 feet. My property, if you were to
21 consider it on A Street, would be 1501 and 1503 A
22 Street, and the subject property is 1511 A Street.

23 CHAIRPERSON HILL: Okay. So, how many units
24 are in between the two? I'm just trying to
25 understand.

1 MR. ALCORN: There would be one, two, three
2 units between my property and the subject property.

3 CHAIRPERSON HILL: Okay. Okay. Ms. Ferster,
4 do you have anything you'd like to add?

5 MS. FERSTER: No, but we think Mr. Alcorn's
6 statement clearly indicates why he is distinctly
7 aggrieved and affected by the proposed actions. And
8 we would -- we do not regard the ANC 6A as being
9 adequate to represent Mr. Alcorn's unique interests
10 because the ANC is concerned with all community
11 residents. Its position can change, it can fluctuate.
12 And Mr. Alcorn, as a very directly affected resident,
13 would have a different interest. So, he should be
14 represented here.

15 CHAIRPERSON HILL: Okay. Before we move on to
16 Mr. Brown, does the Board have any questions for Mr.
17 Alcorn or Ms. Ferster?

18 MS. WHITE: Mr. Alcorn, what is the address --
19 what's your address again?

20 MR. ALCORN: Sure, Commissioner White. My
21 address is 31 15th Street Northeast. The property
22 occupies the corner lot of 15th and A Streets
23 Northeast.

24 MS. WHITE: Right.

25 MR. ALCORN: And if you were to consider its

1 frontage on A Street Northeast, it would equate to
2 both 1501 and 1503 A Streets, which are not property
3 addresses that exist, but which would be property
4 addresses that would correspond to that lot, if they
5 did exist.

6 MS. WHITE: Thank you.

7 CHAIRPERSON HILL: No one else? Okay. Mr.
8 Brown.

9 MR. BROWN: Yes. And when we were here April
10 5th, we got into this question of the standing of an
11 intervener in the context of Mr. Williams, which you
12 denied his intervener status.

13 I don't think -- and, Mr. Williams is a
14 neighborhood of Mr. Alcorn's. But the critical to
15 understand this is we're in an appeal case, and the
16 standard for intervention in an appeal case is very
17 different than what we would find in a BZA application
18 for a variance, or a special exception. In the case
19 of an appeal, and Ms. Ferster hit on it, is whether
20 Mr. Alcorn's legal interests can be adequately
21 protected by the ANC in this case, 6A, as well as the
22 Zoning Administrator, who brought the action
23 protecting the neighbors' interests.

24 In this case, Mr. Alcorn is participating and
25 authorized to participate on the ANC 6A team, putting

1 aside whether we think that's a good idea for ANC to
2 be authorizing non-ANC members, he is a part of the
3 ANC 6A team and so his interests can be protected
4 through his participation on the 6A team, and doesn't
5 rise to the level of a separate party, which will just
6 duplicate what would occur in the 6A case for which
7 he's participating in.

8 The other thing I want to get out in front of
9 today is, well, Mr. Alcorn was certainly entitled to
10 make his presentation about the effects of this
11 property, the effects of what's being proposed in this
12 building permit is not what's on trial today. This is
13 not, again, this is not a special exception variance
14 case where you have those standards to meet. The only
15 issue before the Board, and the only issue that's
16 relevant to taking testimony and keeping this case on
17 track, is whether in fact the notice to revoke is
18 enforceable and proper, or whether taking it from the
19 other side, whether the building permit is valid.

20 None of this, the fact that it may impact
21 light, air, parking, quality of life, all that is
22 entirely irrelevant to the Board's narrow task here.
23 And if we go down that route, we'll be here all day
24 and we'll miss the heart of the case. So, I just want
25 to put that out there right out front.

1 CHAIRPERSON HILL: Okay. Thanks, Mr. Brown.
2 Mr. Brown, we're going to be here all day anyway. You
3 know.

4 MR. BROWN: I don't think so.

5 CHAIRPERSON HILL: No, that's okay. That's
6 okay. Hold on. Just give me one second. Just give
7 me one second. Just give me one second. Just give me
8 one second.

9 Does the board have any questions on what Mr.
10 Brown just said, or comments on what Mr. Brown just
11 said, or any information to Mr. Brown?

12 No? Okay. I'm sorry.

13 MR. HART: Yeah, Mr. Brown, you were -- you
14 stated that Mr. Alcorn's interests are being protected
15 by ANC 6A. So, he's kind of covered under the party
16 status of -- or, I should say the -- yeah, covered
17 under another party. And so, he should not be given
18 the intervene status himself.

19 MR. BROWN: That's correct. I mean, the
20 standard, and this comes right out of the
21 Administrative Procedures Act, which applies beyond
22 the BZA, is that for a non-party to intervene in a
23 case like an appeal, rather than the other cases,
24 there has to be a specific legal interest, legal
25 interest that can't and won't be adequately protected

1 by the parties.

2 In this case, that's not the case because one
3 ANC is here raising all the issues that are relevant
4 to the appeal, and we have the added safeguard that
5 Mr. Alcorn is in fact a participant in the ANC 6A team
6 in making the case. So, and it's important because we
7 don't want to create an additional party where one
8 isn't necessary.

9 CHAIRPERSON HILL: No, Mr. Brown, I got you.
10 I'm just going to just -- I'm just curious as to Mr.
11 Cohen over at OAG there, whether or not, you know,
12 what are your thoughts on -- and this could be a
13 difference of opinion, but what are your thoughts on
14 that it's a higher standard during the appeal as to
15 bringing in an additional party?

16 MR. COHEN: I'm not sure it matters if it's an
17 -- the intervener status question, you have to
18 interpret Section 502 of the zoning regulations in
19 this case. And there's five criteria which --

20 CHAIRPERSON HILL: Okay. No, no, I know. No,
21 I appreciate it.

22 MR. COHEN: Okay.

23 CHAIRPERSON HILL: We know the criteria, but
24 thank you.

25 MR. COHEN: Okay.

1 CHAIRPERSON HILL: Okay. All right. So, Ms.
2 Ferster, you had a comment?

3 MS. FERSTER: Yeah, just a couple of comments.
4 I believe the standard of injured and aggrieved is
5 identical, you know, for an appellant or an
6 intervener. We would have to basically meet the same
7 test either way. But I also wanted to make the point
8 of efficiency here. Mr. Alcorn is the appellant in
9 19412. We're holding that case in abeyance. And he
10 is entitled to his appeal.

11 And so, if he were an active full participant
12 in 19505, which we think he should be, then you know,
13 any adjudication, you know, in 19505 would basically
14 effectively bind him.

15 CHAIRPERSON HILL: Okay. Okay. Okay. No, I
16 appreciate it.

17 MS. FERSTER: But if he's not allowed to be an
18 intervener in 19505, you know, whatever the outcome of
19 19505, he would be entitled to press his appeal --

20 CHAIRPERSON HILL: I understand.

21 MS. FERSTER: -- in 19412.

22 CHAIRPERSON HILL: No, Ms. Ferster, I
23 appreciate --

24 MS. FERSTER: We think it's more efficient to
25 just adjudicate it all in 19505.

1 CHAIRPERSON HILL: I appreciate that comment.
2 And I was kind of torn until you just said that. So,
3 unless the Board has any other thoughts, I'm going to
4 grant the intervener status because again, really for
5 the reasons also that Ms. Ferster said. I mean, I
6 guess -- or actually, I'll open it back up to the
7 Board and you can tell me what you guys think.

8 I was a little bit torn due to -- I mean, if
9 the person is immediately right next door, that's
10 usually something that is kind of a trigger for me.
11 But I do think that he could be uniquely affected and
12 not represented in the exact same way as the ANC, and
13 since he's a party to the appeal that is being held in
14 abeyance for efficiency's sake, I would just rather
15 leave him as party to this case. Does the Board have
16 any thoughts?

17 MS. WHITE: Yeah, I agree with that. That's
18 why I was asking his address and trying to get a sense
19 of how he would be directly impacted by the
20 development. So, I think he should also be granted
21 status for this particular case.

22 CHAIRPERSON HILL: I see everybody nodding
23 their head. Okay. All right. Then, I'll go ahead
24 and make a motion that we can do by consensus I guess,
25 to allow Mr. Alcorn intervener status, represented by

1 Ms. Ferster. Is consensus good? Okay, great. So,
2 there we go with that. All right, Mr. Brown?

3 MR. BROWN: Yes. Based on that decision I
4 would make a motion that Mr. Alcorn and ANC 6A, their
5 representation or their party status be consolidated.
6 They're represented by the same counsel, I believe,
7 and it would not aid these proceedings to have a
8 duplicative process. They're of --

9 CHAIRPERSON HILL: Okay. That's fine. Ms.
10 Ferster, you seem to be nodding your head.

11 MS. FERSTER: Absolutely. We (speaking off
12 mic.)

13 CHAIRPERSON HILL: Okay. That's great. That
14 will maybe get us to lunch in fact, so that's helpful.
15 Thank you.

16 All right. Great. Okay. Then we're going to
17 go ahead and start and we're going to listen to your
18 case, Mr. Brown.

19 MR. BROWN: I think there are a few other
20 things.

21 CHAIRPERSON HILL: Oh, is it?

22 MR. BROWN: And I think one of them was raised
23 by Ms. Ferster about whether in fact some of the
24 issues we've raised are properly before the Board and
25 within its jurisdiction. I will also just remind the

1 Board, and I think you were aware of it in April, that
2 the property owner, my client, has filed a similar
3 appeal at the Office of Administrative Hearing,
4 challenging the notice to revoke.

5 The notice to revoke, just by way of
6 background, is issued as a creature of the building
7 code. The building code authorizes the code official
8 to issue the notice to revoke. The code, building
9 code, also indicates that an appeal of a notice to
10 revoke that arises out of and in part, the zoning
11 regulations, is within the jurisdiction of this Board.

12 Mr. Tondro and I have been before OAH and his
13 filings would indicate at OAH, that he concurs with
14 that opinion and I think that's certainly supportable.

15 But we need to resolve the jurisdictional issues
16 before we go any further.

17 CHAIRPERSON HILL: Okay. Well, I appreciate
18 you bringing that up, actually, because after we had
19 reviewed the case and gone over the docket with OAG,
20 OAG also did point out a few things to us that in
21 their analysis, as well as I believe the Board agrees.

22 And so, there were three primary contentions, I
23 believe you're bringing up. One was, the notice is
24 invalid on its face because it was signed by the ZA
25 and under 12-A-DCMR, Section 105.6, only the code

1 official is authorized to revoke a big building
2 permit.

3 The second was, the notice violates the OAH
4 final decision in 57th Street Mews, DCRA, 2015-DCRA-
5 0021, June 17th, directed by DCRA to accept new plans
6 provided by engineer by failing to take immediate
7 action to comply with the decisions.

8 So, those are not under our purview is what
9 we've been kind of been advised, and the case itself
10 is going to hinge on your third contention, which is
11 that the notice was issued in violation of the set-
12 down vesting rule, 11-DCMR-3202.5(a).

13 And I am going to turn to OAG, and if I got
14 that right, if that sounds accurate.

15 MR. COHEN: Yeah. It sounds accurate.

16 CHAIRPERSON HILL: Okay, great. So, that's
17 what I got there.

18 Mr. Brown, you're welcome to take a moment
19 there and respond.

20 MR. BROWN: Okay, Mr. Chairman. So, I
21 understand it, the two preliminary issues, the code
22 official's authority and compliance with the OAH order
23 and the building code, the board -- and this is
24 important because we need to -- Mr. Tondro and I need
25 to report this to OAG, I mean OAH? The board is

1 declining jurisdiction on those two issues.

2 CHAIRPERSON HILL: Yes, that's my
3 understanding.

4 MR. TONDRO: If I may, just to clarify that
5 point as Mr. Brown brought my statements to OAH, I
6 want to be clear in terms of our understanding of the
7 jurisdiction that the construction codes is what
8 governs basically the processing of a revocation. In
9 other words, it specifies --

10 CHAIRPERSON HILL: Hold on one second. Mr.
11 Cohen, are you paying attention to all this?

12 [No audible response.]

13 CHAIRPERSON HILL: Okay, great.

14 MR. TONDRO: Sorry. That the construction
15 codes establish the rules regarding service of
16 process, regarding how long the notice has to be done,
17 regarding what has to be contained in it, and I think
18 in particular as regards to Mr. Brown, who it is who
19 has to sign it. Those are the -- that is under the
20 construction codes.

21 Otherwise, however, I just want to be clear
22 that at least as far as DCRA's position, the
23 underlying justification for why a revocation is
24 issued falls firmly and exclusively under the Board's
25 jurisdiction.

1 So, the zoning regulations do not establish
2 the rules by how a revocation is to be administered,
3 but it does provide the reason for why a revocation is
4 justified. And that's why we're here today. I just
5 want to be clear for the record on that. Thank you.

6 CHAIRPERSON HILL: Mr. Cohen, do you have any
7 comment?

8 MR. COHEN: The only comment I'll make is that
9 the Board has no authority to hear an appeal that's
10 not based on interpretation of the zoning regulations,
11 period.

12 CHAIRPERSON HILL: Okay. So, I'm going back
13 with my lawyer. Okay. Because that's what I'm
14 supposed to do. Or not supposed to do. That's what
15 I'm going to do. Okay.

16 MR. BROWN: Mr. Chairman, I think --

17 CHAIRPERSON HILL: Yes. Sure, Mr. Brown.

18 MR. BROWN: I think we're in agreement.

19 CHAIRPERSON HILL: Okay.

20 MR. BROWN: So, the one thing I want to also
21 caveat is that we've got BZA issues, which front and
22 center we'll deal with. But there are OAH issues,
23 building code issues which in our view, if the notice
24 to revoke was issued invalidly, or in violation of the
25 OAH order, that could very well have a direct and

1 immediate impact on this matter because you can't --
2 if a notice to revoke is invalid for nonzoning
3 reasons, then you lose jurisdiction over it. So,
4 just --

5 CHAIRPERSON HILL: No, that's fine. I wish
6 that I wasn't in jurisdiction on this right now and
7 you guys could go be at OAH, and I'd be moving on with
8 other cases. So, but I do appreciate that; that
9 clarity. So, we're back to then, your primary
10 argument being the notice was issued in violation of
11 the set down vesting rule. And so can we start?

12 MR. BROWN: Yes.

13 CHAIRPERSON HILL: Okay. All right. So, Mr.
14 Brown, how much time would you like?

15 MR. BROWN: I'm entitled to an hour.

16 CHAIRPERSON HILL: You're entitled to an hour
17 with, what's it called, with any questions the Board
18 has and a variety of other factors. Are you telling
19 me you want an hour?

20 MR. BROWN: Yes, I am.

21 CHAIRPERSON HILL: Okay. All right. Let's
22 start with half an hour. Okay? Okay. Okay. We
23 won't start with half an hour. Oh my God, are you
24 serious, you want an hour?

25 All right. So, because then everybody gets an

1 hour is what I'm just -- so everybody can go to lunch
2 if they want to right now. And no, no, no, I
3 appreciate this. I'm not trying to be -- I'm trying
4 to be judicious, and I have done this enough times now
5 that I have to go back and look at the regulation.
6 Like, there's a lot of things in that hour. It's not
7 just your presentation, and the Board gets to decide
8 in you know, in efficiency of time as to how much time
9 the applicant can get.

10 So, we'll go ahead and give you 45 minutes.
11 Okay? And however much time you use is how much time
12 I have to give everyone else. However, give me 30
13 seconds here to take a breath and then reorganize and
14 we'll come right back to you. Okay?

15 [Pause.]

16 Okay. All right, Mr. Brown. Please begin
17 whenever you're ready.

18 MR. BROWN: And in the context of our appeal,
19 we need to address two zoning issues. One, the
20 vesting set down rule as we see it applies in this
21 case. And then at the same time we want to respond to
22 the provisional vesting concept that DCRA seems to
23 have applied in issuing the notice to revoke. You
24 don't want to hear from me. I want to start with Mr.
25 Bello. I've submitted his CV as an expert witness in

1 zoning and permit issues. Just briefly, Mr. Bello has
2 a long career in DCRA, including time as the Zoning
3 Administrator, and is experienced and knowledgeable
4 and certainly meets the standard and has presented
5 testimony before this Board, the Zoning Commission,
6 and the Office of Administrative Hearings in similar
7 matters as an expert. So, I'd ask him to be accepted
8 as an expert witness.

9 CHAIRPERSON HILL: Is Mr. Bello not in the
10 book? Yeah, Mr. Bello I think is in the book, so yes,
11 we will accept him as an expert witness.

12 MR. BROWN: Okay.

13 CHAIRPERSON HILL: Thank you.

14 MR. BROWN: And I'm trying to control my
15 technical skills here. Mr. Bello, introduce yourself,
16 please?

17 MR. BELLO: Good morning, Mr. Chair.

18 CHAIRPERSON HILL: Good morning.

19 MR. BELLO: Toye Bello of Bello-Bello and
20 Associates.

21 MR. BROWN: Okay. And also, up on the
22 PowerPoint is a recap of the vesting rules. I also
23 have copies for the Board.

24 Mr. Bello, if you could --

25 CHAIRPERSON HILL: I'm sorry, Mr. Brown,

1 you've going to have to speak into a microphone if you
2 walk away. Thank you.

3 And, Mr. Brown, is this from your PowerPoint
4 presentation?

5 MR. BROWN: Yes, it is.

6 CHAIRPERSON HILL: And just so I'm clear, are
7 we in a different -- oh, we're on your third slide, or
8 your fourth slide?

9 MR. BROWN: We are on --

10 CHAIRPERSON HILL: Fourth slide. Okay. Okay.

11 MR. BROWN: The pages are numbered, and this
12 is page four, yes.

13 CHAIRPERSON HILL: Okay.

14 MR. BROWN: All right. Mr. Bello, if you
15 could start by describing the general vesting rule?

16 MR. BELLO: Certainly. The general vesting
17 rule is a rule that vests the rights of a permit
18 holder and to proceed on that permit to completion of
19 the construction, even if there is an amendment to the
20 zoning regulations after the permit is issued.

21 So, Section 3202.4, primarily deals with
22 permit holders to whom permits have been issued prior
23 to either the set down to amend the zoning regulations
24 or the amendment of the zoning regulations, or the
25 zoning district classification of a regulation.

1 MR. BROWN: And then 3202.5 establishes an
2 exception, a specific exception to the general rule.
3 Could you describe that?

4 MR. BELLO: And that would be the set down
5 rule. The set down rule deals with a subject matter
6 totally different. This has to do with the filing of
7 an application on or before the Zoning Commission sets
8 down a hearing to amend the zoned district
9 classification of a particular property. That set
10 down rule actually bifurcates those two situations
11 into people who have either filed on or before the
12 date that the Zoning Commission set down a zoning
13 classification change, and those who filed after.

14 In my experience, those who have filed before,
15 on or before the set down rule, that filing date
16 actually effectively acts as a date that the permit is
17 issued under 3202.4.

18 MR. BROWN: In this case, the permit
19 application was filed and accepted as complete by DCRA
20 on what date?

21 MR. BELLO: I believe, June 13th, 2013. June
22 14th, 2013.

23 MR. BROWN: And under the vesting rule, the
24 zoning -- applicable zoning vested at that time?

25 MR. BELLO: Very much so, yes.

1 MR. BROWN: And that was not altered by the
2 set down of the zoning amendment subsequently?

3 MR. BELLO: I believe the set down came like
4 almost a year and a half after the filing date of this
5 application.

6 MR. BROWN: And the vesting that's under the
7 C-2-A zoning in effect in June of 2013, was that
8 affected by the effective date of the rezoning?

9 MR. BELLO: No, not at all. It's not affected
10 at all. Again, the important point is that governing
11 rule here is the filing date of the application. And
12 that filing date acts as the issuance date under
13 3202.4 in protecting the vesting rights of the
14 applicant of a property so affected.

15 MR. BROWN: And the permit was issued,
16 complied with the applicable C-2-A zoning regulations?

17 MR. BELLO: Yes, as evidenced by the issuance
18 of the building permit and the many, many iterations
19 of zoning review that the subject property undertook.

20 MR. BROWN: And the property was reviewed by
21 zoning how many times?

22 MR. BELLO: I believe at least three or four
23 times.

24 MR. BROWN: And the permit plans that were
25 submitted in June of 2013 were in all substantial

1 respects, the same as the permit drawings that the
2 permit was issued upon?

3 MR. BELLO: That's correct. No substantial
4 change to permit at all, whatsoever.

5 MR. BROWN: The significant change was only
6 that they were -- that the permit plans that were
7 approved for permit had a different professional
8 engineer's stamp on them?

9 MR. BELLO: That's correct.

10 MR. BROWN: If I could, Mr. Bello, moving on
11 to -- I've got a slide for Appeal No. 16716A, Nebraska
12 Avenue Neighborhood Association. That was the sunrise
13 -- that's page 10 of the PowerPoint.

14 MR. BELLO: Found it.

15 MR. BROWN: That was commonly known as the
16 Sunrise Assisted Living case?

17 MR. BELLO: That's correct.

18 MR. BROWN: And please, describe your
19 involvement in that case.

20 MR. BELLO: I believe I worked in the zoning
21 division and actually represented the zoning division
22 in that appeal.

23 MR. BROWN: And at the BZA hearing, you
24 announced the Zoning Administrator's position on the
25 vesting set down rule. Is that correct?

1 MR. BELLO: That's correct, yes.

2 MR. BROWN: And that rule is the same as you
3 just stated recently.

4 MR. BELLO: That rule has not changed; has not
5 been amended.

6 MR. BROWN: And so that in this case, the
7 permit application was filed and then subsequent
8 rezoning application, and then obviously a set down.
9 And then the permit was issued under the vested zoning
10 regulations.

11 MR. BELLO: That is correct.

12 MR. BROWN: And was it at all relevant in the
13 process that the permit was issued before or after the
14 rezoning took effect?

15 MR. BELLO: No, it's not relevant because
16 naturally there will be building permits that were
17 filed on or before the set down for zoning district
18 reclassification that either would be filed or would
19 be issued before the adoption of the reclassification,
20 or issued after.

21 MR. BROWN: But the vesting is in effect as of
22 the permit application date and is not in any way
23 disrupted?

24 MR. BELLO: Absolutely, provided that the
25 submissions meet the submission standards.

1 MR. BROWN: Which are --

2 MR. BELLO: Filing a complete set of plans and
3 paying your filing fees, and the project being
4 accepted for filing a review by DCRA.

5 MR. BROWN: And can I also then ask you to, on
6 the next page, appeal 16982 of Jay Brendan Harron
7 (phonetic). In that case, could you describe the
8 application of the set down rule?

9 MR. BELLO: Well, this application was filed
10 April 4th, 2002. The set down was a couple weeks
11 after, April 19th, there about. The permit was issued
12 June 13th, 2002. The rezoning didn't take effect
13 until 2007. But again, the date of the -- the
14 effective date of the zoning reclassification will be
15 immaterial to the date of the issuance of that permit
16 under the set down rules.

17 MR. BROWN: Are you aware of any decision,
18 either in the Zoning Administrator's office or in the
19 BZA or otherwise that created or endorsed the concept
20 being offered for provisional vesting?

21 MR. BELLO: Never heard of it. This is the
22 first I've ever heard of such a doctrine.

23 MR. BROWN: And you were involved in this
24 permit application from start to finish?

25 MR. BELLO: That's correct.

1 MR. BROWN: And could you describe the scope
2 of the revisions of the permit that were made during
3 the process? Were they typical in the normal
4 processing of a permit, the changes that were --
5 occurred in --

6 MR. BELLO: Well, to be clear, responding to
7 review comments generated by submission of a set of
8 plans is typical. What would have been untypical here
9 would be the timeline for such review.

10 MR. BROWN: And when you say the timeline is
11 not typical, could you describe that in more detail?

12 MR. BELLO: Well, I believe as of September
13 2014, all disciplines have in purview over this
14 application have been approved within DCRA with the
15 exception of zoning. And the zoning comments that
16 needed to be addressed were not very complex zoning
17 comments.

18 The undue time that it was taking to extricate
19 zoning approval is what raised my concern and made me
20 give instructions to my staff to go to DCRA and find
21 out exactly what was going on. And I believe that's
22 when we found out that the ANC had an issue with this
23 application, and it was a slippery slope down from
24 that point.

25 MR. HART: Which page are you referring to on

1 this? With this timeline, which page are you
2 referring to?

3 MR. BROWN: Just in general.

4 MR. BELLO: Just in general. That's my
5 testimony.

6 MR. BROWN: Just in general.

7 MR. HART: You have a lot of timelines on this
8 so --

9 MR. BROWN: Yes.

10 MR. HART: -- it's hard to gauge what --

11 MR. BROWN: Well, if you -- yeah. All right.

12 MR. HART: -- is relevant or what is stuff
13 that we are supposed to be focusing on.

14 MR. BROWN: Why don't we go to, let me see
15 here, sorry. Page, I believe it's page 2. And you
16 see the highlighted portions.

17 MR. HART: In yellow?

18 MR. BROWN: Yes. Zoning approved in September
19 23rd of 2014. Correct, Mr. bello?

20 MR. BELLO: That's correct.

21 MR. BROWN: And then they turned around on
22 October 9th, and what did they do?

23 MR. BELLO: Rescinded --

24 CHAIRPERSON HILL: Wait, wait, I'm sorry. So,
25 I see the -- right, the 23rd. Oh, okay. Sorry. Oh,

1 I see it. Okay, I'm sorry. Please continue.

2 MR. BROWN: So, on October 9th, zoning
3 unilaterally revoked their approval?

4 MR. BELLO: Yes, zoning approved September
5 23rd, 2014 and on October 9, 2014, for reasons unknown
6 to us that were found out at a later time, that zoning
7 approval was revoked.

8 MR. BROWN: At that moment, September/October
9 2014, this permit application was essentially ready
10 for issuance?

11 MR. BELLO: Absolutely, yes.

12 MR. BROWN: On March 6th, 2015, the Zoning
13 Administrator reapproved the building permit, correct?

14 MR. BELLO: That's correct.

15 MR. BROWN: And he reapproved it retroactive
16 to the September --

17 MR. BELLO: The September date, yes.

18 MR. BROWN: Yeah. So, at this point the
19 Zoning Administrator or his offices reviewed this at
20 least twice?

21 MR. BELLO: I believe at least four times.

22 MR. BROWN: But at this moment.

23 MR. BELLO: Yes.

24 MR. BROWN: And this is prior to the rezoning
25 application and prior to the set down.

1 MR. BELLO: That's correct.

2 MR. HART: Mr. Brown, just one question. In
3 this timeline you are talking about zoning, Zoning
4 Commission, Zoning Administrator, and DCRA. Those are
5 actually supposed to be -- those are separate
6 entities. So, when you're talking about zoning
7 approved -- under September 23rd, 2014, zoning
8 approved the permit under applicable C-2-A zoning,
9 that means that the --

10 MR. BROWN: Zoning Administrator.

11 MR. HART: The Zoning Administrator.

12 MR. BROWN: Yes, Zoning Administrator, DCRA.

13 MR. HART: Okay. So, when you then talk about
14 in March 6th of 2015, it is the same person.

15 MR. BROWN: Yes.

16 MR. HART: Okay. I was not reading that. I
17 was thinking that you were saying there was some other
18 entity that was called zoning, and then there was
19 another entity called Zoning Administrator.

20 MR. BROWN: With the caveat that I don't know
21 if I know the name of the approver in zoning on
22 September 23rd. I do in fact know that the Zoning
23 Administrator approved on March 6th. So, I'm being a
24 little more specific but still within the zoning
25 branch of DCRA.

1 MR. HART: And when you talk about DCRA
2 notifies property owner of deficiency, that's also the
3 ZA?

4 MR. BROWN: No.

5 MR. HART: Or that's the office itself.

6 MR. BROWN: That's the department.

7 MR. HART: I'm just making sure that I'm
8 understanding all of the --

9 MR. BROWN: Yeah.

10 MR. HART: -- pieces. So, you can continue.

11 MR. BROWN: I've tried to call out the Zoning
12 Administrator actors separately from DCRA.

13 MR. HART: I appreciate it.

14 MR. BROWN: There were --

15 MR. HART: You can continue with it, I just
16 was, I was just making -- getting the clarity. That's
17 all.

18 MR. BROWN: And then shortly after March 6th,
19 2015, excuse me, let me get back -- DCRA, not the
20 Zoning Administrator, DCRA notified you of a
21 deficiency in the permit?

22 MR. BELLO: By letter, yes.

23 MR. BROWN: And then on March 18th, DCRA
24 canceled the pending permit application. Were you
25 made aware of that?

1 MR. BELLO: Unbeknownst to us, no.

2 MR. BROWN: And then on March 20th, DCRA did
3 what?

4 MR. BELLO: DCRA signed -- sent me a second
5 letter, clarifying their first letter to suggest that
6 -- well, not to suggest, to notify us that the
7 application was rejected. And that letter went
8 further to make a statement about the zoning
9 regulations and the applicability of the zoning
10 classification when we do reapply.

11 MR. BROWN: And in your view, the purpose of
12 that March 20th letter was to divest the permit
13 applicant of their vested C-2-A zoning rights.

14 MR. BELLO: Not only is there no question
15 about that, it is clear that this statement was not
16 from the Zoning Administrator but from the court
17 official. So, the court official was making a zoning
18 pronouncement here without the involvement of the
19 Zoning Administrator to the best of my knowledge.

20 MR. BROWN: And then continuing on in the
21 timeline --

22 MR. HART: Can you clarify how you know that
23 that was the code official? I mean, that's a pretty
24 strong statement that you're saying that one
25 particular person was behind this and I just don't

1 know what that -- what do you use as your basis to
2 make that statement?

3 MR. BELLO: Well, I'll explain. First of all,
4 even within DCRA, the Zoning Administrator has
5 distinctively their own letterhead when the Zoning
6 Administrator communicates about a Zoning
7 Administrator interpretation. This letterhead was
8 DCRA's letterhead, not the Zoning Administrator's, and
9 the letter was signed by the court official, not the
10 Zoning Administrator.

11 MR. HART: Okay. You can get -- you can get
12 to that.

13 CHAIRPERSON HILL: And, Mr. Bello, I just had
14 one quick question. You mentioned you a lot when
15 you're talking about this. So, were you around in
16 2015 on this? This case? You were involved with this
17 in 2015 is what I'm just trying to ask.

18 MR. BELLO: With respect to this project?

19 CHAIRPERSON HILL: Yeah.

20 MR. BELLO: Yeah, this project was processed
21 in my office from inception. So, we were involved in
22 the application process throughout.

23 CHAIRPERSON HILL: I see. Okay.

24 MR. BROWN: And as a result of the March 20th
25 letter rejecting the permit, there was an OAH

1 proceeding which you participated in, and it's in the
2 record. The order is there, it speaks for itself.
3 But the Office of Administrative Hearings rather
4 coarsely rejected DCRA's March 20th letter and allowed
5 the permit holder, permit applicant to restore to
6 their rights as of March 12th, 2015.

7 And that first letter, the response from the
8 permit application required was to submit new --

9 MR. BELLO: Submit new sets of plans with a
10 new seal from a professional engineer.

11 MR. BROWN: And we'll hear from Mr. Iglesias
12 specifically, but it wasn't as simple as just
13 submitting new plans, was it?

14 MR. BELLO: Well, it turned out not to be but
15 the mitigation of the deficiency in the first letter
16 that DCRA sent had no zoning import whatsoever. So,
17 for all intents and purposes, when we resubmitted new
18 plans with a new PE stamp, they should not have taken
19 more than a matter of days for the permit to be
20 issued.

21 MR. BROWN: But it was between July 26, 27th,
22 and August 28th for zoning to approve?

23 MR. BELLO: For zoning to approve? Yes.

24 MR. BROWN: And the plans that were approved
25 in August 28th, 2016, from a zoning standpoint, they

1 were the same as the plans that were submitted in June
2 of 2013?

3 MR. BELLO: Absolutely, no difference.

4 MR. BROWN: And at any time in the zoning
5 review of this project, was there ever any discussion
6 of provisional vesting?

7 MR. BELLO: There was ever any discussion of
8 provisional vesting, I think when we -- well, I know
9 that when we got wind of the community opposition to
10 this project, I in fact met with the Zoning
11 Administrator, want to review what the zoning
12 impediments were to issuing zoning approval, and also
13 specifically to discuss the vesting of this
14 application under the set down rules.

15 And in that meeting, the Zoning Administrator
16 agreed that the historical interpretation of the set
17 down rules were that this application had vested by
18 the time it was filed, and it had nothing to do with
19 the set down date of the zoning reclassification.

20 CHAIRPERSON HILL: When did that meeting take
21 place?

22 MR. BELLO: That would have been -- that would
23 have been February 2015.

24 CHAIRPERSON HILL: Okay, thank you.

25 MR. BROWN: Mr. Bello, the Zoning

1 Administrator and ANC 6A have suggested a provisional
2 vesting that would only allow the vesting to continue
3 if the permit was issued prior to the rezoning taking
4 affect. How is that different from the general
5 vesting rule? Or, is that different from the general
6 vesting rule?

7 MR. BELLO: The effects of such interpretation
8 would actually render the set down rules redundant
9 because of the issuance of a building permit is
10 basically a role of the dice, when there will be no
11 need for any provision in the zoning regulations that
12 speaks to how an application vests, or a need for a
13 set down rule. The permit will just be issued when
14 the permit is issued, regardless of whether the Zoning
15 Commission is contemplating a zone district
16 reclassification.

17 MR. BROWN: And the set down vesting rule was
18 enacted to create a very specific exception to the
19 general rule.

20 MR. BELLO: Absolutely.

21 MR. BROWN: If in fact it was -- the vesting
22 rule was provisional, is there a situation where the
23 permit applicant is entirely at the mercy of DCRA and
24 the processing of that permit?

25 MR. BELLO: I'm sorry. Ask that question

1 again.

2 MR. BROWN: Under the suggestion that vesting
3 is provisional, then the permit applicant really has
4 no protection other than when the permit is issued,
5 correct?

6 MR. BELLO: Well, that's correct, and this
7 application is a classic example of that.

8 MR. BROWN: And so that the permit applicant's
9 rights could in fact be affected by slow walking the
10 permit by DCRA, or just inefficiency.

11 MR. BELLO: That would be a fair assessment
12 yes.

13 MR. BROWN: In this case, do you think the
14 permit applicant suffered as a result of the vagaries
15 of the permit processing system?

16 MR. BELLO: There's no question about it,
17 being that the application was filed near a year and a
18 half before any contemplation of a zone district
19 reclassification. I may even venture as far as
20 suggesting the classification itself was impact upon
21 specifically to frustrate this project.

22 MR. BROWN: I think for the time being I'm
23 finished with Mr. Bello, mindful of my time, but open
24 it for your questions or move to --

25 CHAIRPERSON HILL: I mean, we can come back to

1 Mr. -- I want to go ahead and hear everybody, unless
2 there's an issue, and then we'll come back to
3 questions. So, you can go ahead and keep moving on,
4 Mr. Brown.

5 MR. BROWN: Okay. I'd like to introduce Mr.
6 Iglesias.

7 Please describe -- identify yourself and your
8 place of employment and job.

9 MR. IGLESIAS: My name is Carlos Iglesias.
10 I'm the director of operations at Bello-Bello and
11 Associates. My role is to oversee all items regarding
12 permitting processing, inspections, and third-party
13 plans review at our office.

14 MR. BROWN: And you were involved with this
15 permit application throughout the process?

16 MR. IGLESIAS: Correct.

17 MR. BROWN: I want to specifically focus in on
18 the time period after the OAH order when you were
19 attempting to comply with the requirement for new
20 stamp plans by a professional engineer.

21 MR. HART: So, this is actually in 2015? Is
22 that -- or is this 2016 we're talking about?

23 MR. BROWN: This is 2016. Just refreshing the
24 Board's timeline, I think it's on page 3 here. The
25 OAH order was issued on June 17th, 2016, which said

1 that DCRA had to accept revised plans stamped by a
2 licensed professional engineer. So, on that date you
3 became aware of the OAH order?

4 MR. IGLESIAS: Correct.

5 MR. BROWN: And your job was to prepare for
6 submission, the revised plans.

7 MR. IGLESIAS: Correct.

8 MR. BROWN: And when did you attempt to submit
9 the revised plans?

10 MR. IGLESIAS: If memory serves me correctly
11 it was sometime, July 1st.

12 MR. BROWN: Of 2016.

13 MR. IGLESIAS: Correct.

14 MR. BROWN: And these plans were being
15 submitted in paper form.

16 MR. IGLESIAS: Correct.

17 MR. BROWN: And why was that?

18 MR. IGLESIAS: The project was originally
19 filed under ACELA as a paper job. It was not
20 submitted under the new DCRA system project docs,
21 which was an electronic filing system.

22 MR. BROWN: And on July 1st, when you
23 physically presented the plans to DCRA.

24 MR. IGLESIAS: Yes.

25 MR. BROWN: And who did you -- was DCRA able

1 to accept those plans at that time?

2 MR. IGLESIAS: No, I attempted to file the
3 paper plans and paper application with the DCRA file
4 room, but because the application had been canceled,
5 unbeknownst to me or my office, DCRA could not accept
6 them. So, I then attempted to contact Mr. Englert,
7 based on his e-mail, approximate June 17th, where he
8 said contact him once we filed.

9 But seeing that I could not, I reached out to
10 his office. And Mr. Englert's role was deputy chief
11 permit official, I think, if I'm getting his title
12 right.

13 MR. BROWN: But, on June 17th, he sent a
14 replay e-mail that made him the point of contact,
15 responsible party in DCRA for accepting these plans.
16 Is that correct?

17 MR. IGLESIAS: Correct. He -- I'm
18 paraphrasing, but said, once I file to notify him so
19 that he could expedite the application process
20 through.

21 MR. BROWN: And after July 1, take me through
22 the timeline of your interaction with DCRA trying to
23 obtain acceptance of the plans.

24 MR. IGLESIAS: Sure. Because I could not file
25 with the DCRA file room because the application had

1 been canceled, I attempted to reach Mr. Englert and
2 was then presented with his secretary at the time,
3 Christian Jones.

4 I explained our situation, forwarded the e-
5 mails that Mr. Englert had sent to the group, and she
6 then said she would reach out to him and speak with
7 him.

8 I was later informed shortly thereafter, that
9 she would take the plans on behalf of Mr. Englert, and
10 she did. And she would follow up with me once the
11 application was reinstated and accepted.

12 Some time went by, a couple of weeks I would
13 say, before I was able to get any definitive answer.
14 I then spoke -- exchanged, actually, e-mails with Mr.
15 Englert, where he said please provide evidence that
16 the application can be reinstated. This was all in an
17 e-mail. I provided his actual e-mail in response to
18 where the general counsel for DCRA stated that they
19 would have to reaccept the application based on the
20 OAH order. I provided that with him.

21 And shortly thereafter, I believe that's when
22 we hit the July 27th date where he officially
23 reinstated the application and accepted it. But I had
24 been attempting since approximate July 1 to get it
25 resubmitted.

1 MR. BROWN: And during that period between
2 July 1 and July 27th, was it possible for any review
3 or progress of this permit application to occur?

4 MR. IGLESIAS: No, it was not.

5 MR. BROWN: It was in limbo because it was not
6 in the system.

7 MR. IGLESIAS: Correct. So, because the
8 application had been canceled, no staff or employee of
9 DCRA could do anything within the ACELA database,
10 either to accept it, approve it, even though it's a
11 paper job, they still have to physically go into the
12 computer data base known as ACELA at the time, and
13 approve the project, and even issue the permit.

14 MR. BROWN: And in the review of the permit
15 after OAH, occurring from July 27th to the permit
16 issuance date on September 7th, 2016, were there --
17 beyond zoning, we know zoning there were no changes
18 made to the plan. Were there any significant
19 substantial meaningful changes to the plans during
20 that period?

21 MR. IGLESIAS: No, there were not.

22 MR. BROWN: And August 4th, 2016, there were
23 structural comments made about the plans.

24 MR. IGLESIAS: Correct.

25 MR. BROWN: And, how would you describe those

1 comments?

2 MR. IGLESIAS: They were purely documentary
3 evidence that they needed, certain documents that were
4 part of the file when the application had already
5 previously received structural approval. But again, I
6 had to regenerate everything, including supporting
7 documentations that are required, structural
8 certifications, neighbor notifications, all of these
9 documents had to be put in there. And if you have
10 experience doing permits back before, there was the
11 project doc systems. It was typical that when someone
12 was reviewing plans or the application files would get
13 lost from there.

14 And because this project, once I -- it was
15 accepted and resubmitted, it actually they made the
16 application go to every single desk that had already
17 approved it, in every discipline. So, that was
18 roughly 10 to 11 desks that had to rereview the files
19 and applications prior to it getting too structural.

20 MR. BROWN: And again, across the board, the
21 June 2013 plans and the plans resubmitted in July of
22 2016 were --

23 MR. IGLESIAS: Identical.

24 If I could, you were involved in the process
25 from the very beginning, and I asked the same question

1 of Mr. Bello. This permit application, despite all
2 the controversy was a relatively straightforward
3 application, correct?

4 MR. IGLESIAS: Correct.

5 MR. BROWN: And the quality of the plans
6 submitted were in keeping with normal standards?

7 MR. IGLESIAS: Correct.

8 MR. BROWN: And the comments and revisions
9 that were made were typical in the normal course of
10 the permitting process.

11 MR. IGLESIAS: Correct.

12 MR. BROWN: So that, in your view there wasn't
13 any deficiency in the plans that were submitted that
14 were the responsibility of the permit applicant.

15 MR. IGLESIAS: Correct.

16 MR. BROWN: And I've asked Mr. Bello this same
17 question. In your experience, did this permit
18 application, either before the OAH decision or after,
19 encounter unusual, unexplained, or disruptive delays?

20 MR. IGLESIAS: I believe so, yes.

21 CHAIRPERSON HILL: Mr. Brown, I just want to
22 point out your time and I am going to keep you to 45
23 minutes, just wanted to make you aware of it.

24 MR. BROWN: For the time being, I'd like to --
25 I'm not resting, I'm just ending my presentation. I'm

1 entitled to rebuttal and I've got six minutes in my
2 pocket that I'd like -- may use later, but I think
3 it's important to move on.

4 CHAIRPERSON HILL: Okay.

5 MR. BROWN: And --

6 CHAIRPERSON HILL: No, that's fine. We'll see
7 how this goes now.

8 MR. BROWN: I'm writing it down, Mr. Chairman.

9 CHAIRPERSON HILL: No, no, that's great.

10 MR. BROWN: Six minutes.

11 CHAIRPERSON HILL: Yeah, that's, yeah, that's
12 good. Okay. All right. So, we can get to cross, and
13 so I'm going to let --

14 MR. HART: Can I just ask a question?

15 CHAIRPERSON HILL: Sure, yeah, Mr. Hart. By
16 the way, the Board can jump in any time they'd like
17 and ask any questions.

18 MR. HART: Yeah, I just had a question. I'm
19 sorry, I was a little close to the mic.

20 There were some terms that Mr. Brown, your
21 witnesses have used, and I just need to get a little
22 clarity around that. And I probably will ask DCRA as
23 well. But so far, this permit has been revoked,
24 rejected, and canceled. So, there are three different
25 terms that are being used, and I don't know if -- I'm

1 sorry about being so pedantic about just kind of the
2 word usage, but I'm trying to understand if these
3 things are actually the same, or are they being used -
4 - are they different because they actually are
5 different terms? And if you could try to describe
6 that a little bit, that would be helpful.

7 MR. BROWN: They're very different.

8 MR. HART: I kind of figured as much, I just I
9 -- they were just used and kind of passed, and it's
10 like, well what does that mean exactly? And I'm
11 trying to kind of get the full understanding of that.

12 MR. BROWN: And I'm going to take a quick stab
13 at it and then maybe if I've left something out Mr.
14 Bello or Mr. Iglesias can join.

15 On March 12th, 2014, a letter from the DCRA
16 code official to the property owner --

17 MR. BELLO: 2015.

18 MR. BROWN: 2015. Rejected, or found a
19 deficiency in the plans and rejected -- called for
20 them to be corrected. That was in the context of that
21 pending building permit application, so that the
22 building permit application basically -- there's
23 something wrong with your permit application. We're
24 making you aware of it. It's your obligation to fix
25 it.

1 And that's fine. That's a normal course of
2 building permit processing.

3 In this case, the building code has a specific
4 provision which DCRA ignored that says, if for some
5 reason in this case the professional engineer lost his
6 license, the provision in the building code
7 specifically says that the applicant, the building
8 permit applicant, has the right and obligation to
9 substitute a new design professional, if that occurs.

10 The property owner, building permit applicant
11 was not allowed to do this in this case because on
12 March 20th DCRA sends a second letter saying, we're
13 rejecting your permit, and it's a permit application.
14 They're saying you can't fix this permit, we're
15 kicking it out of the system.

16 And in fact, it already previously canceled
17 it.

18 MR. HART: So, what was the first one that you
19 were describing then?

20 MR. BROWN: March 12th --

21 MR. HART: The March 12th one was --

22 MR. BROWN: A deficiency.

23 MR. HART: A deficiency. That's not a term
24 that I brought up, so you're adding another one in
25 there.

1 MR. BROWN: Yeah.

2 MR. HART: Okay.

3 MR. BROWN: March 20th, they rejected the
4 permit application, saying that we're terminating that
5 permit application and it no longer exists.

6 We later found out that they, even before
7 March 20th, March 18th, had already canceled it in
8 DCRA's system. But that permit application no longer
9 exists. It had been rejected, gone. Critical because
10 that permit application was vested for C-2-A zoning
11 back in June of 2013.

12 We'd prevail at OAH and I recommend the OAH
13 decision for your reading because I think it goes very
14 clearly to conduct at DCRA, not involving any of the
15 people in this room, that was arbitrary and
16 capricious, and violated my client's rights, and
17 affected this process.

18 But anyhow, June 17th, it basically says, we
19 go back to March 12th, you're allowed to correct that
20 deficiency.

21 We go all the way through that process, zoning
22 reviews, this application for a fourth time in August
23 of 2016, and finds it in compliance with C-2-A zoning.
24 The permit is issued September 7th, and then somewhat
25 surprisingly on February 28th a notice to revoke is

1 issued by Mr. LeGrant, saying that the permit had been
2 issued in error. The revoke is, you have a permit,
3 but we think it was issued in error and we're going to
4 take it away from you. And that's why we're here.

5 MR. HART: And the canceled is what? Is that
6 the same thing as rejected?

7 MR. BROWN: No, canceled is --

8 MR. IGLESIAS: I'll speak on that. So,
9 whenever we refer to cancel, that's canceled in DCRA's
10 ACELA database and in their system. So, in order for
11 me to resubmit the permit has to be in their system.
12 But they canceled it on March 18th, meaning that
13 nobody could submit anything under that permit number,
14 because in their system it's reading as canceled and
15 nothing can be accepted. No further action can be
16 done on the application, unless it is reinstated.

17 MR. HART: Okay. So, I'm still not sure what
18 the difference is. And the reason I'm asking all of
19 this is because I'm trying to understand kind of, well
20 one, and I'll get to DCRA when they do their kind of
21 presentation on this, but trying to understand what
22 these terms are that we're using and how -- and is
23 this the normal process that we go through.

24 And I'm not asking you to opine on that
25 because I'm going to talk to them about it, but I'm

1 trying to kind of gauge what level of, you know, where
2 this permit was in the system. And in some cases it
3 seems like it was kind of taken away, but then it was
4 kind of given back and then it was rejected, and then
5 it was revoked. And it's -- it just seems like it
6 would be helpful to understand all of that sequence.

7 MR. BELLO: Well, if I can try to clarify that
8 a little bit. So, immediately after the first letter
9 of deficiency, which was March 12th.

10 MR. BROWN: Correct.

11 MR. BELLO: If we would have been able to get
12 plans resubmitted by March 15th, those plans would
13 have been accepted into the system, all things equal,
14 right? But by March 18th we would not have been able
15 to submit anything, even though we hadn't received the
16 letter of absolute rejection, which came March 20th.

17 MR. HART: Thank you.

18 MR. BROWN: I also, Mr. Hart, I think both Mr.
19 Bello and Mr. Iglesias have testified but could
20 certainly provide more information about what they
21 considered the, for lack of a better term, the regular
22 or unusual nature of this permit application. I mean,
23 we're four years. In context, we're over four years
24 since this permit application was filed and cases like
25 this are unusual at all stages. And that's why we

1 have the honor of being here. But I think you've hit
2 upon a very important element here that how irregular
3 and unusual the processing of this permit has been at
4 all stages. To the prejudice of --

5 CHAIRPERSON HILL: Okay. Okay. I'm just
6 going to stop you real quick. So, does anybody have
7 any more -- I'm trying to get through -- I'm trying to
8 see if we can get through cross with everyone, and
9 then take a break. And so, I'm going to -- and we
10 might have to take a break before we're through cross.
11 So, can I go ahead? Is the Board all right? I'm
12 going to start with cross.

13 So, Mr. Tondro, if you could go ahead and
14 start your cross, and then Ms. Ferster, you'll have a
15 chance as well. And then we'll probably take a break.
16 And, yes. And we've listened to testimony for 45
17 minutes so I don't suspect it will necessarily go
18 quickly. It's okay. I'm just letting you know, you
19 know, if since you're both professionals, that helps
20 us in that you can be as succinct as possible in your
21 cross as it relates to the testimony.

22 So, Mr. Tondro, if you would begin please?

23 MR. TONDRO: Yes. Good morning. I think
24 we're still morning. Members of the Board,
25 Commissioner Miller. Thank you again, just briefly I

1 just want to thank everyone for their consideration of
2 my circumstance of the postponement and I apologize
3 for that and appreciate.

4 If I can just have a couple questions for Mr.
5 Iglesias, I guess I'll start off and then go to Mr.
6 Bello afterwards.

7 If I can have you turn to the PowerPoint that
8 Mr. Brown has presented. And in particular I want to
9 look at the -- at pages 7 through 9, which, can you
10 just identify what that is?

11 MR. IGLESIAS: Sure.

12 MR. TONDRO: What we're seeing, and just brief
13 context? Thank you.

14 MR. IGLESIAS: This is the DCRA permit
15 application status for the prior system under ACELA.
16 That is visible to the public if you enter the permit
17 number, B1307755, on the DCRA website.

18 MR. TONDRO: And so it gives -- it keeps track
19 of --

20 MR. IGLESIAS: The filing, any comments that
21 were issued, and picking up of drawings. So,
22 basically it's a timeline of the permit application.

23 MR. TONDRO: Great. And can you just -- I'm
24 just -- just to further explain because I think Board
25 Member Hart, I just want to make sure that everyone

1 understands I think this is outside of the normal
2 issues that are raised before the Board, so I just
3 want to be clear about that.

4 I'm just looking down, I guess the fourth
5 entry where it says "fire review pending," and it
6 says, "comments submitted to the applicant for
7 correction." Could you just indicate what you
8 indicate that to be?

9 MR. IGLESIAS: The fourth item down, you're
10 saying?

11 MR. TONDRO: Yeah.

12 MR. IGLESIAS: Okay.

13 MR. TONDRO: Just what that means.

14 MR. IGLESIAS: Sure. It means that fire
15 review comments were generated and they were posted on
16 the ACELA database.

17 MR. TONDRO: And those comments indicate
18 approval, or what do they --

19 MR. IGLESIAS: No, fire review pending,
20 comments submitted to applicant for correction means
21 that the fire reviewer generated comments and posted
22 it on the ACELA database, and they were now -- we were
23 not able to view them until we actually picked up the
24 application, but we know that comments were generated
25 on 6/27/2013.

1 MR. TONDRO: And so therefore going down to --
2 you can see after all the various different comments
3 where it says, plans picked up by the applicant for
4 correction, then that indicated that was the date that
5 -- I don't know how many, it's just --

6 MR. IGLESIAS: Yes, it's on page -- give me
7 one moment.

8 CHAIRPERSON HILL: It says File Room
9 7/29/2013.

10 MR. TONDRO: Yes.

11 MR. IGLESIAS: I'm sorry, yes.

12 CHAIRPERSON HILL: It's all right.

13 MR. TONDRO: In other words, yeah, the date
14 may be the easiest way rather than looking at the
15 numbers. So, on 7/29/13, where it indicates file room
16 plans picked up by the applicant for correction.

17 MR. IGLESIAS: Yes.

18 MR. TONDRO: That would indicate what?

19 MR. IGLESIAS: According to that, that we had
20 picked up the drawings for corrections. Though, I
21 don't think that is an accurate state -- posting.

22 MR. TONDRO: Okay, we can get to that after.
23 What I'm just trying to understand or just make sure
24 is clear what the process is. And so, this is as you
25 had indicated earlier, was a paper job, right? Which

1 means in other -- what does that mean, precisely?

2 That --

3 MR. IGLESIAS: So, that means that physical
4 plans were filed with the District for them to be
5 reviewed and approved. And the standard procedure
6 would be, we file the plans, every discipline makes
7 their comments, and then we are allowed to pick up the
8 application and plans.

9 MR. TONDRO: And at that point, then, you
10 would review those comments.

11 MR. IGLESIAS: Yeah, I would give them to the
12 design team, and they would address the comments.
13 Once the comments are addressed, I would resubmit the
14 application and plans.

15 MR. TONDRO: Thank you. So presumably, just
16 in terms of looking at that, presumably at some point
17 -- well, we can look down at, I think September 24th,
18 2013, that would then -- in theory should be the --
19 where it says plans and applicant resubmitted by the
20 applicant, that would be the --

21 MR. IGLESIAS: That would be a date that the
22 plans and application were resubmitted for review.

23 MR. TONDRO: With the corrections made to
24 respond to the prior, right?

25 MR. IGLESIAS: Correct.

1 MR. TONDRO: I just want to make sure that
2 we're all clear about that. Okay. Thank you.

3 CHAIRPERSON HILL: Mr. Iglesias.

4 MR. IGLESIAS: Yes.

5 CHAIRPERSON HILL: Mr. Iglesias, I think
6 you're answering very well. Thank you. I just want
7 to let you know. You're being led around here, but
8 that's very good.

9 MR. TONDRO: Well, and I'm sorry. I'm really
10 just trying to make sure that everyone understands
11 we're all on the same page.

12 CHAIRPERSON HILL: I appreciate that he's
13 answering the question in a nice calm manner because
14 I've done this before and it doesn't necessarily
15 always go that way, Mr. Tondro, when you're asking
16 questions.

17 MR. TONDRO: I agree. I apologize if that's
18 happened before.

19 CHAIRPERSON HILL: No.

20 MR. TONDRO: I'll make sure it doesn't happen
21 to the extent that I can this time.

22 CHAIRPERSON HILL: Oh, no, that's going to
23 happen again and again and again. That's okay.

24 MR. TONDRO: If I can just turn you instead
25 now to page 9 of the PowerPoint?

1 MR. IGLESIAS: Yes.

2 MR. TONDRO: So, I just, you had indicated
3 earlier that there was a situation where the plans
4 would have been -- if the application hadn't been
5 canceled, the plans would have just seamlessly been
6 reviewed and approved and issued. And I just want to
7 call your attention to the entry here on 3/16/2015.

8 MR. IGLESIAS: 3/16/2015?

9 MR. TONDRO: 2015, yeah.

10 MR. IGLESIAS: Yes.

11 MR. TONDRO: March. And what does that
12 indicate?

13 MR. IGLESIAS: Plans picked up by the
14 applicant for correction.

15 MR. TONDRO: So, just in terms of what -- I
16 just wanted to give you an opportunity to explain
17 because you had indicated earlier, you had testified
18 that it was a situation where you had to regenerate
19 various different documents. But doesn't this
20 indicate that you picked up the file and then had an
21 opportunity so that you would have had to always bring
22 everything back?

23 MR. IGLESIAS: Yeah. So, according to this on
24 page 9, the entry file room 3/16/2015, I picked up the
25 application for correction. But I would note that

1 that's after the March 12th letter. Am I correct?

2 MR. BELLO: Yes.

3 MR. IGLESIAS: That was issued for
4 corrections. So, on March 12th, I believe the letter
5 issued by DCRA from Mr. Robbie Cyberon, notifying us
6 of a deficiency to have the plans corrected with a new
7 engineer seal because the current engineer was
8 unacceptable.

9 So, that was on March 12th. I picked up the
10 drawings on March 16th so that we could make that
11 correction. In the process of making that correction
12 we received a secondary letter from Mr. Cyberon,
13 stating that the application had been, if I trying to
14 use the --

15 MR. TONDRO: And, Mr. Iglesias, I don't want
16 to cutoff, I'm just aware of the time and I think
17 that's already been addressed, I think.

18 But my point, I just -- I guess one question,
19 first of all, can you say that March 12th letter,
20 there was a problem with the engineer's seal. Why was
21 there a problem with the engineer's seal?

22 MR. IGLESIAS: According to the letter, we
23 were notified that the engineer's license had been
24 revoked by D.C.

25 MR. TONDRO: And why had it been revoked by

1 D.C.? Do you know?

2 MR. IGLESIAS: No. I mean, they found some
3 deficiencies. That's beyond my knowledge.

4 MR. TONDRO: That's fine. I just wanted to
5 see if you understood.

6 But in terms of the plans, all I -- I just
7 want to clarify that in other words what you had
8 seemed to indicate, suggest earlier, that it was a
9 situation where there were very similar documents on
10 file at DCRA. They just all got thrown in the
11 garbage, and then you had to regenerate them all.

12 But doesn't this indicate in fact that you
13 actually had already -- or not you, but the firm had
14 picked up --

15 MR. IGLESIAS: No, that's not what I was
16 saying.

17 MR. TONDRO: Okay. I just want to clarify
18 that. Yeah.

19 MR. IGLESIAS: So, what I'm trying to say in
20 that statement was, yes, I resubmitted -- the plans
21 were accepted and taken by Mr. Englert's secretary,
22 let's say sometime July 1. And I had -- I had to
23 regenerate the building permit application and all
24 supplementary documents. That file itself consists of
25 sometimes in this case, was about 100 documents. And

1 various other agencies, documents that had to be
2 inserted into there.

3 So, we regenerated that. Now, when it got to
4 structural, which was the final review and approval
5 before the issuance of the permit, he said, I cannot
6 find the certain documents that he needed for his
7 approval and sign off again. Obviously as I said,
8 this process is typical when we had a paper job that
9 when people are reviewing the application they go
10 through the application, they remove the staples and
11 look what they want to see. Sometimes the documents
12 that were prepared and submitted are not there by the
13 time they get to certain reviewers, and I have to then
14 reproduce those documents.

15 So, that was what happened in this case.
16 Though I refiled and everything was complete on July
17 1, by the time it got to the structural desk, the
18 final desk, he said hey, you're not providing certain
19 documents. Supplementary documents. I said, no
20 problem. I'll regenerate them again.

21 MR. TONDRO: Right. So, just to be clear,
22 those documents then were just part of the process of
23 the review that happened after they were submitted,
24 not as a result of the prior previous to the
25 cancellation or the application? I'm just trying to

1 clarify what --

2 MR. IGLESIAS: Those documents had already
3 been reviewed and approved previously. That specific
4 discipline structural had already approved. Actually,
5 every discipline had approved the application prior
6 to.

7 MR. TONDRO: Well, actually, that brings you
8 in to another question because I'm having a little bit
9 of problems understanding that because I think that if
10 you look up on 1/14/2015, doesn't that say that
11 structural review is pending?

12 MR. IGLESIAS: Yes. As we previously stated,
13 structural had actually already approved this
14 application.

15 CHAIRPERSON HILL: Where do you see the
16 1/14/2015?

17 MR. TONDRO: I'm sorry. This is on page 9.

18 CHAIRPERSON HILL: That's all right. Oh, I
19 see it, structural review pending. Okay.

20 MR. IGLESIAS: Okay. Let me refer you to, I
21 believe it's -- there's another page. Yes. Page 7.
22 The third item from the bottom, structural review.
23 Structural review approved, 12/5/2013. So, the
24 application had been approved, but then that approval
25 had been rescinded and we went through several

1 iterations of review comments.

2 MR. TONDRO: And so, right, you just referred
3 to the fact that you had gone through several
4 different iterations, presumably part of the issue
5 with structural would have been -- or let me phrase
6 this in a different way.

7 As one goes through an applicant, the review
8 process, there are comments made, comments made by
9 different disciplines and different agencies indeed,
10 right, that will generate then a requirement for the
11 applicant to respond, right? And those may -- the
12 response to one set of comments may cause problems to
13 the approval that was given to another discipline,
14 right?

15 MR. IGLESIAS: That could happen, yes.

16 MR. TONDRO: Right. And so, in other words,
17 that is probably what happened here given the fact
18 that structural approved and then structural is
19 rereviewing, that there was some change that was made
20 that led to structural, you know, being in a situation
21 where they're indicating that they are still reviewing
22 it.

23 MR. IGLESIAS: And --

24 MR. BROWN: [Speaking off microphone.]

25 CHAIRPERSON HILL: You need to push your

1 microphone for one second, Mr. Brown.

2 MR. BROWN: I think he's asking a question, or
3 rather than making a statement. So, I think Mr.
4 Iglesias can or can't respond, but --

5 MR. IGLESIAS: In this instance all
6 disciplines had approved this application. And I'll
7 give you the date. Excuse me one second. As of March
8 16th -- I'm sorry, March 6th, 2015. There were no
9 other pending comments for this application. The
10 structural review got reopened and we had to satisfy
11 that. And if you can see on page 9, it was approved
12 again on September 7th, 2016.

13 The structural approval did not really change.
14 The other comments that were generated, if you can
15 see, electrical, fire, mechanical, plumbing. All of
16 those items had been approved. There were no other
17 comments issued after their initial approval. The
18 only approval that kept going back and forth were
19 structural and zoning.

20 And as Mr. Bello stated, there were no
21 significant changes to the drawings from the time we
22 filed in 2013, to the time the permit was issued. The
23 plans and structures stayed essentially the same.
24 There were not -- there were no significant changes to
25 the plans.

1 CHAIRPERSON HILL: Okay, Mr. Iglesias, I'm
2 just going to cut you off because we're going around
3 and around on this.

4 MR. TONDRO: No, I just -- and I want to be
5 clear in response to Counsel Brown, I wasn't asking
6 you to pass judgment on something that was outside
7 your purview. I just wanted to clarify that the
8 process that goes on in your understanding is a
9 situation where it's a back and forth. And as a
10 result, what happens with one discipline in response
11 to that can cause potential issues with another
12 discipline's previous approval. And so therefore,
13 that's sort of part of the game that goes back -- not
14 the game, but it's part of the process of going back
15 and forth.

16 MR. IGLESIAS: Yes, it could be part of the
17 process, and I have experienced that on other
18 projects. Though, that was not the case here.

19 MR. TONDRO: Okay. No, and thank you. So,
20 you had also indicated earlier in your testimony that
21 it was a situation where the -- where you said this
22 was a normal -- this was a normal process, this
23 particular one. That this was, this happened -- there
24 was nothing wrong with this application, that this
25 application should have basically sailed through

1 because there was a normal -- there was nothing
2 unusual about the application. I'm trying to remember
3 exactly what you said. You can correct me.

4 MR. IGLESIAS: Up and to the point where the
5 application was canceled on, I'm sorry, March 18th, it
6 was a normal application, a matter of right project
7 submitted and there were, I think it took obviously --
8 it did take a significant amount of time given the
9 size of the project. But it did go through the normal
10 procedures of trying to get a permit issued, up until
11 March 18th, 2015.

12 So I just want to call our attention, right --
13 so you're saying in other words, the fact that it was
14 submitted in June of 2013, and almost being reviews
15 and multiple comments going back and forth, taking
16 almost two years, that that was somehow indicated that
17 the application was normal, that there were no
18 problems identified by the DCRA divisions?

19 MR. IGLESIAS: At that time, with paper jobs
20 under the ACELA system, and then given the size of
21 this project, that is a normal review procedure, or a
22 procedural timeline for an application of this size.
23 We didn't have the benefit of, excuse me, like we do
24 now, ACELA, where we submit electronic drawings and
25 all disciplines can review simultaneously.

1 At this time when paper jobs were submitted as
2 paper jobs, they went from desk to desk to desk to
3 desk to desk. Essentially, you could go through 13
4 divisions and everyone has to review it one more time.

5 CHAIRPERSON HILL: Mr. Tondro, I'm sorry.

6 MR. TONDRO: No, I just --

7 CHAIRPERSON HILL: He answered the question,
8 so I'm just trying to move this along.

9 MR. TONDRO: Yes. Yes, right. Oh, I'm fine.
10 I have two other questions.

11 First of all, do you happen to remember, you
12 said you were involved in this whole process for this
13 property. Do you happen to remember about another
14 building permit application that was submitted back in
15 2015, I believe, for a 40-unit rooming house?

16 MR. IGLESIAS: Correct.

17 MR. TONDRO: Do you want to explain what that
18 was?

19 MR. IGLESIAS: That is a separate application
20 that I was asked to file on behalf of the owner.

21 MR. TONDRO: For the same property.

22 MR. IGLESIAS: For the same property.

23 MR. TONDRO: And that was -- do you remember
24 when that was filed?

25 MR. IGLESIAS: Off the top of my head, I do

1 not.

2 MR. TONDRO: Okay, but was it after the second
3 letter from DCRA? In other words, after the
4 rejection, the cancellation of the permit? In other
5 words --

6 MR. IGLESIAS: It could be, yes.

7 MR. TONDRO: And most importantly, it went on
8 coterminous with this permit application that's the
9 subject of this appeal.

10 MR. IGLESIAS: Yes.

11 MR. TONDRO: And do you remember when it was
12 that it was actually -- do you know what happened to
13 that permit application?

14 MR. IGLESIAS: I remember having a discussion
15 with Gary Englert on that application specifically,
16 where he -- and he told me when we were closely
17 approaching the approval of this application, he asked
18 if I could cancel that application. I said, well, no,
19 I will not cancel it until the application is issued.

20 MR. TONDRO: And why would he have wanted to
21 have that application canceled?

22 MR. IGLESIAS: I could not say. I could not
23 speak for him on that regard. He just asked me, could
24 I cancel that application prior to him giving me
25 approval on this application.

1 MR. TONDRO: And jus to understand again, to
2 repeat, this was an application to get a permit to
3 build something different on the same piece of
4 property.

5 MR. IGLESIAS: Correct.

6 MR. TONDRO: All right. And so there would
7 have been different shape, different size, so forth,
8 different structure, different use.

9 MR. IGLESIAS: Actually, the structure to my
10 recollection, was of the same footprint. It met the
11 zoning regulations for C-2-A. R-4. Supposed to be R-
12 4.

13 CHAIRPERSON HILL: Mr. Tondro, or Mr.
14 Inglasias (sic)? Inglasias (sic)?

15 MR. IGLESIAS: Iglesias.

16 CHAIRPERSON HILL: Inglasias (sic). This is
17 new information now that you're kind of like throwing
18 at me, or us I guess here, the Board, just a little
19 bit.

20 MR. IGLESIAS: Okay.

21 CHAIRPERSON HILL: And so, maybe it comes in
22 to, if you're going to --

23 MR. TONDRO: [Simultaneous speaking.]

24 CHAIRPERSON HILL: I'm happy -- that's okay.
25 I'm happy to understand it if you're going to put it

1 in your presentation so we can then consider that.
2 You had one more question maybe?

3 MR. TONDRO: Yes. You had indicated that
4 there were no changes made to the application after
5 the -- after it was reinstated by OAH, but --

6 MR. IGLESIAS: There were no significant
7 changes made.

8 MR. TONDRO: No significant changes. But are
9 you aware that there were -- of any proposed changes
10 to increase the number of dwelling units and parking
11 spaces that was discussed with the Zoning
12 Administrator?

13 MR. IGLESIAS: To my recollection, no. I was
14 not privy to those conversations.

15 MR. TONDRO: Okay. Thank you.

16 CHAIRPERSON HILL: Okay, great. I'm sorry.

17 MR. TONDRO: Go ahead with Mr. Bello?

18 CHAIRPERSON HILL: Oh, okay.

19 MR. TONDRO: I apologize.

20 CHAIRPERSON HILL: That's okay, you don't have
21 to apologize. I just need to take a break. So, we're
22 going to take a quick three-minute break so I can take
23 a three-minute break. Thank you.

24 [Off the record from 12:16 p.m. to 12:34 p.m.]

25 CHAIRPERSON HILL: Okay, we're going to get

1 started again. And just for everyone here in the
2 audience, this is kind of our plan for the day. We're
3 going to go ahead and hear the appeal. We're going to
4 get through that and then we're going to probably take
5 a 15-minute lunch break. So, all of you that are here
6 for after that, I hope that can provide some kind of
7 timeline for you.

8 So, Ms. Ferster -- oh, I'm sorry. Oh yeah,
9 that's right. We still aren't done with you, Mr.
10 Tondro.

11 So, Mr. Tondro, you're going to move on to Mr.
12 Bello, and then you're going to move on to -- no?
13 Okay. All right.

14 So what I did want to kind of point out, and I
15 think that it's easy to kind of wander at times, but
16 again just kind of focusing it on -- and I know
17 everyone is trying to do their best with cross and
18 focusing it on the testimony, in particular kind of
19 the issues that we're really focusing on is I guess
20 just basically again the timeline and the vesting rule
21 is kind of what we seem to be, I think going to be
22 more focused upon as we eventually get to questions
23 from the Board.

24 So, I'm just kind of throwing that out again
25 in terms of being judicious, because what really I

1 think the Board is interested in is again, finally
2 getting to hear from DCRA as well as the intervener.
3 So, you know, please go ahead and ask your questions,
4 Mr. Tondro.

5 MR. TONDRO: Thank you, Chairman Hill. Mr.
6 Bello, just some questions. I'll try to keep it as
7 quick as possible. Can you just state for the record
8 what years you were the Zoning Administrator for the
9 District?

10 MR. BELLO: That would be 2005.

11 MR. TONDRO: Prior to 2005. Is that correct?

12 CHAIRPERSON HILL: From when to when, Mr.
13 Bello, that's what I think --

14 MR. BELLO: I believe --

15 CHAIRPERSON HILL: I know you probably blacked
16 out on all the time there.

17 MR. BELLO: Yes, those dates are a blur. But
18 I believe I left in May or June or 2005.

19 CHAIRPERSON HILL: And when did you start?

20 MR. BELLO: As the Zoning Administrator?

21 CHAIRPERSON HILL: Uh-huh.

22 MR. BELLO: I think that would be January of
23 2005.

24 CHAIRPERSON HILL: Okay.

25 MR. TONDRO: And you had worked --

1 MR. BELLO: But prior to that I worked in the
2 zoning division for 13, 14 years.

3 CHAIRPERSON HILL: Okay.

4 MR. TONDRO: So roughly from 1992 to 2005,
5 roughly?

6 MR. BELLO: Correct.

7 MR. TONDRO: Okay, thank you.

8 Just on a question, you had testified to the
9 fact that one of the fundamental inequities of the
10 provisional vesting was that it subjected the permit
11 application to potential malfeasance by DCRA,
12 particularly through slow walking, I believe was
13 mentioned, or just sort of the inefficiency of
14 processing. I believe that's correct.

15 MR. BELLO: Well, first of all I don't
16 describe to the concept of doctrine of a
17 provisional --

18 MR. TONDRO: Right. No, we can get to that.
19 That wasn't why I was asking. I just wanted to just
20 confirm before I moved on that your testimony was, in
21 terms of one of the problems, I understand you have an
22 issue with provisional vesting. But one of the
23 reasons you have an issue is the inequity -- what you
24 perceive to the inequity because it puts an applicant
25 at the risk of DCRA, either intentionally slow walking

1 or unintentionally, just through inefficiency causing
2 problems, causing an applicant to lose their vesting.

3 Is that fair?

4 MR. BELLO: Well, yes. That's probably --
5 that is one of the fallout. But more importantly, I
6 think it violates the uniformity clause of the zoning
7 regulations, and I'll explain why.

8 MR. TONDRO: And yeah, but Mr. Bello, I'm just
9 asking just that different question. Just, I want to
10 make sure before I ask my follow up, that that was
11 what you had testified to before.

12 MR. BELLO: Well, what I'm trying to establish
13 is that that's not the only reason why.

14 MR. TONDRO: But you had -- with all due
15 respect, you had your moment of testimony. This is
16 for cross-examination. You'll have an opportunity for
17 rebuttal testimony, I believe.

18 The reason I asked that question --

19 MR. BROWN: I think he ought to be allowed to
20 -- Mr. Bello ought to be allowed to answer the
21 question in the manner he sees fit.

22 CHAIRPERSON HILL: Okay. Hold on, hold on,
23 hold on.

24 MR. TONDRO: To be fair, I --

25 CHAIRPERSON HILL: That's okay. Jus restate

1 your question again, Mr. Tondro. I think you got your
2 answer and so I think that's fine. Restate your
3 question.

4 MR. TONDRO: Yes. I'm going to restate it in
5 the following way, that you had testified prior that
6 one of the issues that you had with the -- that you
7 perceived to be as an equity with the provisional
8 vesting is that the applicant would be subject to the
9 whims of DCRA whether through the inefficiency of
10 reviewing applications, or through potential
11 malfeasance by intentionally slow-walking an
12 application.

13 And I raised that because I wanted to --

14 CHAIRPERSON HILL: Oh no, that's okay. That's
15 the question, right?

16 MR. TONDRO: No, that's not --

17 CHAIRPERSON HILL: Oh.

18 MR. TONDRO: I'm just characterizing the
19 testimony to then ask the question. The question is,
20 isn't that also true of the general vesting rule?

21 MR. BELLO: Well, yeah, that may be true of
22 the general vesting rule, but there wouldn't be a
23 motive behind the general vesting rule, when you
24 compared it to the set down rule.

25 MR. TONDRO: And just to be clear, the general

1 vesting rule is the rule that, just so we're all clear
2 and I should have articulated this earlier, the
3 general vesting rule is that a permit application is
4 vested as of the effective regulations on the date of
5 issuance of the permit. Is that correct?

6 MR. BELLO: That is correct, but as I
7 testified also, that the general vesting rule pertains
8 to a duly authorized building permit that has been
9 issued to the permit holder.

10 MR. TONDRO: Right. But so in other words,
11 just that the general vesting rule would say that a
12 situation where if you've submitted your permit
13 application and you -- that you have to comply with
14 the rules on the date -- that are in effect on the
15 date that it is actually issued. Which means if, for
16 whatever reason, whether through the applicant's
17 actions or inactions or DCRA's actions or inactions,
18 an application is filed, excepted as complete, prior
19 to the effective date of changes in the zoning
20 regulations, but is not issued until after the
21 effective date of the zoning regulations, that you end
22 up in a situation where the permit application will
23 have to comply with the rules in effect on the date of
24 issuance.

25 So if it's issued before the new regs go into

1 effect, it will comply with the regs in effect, which
2 are the old. If instead it is issued after the new
3 rules go into effect, then it must comply with those
4 new rules.

5 MR. BELLO: Actually not. What my testimony
6 is, is that -- is a situation where a permit holder
7 already has a permit, and mid-construction there is a
8 zoning classification change to that particular
9 property, the general vesting rules actually speaks to
10 the ability of that permit holder to complete that
11 construction under which they've been issued a
12 building permit, without the new zoning classification
13 impacting that permit.

14 So, it's a totally different animal from the
15 set down rule.

16 MR. TONDRO: Okay. So what happens then
17 for -- I understand it's a different rule, but what
18 happens then, in that hypothetical, where you have a
19 situation where a permit is applied for under one set
20 of rules, but issued under a new set of rules? Does
21 it have to -- not a zoning map amendment, so it's not
22 subject to the set down rule. Does it have to
23 apply -- does it have to comply with the regulations
24 in effect on the date of the application, or does it
25 have to comply with the regulations in effect on the

1 date of issuance?

2 MR. BELLO: Well, I think you're mixing apples
3 and oranges, because when you start to talk about the
4 date of the filing of a permit, then you're talking --
5 you're reverting back to the set down rule.

6 The preoccupation of the general vesting rule
7 is the protection of the vesting rights of a permit
8 holder. That would be a property owner who has been
9 issued a permit, but have not completed the
10 construction under which the were issued the permit.

11 MR. TONDRO: Maybe you should just get to the
12 specific regulations to be clear, right? So, the set
13 down rule is 3202.5, and I'm referring -- for right
14 now we could refer to page 5 of the PowerPoint, right?
15 That's the set down rule, is that correct? 3202.5?

16 MR. BELLO: Yes, the set down rule is 3202.5.

17 MR. TONDRO: And just to be clear, that first
18 paragraph on the bottom of page 5 shows that it
19 applies only to a circumstance where there's an
20 amendment of a zoned District classification, would
21 affect the proposed property, right?

22 MR. BELLO: Correct.

23 MR. TONDRO: So, in other words, if there was
24 a change in the zoning regulations to say, change in
25 height restrictions, a change in setback requirements,

1 a change in any other aspect of the zoning regulations
2 that's not a map amendment, but that would affect the
3 property, that's not covered by 3202.5.

4 MR. BELLO: I'm sorry. Ask that again?

5 MR. TONDRO: Sure. So, in other words,
6 3202.5, since it only deals with the map amendment,
7 what -- then it's not relevant to a situation where
8 there is a change in the rules that's not a map
9 amendment. There's a change in rules because they
10 changed the rules as happened from 40 feet to 35 feet.

11 They impose new penthouse setback rules, the Zoning
12 Commission for whatever reason, changes the rules.
13 That does not -- those change to the rules would not
14 trigger 3202.5, right, because that only applies if
15 there's a map amendment.

16 MR. BELLO: Well, what you describe are text
17 amendments, that's correct.

18 MR. TONDRO: Right. And 3202.5 is an
19 amendment of the zoned District classification, which
20 is a map amendment.

21 MR. BELLO: Correct.

22 MR. TONDRO: Okay. So, if 3202.5, the set
23 down rule, does not apply to a text amendment, then
24 the only remaining rule to apply for a text amendment
25 is 3202.4, which is the general vesting rule. Isn't

1 that right?

2 MR. BELLO: Yes.

3 MR. TONDRO: Okay. And I'm just looking at
4 what that sentence --

5 CHAIRPERSON HILL: Mr. Tondro, I'm just going
6 to interrupt you just for one second, just --

7 MR. TONDRO: Yes.

8 CHAIRPERSON HILL: All I'm just trying to get
9 to is like, you're kind of, and I appreciate it,
10 you're kind of getting into what your argument seems
11 to be a little bit in that I want to hear it. We want
12 to hear it, so --

13 MR. TONDRO: And I understand that.

14 CHAIRPERSON HILL: And so your very long
15 questions to get to the -- but I understand the set
16 up.

17 MR. TONDRO: I didn't anticipate that I would
18 have to go through this. I just -- because I thought
19 that this was common knowledge that --

20 CHAIRPERSON HILL: Okay. All right.

21 MR. TONDRO: -- Mr. Bello seemed to be saying
22 3202.5 applied to a text amendment and I didn't think
23 that was the case. I just want to be clear.

24 CHAIRPERSON HILL: Okay.

25 MR. TONDRO: But I had not anticipated that.

1 CHAIRPERSON HILL: Okay.

2 MR. TONDRO: So, I just want to be clear that
3 for text amendment, 3202.4 would apply, and that first
4 sentence says that a permit -- that it's about -- it
5 may be carried to completion, a permit, obviously a
6 permit issuance, may be completed pursuant to the
7 provisions of the title in effect.

8 It doesn't apply to -- it doesn't refer to an
9 application, but it only authorizes a permit if it's
10 in compliance on the date to go to -- it authorizes a
11 permit subject to the regulations in effect on the
12 date of the permit, right? So, if you have an
13 application and the rules change, the text amendment
14 changes before the application is issued, the
15 application is not vested under the old rules. The
16 application has to comply with the new rules that were
17 in effect on the date of permit issuance.

18 MR. BELLO: Okay. And I understand what
19 you're saying. A text amendment doesn't become
20 effective until it is finally adopted. But again, my
21 testimony is that the general vesting rules actually,
22 the major preoccupation of the vesting rules are those
23 who have been issued permits already, and their
24 ability to carry that permit to completion.

25 CHAIRPERSON HILL: Okay. Next question.

1 MR. TONDRO: You say you'd never heard about
2 anything to do with the provisional vesting issues.
3 Is that correct?

4 MR. BELLO: That's correct.

5 MR. TONDRO: Okay. But you said you were
6 involved in this project through -- when did you
7 start? When was your involvement in this project
8 starting? You said from the beginning?

9 MR. BELLO: From the date of the application.

10 MR. TONDRO: And what year was that?

11 MR. BELLO: 2013.

12 MR. TONDRO: Okay. So, you're saying you
13 weren't familiar with the rezoning that happened in
14 the Zoning Commission Case 14-20 that had an impact on
15 this property?

16 MR. BELLO: Well, that came like two years
17 after.

18 MR. TONDRO: Because it happened during the
19 time that you were involved in this. Is that correct?

20 MR. BELLO: Absolutely, yes.

21 MR. TONDRO: So, you were not aware that the
22 Office of Planning's set down and hearing reports both
23 referred to, and articulated, and repeated this issue
24 of provisional vesting?

25 MR. BELLO: Well, my view of that is that in

1 the course of --

2 MR. TONDRO: That was a yes or no question.

3 If I can --

4 MR. BROWN: I think he should be allowed to
5 give --

6 MR. BELLO: Was I aware? Was that the
7 question?

8 MR. TONDRO: Right. Because you had testified
9 you never heard of it until now, and I want to clarify
10 whether you had or had -- we're not aware of it.

11 MR. BELLO: Well, I don't want to sound
12 argumentative. If your question is singular and is
13 speaking to my awareness, I can tell you about my
14 awareness. But if you co-join that with some kind of
15 notion of awareness of your doctrine of provisional,
16 then I've got to address that a little bit more.

17 MR. TONDRO: But the only question I was
18 asking is that the Office of Planning set down and
19 hearing reports, were you aware that -- you were aware
20 that the case was ongoing, the rezoning case was being
21 considered.

22 MR. BELLO: Absolutely.

23 MR. TONDRO: Were you aware of the set down
24 and hearing report submitted by Office of Planning as
25 part of that?

1 MR. BELLO: I am aware of the Office of
2 Planning's position and opinion on the matter, though
3 I don't agree with it.

4 CHAIRPERSON HILL: Okay. Okay.

5 MR. TONDRO: That's fine.

6 CHAIRPERSON HILL: Okay.

7 MR. TONDRO: Just as long as we're -- okay,
8 we're understanding, you were aware. So --

9 CHAIRPERSON HILL: Do you have a lot more
10 questions, Mr. Tondro?

11 MR. TONDRO: No, not, not that many more.

12 CHAIRPERSON HILL: No, no, again, I'm not
13 trying to be flippant at all. I'm just trying to get
14 to --

15 MR. TONDRO: I understand.

16 CHAIRPERSON HILL: -- honestly, honestly like
17 I'm trying to get to you and the intervener because
18 that's really what we want to hear from. This kind of
19 -- it somehow doesn't provide clarity at times.
20 That's all. But please, go ahead.

21 MR. TONDRO: I'm sorry. I just -- just to
22 provide a background.

23 CHAIRPERSON HILL: Sure, of course.

24 MR. TONDRO: The only reason I'm asking is in
25 order to respond as the purpose of cross-examination,

1 they provided testimony and I think some of that
2 testimony wasn't accurate, and that's the purpose for
3 why I'm asking. Mr. Bello indicated that he had never
4 heard of it --

5 CHAIRPERSON HILL: Okay.

6 MR. TONDRO: -- and I want it established for
7 the record that it had been in the public record of a
8 case that he was aware of.

9 CHAIRPERSON HILL: Okay. Okay.

10 MR. TONDRO: So, that's just to be clear on
11 the background (simultaneous speech).

12 CHAIRPERSON HILL: No, thank you. And I'm
13 again, not trying to --

14 MR. TONDRO: No, no. Can you -- do you, Mr.
15 Bello, have any understanding of what happened with
16 the engineer, and why those -- why there was a problem
17 with the engineer's plans?

18 MR. BELLO: Well, what I'm aware of is that at
19 some point much later after the application, maybe two
20 years after or more, the DCRA revoked the professional
21 engineer's license. But at the time of the
22 application of this project, the professional engineer
23 had a valid license in the District.

24 MR. TONDRO: And do you know why it was that
25 the license was revoked?

1 MR. BELLO: I haven't bothered to carry a
2 brief on the PE.

3 MR. TONDRO: Right. So you didn't -- that
4 wasn't an issue that was raised in the OAH case? It
5 wasn't an issue that was in either the March 12th or
6 March 20th letters?

7 MR. BELLO: It might have been raised.

8 MR. TONDRO: Okay. I just want to be clear
9 that you weren't -- right. And just to be clear also,
10 that you are the -- your role in this process is to
11 supervise the preparation and the review of the plans,
12 which presumably would involve hiring the engineer?

13 MR. BELLO: Absolutely not. We actually
14 didn't perform any kind of third-party review on this
15 project. This project was reviewed by DCRA.

16 MR. TONDRO: No, I didn't mean to suggest
17 that.

18 MR. BELLO: The design team, the design team,
19 the architect of record would be the one who hires PEs
20 and other consultants, not my office.

21 MR. TONDRO: That's fine. Thank you for that
22 clarification.

23 And just in terms of the process, when the
24 PE's license was revoked, a new PE came in and signed,
25 and I believe you testified, as well as Mr. Iglesias,

1 to the fact that there was no significant changes.
2 But should -- is it your position or your
3 understanding that an engineer can simply stamp
4 another -- plans that were done by another engineer,
5 or do they have to actually be involved in the
6 preparation of those plans?

7 MR. BELLO: I'm not sure of the zoning
8 relevance, but I'll try to answer your question. What
9 I think, another engineer can review a set of drawings
10 and find it to their satisfaction to put their seal on
11 it.

12 CHAIRPERSON HILL: Okay.

13 MR. TONDRO: Okay. Then, thank you. Yeah.
14 Finally, just one point that was raised I think by
15 your testimony, you referred to the date of the OAH,
16 the particular letter. Again, we're dealing with the
17 two letters. We're dealing with the first DCRA letter
18 of March 12th, the second DCRA letter of March 20th,
19 both of 2015. I believe you referred to the March
20 12th letter as being the one that was at issue in the
21 OAH case, and I just wanted to give you an opportunity
22 to clarify that, because I think it's pretty clear. I
23 can point you to the specific reference in your
24 counsel's briefs, the exhibit, but that it was
25 actually the March 20th letter that was the one that

1 was appealed.

2 MR. BROWN: I don't think Mr. Bello ever
3 testified to that and --

4 MR. TONDRO: I think he testified as of the
5 March 12th, that was --

6 MR. BELLO: No, I don't think I testified to
7 that.

8 MR. TONDRO: Okay, sir, so we can just -- if
9 you did testify to it, you're going to remove that
10 testimony, right?

11 MR. BELLO: Well, I didn't, but we agree that
12 the March 20th was --

13 MR. TONDRO: Thank you.

14 MR. BELLO: -- the subject of --

15 MR. TONDRO: That's fine. Perfect.

16 MR. BELLO: -- (simultaneous speech).

17 MR. TONDRO: That's fine. Finally, just a
18 quick question that I had raised with Mr. Iglesias.
19 Are you aware that there was, after the resuscitation
20 or the revival of the application by the Office of
21 Administrative Hearings, were you aware of discussions
22 with the Zoning Administrator on the possibility of
23 changing the project to include more units and more
24 parking?

25 MR. BELLO: I am aware, but that had nothing

1 to do with the current owner of the property. I think
2 that had to do with a potential purchase on the
3 property.

4 MR. TONDRO: Okay, but it was happening at the
5 time after the OAH revived it and before the permit
6 was issued. Is that correct?

7 MR. BROWN: It's not relevant because it
8 wasn't involving this permit or this property owner.

9 MR. TONDRO: It was the same permit
10 application. The permit application had not been
11 completed, I believe, and it was an issue of a
12 discussion.

13 MR. BELLO: No, I can explain that, unless the
14 owner wants to testify for himself. But I have full
15 awareness of what was going on.

16 The owner had -- was contemplating the
17 contract. But that contract was predicated on the
18 issuance of the building permit as filed. The
19 potential buyer wanted to explore the possibility of
20 increasing the number of units. But my client's
21 obligation was just to deliver the permit as filed.
22 So, if anybody had any conversation pertaining to an
23 increase in number of units, it would be that
24 potential buyer, not the current owner.

25 CHAIRPERSON HILL: Okay. Okay.

1 MR. TONDRO: Thanks. And then --

2 CHAIRPERSON HILL: Okay?

3 MR. TONDRO: -- just one last question.

4 CHAIRPERSON HILL: You said final a couple
5 times, Mr. Tondro.

6 MR. TONDRO: This time, I promise. Again,
7 with the issue of what other issues were out there at
8 the time between the OAH revival of the application
9 and the actual permit issuance, were you aware of the
10 simultaneous application at the same time for the same
11 property for the 40-unit rooming house?

12 MR. BELLO: Yes, I am.

13 MR. TONDRO: Okay. And that was, again, for
14 the same property.

15 MR. BELLO: Yes, it is.

16 MR. TONDRO: Okay. Thank you. That's all.

17 CHAIRPERSON HILL: Okay. Okay. Ms. Ferster?

18 MS. FERSTER: Yes, thank you. So, I'm going
19 to ask my questions to both of you, whoever is the
20 most appropriate person to answer, please just step
21 in. And I'm going to excuse myself in advance because
22 my -- I'm not a building construction code expert, so
23 I may use the incorrect terminology.

24 But, I'm looking at your permit status table
25 which is on page 7 of that PowerPoint, indicates that

1 it was downloaded on February 14th, 2017, which is of
2 course after the permit had been long-issued, right?

3 MR. BELLO: What page?

4 MS. FERSTER: Page 7.

5 MR. BROWN: I see what you're referring to at
6 the top of the page.

7 MS. FERSTER: At the top of the page, right.

8 MR. BROWN: Yeah.

9 MS. FERSTER: That's correct. So, if one were
10 to --

11 CHAIRPERSON HILL: Wait a minute, I'm lost
12 now. You said February?

13 MS. FERSTER: February 14th --

14 MR. BROWN: Look at the top, at the very top
15 of the page.

16 MS. FERSTER: -- 2017, at the top of the page.

17 CHAIRPERSON HILL: Oh, I see it. Okay.
18 Sorry.

19 MS. FERSTER: And that indicates that that's
20 when you downloaded it from DCRA's online system, that
21 correct?

22 MR. IGLESIAS: Yeah, I believe --

23 MR. BROWN: Actually, counsel did that.

24 CHAIRPERSON HILL: Okay.

25 MS. FERSTER: Okay. So, that was when it was

1 downloaded by somebody.

2 Okay. So, isn't it correct that if one had
3 gone into DCRA's online permit tracker during the
4 period in which the permit was under review, one would
5 have seen a fairly detailed set of comments by each of
6 the -- under each of the individual reviewing
7 disciplines that would have -- that explained the
8 reason for, you know, what the comments are that are
9 noted in review status?

10 MR. IGLESIAS: At some point, yes, but DCRA
11 has upgraded the system. At some point, the comments
12 were available. I don't know at what, what the exact
13 date was. I don't even know if it happened before
14 this application was filed, or after. They eliminated
15 that service where it was visible to the public what
16 the comments were, generated by the discipline
17 reviewer.

18 So, it was available at one point, but I'm not
19 sure if it was available during this process.

20 MS. FERSTER: Yeah, thank you. Well in fact,
21 my client has downloaded and submitted as part of the
22 record, as Exhibit 24D in Appeal No. 19412. An actual
23 download from the permit tracker application that was
24 downloaded on March 9th, 2015. And that was when the
25 permit was still under review. Isn't that correct?

1 MR. IGLESIAS: March when? I'm sorry.

2 MR. BROWN: Can you show him a copy of the
3 document?

4 MS. FERSTER: Yes, I'm going to hand that you.
5 Yeah.

6 MR. BROWN: Do you have a copy?

7 MS. FERSTER: I do not have. It's Exhibit
8 23D, and which is in the 19412 case.

9 MR. IGLESIAS: Okay.

10 MS. FERSTER: So, that would show you an
11 indication of the kinds of review comments that were
12 made by DCRA.

13 MR. IGLESIAS: Okay.

14 MS. FERSTER: And I'd ask you to turn very
15 specifically to the zoning approval that you noted in
16 your permit status, but the zoning review on page 2
17 here it indicates zoning review approved on March 6th,
18 2015, which you simply note in the current, in your
19 PowerPoint exhibit was simply approved. But zoning
20 review approved -- it says WC next to it. What does
21 WC mean?

22 MR. IGLESIAS: Wall check, I believe. If I'm
23 correct, I believe Mr. LeGrant can confirm that.

24 MS. FERSTER: Could it also mean, with
25 comment?

1 MR. IGLESIAS: No, I believe it means wall
2 check.

3 MS. FERSTER: Okay.

4 MR. IGLESIAS: Or, it may mean, with comment
5 but I don't know. I didn't post that.

6 CHAIRPERSON HILL: Mr. LeGrant?

7 MR. LeGRANT: I can confirm that the letters,
8 WC, in the system refer to wall check.

9 CHAIRPERSON HILL: Okay, thank you.

10 MS. FERSTER: And there is a, in the comment
11 phase, there is a concern expressed, indicated,
12 correct?

13 MR. IGLESIAS: Yes.

14 MS. FERSTER: Okay.

15 MR. IGLESIAS: But it says it was resolved.
16 It says, "Concern over grade was resolved."

17 MS. FERSTER: Uh-huh. That's correct. So,
18 and then you can see, subsequently, that there are
19 some fairly detailed structural review comments there,
20 and many of them have the notation HFC next to them.

21 MR. IGLESIAS: What page?

22 MS. FERSTER: Well, if you look on the next
23 page, well, there's a mechanical review with HFC, fire
24 review, HFC; structural review, HFC.

25 MR. IGLESIAS: Yeah, that's all from 2013. I

1 believe those were -- may have been the initial
2 comments.

3 MS. FERSTER: And what does, HFC, stand for?

4 MR. IGLESIAS: Hold for corrections.

5 MS. FERSTER: Okay. Hold for corrections.
6 Okay. So, Mr. Bello, you indicated that you were
7 involved in this project from its inception. And but
8 that you were not responsible for, you know, hiring of
9 any of the individual designers, the architect was.

10 And you also indicated that this project was
11 not subject to a third-party review, but it was
12 reviewed by DCRA. That's correct?

13 MR. BELLO: Correct.

14 MS. FERSTER: Okay. And can you just explain
15 what a third-party review is? Reviewer?

16 MR. BELLO: Okay. So, the city has a peer
17 review program that precertifies certain agencies to
18 be -- it would do that which DCRA does with project
19 plans, with the exception of zoning. So, in all
20 disciplines relating to the construction codes, an
21 independent agency can actually review project plans
22 and precertify them before they're submitted to DCRA,
23 and DCRA is obligated to give them an expedited review
24 status, which means they don't get the full review
25 because it's coming in precertified by an authorized

1 agency.

2 MS. FERSTER: So, that might explain, for
3 example, why this particular permit application
4 received a particularly thorough review by DCRA.

5 MR. BELLO: Not necessarily. In my
6 experience, even precertified drawings are subjected
7 to scrutiny at the discretion of DCRA.

8 MS. FERSTER: And there was -- were you aware
9 of the fact that the PE who stamped the plans
10 originally, that his license in Virginia was revoked
11 on September 24th, 2013?

12 MR. BELLO: No.

13 MS. FERSTER: And so, apparently, he didn't
14 tell anybody on the team. Did he tell -- do you know
15 whether he ever informed DCRA?

16 MR. BROWN: I object. One, he's already said
17 he wasn't in direct communication or he wasn't the
18 hiring party of the PE, so I think we --

19 CHAIRPERSON HILL: So, Ms. Brown -- I mean,
20 I'm sorry. Ms. Ferster, I guess you're saying again
21 though, that whether Mr. Bello actually knew that in
22 2013 the engineer had already had a certificate
23 revoked? That was your question?

24 MS. FERSTER: Right. And he said he didn't.

25 CHAIRPERSON HILL: So you say no. Okay.

1 MS. FERSTER: Yeah, thank you.

2 CHAIRPERSON HILL: All right.

3 MS. FERSTER: That was my question.

4 CHAIRPERSON HILL: Hold on. Go ahead, Mr.
5 Hart.

6 MR. HART: Certificate revoked in Virginia as
7 opposed --

8 MS. FERSTER: In Virginia, that's correct.

9 MR. HART: As opposed to D.C., which are --

10 MS. FERSTER: That's correct.

11 MR. HART: I mean, you know, Maryland has
12 their own --

13 MS. FERSTER: Understood.

14 MR. HART: Okay.

15 MS. FERSTER: And are you aware of what or not
16 the PE was obligated under D.C.'s licensing rules to
17 inform DCRA that his license in Virginia had been
18 revoked before asking -- seeking renewal of that
19 license?

20 MR. BROWN: I object. That's not a question
21 he should be asked or is qualified to ask.

22 MS. FERSTER: He's an expert.

23 MR. BROWN: Not on professional engineer
24 licensing requirements.

25 CHAIRPERSON HILL: I don't know whether -- I

1 don't know whether this question necessarily helps us
2 with any particular clarity. I do appreciate though,
3 that Mr. Bello, you may not know this so I guess
4 actually I don't mind -- do you know that they have to
5 -- that somebody has to let the -- and I don't know,
6 again, whether this is going to pertain to anything
7 down the road or not. But do you know, and I guess
8 I'm curious now, do you know that if an engineer's
9 certificate gets pulled from Virginia or Maryland,
10 they have to inform DCRA?

11 MR. BELLO: I don't.

12 CHAIRPERSON HILL: Okay. All right.

13 MR. BELLO: I don't do any kind of work in
14 that realm.

15 MS. FERSTER: Okay. But in your -- were you
16 aware in June of 2014 that D.C. had revoked the D.C.
17 license of Mr. Borall(phonetic)?

18 MR. BELLO: I think the first awareness of
19 anything to do with a PE license was contained in
20 DCRA's letter to me of March 20th.

21 MS. FERSTER: What year?

22 MR. BELLO: March 12th. No --

23 MR. BROWN: March 12th letter. The first
24 letter.

25 MR. BELLO: The first letter, yeah.

1 MS. FERSTER: 2015. So, in June of 2014, when
2 DCRA issued its notice to revoke Mr. Borall's license,
3 you were not aware of that?

4 MR. BELLO: No.

5 MS. FERSTER: Okay. And do you think that the
6 fact that DCRA might have been aware of that fact,
7 that might have caused DCRA to take a very careful
8 look at this particular application?

9 MR. BELLO: Well, not particularly because I
10 think some of the abnormalities of this review, I
11 think occurred even before then. And I testified
12 earlier that to the best of my knowledge Mr. Borall
13 held a valid PE license at the time of the filing of
14 the application. I mean, what happened to his license
15 subsequently --

16 CHAIRPERSON HILL: Okay. Okay.

17 MS. FERSTER: Okay. Thank you. Do you know
18 who Benyam Zerihun is?

19 MR. BELLO: Yes.

20 MS. FERSTER: And who is Benyam Zerihun?

21 MR. BELLO: Benyam is a design architect.

22 MS. FERSTER: And who is Architectural Design
23 Graphics?

24 MR. BELLO: That will be Benyam.

25 MS. FERSTER: And they were on your team, the

1 team for this -- the design team for this application?

2 MR. BELLO: The design team. That's correct.

3 MS. FERSTER: And were you aware that these
4 entities were not licensed by the District of Columbia
5 Government?

6 MR. BELLO: I'm not aware of that.

7 MS. FERSTER: And were you aware in October
8 22nd, 2014, DCRA issued an infraction to these
9 entities for their failure to be licensed?

10 MR. BELLO: I am not aware of that.

11 MS. FERSTER: You were not aware of that.
12 Okay.

13 Last question I'm going to ask you. Were you
14 aware that the owner, your client, the owner, was at
15 the zoning hearing in Case No. 03-04, when the --
16 sorry, yeah, 14-20, when -- 14-20, when the zoning
17 change was made in this case, or under consideration?

18 MR. BELLO: Oh, absolutely. I encouraged them
19 to be there. I couldn't be there with them because I
20 traveled out of the country.

21 MS. FERSTER: Okay, and were you aware that
22 the owner testified on the basis -- presented your
23 view of the vesting provisions to the Zoning
24 Commission, at which point -- which was that his
25 permit had already vested, at which point Commissioner

1 Miller corrected his claim, directing the owner to the
2 Office of Planning's hearing report, which repeated
3 OP's view that the rezoning prior to permit issuance
4 would, on the contrary, subject to the property to the
5 more restricted provisions of R-4?

6 MR. BELLO: Well, as I stated before -- well,
7 first of all, I'm aware as I stated before, I do not
8 agree with the Office of Planning's position. And
9 more importantly, the purview for that interpretation
10 rests in the Zoning Administrator's office, not OP.

11 MS. FERSTER: Okay.

12 MR. BELLO: OP was just offering an OP.

13 MS. FERSTER: Okay, thank you.

14 CHAIRPERSON HILL: Okay. Thank you, Ms.
15 Ferster. That was great. Thanks. That's very --
16 you're welcome back any time you like.

17 Okay. All right. So, now, Mr. Tondro, you're
18 up, okay? Oh, you have a computer for us today.
19 Okay. Great. If we can share that device?

20 MR. TONDRO: Move that over, do you know,
21 or --

22 CHAIRPERSON HILL: Or do we need to switch
23 chairs? Does it move? If it will move, that would be
24 great. And Mr. Moy is standing to see.

25 [Discussion off the record.]

1 CHAIRPERSON HILL: All right, Mr. Tondro, just
2 like before, you get a whole 45 minutes. Now, again,
3 in terms of what we're -- I mean, I'd like the Board
4 to chime in on anything. I mean, I'm very interested
5 again obviously, in what your presentation is in terms
6 of the timeline and how you feel that, you know, the
7 ZA has not erred, obviously but the timeline is the
8 part that's going to continue to be the focus.

9 MR. HART: Mr. Chair. Mr. Tondro, if you
10 could also ask the question of Mr. Brown earlier about
11 the revoked, rejected, and canceled. If you could
12 just kind of quickly go through that, that will be
13 helpful.

14 MR. TONDRO: Yes. Board Member Hart,
15 actually, that was what I was going to start with.

16 CHAIRPERSON HILL: And which exhibit are you
17 in now? Or it's this is in the --

18 MR. TONDRO: This is the PowerPoint that --

19 CHAIRPERSON HILL: It's, oh, No. 30?

20 MR. TONDRO: Yeah.

21 CHAIRPERSON HILL: Yeah, I think you guys are
22 30. Yeah.

23 MR. TONDRO: Yes.

24 CHAIRPERSON HILL: Okay, great.

25 MR. TONDRO: And from --

1 MS. WHITE: And if you could -- you could
2 address the vesting rules again too, that would be
3 helpful.

4 MR. TONDRO: Yeah, absolutely. That's part of
5 the PowerPoint was to try -- attempt to try to make it
6 as clear as possible.

7 First of all, in response to Board Member
8 Hart, the distinction between those terms is really
9 one of whether we're talking about an application or
10 we're talking about a permit. A permit is what's
11 revoked because it has to have been issued, then it's
12 revoked. An application can either be rejected or
13 canceled, or those are effectively the same.

14 What happened here, there's sort of three
15 stages. The first was they issued the first letter.
16 There was noted that there were deficiencies, and
17 those deficiencies had to be corrected.

18 The second letter rejected the application,
19 and so the application that the code official -- and
20 again, this is all under the construction codes, but
21 the code official had determined that the deficiencies
22 were sufficient that they were not -- that the
23 application had to be -- was basically deemed to be --
24 it was going to be canceled.

25 So, the rejection is a response to the

1 application being insufficient, and therefore as a
2 result, cancellation occurred. Of the permit
3 application. That happened all back in 2015.

4 The revocation occurred just as part of this
5 process. Once the permit had been issued in 2016, as
6 part of the appeals process, DCRA recognized on the
7 basis of the appellant's that DCRA had made a mistake
8 in issuing the permit, and therefore it revoked the
9 permit, or it moved to revoke the permit which is then
10 challenged by the appellant.

11 I don't know if that's clear, if you want to
12 have a follow up question first.

13 MR. HART: You can continue and then I'll ask
14 questions.

15 MR. TONDRO: Okay. That's fine. Thank you.
16 Chairman Hill, members of the Board, Commissioner
17 Miller, thank you.

18 I'm going to try to keep this as simple as we
19 can. I'm conscious that this is a very complex
20 situation and it's an unusual circumstance. It's
21 unusual for a variety of reasons. First of all, as I
22 think I indicated, and as the Zoning Administrator
23 will testify, the idea that a permit is going on for -
24 - an application is being reviewed of -- for almost
25 two years, is actually not normal, not at that time

1 either. But it's also unusual because it's a
2 situation where its caught up in the issue of a map
3 amendment.

4 So, I want to walk you through that process so
5 we can understand the whole issue of the vesting, as
6 well as the history of the vesting. This generally is
7 attempting to summarize what was already included in
8 my prehearing statement. But I know that had a lot of
9 information so I'm going to try to reduce it as much
10 as possible.

11 So, if you look at the first slide, you can
12 see this is just a timeline of the application and the
13 rezoning. So just, you know, that the application was
14 accepted on June 14th of 2013.

15 Then the next group is when we're talking
16 about the three in red, October 16th, November 28th,
17 and December 8th of 2014. That's when the ANC first
18 proposed to rezone the area in which the property is
19 located.

20 And then as part of that, the Office of
21 Planning submitted a set down report. It is one of
22 two reports that were submitted to the record.

23 And then finally, on December 8th, the Zoning
24 Commission agreed, voted to set down. So, that's a
25 trigger point right there, is the December 8th, is the

1 set down.

2 MR. HART: So, what's the -- you said that the
3 June 14th DCRA accepts application for filing.

4 MR. TONDRO: Right. So --

5 MR. HART: And then, what's between June and
6 October? I mean, this is June of 2013, and then
7 October of 2014. That's a year and some-odd time
8 period. What's the -- I don't understand what the
9 accepting application for filing and then ANC
10 requests.

11 MR. TONDRO: So, yeah. This timeline here is
12 for the purposes of really understanding the vesting
13 provision. So, it's sort of trying to get into that.
14 The applicant submitted the plans that were
15 sufficiently complete in the sense that they had all
16 of the necessary documents in June of '13.

17 MR. HART: Never mind. I understand what I'm
18 -- what I just realized is that the application is not
19 the zoning case, because those are also called
20 applications.

21 MR. TONDRO: I apologize. Yes.

22 MR. HART: No, I get it now. You're saying
23 the owner submitted in June, and then ANC resubmitted
24 their application. Okay. I've got it. You can go
25 forward.

1 MR. TONDRO: Yes. Thank you.

2 So, over a year later then, the ANC proposes
3 and the Zoning Commission then agrees to hear it.
4 Then jumping to the next set of dates, you can see
5 first of all there's the first letter, March 12th.
6 Right after that is then the March 18th, the Office of
7 Planning's second hearing report which just restates,
8 literally cut and pastes the same statement in terms
9 of the vesting provisions of the application of how
10 the vesting would apply to this particular property
11 and any other property in the proposed zoning,
12 rezoning.

13 The owner, on March 19th, testified in that
14 case. Again, that's case 14-20, before the Zoning
15 Commission for rezoning as we heard. I think Mr.
16 Bello indicated that he was aware that that was
17 ongoing.

18 Then March 20th, a day later, it was the
19 second DCRA letter. That's the one that rejected the
20 application.

21 And then finally, it was March 29th was the
22 effective date of the rezoning. Okay? So, that
23 the -- and May 29th. I'm sorry if I misspoke.

24 So, the key time period there are the last
25 two, which is March 20th and May 29th, where that

1 establishes a time period within which the applicant
2 had to get the permit issued for -- to fully vest.

3 And then finally, you can see the last set are
4 the ones where dealing -- once the OAH then issues its
5 order on the June 16th, then it nullifies the second
6 letter, therefore it revives the permit application,
7 orders the acceptance, and I think it's key to
8 emphasize here that they have to provide new plans at
9 that time. There is a requirement for the -- for an
10 engineer, when they're sealing the stamps that they've
11 either directly supervised it, but certainly at the
12 very least have reviewed every single aspect to the
13 plans. It can't just be where you're just selling
14 your stamp to somebody else. You have a professional
15 responsibility, so that presumably would take some
16 time.

17 And then finally, July 26th, that's when DCRA
18 has the intake of the new plans. And then on
19 September 7th, which we hold is the time -- that the
20 clock has already started. So, June 16th, and by
21 September 7th then is when the permit is actually
22 issued.

23 And so, the question that we're dealing with,
24 and I'll get into that a little bit further, but just
25 is that the number of days. And so the parallel is

1 between the date that the application was rejected,
2 and the date when the rezoning took effect. That's 70
3 days between March 20th and May 29th of 2015, and then
4 applying that to when the order was revived.

5 And this gets to the fundamental sort of
6 problem with this case. Why is it a difficult case?
7 Because the vesting procedures, which I'll go through,
8 are one thing to understand. But here you have a
9 situation where the vesting effectively closed, but
10 the order by the Office of Administrative Hearings,
11 revived the permit well after the fact. And so there
12 was a question of how then to give that legal effect
13 in light of the issue of vesting.

14 So what DCRA did was to say, you are put back
15 in as you would have been. And then see if you had
16 been at that time, how many days were there before the
17 rezoning took effect. And then take those same number
18 of days and analyze that from the time that the permit
19 was revived, to when then that would be that window.

20 CHAIRPERSON HILL: And then when would the
21 permit have been revived?

22 MR. TONDRO: The permit was revived as of June
23 16th, 2016. All the way on the bottom.

24 CHAIRPERSON HILL: Oh, I see that. Okay.
25 Okay. But the 29th, again, is when the rezoning took

1 effect. May 29th, 2015.

2 MR. TONDRO: Of 2015, right.

3 CHAIRPERSON HILL: Right.

4 MR. TONDRO: Because, again, we're dealing
5 with almost a year that it took between the trial and
6 the order from OAH to be actually issued.

7 CHAIRPERSON HILL: Right. So when you're
8 saying that the permit goes back and becomes live, and
9 then there's a number of days -- you started to say
10 the number of days. I didn't understand the number of
11 days part.

12 MR. TONDRO: Sure. So the fun -- I can get
13 into the vesting later, I just wanted to deal with the
14 specifics of this case first.

15 CHAIRPERSON HILL: Okay. All right. No, you
16 can keep going.

17 MR. TONDRO: I know, but it's important that I
18 just want to -- the issue is from DCRA's point of
19 view, once the zoning took effect, provisional vesting
20 was terminated. The problem was that the Office of
21 Administrative Hearings basically made this permit
22 into a zombie. It came back into life well after
23 that.

24 And so the question is, they said because we
25 had screwed up, DCRA had screwed up, that we had to

1 give them back their application.

2 So the question is, how do you give that
3 effect, legal effect. And so, and while also
4 respecting the rules of the zoning regulations. And
5 so the way that seemed to us to be the most equitable
6 and fair was to say, you have the same number of days
7 to get that done.

8 CHAIRPERSON HILL: The same number of days.
9 What do you mean, the same number of days?

10 MR. TONDRO: Same number of days as if we had
11 never canceled the application.

12 CHAIRPERSON HILL: And how many days is that?

13 MR. TONDRO: That is 70 days, including one of
14 the bookends. In other words, you have the date of
15 the termination of the order, and the date of the
16 effective date of the Zoning Commission order. That
17 works out to be 69 days without including one of those
18 two bookends, or 70 days including one of the
19 bookends. And so we tried to make it the same in both
20 cases.

21 CHAIRPERSON HILL: Okay.

22 MR. HART: And so you would have added on
23 to -- because the OAH order went back to March of
24 2012?

25 MR. TONDRO: March of 2015.

1 MR. HART: But it says March 12th or March
2 20th of 2015?

3 MR. TONDRO: March 20th. And in fact, that
4 was -- these I was trying to raise -- and if you look
5 at the prehearing statement of the appellant for the
6 June 7th hearing, I don't have the -- they have it.
7 But the exhibit which has the OAH case, which is
8 Exhibit B.

9 MR. HART: 23B.

10 MR. TONDRO: Right. At the very end, page 19,
11 it says, "Ordered that the March 20th, 2015 notice of
12 rejection is null and void." Because there would be
13 no reason to cancel -- there would be no reason to
14 appeal the March 12th, because the March 12th is the
15 one that allowed for plans to be resubmitted. It was
16 the March 20th, which is the one that said the
17 application is rejected and canceled.

18 MR. HART: Okay.

19 CHAIRPERSON HILL: Okay.

20 MR. TONDRO: Is that -- sorry.

21 CHAIRPERSON HILL: Kind of. No, no, no. So,
22 we're back to March 20th. So now I'm just trying to
23 figure out the 70 days again. I'm lost on the 70
24 days.

25 MR. TONDRO: Sure. So, if we can enter an

1 alternative reality where we had never made that
2 mistake and never canceled the permit application,
3 what would have happened would have been that the
4 applicant would have had to have gotten the permit
5 issued prior to the effective date of the new
6 regulations.

7 CHAIRPERSON HILL: March 29th.

8 MR. TONDRO: Which was May 29th.

9 CHAIRPERSON HILL: Oh, I'm sorry. May 29th.

10 MR. TONDRO: Unfortunately, they're both Ms.

11 CHAIRPERSON HILL: Okay. Oh, I see. All
12 right. Okay.

13 MR. TONDRO: That's the 70 days, yeah.

14 CHAIRPERSON HILL: Okay. Okay.

15 MR. TONDRO: I think I made the same mistake
16 earlier. Yeah. Okay?

17 And the second slide then is that -- is a
18 quotation from the two reports by the Office of
19 Planning that were indicating again, putting everybody
20 on notice of the interpretation at that time. That's
21 what the Zoning Commission relied on as well in
22 understanding the effect.

23 And you can see specifically addressed to the
24 issue, to the property of 1511A because there was an
25 outstanding building permit on that particular

1 property at the time, and it had already been
2 submitted prior to the proposed rezoning. And so this
3 is then what the Office of Planning had then issued,
4 or what their statement, their interpretation and
5 understanding of how the zoning regulations apply.

6 And so the second paragraph you see per
7 Section 3202 of the zoning regulations, the permit
8 applications that continue to be processed under the
9 C-2-A Zone provisions. Okay?

10 And then it says that the 3202.5 and 3202.4,
11 and I'm going to get to the next page, establishes how
12 the review will proceed. Okay? And then you can see,
13 as with lot -- in bold at the bottom, if an
14 application for a building permit is in process but is
15 not yet issued when the Zoning Commission has issued a
16 notice of final rulemaking, 3202.4 below, applies, and
17 the application for a building permit must comply with
18 the R-4 regulations. That's the down zone from C-2-A
19 to R-4.

20 Okay? And this was then the Zoning Commission
21 order in that particular case, and I'm quoting from
22 that as well. Then, reference the OP report, pointing
23 out the permit application, the specific one would
24 continue to be processed under the C-2-A unless and
25 until a notice of final rulemaking effectuates a

1 applications will be submitted, and they will not be
2 actually issued for years later, well after there's
3 changes in the zoning regulations, and that sets up an
4 alternative problem. So, I think the Zoning
5 Commission had to weigh those two alternatives, which
6 one is the worst, and come up with a hard and set
7 rule.

8 And so that's where we are with that. I've
9 explained the history of that so that you understand.

10 CHAIRPERSON HILL: Just to provide clarity for
11 me. So again, OAH on June 16th, issued whatever it
12 was, right? And so you go back in time, and now you
13 go back to March 20th and you get the 70 days until
14 May 29th. So, had they gotten their permit in the 70
15 days, then they would be vested, meaning --

16 MR. TONDRO: Yes.

17 CHAIRPERSON HILL: Meaning they would have --
18 so why --

19 MR. TONDRO: They would have met the vesting
20 rule that establishes you have to comply with the
21 regulations in effect on the date of issuance of a
22 permit.

23 CHAIRPERSON HILL: And why did it take 70
24 days, or more than 70 days? You don't know.

25 MR. TONDRO: When it was revived, why did it

1 take more than 70 days?

2 CHAIRPERSON HILL: Yeah, when it was revived.

3 MR. TONDRO: We don't -- I can address that.
4 I think there are some ambiguities that were involved.
5 There's clearly a back and forth in terms of it. I
6 don't have a specific response to that, but I will
7 point out that that's always potentially an issue with
8 the general vesting rule, which is to establish it's
9 at the moment of permit issuance.

10 CHAIRPERSON HILL: Okay. I understand. Okay,
11 great. Thank you.

12 MR. TONDRO: Yeah. Okay. This is just
13 briefly, and again, I want to try and cut to the
14 chase. But these are just these two letters, the DCRA
15 letters. We've already heard about them. There was
16 an issue where you have the engineer who is supposed
17 to be doing the review to make sure that they're
18 accurate, and that they were -- their license was
19 revoked because they were fraudulent submitted plans
20 in Virginia. And as a result, that led to them being
21 revoked in the District.

22 Here, then just briefly to run to the issue of
23 the OAH order, again, it declared the second letter,
24 not the first letter, null and void. And therefore,
25 effectively ordered DCRA to follow its first letter to

1 allow plans to be resubmitted again. Those plans to
2 be resubmitted would have to be resubmitted under a
3 different engineer, with a different seal who was
4 licensed. They would have to, at the very least,
5 review them. It takes a certain amount of time for
6 that.

7 In terms of that, or getting back to I think
8 Chairman Hill, what you had asked, why did it take so
9 long? Why did it take the 70 days? And the Zoning
10 Administrator can speak somewhat to this, but I just
11 wanted to point out this is from the structural review
12 comments that were submitted on the August 4th in
13 response to the new -- to the revived permit
14 application. And you can see the extent of them.
15 These aren't just minor issues that are being raised.
16 These are major issues that are being raised at that
17 time.

18 Okay. So, here we get to sort of the meat of
19 it in terms of the actual vesting provisions itself.
20 You'll notice that I've actually switched them, just
21 as an alert, so 3202.5 precedes 3202.4, which is at
22 the bottom of the screen. That's intentional because
23 in this particular case, it goes from 3202.5 to
24 3202.4.

25 The particular issues that are relevant are

1 the bold. But just to walk you through, 3202.5
2 establishes again, that in the case where there's a
3 quote, and I'm reading from the second line, and the
4 Zoning Commission is considering an amendment to the
5 zoned District classification, as we discussed
6 earlier, that's a map amendment. Then the processing
7 application, the completion of work pursuant to the
8 permit shall be governed as follows.

9 And it's A., that's the key, right, that if
10 it's filed on or before the date, which I think
11 everyone agreed that the Zoning Commission set the
12 rezoning down, which is what happened here. I think
13 we all agree about that, so I think we all agree that
14 it's 3202.5 which controls, then the processing the
15 application, the completion of the work shall be
16 governed by 3202.4.

17 So, you are vested pursuant to however it
18 works at 3202.4. So then okay, let's to go 3202.4.
19 That's at the bottom, and you can see, that's
20 providing that any construction authorized by a
21 building permit may be compared to completion pursuant
22 to provisions in the title, in effect on the date that
23 the permit is issued.

24 Okay. And again, I'll go back to the Zoning
25 Commission, back to slide 3, where from the Zoning

1 Commission order in 14-20, which it states that the
2 zoning regulations provide that any construction,
3 again, in effect on the date that the permit is
4 issued. So, they repeat that same issue. Right?
5 This is how you address when there's a change in the
6 zoning regulations, if a permit hasn't been issued
7 prior to the effective date of the new regulations,
8 then it has to go back to the drawing board,
9 potentially, and comply with the new regulations.
10 It's either issued prior to, or else it's out of luck.
11 It has to comply.

12 So, the question, I think that we all are
13 asking, is probably a situation of trying to
14 understand how did this come? What is the general
15 history? So, this one may be the most helpful
16 timeline, I hope. This is just trying to go through a
17 timeline of the vesting provisions in the zoning
18 regulations, starting back in '58. In '58 the issue
19 was that there was a provisional vesting, was based on
20 application date. So, that was the rule at that
21 particular time.

22 If you provided an application, and there's
23 certain circumstances, but once your application was
24 in, you were vested. Regardless of any changes in the
25 zone, either with a text amendment or map amendment.

1 That all changed in the mid-80s. And that was
2 at a time when the Comprehensive Plan had been just
3 adopted. There was a lot of work by all the various
4 different residents of the District to make sure that
5 there was the new Comprehensive Plan, and that had
6 specifically proposed all sorts of changes to the
7 zoning in the District.

8 And as a result, there was concern by the
9 Zoning Commission, since the zoning regulations are
10 required to not be inconsistent with the Comprehensive
11 Plan. There was a whole series of map amendments that
12 had to be made in order to comply with the new
13 Comprehensive Plan. And the concern that the Zoning
14 Commission had, which is very reasonable, was that
15 there was a situation where people -- property owners
16 might submit an application in, knowing that a
17 rezoning was about to happen under the old rules, and
18 therefore defeat what had already -- what the citizens
19 had already adopted through the Comprehensive Plan.

20 So in order to address that issue, the Zoning
21 Commission adopted the set down rule, which is 3202.5.
22 The current 3202.5. Which basically carved out this
23 exception from the heretofore general rule about
24 the -- that it vested at time of application to say,
25 you're vested at application, but except you're not

1 vested at application if it's a situation where there
2 is a pending rezoning map amendment for that
3 particular property.

4 In that particular case, then, you have to --
5 then it's a separate one. And then you would have to
6 comply with whatever the Zoning Commission eventually
7 adopted for that area, because the idea was, you were
8 on notice at the time of set down, therefore you had
9 to comply at that particular time.

10 That wasn't sufficient again, the late 80s.
11 Sorry, I wasn't there at this time, but looking
12 through the record there was a series of issues again,
13 and I think I pointed out there were almost 20 map
14 amendments that were being made at this particular
15 time. They were ongoing Zoning Commission cases, and
16 there was variety of trying to fix and tighten up in
17 general the requirements for vesting.

18 And one of the things that happened then, some
19 two years later in September of 1988, was a change.
20 And that was this pretty remarkable change, the change
21 from the vesting on the permit issuance, the
22 vesting -- sorry, the change from vesting as of the
23 application date, to vesting as of the permit issuance
24 date. So, it was a -- that's a substantial change. I
25 just want to call that out.

1 That was done, then, in 1988, two years after
2 the set down. And I'm just going to point out to you,
3 and this is then from the zoning case, 86-22, they
4 created the set down rule and it was pointing out
5 right here, that the rule, right, the prior rule, and
6 I'm quoting the second line with the underline, that
7 rule was substantially more favorable to owners and
8 developers of land than the general rule, which would
9 otherwise apply under general principles of law and of
10 zoning in particular. And then in most jurisdictions
11 the right to construct would be barred because it
12 doesn't vest unless a building permit has been issued,
13 and sometimes some work has been carried out under the
14 authority of the permit.

15 So the Zoning Commission was saying, we need
16 to change this and it's justified for us to change it,
17 and they did so at that time.

18 That then had an impact, however, on the set
19 down rule, because the set down rule then referred
20 back to the provision for when it vested, so that now
21 you're in a situation where the -- once you're in your
22 set down, you're only provisionally vested until
23 you -- unless you get your application issued prior to
24 the actual effective date of the rezoning. Okay?

25 And again, just to remind us, and I apologize

1 but going back to slide 7, you can see that's that
2 process that's going on in 3202.5 and 3202.4, where
3 the processing has to take place by 3202.4.

4 CHAIRPERSON HILL: Which slide 7 are you
5 talking about? You're talking about their slide 7?

6 MR. TONDRO: Our slide 7.

7 CHAIRPERSON HILL: Our slide 7. Okay.

8 MR. TONDRO: Sorry.

9 CHAIRPERSON HILL: It's okay.

10 MR. TONDRO: So, if it's --

11 CHAIRPERSON HILL: Okay, I got you.

12 MR. TONDRO: -- under the set down rule, the
13 set down rule sends you to 3202.4. 3202.4 is that
14 general rule about vesting as a permit issuance.

15 Okay. One of the key things, I'm now going to
16 slide 8, that happened afterwards, or subsequent, was
17 that the Office of Document and Administrative
18 Issuances, which has nothing to do with DCRA, with the
19 Office of Zoning, with the Board of Zoning Adjustment,
20 but it is the organ (sic) that codifies the
21 regulations for the District of Columbia. For some
22 reason, in September of 1991, they just decided to
23 change the zoning regulations, particularly in terms
24 of this vesting. There must have been some kind of
25 screw up. It's not entirely clear why.

1 If one is interested, the entire -- there's a
2 zoning case, a Zoning Commission Case 03-14, which
3 went into this in depth. I don't want to bore anybody
4 at this time, but there was an error. And as a result
5 of the error it stripped out the provisional vesting.

6 It was basically reimpose the idea that it was at the
7 basis of -- that vesting occurred at the time of
8 application as opposed to vesting occurring at the
9 time of permit issuance.

10 And that went on until they actually finally
11 corrected in 2003, although they didn't fully correct
12 it and it wasn't until the Zoning Commission, the next
13 year in 2004, actually corrected it, that we went back
14 -- that we actually had a zoning regulation that was
15 consistent with what the Zoning Commission had
16 adopted.

17 So, the point is that between September of
18 1991, and 2003, the rule that was on the books, which
19 is the rule as I indicate that applies to the cases
20 that were brought up by the appellant, and you can see
21 all the cases right there, 16716, and also at the same
22 time as Mr. Bello was zoning administrator and
23 involved at DCRA in zoning administration, there was
24 this erroneous codification that occurred at that
25 particular time. So it's understandable that that was

1 what then the Zoning Commission and the Board relied
2 on in those particular cases. I will point out that
3 in most of those cases this was not an issue. That
4 was a fundamental, as I explained in my brief. It was
5 something that was addressed in passing. Nonetheless,
6 it was clear that the Zoning Commission and the Board
7 understood that it was at the date of application
8 vesting. They didn't think about -- sorry, that the
9 vesting occurred at the date of application, not at
10 the date of permit issuance. But that's because of
11 the erroneous codification.

12 Again, that was all changed. The Zoning
13 Commission had this long case, 03-14, where they
14 realized there was a mistake and went to correct it.
15 Which is why we have the rule that we have right now.

16 I don't need to go through all of these, too
17 much text, but these are just what I already have I
18 think, provided in my brief as an appendix, which is
19 just the various different rules and the changes that
20 occurred at that particular time.

21 I don't want to use up all my time, or waste
22 your time.

23 And just to confirm that since 2004, there's
24 been minimal revisions to the vesting provision. So,
25 nothing has changed. Though substantively there's

1 been some minor changes dealing with R-4 conversions
2 and other issues, but nothing that addressed this,
3 this particular issue.

4 So from 2004 until now, there's been this idea
5 that provisional vesting is -- that language has
6 remained the same that established this provisional
7 vesting. That was the same that the Office of
8 Planning then included in its two reports in case 14-
9 20, that was -- that applied to the property, and that
10 was referred to by the Zoning Commission in that order
11 of 14-20.

12 So this takes us back, Chairman Hill, I think
13 to what you were asking. I'm just going to sort of
14 recap. Just for the timeline on the application, and
15 you can see there, the order at the bottom how -- or
16 sort of the middle -- if you look at March 20th, 2015,
17 that's a second DCRA letter, to May 29th, the
18 effective date. And that is 70 days, including that
19 initial date, one of the bookends. And then we did
20 the same calculation subsequently. And as a result,
21 we ended up recognizing this on August 25th.

22 Now, obviously this gets to the specifics in
23 terms of -- so, that's on one issue which is I wanted
24 to explain and defend the issue of provisional
25 vesting. Then there's a question of how it applies in

1 this particular case. I think it goes without saying
2 that had DCRA -- we would not have issued the permit
3 had we been aware of this. This came once the
4 appellants, the original appellants in 19410 and
5 19412, challenged the issuance of the permit partially
6 on this basis that we realized, went back and realized
7 that we had made a mistake.

8 So I just bring that up because as an issue
9 that there was no intent to slow-walk. There was
10 nothing that was going on here intentionally to try to
11 slow anything down, otherwise, we never would have
12 issued the permit in that first place.

13 So, you can see that we ended up issuing it
14 then on September 7th, when in fact as of August the
15 25th, we believe it was no longer valid.

16 In terms of the issues of what happened during
17 that time period from DCRA's perspective, I would
18 point out again, unfortunately, right or wrong, the
19 Zoning Commission does emphasize the issue of permit
20 issuance. It's not an issue of whether -- what the
21 issue is with DCRA. But I think there is some
22 ambiguity. I think if you look at the history in
23 terms of the 3202.5 and 3202.4, it just says that when
24 it's issued is when it's issued, and you have to
25 comply on that date. There's no out for a situation

1 I'd just refer that the process of going through an
2 application review is one where when one discipline
3 reviews, let's say fire says there needs to be a
4 second egress, or something else, that may change the
5 plans, and that may have impact on zoning, which had
6 prior approved it but then wasn't able. Now they have
7 to go and relook at it again.

8 So, with that, I'm going to close, but I'm
9 going to -- and turn to Mr. LeGrant to provide
10 testimony if I may.

11 Mr. LeGrant, I guess for the record, can you
12 indicate what your title is and how long you've
13 served?

14 MR. LeGRANT: Yes. Matthew LeGrant, Zoning
15 Administrator. I've been the Zoning Administrator
16 since 2007.

17 MR. TONDRO: Thank you. And just a couple
18 questions. Can you just address that issue of the
19 permitting and specifically in terms of what happens
20 as it works through permitting, the various different
21 divisions and how the --

22 MR. LeGRANT: Okay.

23 MR. TONDRO: -- review by one impacts another.

24 MR. LeGRANT: So, the permitting process is
25 overseen by my sister division at DCRA, the Permit

1 Operations Division. They are responsible for
2 accepting applications, assigning the different
3 disciplines. I'll get to that in a moment. And
4 ultimately, issuance of the permit. That process is
5 not under my supervision, it's under the supervision
6 of the Permit Operations Division manager.

7 In that regard, the different disciplines, and
8 we've heard about this already, some of them are the
9 fire and the plumbing, Zoning acts as a discipline.
10 So, when a building permit application is referred
11 through my office, we review it with conformance to
12 the zoning regulations.

13 MR. TONDRO: And can you, in terms of the
14 testimony you heard prior to the fact that this
15 particular project took almost two years to be
16 reviewed before the application was rejected, can you
17 testify as to whether in your experience that's
18 normal?

19 MR. LeGRANT: No, I believe it is a long,
20 longer than normal application review, compared to
21 other applications.

22 MR. TONDRO: And just again, in your opinion,
23 obviously this is not indicative of this one
24 particular, but of your general experience in terms of
25 this. There was the testimony was provided for the

1 fact that this was normal for a project of this size.

2 And I just want to confirm that when you're thinking
3 about that, you're considering it for a project of
4 this size, the two years is not normal.

5 MR. LeGRANT: Correct.

6 MR. TONDRO: And that there are many other
7 projects in your experience that are reviewed by DCRA
8 that are much larger and much more complex. Is that
9 right?

10 MR. LeGRANT: That's correct.

11 MR. TONDRO: And that presumably would be
12 approved in much less than two years.

13 MR. LeGRANT: Yes.

14 MR. TONDRO: Okay. Thank you. Question you
15 had, there was an assertion about testimony that you
16 had a meeting with Mr. Bello in February, at which
17 there was a discussion of vesting. Can you confirm if
18 that's your recollection?

19 MR. LeGRANT: No. I do recall a meeting. I'm
20 not sure exactly when. He noted February. I thought
21 I was a little earlier than that, but we had a
22 discussion about aspects of the application. But I
23 don't recall any discussions of vesting.

24 MR. TONDRO: Okay. And then in terms of two
25 other issues, the 40-unit rooming house, do you

1 remember anything about that application?

2 MR. LeGRANT: Vaguely that this was floated,
3 as a potential application, but it was not something
4 that my office ever reviewed a specific proposal for.

5 MR. TONDRO: Okay. And do you happen to know
6 when it was, what was the result of that application?

7 MR. LeGRANT: I believe as we've heard today,
8 it was ultimately either canceled or withdrawn.

9 MR. TONDRO: Okay. And then finally, there
10 was -- can you provide any testimony about any
11 discussion you had with a representative of the owner,
12 if not Mr. Bello, about proposed changes that would
13 lead to changes to the parking and to the unit, to
14 this particular application after it was revived by
15 the Office of Administrative Hearings, and prior to
16 permit issuance?

17 MR. LeGRANT: That's correct. So, I believe
18 it was with Mr. Brown, may have had other individuals
19 present that we -- the idea was floated like, okay,
20 what would happen to -- if the number of units were
21 increased, and/or the parking was changed.

22 MR. TONDRO: Okay, and do you know what -- or
23 do you recollect what happened, then? What was the
24 result of that?

25 MR. LeGRANT: Well, when it was brought to my

1 attention because the issue was whether those changes
2 would constitute a substantial deviation from the
3 approved plans, I consulted with the Office of General
4 Counsel at DCRA to see if those changes fell within
5 the substantial deviation area.

6 MR. TONDRO: Okay. And this all occurred
7 prior to permit issuance, right?

8 MR. LeGRANT: That's correct.

9 MR. TONDRO: Okay. Thank you. I think that's
10 all that I have to ask Mr. LeGrant. I'm going to
11 close, just for the record, that I still have some
12 time remaining, if not the six minutes.

13 But I just wanted to close by saying that
14 DCRA's position is that it's an unfortunate case, it's
15 a difficult case, but we made our level best to try to
16 handle it correctly. We believe that the Zoning
17 Administrator did not err, but that this was just as
18 again, it was an unusual case in this particular
19 circumstance. Thank you.

20 CHAIRPERSON HILL: Okay, great. Thank you.
21 Does the Board have any questions for DCRA at this
22 point?

23 MR. HART: Just, with regard to the -- Mr.
24 Brown has described that there were some -- I guess
25 he's provided a timeline that shows that there were

1 some approvals for various aspects of the project, and
2 at one point they had noted that there was an actual
3 approval, a permit approval that was in 2000 and I
4 think it was '13, but I want to double-check that.

5 2014, September 2014. And that's not on your
6 timeline, and I'm just, you know, trying to understand
7 this. And it's on, I'm sorry, it's Exhibit 29, which
8 is their PowerPoint. And could you just describe
9 that, because I'm trying to figure out like when
10 things were actually approved or not approved, or it's
11 just a little unclear.

12 MR. TONDRO: Absolutely. I think that that's
13 actually not accurate, that statement. Thank you for
14 reminding me.

15 If you turn to the next page, page 9, you'll
16 see on 1/14, it has that structural review was still
17 pending. On 1/30, it was when green review was
18 finally approved. And on 2/23 was when DDOE finally
19 approved it. So, those were presumably still
20 outstanding at that time in September.

21 MR. HART: And you're still talking about
22 Exhibit 30 -- excuse me, Exhibit 29, page 9, that this
23 is listed on.

24 MR. TONDRO: I apologize. I'm talking about
25 the appellant's --

1 MR. HART: Yeah, yeah.

2 MR. TONDRO: -- PowerPoint that they are
3 presenting.

4 MR. HART: Yeah, yeah. Yes.

5 MR. TONDRO: Yeah, I'm sorry.

6 MR. HART: Yes, which is Exhibit 29 --

7 MR. TONDRO: Thank you, yes.

8 MR. HART: -- and page 9 of that. I just want
9 to make sure people understand --

10 MR. TONDRO: Yes.

11 MR. HART: -- where we're taking this from.

12 So, you're saying that the information, the
13 actual correct information is listed in here, which is
14 the DCRA permit status table, and it's the last page
15 of that, that shows the accurate when these permits
16 were --

17 MR. TONDRO: Yes, because had all reviews been
18 approved at that time, the permit would have been
19 ready and would have been issued, which is what you
20 can see, if you look at the bottom of page 9, you see
21 it says that file room, ready for issuance on 9/7, and
22 that same day the permit was issued. So, the fact
23 that it wasn't issued indicates that there were still
24 outstanding reviews to be done, and then those three
25 that I've just indicated, and in fact actually zoning

1 as well -- I'm sorry. So, on 10/9, zoning review was
2 under review. On 1/14 structural review was pending.
3 1/30, the green finally approved. 2/23, DDOE finally
4 approved. 3/06 zoning finally approved. All of which
5 are in '15, 2015, and therefore after the asserted
6 date that everything was done, was completed as of
7 September of 2014.

8 MR. HART: And it did look like there were
9 quite a few approvals in 2014, with the exception of
10 the structural approval. I understand that there were
11 some issues with -- and from your testimony, and the
12 previous testimony about the structural engineer
13 issues. And I'm not kind of wanting to bring that up
14 again, more just trying to understand that was the --
15 it seemed as though that was the -- that and the
16 zoning review were the two that were kind of
17 outstanding at one point.

18 It seems as though the zoning one was kind of
19 approved and the structural one was the only one that
20 was still outstanding in 2014. And I'm looking at
21 page 8, I guess. Eight or nine.

22 MR. TONDRO: It appears that that was the
23 case. There was still, however, DDOE had not yet
24 approved. I will not that obviously up on the top of
25 page 8, it had approved back in February.

1 MR. HART: Yeah.

2 MR. TONDRO: But therefore I presume if DDOE
3 had to reapprove, then there was a change in the plans
4 that indicated that they had to rereview that. But
5 again, I can turn to the Zoning Administrator to the
6 extent that he can speak to that.

7 MR. HART: That's fine. I think you've
8 answered my question. I was just trying to really get
9 some of the timeline issue, because of the discrepancy
10 between what you've presented with regard to the
11 timeline that you have, and then the timeline that the
12 applicant has -- or the owner has stated.

13 MR. TONDRO: Yeah, I think that -- again, this
14 is an interactive process that goes on, where there's
15 sort of a ping-pong going back and forth because you
16 have the various different disciplines. When you have
17 fire review they may have changes. Those changes may
18 have implications for others. And so, that may be the
19 circumstance of what's going on. There may just also
20 be insufficiencies in terms of what information is
21 provided. That's often what happens with DDOE. I
22 don't know what happened in this particular
23 application.

24 MR. HART: Thank you.

25 CHAIRPERSON HILL: So, then with regard to the

1 exhibit 29, that the applicant did submit, on page 2
2 where it -- and I can ask the applicant also. But
3 March 6, zoning approve -- Zoning Administrator
4 reapproved the building permit under applicable C-2-A
5 zoning. Is that accurate?

6 MR. LeGRANT: Which -- okay.

7 CHAIRPERSON HILL: I'm sorry. Page 2.

8 MR. LeGRANT: Page 2.

9 CHAIRPERSON HILL: It says, March 6th, 2015.
10 And it's highlighted in yellow.

11 MR. LeGRANT: Okay. So, this is the --

12 CHAIRPERSON HILL: What do you think that
13 means when he's saying reapproved.

14 MR. LeGRANT: All right. Give me a moment
15 here and compare timelines.

16 Right. So, that's the point that my office
17 did reapprove the building permit, and that -- the
18 application.

19 CHAIRPERSON HILL: Reapproved the application.

20 MR. LeGRANT: Right. Right.

21 CHAIRPERSON HILL: You didn't administer the
22 permit.

23 MR. LeGRANT: Right. Right. Which I do not
24 have authority to do so.

25 CHAIRPERSON HILL: Okay.

1 MR. HART: What is reapproving the
2 application?

3 MR. LeGRANT: So, the application that we --
4 just to walk through the rest of that page.

5 So, September 23rd there was an initial
6 approval. And then October 9th --

7 CHAIRPERSON HILL: Initial approval of the
8 application.

9 MR. LeGRANT: Application, not the permit.
10 Sorry. At that time.

11 And then October 9th, it says revoked, but it
12 was put back under review. Okay? So, after the
13 initial approval of the application, the pending
14 application, October 9th, I put it back under review
15 to look at other issues to ensure that it had -- was
16 in conformance with all aspects of the zoning
17 regulations. And it wasn't until March 6th that I was
18 able to get to the point to be able to reapprove the
19 application as in conformance with the zoning
20 regulations.

21 MR. HART: So, this timeline is missing, or
22 has building permit, and that really should be
23 building application, or application.

24 MR. LeGRANT: I would agree. Yeah.

25 MR. HART: Okay. I mean, and I guess -- and

1 I'm not trying to be, you know, really, really in the
2 weeds in this stuff. But I think the problem is some
3 of the terminology makes it a little hard to kind of
4 follow some of this. And so when it's talked about
5 being a building permit, when it's really an
6 application or not, that makes a difference because it
7 then kind -- it makes you understand well, if that was
8 an application then that may proceed or it may follow
9 the zoning change. And it's helpful to understand
10 where all of these things kind of fit in so that it is
11 clear that, oh okay, well, I get the, you know, the
12 timeline.

13 And there seemed to be some, as I said,
14 discrepancies between the timelines. Or not
15 discrepancies. There's things that were not in one
16 that were in the other, and I was just trying to get
17 that. And I think I'm understanding it a bit better.
18 Thank you.

19 MR. TONDRO: Yeah. And again, just to clarify
20 that that timeline which was created by Mr. Brown to
21 highlight, I think, the zoning issues, and fair
22 enough, but that doesn't -- I think that was an
23 attempt to sort of simplify this, and to call
24 attention, again fair enough, but remember again that
25 there were all these other reviews and hold for

1 comments and resubmissions by the applicant that
2 occurred between those dates.

3 CHAIRPERSON HILL: That's fine. So, Mr.
4 Brown, I just want to be clear, you agree with what we
5 just went through in terms of your exhibit, with March
6 6th. It's the reapproval of the application.

7 MR. BROWN: [Speaking off microphone.]

8 CHAIRPERSON HILL: Yes. I mean, you can push
9 your microphone there.

10 MR. BROWN: For zoning purposes.

11 CHAIRPERSON HILL: Okay. All right. Okay,
12 great. Thank you.

13 All right. Does anybody have any more
14 questions for DCRA?

15 Okay, I just have one more, Mr. LeGrant.
16 Again, in terms of like the OAH order and going back
17 and having the 70 days, I mean, to be quite honest, I
18 don't necessarily think 70 days is a lot of time. But
19 do you have some -- is that kind of a normal amount of
20 time in terms of, does that seem like a short amount
21 of time to issue the permit or go through -- I mean,
22 I'm just trying to understand the 70 days.

23 MR. LeGRANT: Yeah. Well, the 70 days, as Mr.
24 Tondro has noted, is consistent with what the vesting
25 period would have been in the absence of the OAH

1 appeal. So, after we looked at the situation we felt,
2 you know, in consultation with my counsel, is that
3 seemed to be the most equitable time period. I will
4 say it's not a situation that I've had to face in any
5 other application.

6 CHAIRPERSON HILL: So, my question is again,
7 just like, why didn't the permit get issued in those
8 70 days?

9 MR. LeGRANT: Well, the original approval was,
10 at that point, and I think DCRA has been up front that
11 we mistakenly issued the permit because we
12 miscalculated the timelines and that that 70-day
13 timeline that we now realize actually applies, was not
14 -- we did not have that knowledge at the time of the
15 permit issuance on September 7th.

16 MR. TONDRO: And again, Chairman Hill, I'd
17 just point out that amongst others there was that --
18 the structural review comments by the DCRA reviewers
19 of August 4th that indicate, I think fairly serious
20 issues that needed to be addressed.

21 CHAIRPERSON HILL: No, I got you. That's what
22 your -- okay.

23 MR. HART: Mr. Chairman.

24 CHAIRPERSON HILL: Sure.

25 MR. HART: Actually, I'm sorry. Just to kind

1 of clarify this also, when did you create -- when did
2 you develop the 70-day timeline, because it sounds
3 like you have done that after the September 7th actual
4 permit issuance. So, it was -- and because if you had
5 already known that before then, the permit should not
6 have been issued at that point. So, this was done
7 after that, but I'm not exactly sure when that
8 happened after that.

9 MR. TONDRO: Yes, it was in the process of
10 reviewing, as I think I stated up front, it was in the
11 process of reviewing the appeal, the original appeal.
12 Our appeal was 19410 and 19412, which challenged the
13 issue of the permit on this basis. And as a
14 recognition of that --

15 MR. HART: I recall that now.

16 MR. TONDRO: Right. We realized that we had
17 made a mistake and this was, again, and again, that
18 70-day period, it wasn't one that we pulled out of the
19 air. It was one that was based on what would have
20 been had DCRA not intervened; how much time would they
21 have had.

22 CHAIRPERSON HILL: Okay. Okay. All right.
23 Mr. Brown. Oh, sorry. Commissioner Miller.

24 MR. MILLER: Thank you, Mr. Chairman. I just
25 had one question of DCRA. I have another question

1 when everybody is finished, of each of the parties.

2 But --

3 CHAIRPERSON HILL: Is that tomorrow, Mr.
4 Miller?

5 MR. MILLER: Whenever we finish, which for me
6 will be really, the threshold question. But I want to
7 wait on that.

8 On the October 9th, what Board Member Hart was
9 just reviewing with you that October 9th, and you just
10 referred to the zoning review was put back under
11 review. And you said could you elaborate on what the
12 issues, why you put it back under review?

13 MR. LeGRANT: After the initial approval, then
14 -- and I was presented with information that
15 questioned the representation in the application,
16 specifically as to the location of the first-floor
17 level, vis-à-vis, the surrounding grade, because that
18 had an impact on whether it was conformance with the
19 applicable building height calculations. That
20 information that -- or the question was raised, and my
21 initial -- when I went back and looked at the plans,
22 there was insufficient information on those plans to
23 answer that question, that point of uncertainty. I
24 felt compelled, and I did put the application back
25 under review until that grade question, building

1 height measurement aspect could be clarified. And I
2 had to go back to the applicant and ask for additional
3 information to clarify that.

4 MR. MILLER: So, on the applicant's timeline,
5 they said that this was put back under review without
6 explanation. But you did go back to the applicant and
7 explain what you needed.

8 MR. LeGRANT: When I was put back under
9 review, then I then went back after that date to talk
10 to the applicant.

11 MR. MILLER: Okay. Thank you.

12 CHAIRPERSON HILL: Okay, great. So, Mr.
13 Brown, I'm going to turn to cross for you, and just so
14 I kind of have a clock on my head, I'm going to put 15
15 minutes up. And then okay, great. Thanks.

16 MR. BROWN: Mr. LeGrant, you testified in
17 establishing your role within DCRA, that you didn't
18 have the authority to issue building permits. Is that
19 correct?

20 MR. LeGRANT: Yes.

21 MR. BROWN: You are not the code official, as
22 that term is defined in the building code.

23 MR. LeGRANT: I would agree.

24 MR. BROWN: And have you ever issued, prior to
25 this notice to revoke, have you ever issued a notice

1 to revoke?

2 MS. FERSTER: I'm going to object to his
3 questioning because I thought we already agreed that
4 the building code procedures that were followed here
5 were not within the scope of this hearing, that those
6 are OAH issues.

7 MR. BROWN: I'm certainly -- because in his
8 testimony he defined his authority within DCRA, and
9 limited it. So, I think -- and we're before the Board
10 in a notice to revoke. So, I think my questions are
11 reasonable.

12 CHAIRPERSON HILL: What's your question again,
13 Mr. Brown? Just tell me your question again.

14 MR. BROWN: One, have you ever issued a notice
15 to revoke previously. And my follow up question would
16 be, did you -- were you granted authority from the
17 code official to issue this notice to revoke?

18 CHAIRPERSON HILL: Mr. LeGrant, you can go
19 ahead and answer that.

20 MS. FERSTER: Okay. Again, I believe that
21 that is a building code issue.

22 CHAIRPERSON HILL: Okay.

23 MS. FERSTER: And I thought the Board had
24 already ruled that those issues were beyond the scope
25 of this hearing.

1 MR. BROWN: But they're fact issues as well.

2 CHAIRPERSON HILL: Does the Board have an
3 issue with Mr. LeGrant answering the question?

4 Okay, Mr. LeGrant, if you'll just answer the
5 question? Thank you.

6 MR. LeGRANT: Yes. My recollection is yes, I
7 have revoked, or have signed building permit
8 revocations when they're related to substantive zoning
9 issues.

10 CHAIRPERSON HILL: Okay, thank you.

11 MR. BROWN: Okay. Oh, the follow up question
12 was, were you granted any specific authority to issue
13 this notice to revoke?

14 CHAIRPERSON HILL: Mr. LeGrant?

15 MR. LeGRANT: I don't recall any specific
16 authority granted. It wasn't said to me. This wasn't
17 what you were going to, it was more that it was this
18 is a zoning issue that there's a flaw, a zoning
19 related flaw to the building permit, and I believe,
20 and I had as I've noted, in other words it says,
21 signed such notices.

22 MR. BROWN: Okay. Mr. LeGrant, this permit
23 application has been reviewed for zoning at least --
24 and approved for zoning at least in 2014, in September
25 of 2014. March of 2015, and then again in August of

1 2016. Correct?

2 MR. LeGRANT: Yes.

3 MR. BROWN: And each of those reviews were
4 done to determine its compliance with the C-2-A
5 zoning.

6 MR. LeGRANT: Yes.

7 MR. BROWN: Okay. Between -- in September of
8 2014, zoning approved, and then it, on October 9th it
9 revoked or rescinded that approval for, as you said,
10 you needed additional information. Would it be
11 unusual for from October of 2014 to March of 2015, for
12 it to take six months to resolve the issues that were
13 raised in that specific situation?

14 MR. LeGRANT: Is your question about, in this
15 specific situation?

16 MR. BROWN: Yes.

17 MR. LeGRANT: Okay. So, as compared to other
18 situations.

19 MR. BROWN: Yes. This --

20 MR. LeGRANT: It depends on the issues with
21 the application. Some applications, if the issue is
22 very straight forward, it would not take six months.
23 If it was more complicated it certainly could take
24 longer.

25 MR. BROWN: Well, and I'm asking you in this

1 case, were the issues that complicated that it took
2 six months?

3 MR. LeGRANT: Well, it did take six months.

4 MR. BROWN: As a result of that additional
5 review period between October and the following March,
6 did that occasion any changes to the plans for zoning
7 purposes?

8 MR. LeGRANT: As I recall, it was not really
9 changes to the plans, but there was information about
10 clarifying the plans to me for my understanding. And
11 there might have been -- I might have, for that grade
12 change aspect there might have been a -- I may have
13 requested a -- trying to remember, a clearer section
14 that documented the building height and the grade
15 relationship of that floor with the grade. But
16 otherwise, it was more of just getting an
17 interpretation, an understanding of what was depicted
18 in the plans.

19 MR. BROWN: Were you aware in December of
20 2014, there was a letter written to the -- by the ANC
21 to DCRA, asking that no permits be issued, except for
22 -- be subject to additional review under the R-4 Zone
23 that was being proposed?

24 MR. LeGRANT: I think I believe I did see that
25 letter.

1 MR. BROWN: And did that cautionary letter
2 influence your processing of the permits?

3 MR. LeGRANT: I don't -- I wouldn't use the
4 word influence my approach to the permit. It was
5 information that I looked at. But in the end, when as
6 I concluded at the time, it was still, I believe at
7 that point in time, still subject to the C-2-A
8 provisions.

9 MR. BROWN: Okay. Racing forward to August of
10 2016, the post OAH resubmitted permit, when you -- and
11 would it be fair to say that the review of the permit
12 application for zoning purposes was very careful when
13 you were reviewing it in August of 2016?

14 MR. LeGRANT: All of my offices' reviews of
15 applications are very careful.

16 MR. BROWN: I agree. And at that time, when
17 you approved the permit, the zoning for the permit,
18 you considered the permit application vested as of
19 June 14th, 2013, when the application was filed?

20 MR. LeGRANT: Yes.

21 MR. BROWN: Okay. And that would be
22 consistent with --

23 MR. LeGRANT: So, just to clarify. It was as
24 per the OAH decision that as of going back to the pre-
25 March 20th application condition.

1 MR. BROWN: In August of 2016, when the zoning
2 approved, you approved it under the C-2-A zoning
3 without any provisional concept of the vesting.

4 MR. LeGRANT: Well, at that point in time my
5 understanding of the provisional vesting is different
6 than our current position.

7 MR. BROWN: So, you approved the permit as of
8 -- based on the zoning as of the date of application,
9 June of 2013.

10 MR. LeGRANT: Yes.

11 MR. BROWN: Okay. You've established a 70-day
12 window, which is basically putting the applicant back
13 in the position they would have been, absent the OAH
14 proceedings. One, shouldn't that have referred back
15 not to March 20th, but doesn't the OAH order say that
16 the applicant is entitled to, or DCRA must accept
17 revised plans in accordance with the March 12th, 2015
18 letter? The earlier letter?

19 MR. LeGRANT: I'm not sure I understand your
20 question. You're throwing out lots of dates there.

21 MR. BROWN: You have established as a
22 beginning point for your 70-day -- establishing your
23 70 days as March 20th, 2015.

24 MR. LeGRANT: For -- okay. For this purpose,
25 for this provisional vesting purpose.

1 MR. BROWN: Yes. You have created a 70-day
2 time window --

3 MR. LeGRANT: Yes.

4 MR. BROWN: -- that you've -- so, you started
5 that window on March 20th, 2015, and it runs to May
6 29th, 2015, when the zoning change took effect.

7 MR. LeGRANT: The provisional vesting is the
8 70 days, and I'm looking at the exhibit in our kind
9 exhibit here.

10 [Pause.]

11 MR. LeGRANT: Restate your question, please?

12 MR. BROWN: Under your current provisional
13 vesting determination, you've created a 70-day window
14 for -- for that provisional vesting to be applied
15 currently, based on the prior circumstance. And you
16 established that 70-day period beginning March 20th,
17 2015, which was the letter of rejection that OAH threw
18 out.

19 CHAIRPERSON HILL: Yes.

20 MR. LeGRANT: Yes.

21 CHAIRPERSON HILL: No, I'm just trying to -- I
22 get the 70 days, so get to the other part. You're
23 taking him to March 12th, now.

24 MR. BROWN: But if you read the OAH order --

25 MR. LeGRANT: Okay.

1 MR. BROWN: -- it says the March 20th letter
2 is null and void, but you've got to go back and
3 comply, you being DCRA, comply with the March 12th,
4 2015 letter.

5 MR. LeGRANT: And your point?

6 MR. BROWN: Then, all of a sudden, your 70
7 days is 78 days.

8 MR. LeGRANT: Oh, from the two March dates.

9 MR. BROWN: Yes.

10 MR. LeGRANT: Okay.

11 CHAIRPERSON HILL: So, now this is the only
12 question that I have, Mr. Brown, is that again, you're
13 bringing -- now you are bringing in the OAH stuff in,
14 but still -- I'm just trying to get -- you're getting
15 an extra eight days. Is that what you're trying to
16 understand?

17 MR. BROWN: Yeah, but I'm not worried about
18 the eight days.

19 CHAIRPERSON HILL: Okay.

20 MR. BROWN: Per se. I'm worried about this
21 concept that one, we disagree with provisional
22 vesting.

23 CHAIRPERSON HILL: Uh-huh.

24 MR. BROWN: But, I'm also saying that if eight
25 days makes a difference here, and we've made the point

1 very clearly that they say we're 13 days late. But
2 they sat on our application for 26 days. And I get
3 another eight days to comply with the order.

4 CHAIRPERSON HILL: Where are you getting the
5 13 days?

6 MR. BROWN: Well, is it correct, Mr. LeGrant,
7 that the notice to revoke was issued because under
8 your provisional vesting determination, the permit
9 should have been issued no later than August 25th, as
10 opposed to September 7th?

11 MR. LeGRANT: Right. The provisional vesting
12 that we have arrived at would end on August the 25th.

13 MR. BROWN: So, the permit was issued 13 days
14 too late.

15 MR. LeGRANT: Correct.

16 MR. BROWN: All right. And the point I'm
17 making is, well, you say we're 13 days too late, but
18 under what should be the interpretation that you're
19 using, I get at least another eight days because it
20 reverts back to March 20th, not March -- March 12th.
21 And on top of that, my client's application sat in a
22 corner in a room, unaccepted from July 1 to July 27th,
23 where no activity occurred.

24 So, I'm being held to the 70-day standard, yet
25 DCRA can miscount by eight days and sit on my

1 application --

2 CHAIRPERSON HILL: Okay. Okay.

3 MR. BROWN: -- for 26 days.

4 CHAIRPERSON HILL: I'm sorry. Now, what's
5 your question again?

6 MR. BROWN: Well, I'm trying to --

7 CHAIRPERSON HILL: I listened to all of it.
8 We -- you got it in there.

9 MR. BROWN: And I'm trying --

10 CHAIRPERSON HILL: You got it in there.

11 MR. BROWN: I'm trying to establish that one,
12 that there are in my view, I'm asking whether there
13 should be an additional eight days in the front end.

14 CHAIRPERSON HILL: Uh-huh.

15 MR. BROWN: And my next follow up question
16 would be, Mr. LeGrant, is it significant in your
17 determination of the 70-day compliance whether in fact
18 the applicant was not able to enter his permit into
19 the system for further processing?

20 CHAIRPERSON HILL: Okay. So, that's the
21 question on the table.

22 MR. LeGRANT: As I've noted earlier, I do not
23 have control over the permit processing, the
24 acceptance or the application -- the building permit
25 application acceptance process.

1 MR. BROWN: Okay. So, that I understand. But
2 you're counting -- you're making a zoning
3 determination, and you're counting 26 days against my
4 clients that there was no ability for that permit to
5 move forward. You factually don't disagree with the
6 fact that between July 1 and July 27th, the permit was
7 in nonaction limbo, correct?

8 MR. LeGRANT: Well, your words is limbo. And
9 I've noted several times now that that aspect is not
10 under my control. We have a time period, but there is
11 a -- the time period for the application submission is
12 something that I don't impact --

13 CHAIRPERSON HILL: Okay, Mr. Brown, I'm going
14 to -- you're over 15 minutes now. I just want -- do
15 you have another question there or so, because I want
16 to get to the applicant. Or, not the applicant. I
17 want to get to the intervener.

18 MR. BROWN: One last question. The permit was
19 accepted and subject to processing. Did you consider
20 counting the 70 days from that period forward?

21 MR. LeGRANT: No.

22 CHAIRPERSON HILL: Okay. All right.
23 Before -- I'm sorry, go ahead, Ms. Ferster.

24 MS. FERSTER: Can I have just one quick cross-
25 examination question?

1 CHAIRPERSON HILL: Sure. Oh, sure. Sorry,
2 forgot.

3 MS. FERSTER: Mr. LeGrant, you heard Mr. Bello
4 articulate his view of the zoning regulations vesting
5 provisions, which under his view there's no
6 provisional vesting that his client is permanently
7 vested in a permit application under the existing
8 zoning when he submits a permit application before the
9 set down hearing without regard to when the -- what
10 the zoning is, when the permit is issued.

11 Do you agree with Mr. Bello's interpretation
12 of the zoning regulations?

13 MR. LeGRANT: No.

14 MS. FERSTER: Okay. Thank you.

15 CHAIRPERSON HILL: Okay. Does the Board have
16 questions? I kind of have a question.

17 So, I'm going to turn to Mr. Tondro. I'm a
18 little confused now again by the 13 days that just got
19 thrown out again. So, I'm looking at a timeline. I'm
20 trying to stick with a timeline. There's a lot of
21 different dates flying around. And so, March 29th is
22 when the rezoning happened.

23 I'm sorry. Sorry. May 29th, 2015. Okay?
24 So, had the permit been issued before then, then
25 you're done. Okay?

1 So, where is the 13 days that you're speaking
2 of, Mr. Brown? I'm trying to understand where your 13
3 days are. You can speak in the microphone. Sorry.

4 MR. BROWN: DCRA has established a 70-day
5 window that they think --

6 CHAIRPERSON HILL: Right.

7 MR. BROWN: -- my client is entitled to, to
8 pick up and process his --

9 CHAIRPERSON HILL: Because of the OAH thing,
10 right?

11 MR. BROWN: Yes.

12 CHAIRPERSON HILL: Right. Okay.

13 MR. BROWN: And so, they started that clock
14 running on --

15 CHAIRPERSON HILL: On March 20th.

16 MR. BROWN: No. No, we've established -- we
17 have the window.

18 CHAIRPERSON HILL: Yeah.

19 MR. BROWN: We've established the 70-day
20 window.

21 CHAIRPERSON HILL: The 70-day window. Uh-huh.

22 MR. BROWN: And for purposes of the permit and
23 this notice to revoke, they've started that 70-day
24 period running on June 17th, 2016, which is the --

25 CHAIRPERSON HILL: No, I thought they were

1 starting it on March 20th.

2 MR. BROWN: They're use -- they're defining
3 the 70-day period from March 20th --

4 [Discussion off the record.]

5 CHAIRPERSON HILL: All right. I'm back.
6 Okay.

7 MR. BROWN: So, they've created that 70-day
8 period. Now, they're applying it to the current
9 situation starting with June 17th, 2016, which was the
10 day the OAH order was issued. And they're saying from
11 that day, from June 17th, 2016, you have -- there was
12 a window of 70 days that we had to obtain the permit.

13 CHAIRPERSON HILL: Okay.

14 MR. BROWN: Under that provisional vesting
15 window.

16 CHAIRPERSON HILL: Okay.

17 MR. BROWN: The point I'm making is, one --

18 CHAIRPERSON HILL: So, you actually got your
19 permit on September 7th.

20 MR. BROWN: Yes.

21 CHAIRPERSON HILL: Right? Okay.

22 MR. BROWN: All right. So, their version,
23 October -- August 25th was the 70th day.

24 CHAIRPERSON HILL: Right.

25 MR. BROWN: And so, the difference between

1 August 25th and September 7th is 13 days.

2 CHAIRPERSON HILL: Okay.

3 MR. BROWN: I'm 13 days too late.

4 CHAIRPERSON HILL: Right.

5 MR. BROWN: And I'm saying one, I deserve
6 another eight days because the window should be larger
7 based on March 12th, not March 20th. And I'm also
8 saying that you've penalized me the 26 days that DCRA
9 locked us out of the building permit system, because
10 as the testimony, and nobody is disputing it, between
11 July 1 and July 27th, and my 70-day clock is running
12 then, we were locked out of the system.

13 CHAIRPERSON HILL: Okay. Okay. I've got you.
14 All right. I'm back. Okay. I'm okay.

15 MR. TONDRO: Can I just respond to that
16 because I think --

17 CHAIRPERSON HILL: Sure. Sure.

18 MR. TONDRO: I'm not sure it's an accurate
19 representation.

20 The March 12th at this eight-day issue that
21 Mr. Brown is bringing up, I think is completely in a
22 posit. The issue here is the order that the OAH order
23 declared null and void the March 20th letter that
24 canceled the application.

25 CHAIRPERSON HILL: Yes.

1 MR. TONDRO: That was the action that was
2 wrong. Had that never taken place, which is what the
3 OAH judge wanted to do, the provisional vesting would
4 still have run out on the date of the zoning, the
5 rezoning effective date on March the 20 -- on May the
6 29th, pardon me. So, it's going back not to the March
7 -- not back to March 12th, my apologies, but back to
8 March 20th because that's the action where at that
9 point DCRA stopped reviewing it.

10 Prior to that was part of the normal review
11 process.

12 CHAIRPERSON HILL: I understand. But that's
13 how you're getting the 70 days, correct?

14 MR. TONDRO: Right. But I'm responding to the
15 issue of these extra eight days. It should be 70
16 days, not the 78 days because again, the OAH order
17 null and voided the March 20th, not the March 8th,
18 because the March 8th was a request for additional
19 information --

20 CHAIRPERSON HILL: Okay. Okay. All right.
21 Okay. All right. Okay.

22 MR. TONDRO: -- for an ongoing review.

23 CHAIRPERSON HILL: Okay.

24 MR. BROWN: Can I respond, Mr. Chairman?

25 CHAIRPERSON HILL: Sure.

1 MR. BROWN: If you go to my page 12 of my
2 PowerPoint presentation, which is an excerpt of the
3 OAH order, and the first paragraph ordered that the
4 March 20th notice of rejection is null and void, but
5 then in the second paragraph it says, order, my
6 client --

7 CHAIRPERSON HILL: Right.

8 MR. BROWN: -- may submit to DCRA, and DCRA
9 must accept for filing, new plans stamped by the
10 professional engineer licensed in D.C., as directed by
11 the D.C. Code Official in his March 12th, 2015 letter.

12 So, the judge is throwing out the March 20th
13 letter and saying, we're going back to March 12th.

14 CHAIRPERSON HILL: Okay. Mr. Tondro.

15 MR. TONDRO: The judge is saying that the
16 March 12th -- the March 20th letter superseded the --
17 is the second letter for the dates. The second letter
18 superseded the first letter. Therefore, by
19 definition, when the second letter was declared null
20 and void, the first letter came back in the force.
21 What that first letter had done was to tell the
22 application that they had to go and correct their
23 plans to get them properly signed and sealed and
24 therefore reviewed by a professional engineer licensed
25 in the District, unlike the one who had had the

1 license revoked.

2 And that had already been alerted -- the
3 applicant had been, or the appellant in this case, had
4 received notice that as of March the 12th, therefore,
5 for those eight days, those eight days had no effect.

6 It's the March 20th when the application was rejected
7 that at that point, then everything stopped.

8 CHAIRPERSON HILL: Okay. Okay.

9 MR. TONDRO: Prior to that --

10 CHAIRPERSON HILL: Okay. Okay.

11 MR. TONDRO: -- therefore should not be
12 included in the --

13 CHAIRPERSON HILL: Okay. Okay. Does the
14 board have any other questions? Okay.

15 Okay. So, we're going to go ahead and start
16 with the intervener. And so, Ms. Ferster, if you want
17 to go ahead and present your case. You know,
18 basically, everything that's been talked about. And
19 if you can help clarify, that's great. If you can
20 speed us up, that would be wonderful. However, I'm
21 going to put 45 minutes on the clock for you, just
22 like everyone else had. And we're going to move
23 forward. Thank you.

24 MS. FERSTER: Thank you. I'm going to start
25 by raising just a procedural issue, and that is that

1 the DCRA, and I believe the applicant as well have
2 noted that many of the filings in this matter have
3 been filed in the earlier appeals. And we would just
4 like -- we were referencing as part of our appeal,
5 most of the filings -- we're referencing as part of
6 this case, most of the filings that we made in appeal,
7 and we would like them to be made part of this record.

8 And we are proceeding under the assumption that the
9 things, the exhibits that we filed in Appeal 19412 are
10 part of the record in this case as well, so that we
11 don't have to refile everything. And we will be
12 making reference to some of those exhibits.

13 So, I would ask that they be incorporated into
14 this record.

15 CHAIRPERSON HILL: Well, I just looked at OAG
16 and OAG just shrugged their shoulders like, yeah. So,
17 I guess, does the Board have any issue with that,
18 and/or does OAG have any issue with that?

19 [No audible response.]

20 CHAIRPERSON HILL: Okay, he's actually looking
21 at regulations. Who knew?

22 MR. HART: We can proceed with understanding
23 that we can --

24 MS. FERSTER: Sure.

25 MR. HART: I mean, I'm assuming that we could.

1 CHAIRPERSON HILL: I don't know. I'm looking
2 at them.

3 MR. COHEN: There shouldn't be an issue with
4 that.

5 CHAIRPERSON HILL: Okay. Then that's fine.
6 So you're going to refer to exhibits in the previous
7 appeal that we can pull up?

8 MS. FERSTER: That's correct.

9 CHAIRPERSON HILL: Okay, great. Thank you.

10 MS. FERSTER: Now, I'm just going to make a
11 very brief statement, opening statement, and only in
12 the respect to which we differ with DCRA somewhat. We
13 don't differ as to the result. We believe the permit
14 should have been revoked, and that it was unlawfully
15 issued per our appeal.

16 But our view is that this case is actually
17 much simpler than the applicant certainly would
18 portray it, and we don't believe that it's complex at
19 all.

20 And the reason we don't believe that it's
21 complex is that the only issue before the BZA is the
22 issue that is subject to your jurisdiction is whether
23 the DCRA's interpretation of the vesting provision is
24 correct. And we believe that that's a simple legal
25 question. It can be resolved based on the plain

1 language of the zoning regulations. You don't even
2 need to look to the regulatory history of the zoning
3 regulations, because I believe the language of the
4 zoning regulation is plain. But in fact, the
5 regulatory history, as well as the plain language of
6 the zoning regulation, completely confirms that even
7 if a permit application is filed before a set down,
8 rezoning is set down, if the permit is issued after
9 the zoning becomes effective, it is governed by the
10 zoning that is in place at the time of permit
11 issuance.

12 In this case, we think it's pretty simple.
13 The permit was issued on September 7th, 2016, and the
14 zoning became effective on May 29th, 2015, therefore
15 the permit is governed, the permit application is
16 governed by the zoning in effect at the time.

17 And as far as we can tell, all the issue
18 involving allegations of slow-walking of the building
19 permit application and you know, counting of, you
20 know, what days count and what days didn't count in
21 terms of the 70-day provisional vesting, these are OAH
22 issues. If in fact the applicant -- or to a court,
23 really. You know, there are due process claims that
24 have been brought in courts, you know, on many
25 occasions, claiming that DCRA, you know, unduly

1 delayed in permit applications, et cetera. But the
2 zoning -- BZA had limited jurisdiction. Your
3 jurisdiction is simply the interpretation of the
4 zoning regulations. The owner, if they feel that
5 there's some extraordinary, unusual hardship in
6 applying the plain language of the zoning regulation
7 to their case, they can file an application for a
8 variance to this BZA, explaining why the plain
9 language of the zoning regulations should be varied in
10 order to take into account, their unique situation in
11 this particular case.

12 But in the context of this appeal, the only
13 issue is whether the vesting provision is correct, and
14 whether or not Mr. LeGrant's interpretation of the
15 vesting rule is correct, or whether Mr. Bello's
16 interpretation that in fact there is no such thing as
17 provisional vesting, that permanent -- that he was
18 permanently vested on, you know, the day he submitted
19 his application in 2013 under the former zone, and it
20 doesn't matter what the zoning is that is in effect at
21 the time the permit is issued.

22 So, with that in mind, you know, we will be
23 presenting Mr. Alcorn's testimony. And will you be
24 briefly testifying as well? No. Okay. Mr. Alcorn
25 will be representing both himself and the ANC in the

1 testimony presented, and he's going to provide a
2 little more context for the permitting process. But
3 again, I believe that it is a legal irrelevancy
4 because there's no question about the fact that when
5 the permit was issued, the zoning that was in effect
6 at the time the permit was issued, was the R-4 zoning
7 and not the C-2-A zoning.

8 MR. ALCORN: Thank you. So I, like others who
9 have gone before me, will attempt to be brief. And
10 I'll really try, but I'll be reading my statement for
11 the most part.

12 I am Brian Alcorn of 31 15th Street, across
13 the street from the historic Capitol Hill Car Barn. I
14 am here on behalf of myself as intervener, as well as
15 one of the appointed representatives of ANC 6A in this
16 matter. I am not an ANC commissioner. I am directly
17 and personally affected property owner. My family and
18 I own and live in a rowhouse built in 1889, less than
19 200, some say 75 feet, from 1511 A Street Northeast on
20 the same square.

21 MS. FERSTER: Let me interrupt you just to the
22 extent that you said that already. You can skip to,
23 you know --

24 MR. ALCORN: Okay. This may be a little
25 repetitive too, so I apologize.

1 My and ANC 6A's reason for participating in
2 this case before you arises from DCRA's issuance of
3 the building permit, Permit 1307755, dated September
4 7th, 2016, with a one-year validity.

5 On its face, it allowed C-2-A Zoned
6 development of 1511 A Street Northeast, even though
7 the property zoning has changed to the R-4 Zone in May
8 2015, long before the permit was issued.

9 Indeed, on the date of the permit's issuance
10 by DCRA, R-4 zoning had been applicable to 1511 A
11 Street Northeast for over one year and a half, since
12 late May 2015. No known variance had been sought or
13 received by the property's owner to explain the
14 situation and therefore lend me to conclude the
15 issuance of a C-2-A building permit by DCRA was
16 clearly in error.

17 As a result of the error ANC 6A and 6C and I
18 initiated timely appeals of the zoning
19 misinterpretation and the mistaken permit via BZA
20 cases 19410 and 19412, which may be addressed later
21 today, or maybe incorporated.

22 I applaud DCRA's recognize that it's September
23 2016 issuance of the C-2-A permit was an improper
24 action. The agency's revocation letter should be
25 recognized as valid, and the improperly zoned permit

1 revoked.

2 I would like to clearly express my interest in
3 this case. As a D.C. homeowner and long-time Capitol
4 Hill resident, I enjoy the historic nature and
5 residential nature of Capitol Hill. I also appreciate
6 the consistent scale, height, and density prevalent
7 around the neighborhood, maintained in part by the
8 near universal R-4 Zoning, now known as RF-1 under the
9 2016 zoning regulations.

10 I will note that the adjacent car barn is a
11 step protected historic complex to the west on Square
12 1057, and while this split between RA-2 and MU-4
13 Zoning, with a corresponding historic overlay, it
14 unobtrusively fits into the neighborhood streetscape
15 with no structure over three and a half stories in my
16 estimation.

17 As I've touched upon a little bit, the
18 building as proposed at 1511 A Street Northeast -- I'm
19 sorry, 1511 A Street Northeast will remove all
20 semblance of height and building bulk conformity to
21 property surrounding it, forever spoiling the
22 continuity and neighborhood character I and my
23 neighbors enjoy.

24 You can see the current state and proposed
25 renderings of this building as Exhibit 24B of this

1 case, 19505.

2 CHAIRPERSON HILL: If I could just interrupt
3 you just for one second?

4 Ms. Ferster, if you could -- anything that you
5 guys do refer to as an exhibit from the appeals, if
6 you would do me a favor and just put them into the
7 current case afterwards as well?

8 MS. FERSTER: Sure.

9 CHAIRPERSON HILL: Okay. Thank you.

10 MR. ALCORN: And I've also articulated
11 concerns about the excessive construction, heavy
12 excavation, and other related things that would be
13 involved with constructing and building of this size
14 in a residential area. Primarily residential area.

15 My neighbors and I became interested in this
16 case because they and I did not want to become another
17 cautionary tale of inconsistent, unwanted development,
18 born from lack of oversight or loopholes that diverged
19 from law or regulation. Instead, we wanted to uphold
20 the priorities of owners and residents who chose to
21 live in the community co-existing with the city zoning
22 guidelines.

23 Some neighbors were surprisingly diligent on
24 these points, having found details of 1231 Morse
25 Street Northeast, a property constructed and believed

1 to be associated with the owner at 1511 A Street
2 Northeast, and Mr. Toye Bello.

3 This property was the subject of a complicated
4 BZA case No. 17657 --

5 MR. BROWN: Mr. Chairman, I object. I'm
6 willing to give Mr. Alcorn some latitude, but he's
7 talking about a wholly separate property in a wholly
8 separate case that's long past. I don't think it's
9 relevant to our consideration here.

10 CHAIRPERSON HILL: Okay. I appreciate your
11 comment. You brought up some cases that didn't have
12 anything to do with what we were talking about
13 earlier, so -- or at least, I shouldn't say it like
14 that way. You mentioned a bunch of cases, and I'm
15 going to let him go ahead, unless the Board has any
16 objection. You can go ahead and let him give his
17 presentation and mention the BZA cases that he's
18 mentioning. We are listening to what he's saying, but
19 I do appreciate and understand your objection. Thank
20 you.

21 MR. ALCORN: Anyway. Neighbors Red Hell
22 (phonetic) a building on that site, was demolished
23 contrary to a stop-work order, and Howley (phonetic)
24 foundation collapsed, impacting a neighborhood
25 property. Many were asking themselves, would you want

1 to be part of a project like that? And the answer
2 would appear to be no.

3 Keeping up with developments associated in our
4 neighborhood and neighbor priorities, including 1511 -
5 - monitoring 1511 A Street Northeast, has come at a
6 personal cost to me and others. But it has also come
7 with a silver lining. It has helped our community
8 build productive relationships with officials at DCRA,
9 at the Office of Zoning, and the City Council, who can
10 identify and help solve other problems.

11 It has also demonstrated to me that city
12 agencies really do want to follow all laws and
13 regulations, but sometimes they need a little help
14 from concerned citizens.

15 With that, and my remarks, I will do the
16 following with hopefully what is a short bit of
17 remaining time. One, I will provide a little history
18 of how we ended up before you today. This is
19 important that the Board understand the motivations
20 and history behind the case.

21 Two, I will very briefly explain the legal
22 basis of why the zoning regulations required
23 revocation of B-1307755, although those run akin to
24 what my counsel had explained at the opening
25 introduction. This is, in my opinion, a plain and

1 submitted, neighbors discovered for the first time
2 that the Northwest quadrant of Square 1070 was zoned
3 as C-2-A rather than R-4. Given the predominantly
4 residential nature of the square and the surrounding
5 squares on Capitol Hill and Hill East, this was quite
6 a surprise to neighbors and we acted quickly.

7 In October 2014, ANC 6A filed a map amendment
8 to petition to rezone the property at issue here, as
9 well as 13 others from C-2-A to R-4, which petition
10 was set down by the Zoning Commission for a hearing on
11 December 8th, 2014.

12 It is important to note that neighbors quickly
13 rallied beyond the zoning change to correct what we
14 perceived as a zoning map quirk, not to target or
15 penalize the owner of 1511 A Street, but rather to
16 protect the long-standing use of our properties and
17 maintain the residential character and current height
18 and density of the neighborhood we live in.

19 As was said in the Zoning Commission case, the
20 community's actions were supported by the 2006 D.C.
21 Comprehensive Plan, which called for the rezoning of
22 the so-called Legacy 15th Street Commercial Zone for
23 residential uses.

24 Square 1070 had a very minor piece of this
25 corridor, which is much more concentrated south of

1 East Capitol Street and ANC 6B. And following its
2 normal course, the Zoning Commission approved ANC 6A's
3 map amendment petition with a vote of 500 in March
4 2015. The rezoning of 1511 A Street Northeast, and 13
5 other properties to the R-4 Zone district, became file
6 upon the publication of the order in the D.C. Register
7 on May 29th, 2015.

8 No permit had been issued for 1511 A Street
9 Northeast at the time of the Zoning Commission's March
10 2015 hearing, and its May 2015 vote to approve the
11 zoning, or at any time the map -- or at any time prior
12 to the map amendment went into effect on May 29th,
13 2015.

14 DCRA granted a building permit under a C-2-A
15 Zone classification for the property on September 7th,
16 2016. This was clearly wrong, given the zoning had
17 changed to R-4 a year and a half earlier.

18 As for the law, I believe that Ms. Ferster has
19 laid out that argument very well. I, ANC 6A, and
20 neighbors do concur with DCRA's interpretation that
21 the regulations at Section 3202.4 and 3202.5 have some
22 authority on this, but Section 3202.4 would control in
23 this particular situation.

24 This legal point was explicitly recognized by
25 the Office of Planning in its report, supporting the

1 unfair now to change the vesting rules in a way that
2 injures the community just because DCRA made a mistake
3 in issuing the permit. As previously mentioned, OP
4 had put the property's owner and community on notice
5 to the impact of the proposed zoning map amendment.

6 I also wanted to talk a little bit about
7 community relations. When the community was briefly
8 engaged with Toye Bello in 2014, he suggested in
9 writing that he and the owner of 1511 A Street, felt
10 victimized by the city's building permit review
11 process and the neighbor's curiosity in that
12 property's development. It seemed an unusual
13 sentiment to express on behalf of a sizable developer
14 with over 12 years of experience, with the wealth, the
15 resources, financial and legal.

16 I can enter Mr. Bello's e-mailed statements
17 into the record if the Commission would find that
18 helpful.

19 I am also hopeful that the property's owner
20 and Mr. Bello appreciate the roles and concerns of his
21 neighbors near his properties and their advocacy.
22 These neighbors take great pride in their community
23 and support one another and want to ensure that law
24 and regulation is followed. That is why we initiated
25 appeals and have carried through as interveners.

1 matters as remediating them can only benefit all
2 involved. But we have been alarmed that there -- but
3 we are alarmed that had these issues not been
4 discovered, there may have been an impact to public
5 safety.

6 For example, as discussed, the structural
7 engineer, Borash Borall, selected to certify the
8 construction plans, had his D.C. license revoked
9 during the course of the permit review due to prior
10 professional malfeasance. A structural engineer's
11 attend of oversight, proper handling and certification
12 of plans, is a key and one of the few safeguards
13 within the D.C. Building Code, meant to reassure those
14 who may depend on a building's stability and safety,
15 and proper design in the future among some neighbors,
16 building residents, and first responders.

17 We also understand, as Ms. Ferster had
18 mentioned, that an architectural designer allegedly
19 involved with the plans, received a DCRA monetary
20 infraction for practicing as an architect without a
21 license.

22 We hope these instances were just unfortunate
23 instances of adverse selection befalling Mr. Dumarin
24 and Mr. Bello within the many details of an admittedly
25 sizable project that may have caught the unprepared.

1 We encourage DCRA's ongoing due diligence on
2 all these issues in ways that support the public good.

3 Thanks for the opportunity to present, and in
4 summary, the only proper zoning on the 1958 zoning
5 regulations for 1511 A Street Northeast is R-4 Zoning
6 consistent with the Zoning Commission's final order in
7 May, 2015. Thank you.

8 MS. FERSTER: And I would simply ask, in
9 addition to the exhibits that Mr. Alcorn mentioned at
10 Exhibit 2A in Case No. 19412, that we will include
11 that in the record. That's the ANC's letter to the
12 BZA, articulating the ANC's position, and we believe
13 that the ANC's letters, and of course its testimony
14 today, should be given great weight.

15 CHAIRPERSON HILL: Okay. Ms. Ferster is that
16 -- are you guys done?

17 MS. FERSTER: Yes, we're done.

18 CHAIRPERSON HILL: Okay, great. You have 23
19 minutes left, you know.

20 MR. ALCORN: We'll reserve the time, as they
21 say.

22 CHAIRPERSON HILL: Yeah, I know. I was going
23 to say. Okay. So, we're going to have cross again.
24 As I was just sitting here, I just wanted to mention
25 again that we've been all here a very long time and

1 it's taken a lot of our time to be here, meaning you
2 guys, and we've listened to a lot of testimony. And
3 so, you know, I guess I'm just stating that, that it's
4 an obvious thing. We've been here a long time. Let's
5 try to continue to work through this as best we can.
6 We're coming near the homestretch here in terms of the
7 case. And so with that, I'm going to turn to you, Mr.
8 Brown, again, to provide some cross-questions,
9 specific to the testimony provided by the intervener.

10 MR. BROWN: No cross from me.

11 CHAIRPERSON HILL: Mr. Tondro.

12 MR. TONDRO: No cross from me. Thank you.

13 CHAIRPERSON HILL: Okay, wow. Everybody is
14 invited back. Okay.

15 All right. So, do we as a board, have any
16 further questions for the intervener?

17 Sure, please. Go ahead, Commissioner Miller.

18 MR. MILLER: So I said I was going to ask a
19 question of each of the parties and that would be, I
20 guess I'll start with DCRA.

21 I'm mean, I should preface it by saying one of
22 the threshold issues is that December 8th, 2014 set
23 down of the rezoning case. Do you, Mr. LeGrant or Mr.
24 Tondro, think that a subsequently complete application
25 had been submitted prior to December 8th, 2014, when

1 the rezoning case was set down? There seemed to be a
2 lot of reviews that were ongoing, and I know this
3 isn't something that necessarily you all testified to,
4 but just something in my mind as to how I'm -- one
5 approach that I'm looking at, at this case, in
6 addition to the different approaches that you all have
7 offered. Do you think that there was a substantially
8 complete building application submitted prior to the
9 set down of the rezoning case on December 8, 2014?

10 MR. TONDRO: I guess I'll take a first crack.

11 I believe that there was -- the application, DCRA
12 accepted the application as complete way back, over a
13 year earlier, almost two years earlier, or a year and
14 a half before then, June of 2013. That, however, just
15 simply means that all the forms were checked, the
16 appropriate size plans were filed and so forth.

17 I think from our understanding there were
18 still ongoing -- there were ongoing issues in the
19 application that needed to be resolved as of the time
20 of set down. And it was up to the process, I mean, I
21 think that was, as I understand, that's sort of the
22 purpose of the provisional vesting is. If you are
23 sufficiently along on your path before set down, then
24 you should be able to get it complete by the time it
25 actually takes effect.

1 In this particular case, we're dealing with
2 almost six months between set down and the effective
3 date of the Zoning Commission -- the rezoning. And
4 that period of time, had there been, you know I think,
5 not been various different comments and so forth, and
6 obviously had DCRA not taken the step of canceling the
7 application, which is why we're here now, that would
8 have been that time for an application to be vested --
9 to be issued, and therefore vested under the rules.

10 I guess the hesitation I have in responding
11 is, that an application, until it -- and I believe
12 this may be one of the reasons why the permit vesting
13 was changed from application to the issuance of the
14 permit, is because an application by definition is
15 still iterative. It still can change and be heard
16 that there were discussions about the possibility of
17 increasing the size of the number of units and the
18 number of parking spaces. Even after the permit was
19 revived by OAH. And that's really in the hands of the
20 application who has the right to be able to make those
21 changes.

22 And I believe, and so, you know, as of that
23 time of set down, there was an application that was
24 being considered, that was being considered by DCRA.
25 Arguably, if the applicant had responded to all of the

1 hold for comments that were outstanding, they should
2 have gotten that permit issued well before May 29th.

3 CHAIRPERSON HILL: The Zoning Administrator
4 may have something else to add.

5 CHAIRPERSON HILL: Just, we'll go down the row
6 here.

7 MR. MILLER: So, the way I was using the word
8 complete was the way it's being used in the vesting
9 provision itself. Sufficiently complete, processing
10 without substantial change or deviation. It seems
11 like you requested a lot of stuff between December
12 8th, 2014, and it seems that you didn't have all the
13 information you need to complete the permit
14 processing. And you had that zoning review reopened
15 because the building height measurement issue, that's
16 kind of a major issue. You need more information on
17 that.

18 So, that's the way I was using it, but I
19 understand the point you're making that all the checks
20 had -- the checkpoints had been submitted as part of
21 the application, but it didn't seem to me that based
22 on the testimony we received, and even now the
23 appellant's own timeline of the review, that you were
24 ready to -- and by what happened in the case. It just
25 didn't get issued. I mean, there was all this

1 information that was -- and reviews that were ongoing.

2 MR. TONDRO: Yes, so just to clarify, yeah.
3 Most definitely it was not ready to be issued at the
4 time of set down. There were comments that were still
5 outstanding, and so the question was whether the
6 application would, could and would provide those, make
7 the necessary changes to respond to those in time.
8 And so, in that sense, I'm not sure -- DCRA certainly
9 felt that in other words, if the question you're
10 asking is, as of the date of set down in December of
11 2014, what was DCRA's position on the permit
12 application? Was it ready for issuance? No, there
13 were still problems and it was not ready to be issued
14 at that time.

15 MR. MILLER: Okay. Thank you. I guess I'll
16 give the appellant an opportunity to --

17 MR. BROWN: Yeah, and I'm going to let Mr.
18 Bello chime on the complete issue. But I think it's a
19 distinction, and you're raising an important issue.
20 But the complete shouldn't be equated with the
21 permit's ready to be issued, the plans have been
22 approved, the plans are not without comments. It's
23 just that you've submitted a complete application that
24 provides all the information needed for review.

25 The risk, and one of the things they were

1 trying to cover in the zoning regulations in adding
2 that provision was, people putting in skeletal permit
3 applications to basically take advantage of the
4 vesting rule with little or no documentation.

5 In this case, you had a fully documented
6 permit that was submitted in June of 2013. You've
7 heard testimony that the changes that were made were
8 routine in the give and take of permit review and
9 processing. But the plans did not change
10 substantially between the day they were filed in June
11 of 2013 and when the permit was issued in September of
12 2016. So, the application for what it was intended
13 for, was complete on June 14th, 2013. But certainly
14 at the time of set down.

15 But Mr. Bello, I think wants to --

16 MR. BELLO: Okay.

17 MR. MILLER: And then I'll give the intervener
18 an opportunity to respond if they have a comment after
19 your brief comment.

20 MR. BELLO: Okay. Thank you. Commissioner
21 Miller, I think Zoning Commission Order No. 562
22 actually addressed the specific question that you're
23 talking about, because prior to that order one could
24 vest their zoning rights by submitting skeletal plans
25 just to vest the rights.

1 So, that order specifically dealt with this
2 matter in making more robust, if you will, the
3 submission standards of DCRA.

4 So, for purposes of the zoning regulations and
5 the hearing here, I don't think we need to go through
6 to the iterations, the normal iterations, or the
7 discipline reviews could cough up. And quite frankly,
8 in all my years of working in this industry, I know of
9 no single plan that's ever gone through DCRA without
10 some review comments.

11 But there is no deviation whatsoever from
12 these plans, same number of units remained, same
13 parking, nothing changed. Same footprint, same
14 height. Nothing changed.

15 MR. MILLER: Thank you. And the intervener.

16 MR. ALCORN: Thank you. I have a difference
17 of opinion. And with all due respect to your
18 question, what was the status of the application on
19 the set down on December 8th 2014?

20 Well, we know that we had a building that was
21 of dubious and unknown design origin. We know that an
22 engineer that had certified the plans had been
23 dismissed in Virginia and was soon to be dismissed in
24 D.C., and we know that the Zoning Administrator had to
25 make an adjustment to the plans, we're requiring

1 adjustment to the plans to make sure that building was
2 zoning compliant for C-2-A at the time by definition,
3 lowering the slab by three and some number of feet,
4 which presumably would require excavation in the
5 historic Capitol Hill Neighborhood with homes that are
6 old, and party walls.

7 I would not consider an application and plans
8 bearing those hallmarks, a complete application in my
9 personal opinion.

10 MR. BROWN: Can Mr. Bello respond?

11 CHAIRPERSON HILL: What? No. I'm sorry. Mr.
12 Miller was just asking a question. And so, Mr.
13 Miller, did you get your answer?

14 MR. MILLER: I got my answer. I didn't know
15 if -- was the intervener's response complete? Were
16 you finished with your --

17 MR. ALBERTI: I just want to emphasize that
18 from the ANC's point of view, the fact that we -- the
19 plans, intentional or not, the plans that accompany
20 this application at the time of the set down, and were
21 not stamped, were not valid because they were not
22 certified by an engineer in good standing. It's as if
23 I had drawn up my own plans and submitted it to DCRA
24 with all the other information, and so now you have a
25 complete application. Well, it wasn't complete simply

1 because they did not have valid plans at the time of
2 the set down.

3 CHAIRPERSON HILL: Okay. I'm just going to --

4 MR. ALBERTI: That's the point we're making.

5 CHAIRPERSON HILL: Just one second. Just one
6 second. Just one second.

7 Mr. Miller did ask some questions. It's
8 opened up a lot more discussion. I'm going to let
9 everybody have a chance to talk through this, but
10 again, we're not rehearing the case as such.
11 Commissioner Miller asked a question. I think he's
12 getting his question answered.

13 However, Mr. Bello, in the interest of --
14 we'll see how long this goes on, but I don't want it
15 to go on very long. Mr. Bello, you had a comment, is
16 that correct?

17 MS. FERSTER: You know, before we complete
18 with our comments, I just had one brief --

19 CHAIRPERSON HILL: Oh, sure. I thought you
20 guys were done. Sorry.

21 MS. FERSTER: -- comment to add. And then --

22 CHAIRPERSON HILL: Mr. Miller, are you sure
23 you don't have any more questions? You know.

24 MR. MILLER: I have no more questions.

25 CHAIRPERSON HILL: All right, because we can

1 go around and around again. So, please, Ms. Ferster.

2 MS. FERSTER: In addition to the points that
3 were made by the ANC representatives, I would just
4 refer you to our Exhibit 23. 23D. And I've just
5 noted that there were several reviewers noted within
6 that exhibit that show a date after December 8th,
7 2015, with the HFC, hold for comment notation on it,
8 which indicates that there was still work that was
9 being done.

10 CHAIRPERSON HILL: Okay. Hey, Mr. Miller,
11 DCRA doesn't think they were complete, the intervener
12 doesn't think they were complete, and the applicant
13 thinks they were complete.

14 So, Mr. Bello.

15 MR. TONDRO: Commissioner Hill, just, I'm
16 sorry. Just, I believe just for the record that the
17 intervener cited to Exhibit 23D, and that was as filed
18 in appeal 19412. Is that correct? Sorry, just for
19 the record. Thank you.

20 MS. FERSTER: And we will put it in this --

21 CHAIRPERSON HILL: Thank you.

22 MS. FERSTER: In the record of this
23 proceeding.

24 CHAIRPERSON HILL: Thank you. And I'm sorry,
25 I haven't had anything to eat in a while so I'm just

1 kind of -- I'm running low on fumes. But, Mr. Miller,
2 I didn't mean to -- whether you had gotten your
3 question answered or not. However, Mr. Bello did have
4 something you wanted to add, Mr. Bello?

5 MR. BELLO: I'll let Carlos deal with the
6 timeline issue. Just --

7 CHAIRPERSON HILL: Okay. We're not rehearing
8 the case again. I'm just saying that you -- the
9 question was, did you think that your application was
10 complete on December 8th. I'm going to guess your
11 answer is yes.

12 MR. BELLO: The answer is yes, and that's also
13 underscored by the fact that both the zoning and
14 structural had approved before that date.

15 CHAIRPERSON HILL: Okay. Okay. All right.
16 So, Mr. Brown, you're going to have a chance for
17 rebuttal here, and again, we've had a tremendous
18 amount of testimony, a tremendous amount of
19 information. I don't know how much more you're going
20 to be able to add, as everyone is going to get a
21 chance for rebuttal.

22 I'm going to go ahead and just put up three
23 minutes for rebuttal and just see where you go, or do
24 you need more time than that? You're looking at me as
25 though you need more time than three minutes.

1 MR. BROWN: Well, I had six minutes --

2 CHAIRPERSON HILL: Oh, the six minutes. That
3 went way long ago. That was like, that was hours and
4 hours and hours ago.

5 MR. BROWN: I reserved that. I put that in my
6 pocket.

7 CHAIRPERSON HILL: Right. Right. I know you
8 put it in your pocket. I mean, again, and I'm going
9 to go back and read the regulations on how this works
10 because -- but in any case, in any case, I'll go ahead
11 and -- I want you to be heard. We'll give you five
12 minutes. Okay? All right? And you had six, we'll
13 give you five. Everybody is going to get five. Okay?

14 And please, and again, I'm offering all this
15 up because the Board at any time has had an
16 opportunity to ask questions, and they still do have
17 an opportunity to ask questions, and we've heard a lot
18 of testimony. So, that's why I'm just kind of
19 mentioning in terms of rebuttal, that time limit.
20 However, please go ahead.

21 MR. BROWN: Okay. If we could, and either Mr.
22 Bello or Mr. Iglesias, there's been a lot of concern
23 raised about the August 4th, 2016 structural review
24 comments as being somehow substantial or indicating
25 that the permit was deficient.

1 Those comments were not substantive and were
2 matters that were covered previously in the review
3 process, prior to the permit being derailed by OAH
4 matters.

5 MR. IGLESIAS: Correct. I would like to add
6 that the -- I'm not sure what the number of this
7 exhibit is that you were referring to.

8 MR. BELLO: That would be 23D, from 19412.

9 CHAIRPERSON HILL: Thank you.

10 MR. IGLESIAS: In December of -- sorry. Of
11 May of 2014, structural had issued comments, and
12 that's on page 5 of your exhibit. But if I flip the
13 page, and maybe this is inaccurate based on what
14 you've given me here, there is a missing page 6 of 8.
15 It jumps from five to seven. So, I don't -- it
16 doesn't continue on with the structural comments. But
17 if we go to page 7, it's asking here on January 14th
18 of 2015 for geotechnical reports. And which this
19 comment is also brought up on August 14th of 2016.

20 The geotechnical report was part of the
21 original comments that were issued on the project, on
22 September 23rd, 2013. And that geotechnical report
23 was provided. That -- I say that to make a point that
24 comments often become repetitive with DCRA and we've
25 provided those. And evidence is such that on

1 September 23rd, that comment was posted. Part of the
2 comments was, provide geotechnical report.

3 The project was approved by structural on
4 December of 2013, so essentially, that comment was
5 satisfied. But here it is coming up again on August
6 4th of 2016. So, again, to say that the comments
7 often times become repetitive, and as I said in my
8 earlier testimony, when it was a paper project job,
9 when that's the only way you could submit it, often
10 times because other people are looking through the
11 files, they forget to put certain forms back in.

12 So, that inefficiency adds to the extent of
13 how long a permit takes. You don't really have that
14 now because you have project docs and you submit
15 everything electronically, and it's just there.
16 Things don't get lost. But I did want to add to that,
17 that one, we're missing a page out of this document,
18 so I don't know how accurate we can rely on that,
19 because we need to be able to see the full record of
20 what the comments were. But some of these comments
21 that I see from August 4th are repetitive and had
22 already been answered in the previous submissions.

23 I would like to add by the set down date, that
24 was brought up, the only outstanding reviews that were
25 pending by DCRA agency specifically, were zoning and

1 structural, which had already, actually, received
2 approval. But as Mr. LeGrant testified, had been
3 reopened because of some concerns. Those concerns
4 were put to rest once further information was
5 provided. But as Mr. Bello testified, the plans did
6 not change significantly. It still remained the same
7 footprint, the same amount of units, the same amount
8 of parking spaces, the same height, nothing changed
9 significantly on the drawings. Just further
10 information for clarity was provided.

11 MR. BROWN: Quickly, Mr. Bello, you had your
12 own assessment of the processing of this permit and
13 whether it was abnormal or normal in the period after
14 December of 2013.

15 MR. BELLO: Well, by September of 2013, we had
16 structural approval. Much like it happened in the
17 zoning review, structural rescinded that approval and
18 regenerated almost 20 comments that we had to address.
19 Some of them, again, repetitive.

20 And we did address all of them, all over
21 again, severally. And there were lots of incidences
22 of e-mails, checking on the status that went
23 unanswered until we got that letter.

24 And the delay in the zoning between when it
25 was approved originally and revoked that approval,

1 which is September of 2014, and when it was finally
2 reapproved and backdated to that earlier date in March
3 of 2015. Given the substance of the questions raised,
4 was that an excessive delay in resolving the issues
5 that were raised?

6 MR. BELLO: Well, it wasn't substantive. The
7 ANC wrote a letter to the zoning administrator,
8 expressing a concern that the topography of the site
9 was being changed for advantage. In other words, they
10 were attempting to build a building that will exceed
11 the height limit for the underlying C-2-A Zone. So,
12 all we did was provide clarification, additional
13 clarification to the Zoning Administrator that in fact
14 the site topography was not changing whatsoever.

15 MR. BROWN: Okay.

16 MR. BELLO: And that was the only outstanding
17 zoning matter.

18 MR. BROWN: And then, Mr. Bello, focusing in
19 on the vesting, set down vesting rule, I wanted you to
20 clarify one, the nature of the set down vesting rule
21 and its relationship to 3205.4, or 3202.4.

22 MR. BELLO: Okay. So, the only thing that I'm
23 in agreement with Mr. Tondro on, respectfully, is that
24 he quotes very liberally from the petition that ANC 3F
25 sent the Zoning Commission on March 26th, 2003. This

1 is very extensive work, and has very extensive
2 information about the convoluted history of the
3 amendments to the vesting rules and the set down
4 rules. So, I urge the Board to incorporate this
5 document as part of this hearing, because without a
6 proper understanding of that history, we will not be
7 able to put this issue in context.

8 But just to paraphrase some sections from that
9 document, in Zoning Commission Order No. 588, which
10 was September 15 of 1988, and I quote, the Zoning
11 Commission decided in September of 1988, not to repeal
12 the set down rule because the proposed repeal of 11-
13 DCMR 3202.6, which was the set down rule at that time,
14 would be beyond the scope of either the notice of
15 public of the -- either notice of public hearing,
16 right? So, the Zoning Commission specifically decided
17 not to repeal the vesting rule.

18 CHAIRPERSON HILL: Okay.

19 MR. BELLO: And then if you look at the Zoning
20 Commission correction order associated with that
21 petition, which is Zoning Commission Order No. 03-14,
22 this was July 31, 2003, on, this would be on --

23 CHAIRPERSON HILL: Mr. Bello, I'm not going to
24 -- I'm just trying to get you to wrap up a little bit
25 in terms of --

1 MR. BELLO: And that's, I'm trying to wrap up
2 the last statement.

3 Okay. This is on page 6. So, page 6, there
4 were errors in the 1991, 1994, and 1995 additions of
5 Title 11.

6 MR. HART: Where are you pulling this from?

7 CHAIRPERSON HILL: Yeah, where are you pulling
8 this from?

9 MR. HART: Which exhibit?

10 MR. BELLO: It's not an exhibit because in
11 this case we're referencing the Zoning Commission
12 order. These are the public documents which --

13 MR. HART: No, I'm just asking, what -- okay,
14 so which case are you actually talking about?

15 MR. BELLO: Zoning Commission Case No. 03-14,
16 July 31, 2003.

17 CHAIRPERSON HILL: Okay. So, we don't have
18 that in front of us. Is that what you're saying?

19 MR. HART: Yeah.

20 MR. BELLO: You don't have it in front of you,
21 but Mr. Tondro has accepted certain arguments from
22 these two documents.

23 MR. TONDRO: Objection.

24 CHAIRPERSON HILL: Hold on.

25 MR. TONDRO: I categorically deny that. The

1 citations that I provide are directly from the public
2 documents themselves, not directly from this year,
3 unless otherwise indicated.

4 CHAIRPERSON HILL: Okay. So --

5 MR. TONDRO: (Simultaneous speech.)

6 MR. BELLO: Well, the Zoning Commission order
7 is a public document.

8 CHAIRPERSON HILL: That's fine. We're just
9 trying to following along. And again, this was
10 rebuttal and I wasn't trying to have new testimony
11 that we're trying to figure out. So, right, you're
12 providing rebuttal to Mr. Tondro, and I understand.
13 And so I'm just trying to -- I don't know what you're
14 talking about. I don't have it in front of me so,
15 you're just citing things that --

16 MR. BROWN: Perhaps the specifics would be
17 better left to a post-hearing submission. We can
18 provide the entire document.

19 CHAIRPERSON HILL: Okay. All right.

20 MR. BROWN: But, Mr. Bello, one last point.
21 Again, state the accepted set down vesting rule as its
22 been applied previously.

23 MR. BELLO: It's been applied in my
24 experience, a project vests, either filing a building
25 permit on or before the Zoning Commission sets down to

1 amend the zoning district classification of a
2 property.

3 The vesting rules of 3202.4 actually has more
4 to do with a permit that has been issued. And
5 subsection 3202.5A actually underscores the point.

6 CHAIRPERSON HILL: Okay. That's okay. That's
7 okay. So, we're going to go back to your other
8 suggestion, because our -- do you have anything else
9 to add?

10 MR. BROWN: I don't believe --

11 MR. BELLO: That's it.

12 CHAIRPERSON HILL: Okay. All right. So, Mr.
13 Tondro, do you have rebuttal for me? And then, the
14 way this is going to work again is that everyone will
15 get conclusions, concluding, what have you, you know,
16 you keep pointing at -- I thought it was you for sure
17 next.

18 MR. TONDRO: No, I'm sorry. You're right. I
19 just wanted to point out, I think the intervener has
20 the right to rebut as well.

21 CHAIRPERSON HILL: Yeah, that -- I got --

22 MR. TONDRO: I apologize.

23 CHAIRPERSON HILL: No, thanks. That's okay.
24 I appreciate all the help I can get. So, you're next,
25 and then the intervener will get also five minutes.

1 And then there will be a conclusion by the appellant,
2 DCRA, and the intervener in the same order. That's
3 apparently in the regulations. So, go ahead.

4 MR. TONDRO: Yes. Thank you, Chairman Hill.
5 Just briefly on that prior issue that was brought up,
6 there is ANC 3F did make a filing. They were the ones
7 who called attention to the Zoning Commission of the
8 error that had been made by the Office of Documented
9 Administrative Issuances, back starting as I said,
10 back in 1991. It is a very -- not a concise, it's a
11 very thick filing.

12 I did refer to it. I just want to clarify
13 what I said. I referred to it briefly, but not solely
14 in -- I referred to it briefly in footnote five of my
15 prehearing statement, but I did not rely only upon
16 that and that was just a slight point to it. So, I
17 just want to correct the record to make it very clear
18 that the citations that I use are from the actual
19 public documents. I did not rely on ANC 3F's filing,
20 so I don't think it's really a posit, necessarily, in
21 this particular case. Nor is it, do I believe, that
22 there is needed to have post filings in this case
23 here.

24 Second of all, in terms of the issue of the
25 building code review and the status of the review at

1 the time of set down, again, I just want to call
2 attention to, I think it's Exhibit 29, the PowerPoint
3 presentation by the appellant, page 8, and I think if
4 you start from the bottom and go up, you can see that
5 there are multiple structural reviews that were
6 pending.

7 Now, I've just, I've been -- I haven't
8 objected to the discussion about what goes on in the
9 review too much, but I do want -- up until now. But I
10 do want to point out that this is not -- what happens
11 in terms of permit processing by disciplines other
12 than zoning, is not under the purview of the Board.

13 That's something that really should be decided by OAH.

14 There is an appeal that appellant has chosen to file
15 there, at which point I believe these kinds of issues
16 are properly raised.

17 There's been all sorts of assertions made by
18 Mr. Iglesias and Mr. Bello, as to what the reasons
19 were. I can understand that they were made in good
20 faith on their understanding, but they have a
21 different role in the process than DCRA does. And so,
22 they may very -- I'm sure there are reasons as to why
23 it was that our particular reviewers held them. This
24 idea that we just adinfinitum repeat a comment, I
25 don't think that's relevant here before the Board. If

1 we need to go with it to consider that, that issue
2 should be addressed by the Office of Administrative
3 Hearings, at which point we can call the relevant
4 reviewers. I didn't not bring them here today because
5 I did not think that that was an issue that was before
6 the Board on that issue.

7 Turning then, to what the intervener said. I
8 did want to just briefly address that I agree with --
9 that DCRA agrees with the intervener in terms of an
10 understanding of what the provision, the provisional
11 vesting in 3202.5 and 3202.4, and it is an absolute in
12 this particular circumstance, and that was what they
13 raised in their appeal that had caused us to go back
14 and look at it.

15 In this particular case, DCRA made the
16 decision, it was an unusual case that we felt that
17 equity sort of required us to try to recreate that 70
18 days that would have been allowed had they -- had we
19 not intervened. But again, that was an attempt by us
20 after the fact to try to ameliorate that issue. But
21 again, we agree with intervener on that aspect.

22 Finally again, in terms of the issue of what
23 the permitting processing -- again, the permit
24 processing again is properly before OAH, but there are
25 multiple reasons for why this could have happened.

1 I'm talking now about the permit processing after it
2 was revived in July. Mr. Iglesias has asserted that
3 he was ready to file by July 1st. The only evidence
4 we have in the record is of a partial e-mail that
5 dates to July 8th, indicating that there was an
6 awareness. And then some subsequent e-mail traffic.
7 But nothing that indicates that DCRA actually rejected
8 them prior to that.

9 Our records, what we have, is only that as of
10 July 26th, that was when the plans were submitted.
11 There may be a variety of reasons as to why it was
12 that they were not able to be obtained prior. Those
13 may lie with the applicant not being able to provide
14 something. Arguably, they may lie in DCRA. But I
15 just wanted to emphasize that DCRA does not accept Mr.
16 Iglesias's you know, assertions, with all due respect
17 to that.

18 And finally, for the second time, I apologize,
19 I will close by just reminding everybody it's probably
20 a statement I make one too many times, but the burden
21 of proof in this particular case, as always, lies with
22 the appellant. Thank you.

23 CHAIRPERSON HILL: Okay, thank you. Ms.
24 Ferster, or Mr. Alcorn, would you like to provide any
25 rebuttal?

1 MS. FERSTER: We have no rebuttal. And I
2 assume this is not the point for a closing statement.

3 CHAIRPERSON HILL: We're going to do closings
4 now. Okay.

5 Mr. Brown, I'll give you three minutes for
6 closing.

7 MR. BROWN: One, Mr. Bello, whose experience
8 in zoning predates Mr. LeGrant, who I hold in high
9 regard, but the cases that this Board has considered
10 and talked about, and you're the interpreter of the
11 zoning regulations, have laid out the set down rule as
12 we present it. That there's a set down vesting rule
13 that applies once the complete permit is on file and
14 you're vested.

15 Under any definition of complete, we meet the
16 complete application. DCRA processed this permit for
17 years in its same form in the normal course. So, if
18 you take the provisional concept, which we disregard
19 entirely, if you take that, there is no vesting set
20 down rule because it's the same. You get whatever you
21 get on the day the permit is issued. And the vesting
22 set down rule was established to create a very
23 specific exception that applies to the situation.

24 Even if you accept this new found provisional
25 vesting rule, I think it's clear that applying the 70

1 or 78-day standard that DCRA has created, in all
2 fairness, because they're talking about equity, not
3 the law, equity would be, you don't penalize -- you're
4 giving a guy 70 days for his last mean, and you don't
5 then penalize him 26 days because you won't let him in
6 the door.

7 And it's clear on their records and Mr.
8 Iglesias's testimony, that we were standing at the
9 door asking to submit our permit plans, and they
10 wouldn't let it back in the system. Yet then they
11 penalized us for the 26 days that it took to
12 accomplish a fairly simple administrative matter that
13 was created because DCRA unilaterally canceled a
14 permit.

15 So one, I think the permit, as Mr. LeGrant did
16 when he approved in August of 2016, the permit was
17 properly granted in the first place, and DCRA, for
18 whatever reasons, had second thoughts of permitter's
19 remorse, and came up with this provisional vesting
20 requirement. And that's not the law, and it's
21 certainly not being applied in an equitable fashion
22 under these circumstances. Thank you.

23 CHAIRPERSON HILL: Okay, thank you, Mr. Brown.
24 Mr. Tondro.

25 MR. TONDRO: Yes, thank you. Appellant would

1 have you ignore the absolutely clear statement in the
2 law. Would have you ignore 3202.5A, the second clause
3 of the first sentence that the processing of the
4 application, the completion of work shall be governed
5 by 3202.4. As the intervener did state, you know, the
6 clear language of the law itself, or of the
7 regulations I should say, of 3202.5 and 3202.4 says
8 that there is this provisional vesting. It
9 establishes that.

10 As I indicated earlier, the way that we would
11 understand that is that the Zoning Commission did not
12 want to be in a position to penalize somebody who is
13 ready to go but for some minor corrections, provided
14 they -- but they also didn't want to allow any
15 applications just to survive long after the zone had
16 actually changed.

17 So, there was this provisional vesting. It
18 allowed you to continue the permit process, provided
19 that the permit was actually issued prior to the new
20 zone so that any permit was in compliance with the
21 regulations, in effect, on the date of the permit
22 issuance. I think that's in the clear language of the
23 regulations themselves.

24 Again, this was stated in the Office of
25 Planning report, both reports, the set down report,

1 the hearing report in case 14-20 that was involved,
2 sorry, with this specific property. We know that the
3 owner of the property participated in that one,
4 objecting to the proposed rezoning. This was
5 included, as I provided in testimony, in the Zoning
6 Commission final order in this particular case. I
7 think this was very clear. Everyone was on notice
8 that this was the issue.

9 Again, DCRA attempted to deal with the fact,
10 after the fact of, how do we do this once OAH had
11 resuscitated the application. And we did that by
12 trying, once it was called to our attention by the
13 appellants, by trying to adopt -- give back to the
14 application what they would have had, had we not
15 intervened. That's the 70 days.

16 We believed that that was the 70 days that
17 they had. Appellant keeps on saying that we somehow
18 connived or dumped the plans someplace in a room
19 somewhere. Again, you know, the evidence we have --
20 I'm constrained. We can't provide Mr. Englert here,
21 as I said, for the reasons why, so we have to rely on
22 the record that we have, which is that it wasn't
23 accepted until the 26th. But I haven't seen anything
24 in terms of an e-mail or any other information that
25 would contradict the fact that there may have been

1 discussions and that for whatever reason, something
2 was not provided that was necessary in order for that
3 process to be permitted.

4 So again, I think this is a difficult case, at
5 least from DCRA's point of view, because we felt we
6 were -- obviously we were judged by OAH as having made
7 a mistake earlier. We wanted to try to be reasonable
8 in that sense. But at the same time, the zoning
9 regulations were created by the Zoning Commission. I
10 went through the history and I apologize if that was
11 overly long, but I went through that in order to make
12 sure that the board understands that there was a
13 justification and a process for why the Zoning
14 Commission had come up with the particular rule that
15 we have.

16 And again, the Zoning Administrator tried to
17 apply it in as fair a manner as possible in this
18 particular case. And with that, we'll rest. Thank
19 you.

20 CHAIRPERSON HILL: Okay. Thank you. Ms.
21 Ferster.

22 MS. FERSTER: Thank you. You know, this case
23 may be a difficult case for DCRA because they have to
24 defend also in the OAH proceeding, and obviously they
25 don't want to create a record in this case that is in

1 any way conflicted in that. But from our perspective,
2 as I said, it's much simpler. Here, we think the BZA
3 should clearly find that the applicant has not
4 satisfied its burden of proof of showing that its
5 interpretation of the zoning vesting regulations
6 should prevail over the Zoning Administrator's
7 interpretation, which should be accorded deference by
8 this Board. It's accorded deference by the courts.
9 And that it's the Zoning Administrator's current
10 interpretation of the regulations that is aligned with
11 the plain language, and the regulatory history of the
12 zoning regulations.

13 I would also like to point out that the two
14 cases that were cited by the applicant as somehow
15 evidence of their view of the vesting regulations and
16 the *Nebraska Avenue Neighborhood Association* case, and
17 the *Heron* case appeals, in neither of those cases
18 supports that position, because both of those cases
19 the permit was issued before the rezoning became
20 effective. So, it simply shows the vesting provisions
21 are in fact you know, work as the Zoning Administrator
22 says, that when the permit is issued, it's issued
23 under the zoning in effect at the time the permit is
24 issued.

25 And in this case, both of those cases in the

1 16716A, the rezoning didn't become effective until
2 over a year later and in 16982, the rezoning was
3 actually five years later. So, these were absolutely,
4 you know, don't prove in any way that permits that
5 were issued after the rezoning became effective were
6 somehow processed in accordance with the zoning that
7 was in effect at the time of the applications. Thank
8 you.

9 CHAIRPERSON HILL: Okay.

10 MS. FERSTER: I'm sorry.

11 CHAIRPERSON HILL: Sure.

12 MS. FERSTER: There was one other point that I
13 wanted to make. And, you know, and that is the point
14 that Mr. Alcorn made. And that is that the ANC and
15 Mr. Alcorn played by the rules here. I mean, they had
16 concerns about this project, and the fact that the
17 zoning in this case had been -- did not reflect,
18 basically what the Comprehensive Plan called for. And
19 so, they played by the rules. They went to the Zoning
20 Commission and they asked that the area be rezoned.
21 And it was rezoned, because they were right.

22 And then they had concerns about the
23 permitting process. They identified numerous
24 irregularities with the permitting process that made
25 this a better review process, including the fact that

1 the PE who had stamped the plans had been -- had his
2 license suspended. So, you know, they played by the
3 rules, they did everything that they were supposed to
4 be. And to do. And as a result of their efforts,
5 there's now zoning in place that reflects the
6 Comprehensive Plan, and this project should be
7 processed in accordance with that zoning. That is
8 where the public interest lies in this case.

9 CHAIRPERSON HILL: Okay, great. Thank you.
10 So, the Board, I don't know if they -- we have any
11 further questions of anyone. I do not. I don't need
12 any supplemental information. I think that the record
13 is very full and I'm satisfied with what we have in
14 order to take a look at. Does the Board want anything
15 else from anyone?

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. Okay. So, I'm going
18 to close the hearing.

19 MS. FERSTER: Excuse me, with the exception of
20 the exhibits that we had identified in our
21 presentation.

22 CHAIRPERSON HILL: Yeah, I'm sorry. Thanks,
23 Ms. Ferster. If you can, just submit whatever you
24 mentioned in your presentation that was reflective of
25 the current -- or of the ANC appeals, add those into

1 the record. That would be great, so we have a full
2 record.

3 MR. BROWN: Mr. Chairman.

4 CHAIRPERSON HILL: Yes.

5 MR. BROWN: And the Zoning Commission matter
6 that we were referencing, the Zoning Commission case
7 having to do with the set down rule, we'd like to
8 submit that into the record.

9 MR. HART: Isn't the zoning case already
10 something that we can look up ourselves? I mean, we
11 know the name of it. I just didn't know what the name
12 -- he was reading from something so it was a little
13 bit --

14 MR. BROWN: Yeah, we --

15 MR. HART: So, I don't think we need to have
16 that in there.

17 MR. BROWN: Okay.

18 MR. HART: I just, I think we can -- you know,
19 we know the number that they're looking at and we can
20 refer to that as we need to.

21 CHAIRPERSON HILL: Okay. So, I appreciate
22 your comment, Mr. Brown.

23 So, okay. So, we'll go ahead and close the
24 hearing. I mean, obviously, I don't think -- I'm not
25 ready to deliberate. I'm not ready to deliberate.

1 And so maybe we can take this up. Do you think we'll
2 be able to take it up next week?

3 MR. HART: What's our schedule?

4 CHAIRPERSON HILL: Mr. Miller, are you
5 available?

6 MR. MILLER: Yes.

7 CHAIRPERSON HILL: Okay. All right. Then,
8 we'll go ahead and set this for decision next week. I
9 must say, I admire all of you. This has been a very
10 long day and so, you know, the fortunate thing for you
11 all is you get to go home and we do not. And so, the
12 other people that are here in the room that don't get
13 to go home either, we're going to take a 10-minute
14 break to eat something so we are able to listen.

15 [Pause.]

16 MS. FERSTER: I'm sorry. Just one other
17 matter, and that is the two appeals, 19412 and 19410,
18 are they still held in abeyance, and are those then
19 going to be set for a decision date? I mean, I
20 actually don't know the answer to that.

21 CHAIRPERSON HILL: No, that's okay. Did it
22 look like I was trying to get out of here?

23 The Vice Chair has pointed that out. So,
24 again, we would hold those in abeyance, and I guess we
25 could determine that also next week. Okay. So --

1 MR. BROWN: Mr. Chairman.

2 CHAIRPERSON HILL: Yes, certainly.

3 MR. BROWN: I appreciate your willingness to
4 move this forward as quickly as you said, but would
5 the Board benefit from proposed findings of fact and
6 conclusions of law from the parties, or I mean,
7 there's a lot of material here which you all have dug
8 into. But I --

9 CHAIRPERSON HILL: I mean, it's up to the
10 Board.

11 MR. BROWN: Unfortunately, I can't produce
12 that in a timely manner for next week, but --

13 CHAIRPERSON HILL: Mr. Miller?

14 MR. MILLER: I think that might be helpful.

15 CHAIRPERSON HILL: Okay. All right.

16 MR. MILLER: But I don't know if the -- what
17 the other parties think about that.

18 MR. TONDRO: Just in terms of scheduling, I
19 don't know if it makes any difference, but I will be
20 out of the country until mid-August. So, I won't be
21 able to start dealing with it until then.

22 CHAIRPERSON HILL: Sure.

23 MR. BROWN: Well, and you're not going to be
24 able to deal with it until --

25 CHAIRPERSON HILL: No, right.

1 MR. BROWN: -- September.

2 CHAIRPERSON HILL: September. If you think,
3 Commissioner Miller, that proposed findings of facts
4 and conclusion of law would help with the
5 deliberation, then that's fine and we can go ahead
6 and --

7 MR. MILLER: I think it would --

8 CHAIRPERSON HILL: Okay. All right. So --

9 MR. MILLER: -- help focus us.

10 CHAIRPERSON HILL: So, you are welcome. Now,
11 I forget how this works now again. So, Mr. Brown, Ms.
12 Ferster, and Mr. Tondro, you are all able to submit
13 findings of fact and conclusions of law. We will not
14 be able to decide this now next week.

15 The day that I guess we could get this in, I
16 don't know, Mr. Moy, when we would be back then. And
17 also whether or not you set dates in August. I can't
18 recall. Mr. Tondro is gone until the middle of
19 August, so.

20 MR. MOY: Okay. Well, if Mr. Tondro is going
21 to be absent until the third or fourth week of August,
22 we do have hearing dates in September beginning with
23 the 6th of September, which might be too soon.
24 Following that, we have the 13th, the 20th, and the
25 27th. Okay?

1 CHAIRPERSON HILL: So, I don't think the 6th
2 is going to work. And so, the 13th would be fine with
3 me. Okay. So, the 13th would work for you guys.

4 MR. BROWN: For decision?

5 CHAIRPERSON HILL: No, for decision, right.
6 So, if you get in the information by the end of the
7 month, August, end of August. So, Mr. Moy, what's the
8 last day in August?

9 MR. MOY: The last day in August is a
10 Thursday, on the 31st. So you can do it Friday,
11 September the 1st.

12 CHAIRPERSON HILL: Let's do Friday, September
13 the 1st. Okay. And I think that's it. Okay?

14 And then, so we'll do decision on the, did we
15 say the 13th now?

16 MR. MOY: Thirteenth.

17 CHAIRPERSON HILL: All right. So, again,
18 we're going take a quick break. For those of you that
19 are here afterwards, we'll see you then. Thanks.
20 Thank you all very much.

21 [Off the record from 3:45 p.m. to 4:07 p.m.]

22 CHAIRPERSON HILL: All right, Mr. Moy,
23 whenever you are ready to call our next hearing case,
24 that would be great.

25 MR. MOY: Okay. Let's see, okay. We're back

1 and it's 4:00 p.m. All right. Going through the rest
2 of this docket, the first, according to the schedule
3 is Case Application No. 19521 of David Hunter Smith.
4 If we can have parties to the table as I read what's
5 been captioned and advertised for relief. This is a
6 special exception request under the advisory -- or
7 rather, accessory apartment requirements, Subtitle U,
8 Section 253.4, to construct an accessory apartment
9 above an existing garage, R-20 Zone, at premises 3520
10 S Street Northwest, Square 1303, Lot 29.

11 CHAIRPERSON HILL: Good afternoon. If you
12 could just please introduce yourself from my right to
13 left?

14 MS. FERREIRA: Catarina Ferreira, I am the
15 architect.

16 MS. MILIN: Zorka Milin, applicant.

17 CHAIRPERSON HILL: Could you say your last
18 name again? I'm sorry.

19 MS. MILIN: Milin.

20 CHAIRPERSON HILL: Milin. Oh, okay. Thank
21 you. Okay. Let's see. Have you guys been sworn in?

22 MS. FERREIRA: Yes.

23 CHAIRPERSON HILL: Okay. And so, you've
24 filled out your witness cards? Okay. All right.

25 Ms. Ferreira? Is it Ferreira? Ferreira.

1 Ferreira. Ms. Ferreira, are you going to be
2 presenting to us more or less?

3 MS. FERREIRA: Sure.

4 CHAIRPERSON HILL: Okay. All right. So,
5 after reviewing the application there are a couple of
6 questions, I think, which are primarily going to have
7 been kind of addressed in terms of the record, I
8 think, concerning some people I guess, that are
9 opposing the property. And we'll see how that goes in
10 a little bit.

11 I guess basically if you could just kind of go
12 ahead and, you know, walk us through the project and
13 I'm sorry, I just realized I'm tired. And if you
14 could just walk us through the project as to what
15 you're trying to accomplish, and then also the
16 standard in which the relief should be granted. I am
17 curious as to I don't see an ANC report, or at least I
18 didn't see one in the record as of when I was
19 reviewing the case. So, if you could kind of clarify
20 how the ANC meeting went, et cetera, that would be
21 great.

22 I'm going to go ahead and put 15 minutes up on
23 the clock just so I know where we are. And you can
24 begin whenever you'd like.

25 MS. FERREIRA: Thank you. The project

1 consists of a new accessory building, so just to
2 correct that for the record. It's not simply the
3 addition of an apartment on top of a garage. It is a
4 new accessory building that will replace a garage that
5 currently exists.

6 And as per the zoning regulations, an ADU can
7 only be added through the special exception process in
8 the R-20 zoning district as a second story on to an
9 existing -- or on to an accessory building. In this
10 case, a garage.

11 And we are also required to comply with the
12 parking requirements and maintain parking so the first
13 floor of the accessory building will remain a garage,
14 as it currently is.

15 In the planning of the accessory building, we
16 took great care to make sure that we followed the
17 intent of the zoning regulations with respect to the
18 square footage, with setbacks, with height allowances,
19 privacy concerns, in every way, shape, and form that
20 we could. And we also minimized the height in the
21 interior spaces as much as possible, because we
22 suspected that neighbors might have concerns about the
23 height, the bulk of the proposed structure.

24 In terms of square footage, what we're
25 proposing is 412 square feet, which represents a

1 slight increase in lot occupancy, but is still well
2 within the allowed amount.

3 We have seen the letters of opposition that
4 have been posted, and most of them, from our point of
5 view, seem to address the issues that I just
6 mentioned; the height, the bulk of the proposed
7 structure. But these are all aspects of the accessory
8 building that are already allowed as a matter of
9 right, without a request for a special exception. So,
10 I just wanted to clarify that, and this is something
11 that we've clarified for ourselves is that the fact
12 that we're building an accessory building here is not
13 what requires relief, but rather the addition of an
14 accessory dwelling unit on to the property.

15 And that could be, of course, added elsewhere
16 on the property, or as part of the main residence. My
17 clients have opted for this option instead, in part in
18 recognition of the sensitivity of the location and in
19 an effort not to disrupt the existing structure. One
20 alternative they considered was adding a third-story
21 addition, which they are allowed to build. They opted
22 to build the accessory building with the ADU on top
23 instead, as from their point of view, and I tend to
24 agree, a more sensitive way to introduce the accessory
25 dwelling that they are trying to achieve, which is for

1 the purposes of an au pair.

2 There is a basement in the property that is
3 partially finished, but it's not legal living space
4 and doesn't comply with those requirements. And it's
5 a fairly small house as it is. They have a growing
6 family with one child and another child on the way.
7 And this was the way that they determined to be the
8 most rational to expend their living space and
9 accommodate a nanny in the least disruptive way
10 architecturally, and also in the most sensitive way to
11 the public realm. Thank you.

12 CHAIRPERSON HILL: Okay, thank you. Does the
13 Board have any questions for the applicant?

14 Okay. Then, I'm going to turn to the Office
15 of Planning.

16 MR. MORDFIN: Good afternoon, Chair and
17 members of the Board. I'm Stephen Mordfin. And the
18 Office of Planning does support this application.
19 There is one correction to the OP report that I would
20 like to make. It does not address Section 253.8,
21 which the applicant's submission does do, and the
22 application is in conformance with those provisions in
23 that there will be permitted access to the accessory
24 unit. You will be able to access it from the public
25 alley, and also that the alley is at least 15 feet in

1 width, so it complies with 258 -- 253.8(c)(3) in that
2 it is less than 300 feet from a public street along an
3 alley with a minimum width of 15. In this case, it's
4 approximately 250 feet from a public street, and the
5 alley width is 20 feet.

6 And it complies with the remainder of the
7 criteria under there. It will house an apartment that
8 won't be used simultaneously for any other accessory
9 use. It will not have a roof deck, and the accessory
10 building is not likely to become objectionable, which
11 was already addressed in the report to neighboring
12 properties, and that there is evidence of adequate
13 public facilities for health and safety of residents.

14 So, I just wanted to add that, we do find that it is
15 in conformance with 253.8, even though it was not
16 addressed in the OP report.

17 CHAIRPERSON HILL: Okay, thank you. But the
18 application doesn't have to be changed.

19 MR. MORDFIN: The application did cover those
20 things.

21 CHAIRPERSON HILL: Okay.

22 MR. MORDFIN: So, it is included in the
23 applicant, the information.

24 CHAIRPERSON HILL: Okay, great. Thank you.
25 Does the Board have any questions for the Office of

1 Planning?

2 MR. HART: Just one question, Mr. Chairman.
3 And what is this? One of the provisions to the
4 special exception provisions, talked about the number
5 of persons.

6 MS. FERREIRA: Uh-huh.

7 MR. HART: And this is -- and this was just
8 saying that you -- I'm sorry, I'm looking at two
9 different things. Okay. I'm sorry. Let me start
10 over.

11 So, your report says that the principle
12 dwelling will -- or the accessory apartment shall be
13 owner occupied for the duration of the accessory
14 apartment use. How do you -- well, I guess you will
15 know this because they've already testified to them
16 being there.

17 I had another kind of question about the
18 number of persons that are kind of in total on the
19 lot, because it says that I guess it's three, no more
20 than three in the accessory unit, and then six total
21 for both the accessory unit and the principle
22 building.

23 MS. FERREIRA: Correct.

24 MR. HART: Yeah, I'm just asking, how do you
25 kind of figure that?

1 MR. MORDFIN: Oh, it controls the number of
2 people living on the lot in this case. The applicant
3 has indicated that no more than three people will
4 occupy the accessory unit, and that there will be no
5 more than six on the lot. So, they will be in
6 conformance.

7 If they were to be found to not be in
8 compliance with that, they could lose their
9 certificate of occupancy if there are more people
10 living on the property than what is permitted under
11 this provision.

12 MR. HART: And, thank you. That's all.

13 MS. FERREIRA: Yeah, I'd like to add to that
14 if I may.

15 I had submitted a revised burden of proof that
16 went into a little bit more detail how we were
17 complying with each section, and I didn't see that in
18 the exhibits for the case, so I'm not sure if perhaps
19 it dropped out or I guess there were two on there at
20 some point.

21 But the final burden of proof was actually not
22 on there last time I looked. So, perhaps it can still
23 be submitted. But just to -- I think that would
24 partially answer that question. We did state on there
25 that the number of occupants would not exceed six in

1 the property total, and that they would not exceed
2 three in the accessory dwelling itself. And we also
3 responded to several other sections that are
4 pertinent.

5 I did not also provide an answer to the
6 concerns regarding the ANC.

7 CHAIRPERSON HILL: Actually, before you move
8 on, so the revised burden of proof, you tried to
9 submit that into IZIS at some point. Is that what
10 you're saying?

11 MS. FERREIRA: Correct.

12 CHAIRPERSON HILL: And it didn't populate. Do
13 you have a copy now?

14 MS. FERREIRA: I do.

15 CHAIRPERSON HILL: Could you bring that -- you
16 don't have a copy for all of us, do you? You don't
17 have the 12 copies?

18 MS. FERREIRA: I do not, unfortunately.

19 CHAIRPERSON HILL: Mr. Moy, if you could just
20 take that and make a couple of -- if you could pass
21 that up to the secretary, and then he could make some
22 copies for the Board.

23 MR. HART: I appreciate that. That's helpful
24 because I didn't see anything and I thought there
25 should be something that actually talked about that.

1 MS. FERREIRA: Correct.

2 CHAIRPERSON HILL: And so now you can go about
3 -- and I'm sorry, the -- your meetings with the ANC,
4 how did that go?

5 MS. FERREIRA: Yes. The ANC was contacted
6 initially, probably about four months ago. I don't
7 have the timeline in front of me. I didn't expect to
8 have to provide that, but I will go through it in, you
9 know, in concept. We were initially in contact with
10 them on the phone. About four months ago I sent them
11 PDF copies of the drawings. I also spoke with
12 Commissioner Solomon and met with him in person and
13 provided him with a printed copy of the drawings.

14 We talked about the potential meeting
15 schedule, when the project would actually be reviewed.
16 They never actually scheduled the project for review.
17 And I think by the time that he realized the hearing
18 was happening, he wasn't able to get it into the
19 schedule, which I assume is why there is no statement.

20 I did speak to him on the phone about this and
21 he told me that he would be providing a letter, most
22 likely in support of the case. That's the statement
23 he made to me at that time, but there weren't as many
24 letters of opposition up on the system yet. So, just
25 for full transparency at that time, he did tell me

1 based on the feedback from the community, and his
2 familiarity with the case, that he would most likely
3 be in support. But he never did provide that letter.
4 Don't know why, but --

5 CHAIRPERSON HILL: So, when did you speak to
6 him last about getting some kind of a letter -- I
7 mean, the other thing is, so you haven't presented in
8 front of the full ANC yet.

9 MS. FERREIRA: We have not.

10 CHAIRPERSON HILL: Okay. So, and you are
11 aware of that process.

12 MS. FERREIRA: Yes.

13 CHAIRPERSON HILL: Okay. And so, there was
14 something -- so, there was a phone call, and the phone
15 call indicated that Commissioner Solomon possibly
16 could be in support, or thought he would be in
17 support.

18 MS. FERREIRA: That's correct.

19 CHAIRPERSON HILL: And how long ago was that
20 phone call?

21 MS. FERREIRA: Three weeks ago.

22 CHAIRPERSON HILL: Okay. And so, you haven't
23 heard back from Commissioner Solomon?

24 MS. FERREIRA: Correct.

25 CHAIRPERSON HILL: Okay. And he knew about

1 this hearing date?

2 MS. FERREIRA: Yes.

3 CHAIRPERSON HILL: Okay. Just give us one
4 second.

5 [Pause.]

6 CHAIRPERSON HILL: Where does it speak in your
7 supplemental filing about the people, or the -- oh, I
8 see it. I'm sorry. I'm sorry. So, you can have one
9 more child and a nanny. Okay.

10 All right. So, does the Board have any
11 questions of the applicant?

12 MS. WHITE: Did you get any feedback from the
13 neighbors, the immediate on the left and the right?
14 I'm kind of curious as to what their position was. I
15 know there was some conversation that you talked
16 about, about height. But you also mentioned that, you
17 know, you had the ability to do that as a matter of
18 right, but I'm curious as to what their --

19 MS. FERREIRA: Sure.

20 MS. MILIN: Yeah, I think I can, I can answer
21 that. We spoke extensively with our immediate
22 neighbors on the left and right, and one of them filed
23 some comments that were not in opposition, but just
24 you know, based on her own experience with her
25 building unit and raising some concerns about height.

1 And the height of our proposed ADU is about the same
2 as what she currently has. So, that's why she's not
3 necessarily opposed.

4 And we also made efforts to reach out to
5 neighbors who are directly behind us in the alley.
6 Some of whom have filed letters of opposition and were
7 able to speak to them about their concerns, which were
8 pretty general in nature around preserving the
9 character of the neighborhood, which is something that
10 we share. So, you know, they're not -- their concerns
11 are not necessarily specific to this project.

12 CHAIRPERSON HILL: Okay. Any other questions
13 of the applicant?

14 MR. HART: What's the materials? What
15 materials are you using for the garage, or the
16 accessory structure?

17 MS. FERREIRA: Well, the garage has been
18 designed to, in a way, pay homage to the architecture
19 of the main house, which has a mansard roof as the
20 second story, and basically has a disguised second
21 story.

22 The lower level will have cement board siding
23 on the sides, and some wood siding on the sides facing
24 the alley and the back yard. And the mansard roof
25 portion will be a standing seam metal roof.

1 MR. HART: And the roof itself is -- I was
2 looking at one of the drawings. It is --

3 MS. FERREIRA: It's an inverted roof, or also
4 known as a butterfly roof.

5 MR. HART: Yeah, I was going to say that and
6 then I was making sure that I was looking at the right
7 drawings to say that.

8 So, you've designed that -- why were you
9 looking at that particular shape for it?

10 MS. FERREIRA: That particular --

11 MR. HART: Were you trying to reduce the
12 height of the building, or --

13 MS. FERREIRA: Correct.

14 MR. HART: That's what I'm asking.

15 MS. FERREIRA: Yes. Well, there's also an
16 architectural agenda of course. Trying to make an
17 attractive space on the inside that focused the light
18 into the space by allowing us to have slightly taller
19 windows and slightly higher portions of the spaces
20 towards to the exterior. So, the dip is in the
21 middle, which happens with the butterfly roof. So,
22 that point is actually at seven feet, and then it goes
23 up from there towards the end.

24 MR. HART: And so this will actually be a bit
25 higher, almost a story higher than the actual

1 structure, than the principle structure? Maybe a
2 little less than that?

3 MS. FERREIRA: There is a significant grade
4 change on the property from the alley side to S
5 Street. So, that's why you see that difference in
6 elevation there. Yeah.

7 MR. HART: And this was not going to be
8 visible from the street itself?

9 MS. FERREIRA: Will not be visible from the
10 street.

11 MR. HART: Because of the height of the
12 existing building. And that height is not changing.
13 I mean, the existing building is -- this is -- there
14 is not being renovated or not -- shouldn't say
15 renovated. It's not changing. This is what it is
16 currently.

17 MS. FERREIRA: Correct. The principle
18 dwelling, right. Yes.

19 MR. HART: That's what I was asking about.
20 Thank you.

21 CHAIRPERSON HILL: Okay, I'd just like -- I
22 have a question for the Office of Planning actually.

23 The applicant is speaking of the by-right
24 option. There's a third-floor by-right. Is that --
25 could you confirm that?

1 I'm sorry, that they would be able to, at
2 least I think the testimony is what you're saying,
3 that you could have done a third-story by-right. And
4 rather than do that, you're proposing this.

5 MS. FERREIRA: Let me rephrase if I may.

6 CHAIRPERSON HILL: Okay.

7 MS. FERREIRA: I have not investigated that
8 option thoroughly. It is a discussion that, you know,
9 my clients have had between themselves, how could we
10 accommodate additional living space on our property.
11 Perhaps it would be with a third-story addition. I
12 have not verified, I have not gone through the process
13 of verifying that we could actually do that on their
14 particular property.

15 However, their option was to either do that,
16 even if they had to seek relief for it, or renovate
17 their basement, or add to the back. They need to add
18 living space to their property in some shape or form.
19 They already have an accessory structure at the rear
20 of their lot, so this is the option that they chose to
21 pursue instead of any of those other options. Whether
22 they required relief or not, that's something that I
23 would have to still verify.

24 CHAIRPERSON HILL: Okay. I'm sorry. I was
25 just -- because you used the term, by-right. And so,

1 I was trying to understand. And so --

2 MS. FERREIRA: Correct. Right.

3 CHAIRPERSON HILL: -- I don't know, Mr.
4 Mordfin, if you can easily tell me whether or not
5 there is a by-right third-story option?

6 MR. MORDFIN: In the R-20, I'm not exactly
7 sure what you can do in the R-20. The R-20 is a
8 specific zone just for like, Georgetown and Burlingame,
9 and I don't recall the --

10 CHAIRPERSON HILL: Okay. Okay. That's fine.

11 MR. MORDFIN: -- height that you can go up to.

12 CHAIRPERSON HILL: Okay. All right. Okay.
13 Thank you. Okay. All right.

14 Is there anyone here from the ANC? Is there
15 anyone here wishing to speak in support?

16 Is there anyone here wishing to speak in
17 opposition?

18 [No audible response.]

19 CHAIRPERSON HILL: Okay. Do you have any
20 questions for the Office of Planning?

21 MS. FERREIRA: We do not.

22 CHAIRPERSON HILL: Okay. All right. Does the
23 Board have any -- the Board doesn't have any further
24 questions for the applicant? All right. Then I'm a
25 little bit at a loss because I don't know what to do

1 about the ANC.

2 Is the Board -- do you think the Board -- are
3 you guys ready to deliberate?

4 Okay. All right. So, I'm going to go ahead
5 and close the record, and so the record is closed.

6 Is the Board ready to deliberate? It looks
7 like the Board is ready to deliberate. Would someone
8 else like to start the deliberations?

9 MR. HART: I think that the applicant has
10 provided a -- there are documents that show what it is
11 that they're, you know, proposing for this site. I
12 think that I, after listening to the testimony from
13 the applicant, and from the Office of Planning, I
14 think I would be in support of the application. I
15 think that the -- that there are -- I understand that
16 there is opposition kind of generally to having a
17 second story on this, this building, accessory
18 building. And I would understand that.

19 I do think that this is fairly -- relatively
20 speaking, this is a fairly small building in a small
21 kind of footprint that we're talking about. And I
22 think that they've met the criteria in the zoning
23 regulations, and I would be in support of the
24 application.

25 MS. WHITE: Mr. Chairman, I think I would also

1 be in support. I did have some reservations because
2 we didn't have a formal statement from the ANC. But
3 your testimony that you have had some discussions with
4 the ANC about it, gave me some comfort, and also the
5 fact that you've talked to some of the adjacent
6 neighbors and other neighbors that had, you know,
7 maybe some reservations about it, more so with respect
8 to height.

9 But I don't find it to be something that would
10 keep me from supporting it. I think you've met your
11 criteria to get a special exception, especially with
12 the support of Office of Planning. I would be in
13 favor of supporting the application.

14 MR. MILLER: Thank you, Mr. Chairman. Yes, I
15 concur with Board member White and Hart, with
16 everything that they said, and agree that the burden
17 of proof has been met, the standards for accessory
18 building and dwelling unit are all being complied with
19 from what we have, from the record that we have before
20 us. And you know, the whole purpose -- not the whole
21 purpose, but one of the main purposes of the accessory
22 regulations is to try to accommodate growing families,
23 or their needs. And this is what's apparently
24 happening here.

25 CHAIRPERSON HILL: Okay. Then I'll go ahead

1 and make a motion to approve Application No. 19521 as
2 read by the secretary.

3 MR. HART: And I would also like to add that
4 Section -- the 253.8 just needed to be added in there.
5 I don't think it was added in. Was I --

6 CHAIRPERSON HILL: That's what I didn't
7 under --

8 MR. HART: Mr. Moy?

9 MR. MOY: I'm sorry. This is Subtitle U,
10 Section 3 -- or rather, 253.8.

11 MR. HART: Yeah, that was -- the Office of
12 Planning noted that that was -- do we not need to add
13 that in there? It's fine if we don't, I just wanted
14 to make sure we were --

15 MR. MOY: I was going to stay with the overall
16 section of 253.

17 MR. HART: Okay. That's fine.

18 MR. MOY: We can get very specific as well.
19 It still meets all the requirements of that section.

20 MR. HART: That's fine. I just wanted to make
21 sure that we were covering --

22 MR. MOY: Yes.

23 MR. HART: -- what Mr. Mordfin stated in his
24 report.

25 CHAIRPERSON HILL: Okay. So, I'm going to

1 make a more specific motion to approve application No.
2 19521 of David Hunter Smith, pursuant to 11-DCMR
3 Subtitle X, Chapter 9, for a special exception from
4 the accessory apartment requirements of Subtitle U,
5 253.4, to construct an accessory apartment above an
6 existing garage in the R-20 Zone at premises 3520 S
7 Street Northwest, Square 1303, Lot 29.

8 I made the motion.

9 MR. MILLER: Second.

10 CHAIRPERSON HILL: Motion has been made and
11 seconded.

12 [Vote taken.]

13 CHAIRPERSON HILL: The motion passes, Mr. Moy.

14 MR. MOY: Staff would record the vote as four,
15 to zero, to one. This is on the motion of Chairman
16 Hill to approve the application for the relief
17 requested. Seconded the motion, Mr. Miller. Also in
18 support, Vice Chair Hart, Ms. White, we have a board
19 seat vacant, motion carries.

20 CHAIRPERSON HILL: We can do a summary order,
21 Mr. Moy?

22 MR. MOY: Yes, sir.

23 CHAIRPERSON HILL: Thank you. Thank you all
24 very much.

25 MS. FERREIRA: Thank you.

1 MR. MOY: The next case application before the
2 Board is No. 19524 of Quincy Street Townhomes II, LLC.
3 Captioned and advertised for a special exception
4 under the requirements of Subtitle U, Section 320.1,
5 to construct a rear addition to and convert an
6 existing one-family dwelling to a three-unit apartment
7 house in the RF-1 Zone. This is at premises 429
8 Quincy Street Northwest, Square 3236, Lot 87.

9 [Pause.]

10 CHAIRPERSON HILL: Okay. Good afternoon. If
11 you could introduce yourselves, please, from my right
12 to left?

13 MR. GOODMAN: Jonah Goodman, Commissioner 4C.

14 CHAIRPERSON HILL: Goodman?

15 MR. GOODMAN: Goodman. Correct.

16 MR. SULLIVAN: Marty Sullivan from Sullivan
17 and Barros on behalf of the applicant.

18 MS. WILSON: Alex Wilson from Sullivan and
19 Barros on behalf of the applicant.

20 MR. HIRSHFIELD: Eric Hirshfield --

21 CHAIRPERSON HILL: You need to push the button
22 there, sir, the green button.

23 MR. HIRSHFIELD: Eric Hirshfield, with Quincy
24 Street Townhomes.

25 MR. FOSTER: And Jim Foster from Arcadia

1 Design for the applicant.

2 CHAIRPERSON HILL: Okay. We have a couple of
3 preliminary matters. But first of all, did everybody
4 get sworn in earlier? Okay, great.

5 Commissioner Goodman, thanks for coming down,
6 and hopefully you can provide some clarity for us.
7 Did you come at 9:00?

8 MR. GOODMAN: 9:30.

9 CHAIRPERSON HILL: 9:30. All right. Well,
10 yeah, so it's been a long day for you then, as well.

11 Okay. So, there is a couple of preliminary
12 matters, the first being applicant's request to waiver
13 of the 21-day deadline to submit supplemental filings
14 to amend the application. And then the applicant
15 request to amend the application to add variance
16 relief and request that the Board waive its notice
17 requirements.

18 Can you, Mr. Sullivan, kind of walk me through
19 those preliminary matters real quick again?

20 MR. SULLIVAN: Sure. Thank you, Mr. Chairman,
21 members of the Board.

22 The variance relief is a request for a
23 reduction in the width of one of the two parking
24 spaces on each lot. What's required for each property
25 is to have a full-sized space that's nine feet wide,

1 and a compact space.

2 If we can reduce the width of the full-sized
3 space on each lot to eight feet, we can then provide a
4 fifth spot in the middle of the two lots. So,
5 effectively, we'll have five eight-foot-wide spaces.
6 Eight feet by 19. Compact width, but a full length.

7 CHAIRPERSON HILL: I'm sorry. I guess what I
8 was trying to get to again was just, why should we
9 grant the preliminary matters first about the -- I
10 mean, I understand why you need them. I just want
11 some explanation as to the 21-day and the 40-day, if
12 you could just tell me that first.

13 MR. SULLIVAN: Sure. Parking was a big
14 concern of the community and of the ANC, and we
15 learned that through our interactions with them. And
16 so, we hadn't requested that originally. And we were
17 working on solutions and improvement of the parking
18 situation. We came up with adding an additional space
19 if we could get just a foot of width, allows us to get
20 an additional space.

21 CHAIRPERSON HILL: Okay. So, as far as the
22 preliminary matter, I mean, the only concern that I
23 kind of had was that the 40-day notice. But since the
24 applicant is here with the ANC, the ANC is the party
25 that we would have been most -- or we would have been

1 concerned about in terms of the timing. Commissioner
2 Goodman, I assume you're okay with waiving the notice
3 requirements in order to proceed?

4 MR. GOODMAN: Yes.

5 CHAIRPERSON HILL: Okay. Does the Board have
6 any issues with these preliminary matters?

7 [No audible response.]

8 CHAIRPERSON HILL: Okay. Then by consensus,
9 we go ahead, Mr. Moy, and waive the -- we will approve
10 -- approve? We will approve the applicant's request
11 for the waiver of the 21-day deadline to submit
12 supplemental filings to amend the application.
13 Exhibit 45 and 46. And then we will also approve the
14 applicant's request to amend the application, add
15 variance relief, and request that the Board waive its
16 notice requirements for Exhibit 45 and 46, again.

17 And then also just a reminder to the applicant
18 that you need to submit revised self-cert and pay the
19 additional fee.

20 MR. SULLIVAN: Correct. And we have a revised
21 self-certification, but we had a question actually for
22 the Office of Planning. They cited a different
23 section for the relief, so we wanted to settle that
24 and clear that, and then we'll submit whatever they --

25 CHAIRPERSON HILL: Okay. Okay.

1 MR. SULLIVAN: -- the Board decides.

2 CHAIRPERSON HILL: Okay. And then the other
3 was that -- and I can't remember if this was a request
4 on your part, on the applicant's part or not, in terms
5 of hearing the cases together. We will go ahead if
6 the Board is comfortable with this, we'll hear the
7 cases together. However, we're not able to combine
8 them. They still have to be ruled on, on their own
9 individual merits. But to do this as quickly as
10 possible, we're going to hear the cases together.

11 So, with that being the situation here, Mr.
12 Sullivan, however you'd like to proceed. I'm going to
13 go ahead and again put 15 minutes up on the clock for
14 you just so I know where we are, and let you go ahead
15 and explain again what the applicant -- what you guys
16 are trying to do, and how and why you meet the
17 standard.

18 And then, since the commissioner has been so
19 kind as to sit here all this long time, kind of work
20 about -- try to talk about how you guys are coming to
21 whatever agreements you're coming to and making sure
22 that that is being addressed, and if we have to put
23 that in a condition, or how to do that as well.

24 So, there you go. Thank you.

25 MR. SULLIVAN: Okay. Thank you, Mr. Chairman.

1 Again, we're here requesting special exception relief
2 under Section U-320, for a conversion of a one-family
3 dwelling to three units on each lot. And within that
4 request, requesting a waiver of the 10-foot rule for
5 each lot as well. And the second area of relief as we
6 discussed, is the variance relief to reduce the width
7 of a parking space on each lot by one foot.

8 CHAIRPERSON HILL: Mr. Sullivan, I'm sorry to
9 interrupt you. Which exhibit are you in that you have
10 the PowerPoint? Or no? Did you submit the
11 PowerPoint?

12 MR. SULLIVAN: We submitted the PowerPoint
13 last night, I believe.

14 MR. HART: Fifty-two.

15 MR. SULLIVAN: I'm not sure what exhibit --

16 CHAIRPERSON HILL: Oh, okay. I'm sorry. I
17 got it. It's 52. Thank you. I apologize. Please,
18 go ahead.

19 MR. SULLIVAN: Sure. Thank you.

20 So, the variance relief, as mentioned, is to
21 reduce the width of two spaces, thereby allowing a
22 fifth parking space, and that's all I have. I would
23 like to turn it over to Mr. Hirshfield for the
24 applicant, for a short introduction, and then we'll
25 quickly get to the project presentation by the

1 architect.

2 MR. HIRSHFIELD: Good afternoon. Thank you,
3 members of the Board for having me here today. My
4 name is Eric Hirshfield. My company, Intown
5 Development specializes in D.C. neighborhood
6 rowhouses, and also small commercial buildings.

7 My business partner on this project is Matt
8 Score. He is the principle with Potomac Development
9 and between us we have more than a few unique projects
10 like this under our belt, all with a track record of
11 good performance.

12 I'd like to just take a quick moment of your
13 time to explain how this development came to us, 429
14 and 431 Quincy Street.

15 We were approached by the former developer and
16 his lender, asking if we were interested in buying his
17 stalled project. We had just recently completed a
18 similar project at 511 and 513 Kenyan Street, that
19 basically had the same topology as what you're seeing
20 here, with the meaningful connection and the front
21 structure and the rear structure. And this Kenyan
22 Street project being very well received by the market,
23 had just sold to homeowners who were looking for
24 house-sized residences, and we also were applauded by
25 our neighbors there on Kenyan Street for you know,

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1 injecting life into that central courtyard, activating
2 the alley, and kind of creating a new Kenyan Lamont
3 water alley scape.

4 So, as these discussions with the Quincy
5 Street property continued, the developer and bank team
6 were having further trouble with the site, and we
7 ended up buying the project from the developer's
8 lender, the developer was unable to perform. So,
9 while that was going on, we realized our next logical
10 step was to reach out to the advisory neighborhood
11 commissioner, Jonah Goodman here, and he connected us
12 to a neighbor listserv, so we could communicate what
13 our plans were for the site, different than what the
14 previous developer had planned.

15 So, we kind of thought the best approach would
16 be to bring the neighbors from Quincy Street over and
17 show them what we called a full-scale model, where one
18 foot will equal one foot of what we're proposing to
19 build. So, we took them over to Kenyan Street. We
20 did about two or three tours, excuse me, where they
21 saw you know, front house, rear house, meaningful
22 connection, courtyard, lots of outdoor space, roof
23 decks, and encouragingly, it was very well received.

24 So, one of their suggestions was they asked
25 the courtyard separating the front structure from the

1 rear structure -- at Kenyan Street, it's only 25 feet.
2 They said, can you make it wider, deeper? So, that's
3 why what you're seeing here at Quincy, 35 feet.

4 We then, upon the suggestion of the ANC and
5 the neighbors, held a community forum at a local
6 restaurant up in Petworth, and invited not just the
7 neighbors but the entire community to kind of come out
8 and hear what our proposal was. We even got the
9 assistance of Ward 4 Councilman, Brendan Todd's
10 office, to act as a community liaison, to spread the
11 invites for this forum.

12 The forum went well. We got a lot of input,
13 feedback. The common denominator was that the
14 community wanted us to mitigate our impact on parking.
15 So, that's why the request to do the five parking
16 spaces.

17 And then another byproduct of that meeting was
18 that all the neighbors really said, why don't you
19 focus on the most affected neighbors who in the slide
20 show, if you can see the slide that has all five
21 houses shown? This is an assembly of five matching
22 rowhouses. It might be number 7, I think. But yeah,
23 you can see this one here. This one here, number 7, I
24 guess.

25 Yeah, so from the street. From the street,

1 all five of these rowhouses were all built,
2 coincidentally, in 1917. So, we're just coming up on
3 their 100-year centennial anniversary.

4 But all five of these houses, the neighbors
5 wanted us to you know, keep the facades consistent,
6 set back the third-floor addition, and then in the
7 back yards maintain parking pads so that right now all
8 five of those houses, and our architect, Jim, will
9 speak to this later, we have a site plan that is able
10 to capture like 13 parking spaces amongst the five
11 houses, and those are 13 parking spaces that don't
12 exist right now.

13 So, you know, we continue. Many living room
14 meetups with these immediate neighbors, different
15 suggestions, requests, tweaks to the project. Our
16 neighbor to the due west 433 Quincy, his name is Ross
17 Margulies, whom you have a letter of support from. He
18 requested that we add the green trellis, which you can
19 see on the side of his wall there, just to kind of
20 soften the structural on his property. He does have
21 solar panels, so of course we entered into a solar
22 agreement, and then of course the chimney agreements
23 were also executed.

24 Ms. Tucker, who is at 427 Quincy, her -- you
25 also have a letter of support from her. Her main

1 concern is that her family be able to use the rear
2 garage in the back of her yard that has kind of been
3 crumbling. She wanted to use it for parking, so we
4 made an agreement to do some repairs to that for her.

5 And then also the same --

6 CHAIRPERSON HILL: Is that the Garage P-1 in
7 your diagram?

8 MR. HIRSHFIELD: Yes. Yes.

9 CHAIRPERSON HILL: Okay.

10 MR. HIRSHFIELD: Exactly.

11 CHAIRPERSON HILL: Okay.

12 MR. HIRSHFIELD: So, right now that garage is
13 kind of crumbling on itself, and you can't --

14 CHAIRPERSON HILL: But it belongs to 427?

15 MR. HIRSHFIELD: 427, yes. So, we just, since
16 we're going to be doing some construction back there,
17 we agreed to make her garage --

18 CHAIRPERSON HILL: Okay. Okay.

19 MR. HIRSHFIELD: -- parkable. Yeah. And then
20 she also, of course, asked for the same green trellis
21 wall on her side. And then she wanted the front
22 porches of the all the houses to kind of come into
23 conformity.

24 And then finally, the last of these five
25 sister houses, Number 435 Quincy, and you also have a

1 letter of support from him, this is Rory Falconer, and
2 his wife, Lisa, they're raising a young family there,
3 and they wanted to ensure that their backyard could be
4 safely separated into like a play yard in the center,
5 but then also have a fenced off paved parking area in
6 the rear. So, we made agreements for that.

7 So, you know, we feel like this was all
8 mutually beneficial because it's helping both our
9 neighbors and helping our project as well.

10 Even some of the Randolph Street neighbors who
11 are on the other side of the alley from us, they also
12 weighed in, and they had an appreciation for this
13 activation of the alley. And again, by taking them
14 over to Kenyan Street, we kept showing them the full-
15 scale model. This is what we're building.

16 You know, simultaneous to this we went to the
17 ANC on three different meetings, each time getting
18 feedback input, you know, about adding green roofs.
19 There was a request that these not be two-bedroom
20 condos, but more like family-sized townhouses. Quincy
21 Street Townhouses is the name of the project. Each
22 unit will be four bedrooms, so they will be family
23 sized.

24 And then the ANC also wanted us to kind of
25 reaffirm our agreements about minimizing the impact

1 during construction by just employing some best site
2 practices. Everything from, you know, rodent control
3 and lighting and things like that. So, all that kind
4 of got worked into our plans.

5 And then last but not least, we engaged with
6 Office of Planning and had some strategy sessions with
7 them to incorporate their suggestions. You'll see
8 we've since received a favorable report from them, and
9 they're requesting their support of this special
10 exception.

11 So, we're here today. We've purchased the
12 properties. We've fully incorporated a lot of impact
13 feedback from the community. What you're seeing here
14 today was not just designed by us, the development
15 team, but it was designed by neighborhood, happened in
16 neighbor's living rooms, at community forums, at ANC
17 meetings. You know, this has kind of been going on
18 for about a year now.

19 So, there's actually, I don't know if we have
20 it here, but there's a blog that was started. Jonah
21 had to start a blog about the blighted property, 431
22 Quincy. So, we're hoping to kind of put a happy
23 ending to that blog.

24 CHAIRPERSON HILL: Okay.

25 MR. HIRSHFIELD: But opposed to that.

1 CHAIRPERSON HILL: Okay.

2 MR. HIRSHFIELD: So, I appreciate you
3 listening to the iterative process.

4 CHAIRPERSON HILL: Okay, great. No, I'm just
5 interrupting you, Mr. Hirshfield --

6 MR. HIRSHFIELD: Yeah.

7 CHAIRPERSON HILL: -- just because I want to
8 answer a couple -- ask a couple questions.

9 MR. HIRSHFIELD: Sure.

10 CHAIRPERSON HILL: And then move on to the
11 Office of Planning.

12 MR. HIRSHFIELD: Please. Yes.

13 CHAIRPERSON HILL: Just for that one, the site
14 diagram again, that had all the parking spaces. I was
15 just curious. So, all of those 13 spaces that you're
16 speaking of --

17 MR. HIRSHFIELD: Right.

18 CHAIRPERSON HILL: -- those are all spaces
19 that you're developing?

20 MR. HIRSHFIELD: Well, right now --

21 CHAIRPERSON HILL: Or you're going to help
22 develop.

23 MR. HIRSHFIELD: Yeah, so right now the back
24 alley is poorly graded.

25 CHAIRPERSON HILL: And so, those -- and so

1 435, 433, and 427 will benefit from those spots.

2 MR. HIRSHFIELD: Exactly.

3 CHAIRPERSON HILL: You're going to be --

4 MR. HIRSHFIELD: We'll be grading and paving
5 their parking pads so that they could park in their
6 backyards where they cannot right now.

7 CHAIRPERSON HILL: Right. And then that will
8 then be their parking pad.

9 MR. HIRSHFIELD: That will be their parking.

10 CHAIRPERSON HILL: Right. Yours will only be
11 the white ones.

12 MR. HIRSHFIELD: Ours will only be the five
13 white ones. Right.

14 CHAIRPERSON HILL: Right. Okay. All right.

15 MR. HIRSHFIELD: Right. So, but there just
16 was a concern that you know, we, by taking 13 cars off
17 the street on Quincy Street --

18 CHAIRPERSON HILL: Right.

19 MR. HIRSHFIELD: -- by fixing up the
20 backyards.

21 CHAIRPERSON HILL: Okay. Okay.

22 MR. HIRSHFIELD: So, yes. Yes.

23 CHAIRPERSON HILL: Great. Does the Board have
24 any questions? Mr. Hart?

25 MR. HART: Yeah. Thank you very much for

1 stepping through the project. I do appreciate the
2 level of outreach that you will have done, I think
3 that's been good to hear and good to see.

4 MR. HIRSHFIELD: Thank you.

5 MR. HART: It sounds like there has been
6 somewhat of an iterative process. The comment, and
7 this is going to be just a basic comment.

8 MR. HIRSHFIELD: Sure.

9 MR. HART: I have specific comments, but I
10 think it's probably just better, it's better to make
11 it fairly general and then let you kind of deal with
12 it.

13 MR. HIRSHFIELD: Okay.

14 MR. HART: And the comment is with regard to
15 the drawings. And I know that this is -- again, I'll
16 reiterate the iterative process.

17 MR. HIRSHFIELD: Sure.

18 MR. HART: The drawings that we received and
19 that we have on file in the exhibits that you've
20 submitted prior to us getting this PowerPoint are
21 different. And so, it's just as you go through the
22 process --

23 MR. HIRSHFIELD: Right.

24 MR. HART: -- as your architect is going
25 through the process, he's making changes to drawings.

1 And as he's making changes to drawings, then
2 sometimes they forget to make a change to the
3 floorplan. And sometimes they forget to make a change
4 to the elevation. And sometimes they forget to make a
5 change to the section.

6 And so, what that has done is that I'm not
7 exactly sure what I'm looking at, at times, because
8 I'm thinking that I remember seeing something, and
9 that detail has changed or that piece has changed.

10 MR. HIRSHFIELD: Sure. Sure.

11 CHAIRPERSON HILL: And so, the reason I'm
12 making this, and this all kind of started because I
13 was looking at -- if you could go to slide 4, I was
14 looking at this image from what we received, not your
15 -- I'm looking at your PowerPoint now, but the
16 information that we received, the exhibits that we
17 received, there is, in this particular drawing, there
18 is -- there are two entrances for pedestrians off of
19 the steps on either side. You see where they are?

20 These are not -- those entrances aren't --
21 those entrances aren't there -- aren't in this image
22 now. But they're on the plan. And so, the plan shows
23 that there are four places to access, you know, from
24 the sidewalk.

25 I understand that you all have moved past

1 that, which is fine. The problem is that it becomes,
2 well, am I looking at the plans, or am I looking at
3 this drawing, this perspective rendering to have me
4 understand what's actually happening on the drawings.
5 And that's one detail.

6 There is a closet on the third floor that's no
7 longer there and that's been replaced by, you know,
8 kind of moving where the building, that room is.
9 There was a little kind of walk-out deck thing that
10 was on that third level. That's kind of been removed,
11 but it actually shows up in the plans but doesn't show
12 up in this drawing or some of the other bird's eye
13 views looking down on it.

14 And so again, it makes it a little bit hard to
15 follow where we are with the actual -- like which
16 drawing am I looking at that is the most up-to-date
17 drawing.

18 And again, I understand that this has been an
19 interactive process, and I commend you for that aspect
20 of it. Unfortunately, that's one of the problems that
21 you have with it is that you have to bring all of the
22 drawings out of the same point so that you can say,
23 okay, no, we've checked all these, you know, these
24 things kind of make sense, and they're actually all on
25 the same level.

1 And then on the reverse of this view, which is
2 looking from the alley, there is that -- you all were
3 asking for the extra parking space, and in some of the
4 -- I think it's the floorplan. I think it's the
5 floorplan in -- well, actually, slide 9 which shows
6 the image, the view from the back, shows a stair that
7 kind of you know, wraps around it. It comes up but it
8 kind of does a 90-degree turn, and then comes up, you
9 know, in the back. That stair is actually shown
10 differently on the plans themselves which have it kind
11 of coming directly out, and it doesn't show the five
12 parking spaces that you're looking for.

13 So, I'm just making sure that, you know, what
14 we're looking at is accurate, and that it is -- and it
15 is reflective of where all of the drawings are at the
16 same point in time. And like I said, it's hard for
17 just, for me to look at it and say, okay, what am I
18 looking at now? Which one am I -- you know, what are
19 we actually approving.

20 And so, I would just recommend that you all
21 look at all of the plans at one point and then kind of
22 say, okay, we're going to stop here, and then make
23 sure all of these things are at the same level of
24 completion and coordination.

25 MR. SULLIVAN: I thank you for that comment,

1 and apologize for some of the late changes. Some of
2 that was due to our latest meeting session with the
3 Office of Planning. And I attempted to identify those
4 changes specifically in a cover letter that we
5 submitted two days ago, I think. I think we did
6 specifically identify the front wall issue. The
7 Office of Planning wanted to have a continuous
8 retaining wall. And so we said, fine, we'd close that
9 wall up and the entrance would be -- would then come
10 from the front stairway. So, there's only one
11 stairway.

12 And the setback was, there was a closet room
13 in the front that was removed, and I think we
14 identified that. But yes, with the late changes we
15 understand that and whatever we need to do after we go
16 through this to clarify that for the Board, we would
17 be happy to do.

18 And I do, I know I'm running out of time, I
19 was intending the architect to speak, but I know you
20 all have seen the plans and I want to be mindful of
21 your time today. So, if you would like him to
22 present, or just ask questions.

23 CHAIRPERSON HILL: No, we'll just kind of keep
24 chugging along here if that's okay.

25 So, does the Board have any other questions

1 right now, immediately, before I turn to the Office of
2 Planning?

3 MR. HART: Actually, just one more.

4 CHAIRPERSON HILL: Sure. Please. Go ahead.

5 MR. HART: And this is again, more of a point
6 of clarification. I'm not sure what's going on. I
7 understand that the plan that you've provided, the
8 floorplans that you've provided on slides 11 and 12
9 are showing the, I don't know, it's the western
10 property, I'm assuming. Yeah, I think it is. It's
11 the western most. I can't -- I don't know which
12 number that is. I'm sorry.

13 It's you have two buildings and they're next
14 to each other. And that's the western one?

15 MR. FOSTER: Correct.

16 MR. HART: And this shows that there is a --
17 and I don't know if this is going to be the case. Is
18 there one set of stairs? Like, I don't know what the
19 other building is going to -- like, floorplan is going
20 to look like because I don't know if this stairwell is
21 -- not stairwell. If this -- on the cellar level you
22 have the walkthrough, and you kind of, you know, walk
23 along and then you walk up, and then you walk back
24 down. Is that going to be in both of these
25 structures, or is it just going to be in one?

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1 MR. FOSTER: Yes, it will be -- each house
2 will have the steps down and the walkthrough,
3 basically just a mirror image.

4 MR. HART: Okay. Then, that's what I thought.
5 And it would be helpful to have actually both of them
6 when you submit for -- submit all the plans, submit
7 for both of them.

8 MR. FOSTER: I believe we did submit all the
9 plans.

10 MR. HART: They're actually the same, it's the
11 same floorplate for both because they're not mirrored,
12 and that's the reason I just, I noticed it.

13 And the reason I'm asking this is because on
14 the slide number 9, which showed the rear door, the
15 rear door, there's only one of them, which is the
16 little -- this one? There's only one door here, and
17 so that to me means that there's only one exit. You
18 see what I'm saying, that there should be another door
19 at the end of the set of stairs.

20 MR. FOSTER: On the rear structure there is a
21 single shared corridor through to the parking. But in
22 the front structure there are two separate hallways
23 and two separate access points. The reason being
24 we're required by code to have a separate entrance for
25 each building from the street, but the hallway to the

1 parking and the back structure is a convenience not
2 required by zoning. So, we were able to share it
3 between the two projects.

4 MR. HART: Then you should have a doorway that
5 actually, on the floorplans it should show a door that
6 is shared between two buildings. And maybe it's
7 better to have the floorplan that has, I don't know,
8 both of these buildings next to each other, and that
9 way you can actually -- we can see how they work
10 together, because it wasn't cleared. I've thought
11 that there should be two doors, which I thought was
12 kind of strange.

13 MR. FOSTER: At one point we had everything,
14 both buildings shown on a single floorplan, and it was
15 easier to indicate that. When I was required to split
16 the properties into two separate sets of floorplans, I
17 couldn't show half a hallway. It just didn't work
18 graphically very well. So, I went ahead on that --
19 when I separated the property into two, I went ahead
20 and showed a hallway on each one.

21 MR. HART: And it's a shared hallway that's on
22 each one?

23 MR. FOSTER: Correct. There just wouldn't be
24 a -- in practical use purposes in the field, the wall
25 wouldn't necessarily exist between them, that's all.

1 MR. HART: Okay. If you could have one
2 floorplan for, especially the -- maybe that's it. One
3 floorplan for the cellar that actually shows all of
4 the cellar from the two buildings, that way I could at
5 least -- and maybe that's a separate drawing, you
6 know. I don't know. I'm just trying to think of some
7 way that we could see this entire thing to see how
8 people actually moved through this space. I had a
9 hard time trying to figure that out.

10 But again, this has nothing to do with -- I
11 appreciate the process that you all have been going
12 through, and I understand it. I just think that
13 there's, you know, as you're moving forward so
14 quickly, I think that you're dropping some things so.
15 That's it.

16 CHAIRPERSON HILL: Okay. Well, I think we are
17 going to need clarifying drawings at some point, but
18 we'll see how this moves along.

19 I'm going to go ahead and turn to the Office
20 of Planning.

21 MS. MYERS: Hello, Crystal Myers for the
22 Office of Planning.

23 The applicant is correct, we are recommending
24 approval and are in support of the project. So, we
25 stand on the record of the staff report. I would note

1 that I know the applicant is doing quite extensive
2 work off-site, but we just focused on on-site, so just
3 the five parking spaces. But I do know that there was
4 more being done. So, just want to make note of that.

5 But again, we stand on the record of the staff
6 report.

7 CHAIRPERSON HILL: Okay. Does the Board have
8 any questions for the Office of Planning?

9 MR. HART: Of course I do. Just one question.
10 I think this is the first time that we've looked at,
11 what is it, Subtitle U, 320.2(e). I think you all
12 have actually been in favor of this? Because most of
13 the times, this is the 10-foot, you know, past the
14 adjacent building, and it seems like the only other
15 times -- all the other times we've been hearing this
16 it's been kind of no, no, no, and this one it's kind
17 of well, yeah.

18 So, could you talk a little bit more about
19 that?

20 MS. MYERS: Well, every case is unique. So,
21 just number one issue. We looked at this one --
22 actually each case, 19524 and 1925 (sic), we looked at
23 separately. But also, you know, they work in concert
24 with each other.

25 But it's the way they are, I guess, separating

1 the massing on the site, which was quite notable here.
2 Yes, it is exceeding the 10-foot requirement. But as
3 you notice here, the connecting piece of each building
4 has been recessed further into the site, along with
5 the property line with the adjacent similarly
6 developed building, which made this less of an impact
7 on the adjacent neighbors.

8 And as you all noted, both neighbors are in
9 support of this project, the ones that would be most
10 impacted by that 10 feet. So that was a major aspect
11 that made this something that, you know, we looked at.

12 And another, you know, way to look at it too is,
13 there's a whole courtyard.

14 So, even though the 10-foot rule is -- you
15 know, even though the building is exceeding the 10
16 feet, the front part of the house, or the front part
17 of the apartment house, is actually in line with the
18 other houses, which is another reason why it has very
19 lower impact than you would typically see in a house
20 that was exceeding the 10-foot requirement.

21 So, that was our thinking. This was, I guess
22 a way to look at it is, this project was very
23 sensitive when it came to how to proportion the
24 massing on the site to reduce its impact.

25 MR. HART: Thank you.

1 CHAIRPERSON HILL: And could the architect go
2 back, and could you just point out the 10 feet again
3 that you're asking for because I'm a little confused
4 again as to -- yeah, it's in --

5 MR. FOSTER: Slide No. 10? Is that what you
6 said? Or what --

7 CHAIRPERSON HILL: The 10 feet that you're
8 requesting, I just want to see where the 10 feet is.

9 MR. FOSTER: I'm not sure I understand the
10 question. I'm sorry.

11 MR. MILLER: You mean the waiver of the 10-
12 foot --

13 CHAIRPERSON HILL: Yes.

14 MR. MILLER: That can't extend beyond 10 feet.
15 That's what you mean.

16 CHAIRPERSON HILL: Yes, that's what I mean.
17 Thank you so much.

18 MR. FOSTER: Do you want --

19 CHAIRPERSON HILL: Yeah, I think I see where
20 it is, right? But it is --

21 MR. FOSTER: Well, so the backs of the --

22 CHAIRPERSON HILL: All right. That's the 10-
23 foot right there. Right. Okay.

24 MR. FOSTER: Generally, you can't go more than
25 10 feet beyond.

1 CHAIRPERSON HILL: I understand. I just had
2 clarity because for some reason the meaningful
3 connection was somewhat confusing me. So, what I
4 thought was right, is right. So, I'm okay.

5 MR. FOSTER: Okay.

6 CHAIRPERSON HILL: So, I just wanted to
7 confirm. It's never good when your question doesn't
8 make sense and somebody else from the Board has to
9 explain it.

10 Okay. Does anybody have any more questions
11 for the Office of Planning? Oh, please, Mr. Miller.

12 MR. MILLER: Thank you, Mr. Chairman. We have
13 a letter, at least a letter from a neighbor in
14 opposition which discusses inclusionary zoning. And
15 maybe the applicant can address this as well, saying
16 that although they're two separate cases, this is
17 being presented as one development project, the Quincy
18 Street Townhomes. And so, I wondered if the Office of
19 Planning had looked at this, I mean, with a conversion
20 to I think four or more units, the fourth unit and
21 then the sixth unit have to be IZ units. If you look
22 at these as separate projects I guess that -- of three
23 units each, then I guess that wouldn't apply.

24 But I guess, how did you come to the
25 conclusion that it's just -- that it is not one

1 development and this was a clever way of circumvention
2 that provision?

3 MS. WHITE: Exactly. These are two separate
4 apartment houses. And when you review it, according
5 to the requirements for U 320.2, you need four units
6 for IZ to go into effect. We have to look at it for
7 that.

8 There are each three, three dwelling units.
9 So, it did not come up to the level of having to
10 review it for IZ requirements.

11 Does the applicant want to say anything about
12 that issue?

13 MR. SULLIVAN: Yeah, we agree with that. I
14 think it applies to the building. It's a separate
15 section than the IZ for the 10-unit minimum. And it's
16 separate for each building as opposed to the 10-unit
17 one, which brings together all projects done by a
18 common owner.

19 And this is a project that could be -- would
20 be two units, if it had to have an IZ unit. It would
21 probably have to be two and two.

22 And it's also a property that was vacant and
23 blighted for a long time and so it resisted
24 development of any kind.

25 MR. MILLER: Right. And currently is, right.

1 MR. SULLIVAN: Right.

2 CHAIRPERSON HILL: I mean, I guess to Mr.
3 Miller's point, you know, you are sharing a common
4 hallway in terms of the second -- you just said that
5 there was a common hallway that you're sharing in
6 terms of in the second portion of the building?

7 MR. HIRSHFIELD: Correct.

8 CHAIRPERSON HILL: Okay.

9 MR. HIRSHFIELD: For trash removal and access
10 to parking.

11 CHAIRPERSON HILL: Okay.

12 MR. HIRSHFIELD: It's not an access to the
13 building.

14 CHAIRPERSON HILL: Okay. And the question
15 that I would have, I suppose, is along Mr. Miller's
16 question again, that if we did consider this as one
17 project, then you would have four and six, so the
18 fourth unit would be under IZ, as well as the 6th.
19 Have you guys thought about, you know, offering one
20 unit up for IZ?

21 I mean, I'm talking about money right now
22 right here. And so, you haven't thought about that.

23 I'm sorry, your microphone is not on.

24 MR. HIRSHFIELD: Yeah, I'm sorry. We've
25 always considered this as two lots. You know, two

1 apartment houses, three units each.

2 CHAIRPERSON HILL: Right.

3 MR. HIRSHFIELD: With separate utilities,
4 separate meters, separate you know, separate projects.

5 CHAIRPERSON HILL: Okay. Yeah, I mean, I'm
6 just following along with what Mr. Miller's
7 conversation was.

8 MR. HIRSHFIELD: Sure. Sure.

9 CHAIRPERSON HILL: And then again, that you
10 are sharing a common hallway. There is one common
11 element of the projects, and they're not completely
12 separate. They are sharing something.

13 MR. HIRSHFIELD: Right.

14 CHAIRPERSON HILL: But, at the same time, and
15 I'm not trying to -- you know, there's been a lot of
16 discussion I can see, and we'll still see how the rest
17 of this hearing goes, I mean, you have done, I think,
18 a tremendous job of trying to get buy-in from
19 everyone, and I would -- I commend you for that. But
20 now I'm just thinking about what Commissioner Miller
21 just brought up. So --

22 MR. HIRSHFIELD: Understood.

23 CHAIRPERSON HILL: Any other questions right
24 now?

25 MR. HART: Yeah, Mr. Chair.

1 CHAIRPERSON HILL: Sure.

2 MR. HART: Just one question with regard to
3 the fifth parking space. Is that going to be on one,
4 or I mean, is that split down the middle? I mean, how
5 does that work, because you'd have -- does one
6 apartment building have three, and the other one has
7 two? I just, just out of curiosity because right now
8 you have a property line that goes down the middle of
9 that parking space. So, I'm guessing that somebody
10 that buys one of these units is not going to want to
11 have half of a parking space, so again, I'm -- I think
12 you need to at least think about that if you haven't
13 already.

14 MR. HIRSHFIELD: Yeah. Well, the parking
15 would be common, or limited common elements. It
16 wouldn't be like a deeded parking space. They
17 wouldn't belong to, to any one of the units. So --

18 MR. FOSTER: And you can do an easement. One
19 property can have an easement to the other property to
20 allow use of that part of the space.

21 MR. HIRSHFIELD: So, it wouldn't be split down
22 the -- there would be an easement to take care of that
23 property line. Easement language.

24 MR. HART: Yeah, it's across and it's not
25 uncommon to have -- to share space like that and then

1 basically each side grants an easement to the other so
2 that it's available to be used by either. Or however
3 he wants to define it. If he wanted to sell it, he
4 would sell a portion, and it could be contractually.

5 MR. HART: That's fine. I just was more of a
6 curiosity than anything.

7 MR. HIRSHFIELD: Yeah, understood.

8 CHAIRPERSON HILL: Okay. Anybody got anything
9 else for the applicant right now?

10 MS. WHITE: My only comment was that I was
11 talking to Mr. Miller about the connection of the two
12 buildings. It's almost like one building, so it would
13 have been nice to have some kind of affordable
14 component or some kind of IC component associated with
15 that project because it's such a big issue in the
16 city. But I guess that's not on the table right now.

17 MR. SULLIVAN: I'm sorry. I don't think it's
18 economically feasible. Otherwise we wouldn't be here.

19 MR. HIRSHFIELD: Yeah. And they are going to
20 be you know, family sized houses and that was one of
21 the things that the whole community, neighbors, ANC,
22 everybody wanted to, you know, not be building two-
23 bedroom condos. These wanted to be, you know, we call
24 them townhouses that could have three, four bedrooms.

25 CHAIRPERSON HILL: Okay. Okay. So, sorry, is

1 there more?

2 MR. HART: Yeah, I'm sorry. I'm back on the
3 parking.

4 Right now you have a -- you're proposing this
5 fifth parking space because you want to provide more
6 parking on the back, because currently you could
7 actually -- I mean, it's a 20-foot-wide site, so you
8 could actually have two legitimate parking -- sorry,
9 four legitimate parking spaces --

10 MR. HIRSHFIELD: Correct.

11 MR. HART: -- without having to get a
12 variance.

13 MR. HIRSHFIELD: Correct.

14 MR. HART: And so --

15 MR. HIRSHFIELD: This was a request from the
16 ANC and neighbors to, you know, provide more parking.

17 MR. SULLIVAN: And we would have four feet
18 left over, essentially. But actually, we can do a
19 compact and a regular. So, that would be 17 feet, so
20 we'd have six feet left over. So, if we just steal
21 one foot from each of the full-sized parking spaces,
22 it allows us to make another eight-foot parking space.

23 MR. HIRSHFIELD: And that was a request of the
24 ANC.

25 MR. HART: No, I understand. I'm thinking

1 about the actual -- because this is a variance. It's
2 a much higher bar. And so, I'm trying to get to the -
3 - well, I understand what the neighborhood is asking
4 for and I understand why you're trying to do that, but
5 that doesn't keep you from having to, you know,
6 address the variance issue and whether or not, you
7 know, I don't know. I just think that that part of it
8 is the hard part of it for me.

9 The Office of Planning, since they are sitting
10 here.

11 MS. MYERS: Yes.

12 MR. HART: Do you have any comments on that?

13 MS. MYERS: We agree. It is a higher bar, and
14 we even say in our staff report that the argument for
15 it is a little weak. However, we do consider the fact
16 that they do have enough space to make five legal
17 parking spaces. They are compact parking spaces, but
18 they would meet the compact parking space standards as
19 an argument towards it being a little bit of a unique
20 situation.

21 They're also two properties that they are
22 doing simultaneously. But it is a little bit of a
23 trickier argument. We also looked at the fact that
24 the ANC requested this and this is the applicant
25 complying with what they've agreed with, with the ANC.

1 Which is not always something that we would say is an
2 argument towards it. But we looked at all of those
3 factors as being an argument towards allowing for the
4 variance. But it is up to you as to whether or not
5 you are comfortable with that.

6 MR. HART: Thank you.

7 CHAIRPERSON HILL: Okay. Okay. All right.
8 Commissioner Goodman, you've been here a long time.
9 This is just like, I mean, you've taken a whole day
10 off.

11 And you know, we're going to throw five
12 minutes up on the clock for you, just to hear what you
13 have to say. I suppose, you know, you've listened to
14 all of us deliberating on what we have deliberated
15 upon, and it seems as though you're here to lend your
16 support. And I suppose if you could just continue to
17 articulate why you're here and what you wanted to make
18 sure we listened to, would be helpful. But thanks
19 again for coming.

20 MR. GOODMAN: Yeah. Thanks for having us.
21 I'd say the ANC is here to lend partial support. And
22 partial support to the three-unit exceptions for both,
23 for 431, this is a two-year blighted vacant building
24 that has damaged both 433 and 429. And due to neglect
25 and lack of resources from DCRA to abate this, it's

1 saying, can you provide us guidance on when more than
2 10 feet would be allowable. And there was some
3 commentary that if this was potentially on the alley
4 or an end lot where it significantly changed the mid-
5 block make up, sightlines, whatnot, that might be a
6 possibility.

7 So, we I'll tell you, they have plenty of
8 support, they have support from both the adjoining
9 properties, very strong support. They do not have
10 full support from the neighborhood of the maybe 10 to
11 12 neighbors who have weighed in on this with the ANC.

12 I'd say about five are vocally opposed to it.
13 They're not adjacent neighbors. I believe you had two
14 letters and one of the neighbors, unfortunately, was
15 going to be here to testify but had a medical
16 emergency and submitted one very late last night.
17 That the ANC then did not -- one away in support of
18 this rear addition. We're unsure of how this can get
19 past 322(e) if it clearly says that it's a 10-foot
20 limit. They're adding 10 feet and then adding an
21 additional 27 feet, plus the significant corridor.

22 So, we're just asking for guidance, if you
23 want to approve this, how us as the ANC, can be in
24 compliance with this in the future and kind of be in
25 the same page with BZA and planning, so we can figure

1 out how to treat these cases going forward.

2 So, support of the three-unit exception for
3 both, very unsure how the 10-foot addition, the rear,
4 is viable and meets requirements.

5 CHAIRPERSON HILL: Okay. So, and I'll let the
6 Board weigh in. But again, I think the Office of
7 Planning, I'm going to have them reiterate again how
8 you -- that was Mr. Hart's question to OP in terms of,
9 right, we have -- I don't remember that particular
10 case as far as the 10 feet. And in the past the 10
11 feet is a very hard bar for people to get by as you
12 mentioned. I did then just listen to the Office of
13 Planning in terms of, you know, each individual case
14 is different. But I'm going to let the Office of
15 Planning again just reiterate how you have come to the
16 recommendation in terms of support of the 10 feet.

17 MS. MYERS: The Office of Planning, again,
18 looks at the case individually. But in this
19 particular case, we feel that the project complies
20 with the -- or the waiver should be granted because of
21 the distribution of the massing on the site.

22 The impact of the 10 feet is reduced
23 substantially because of the fact of how the project
24 has recessed the connector piece of the building
25 towards the property line of the adjacent building,

1 which is also similar, similarly built.

2 The properties that would be the most impacted
3 by the 10 feet, or going past the 10 feet, would not
4 even really -- would be pretty much encountering a
5 courtyard. So, it would be very similar to a backyard
6 experience.

7 And again, both neighbors have written in
8 support of this project.

9 CHAIRPERSON HILL: Mr. Good -- I mean,
10 Commissioner Goodman, and then just my follow up
11 question before I turn it over to the Board if they
12 have any questions. And feel free to ask the Office
13 of Planning if you have -- if you would like
14 clarification on their answer.

15 Again, it being a blighted property and the
16 extensive effort it seems as though the developer has
17 gone through, and this being the second round in terms
18 of a previous developer and the project crashing, you
19 the ANC are not withholding your approval based solely
20 on the 10 feet. Meaning, I don't know if the
21 developer could make this work without the 10 feet.

22 So, you know, you would be back to square one
23 again. So, I just want to be sure that I understood
24 that you -- the ANC was in approval of the plans the
25 way they are. You just had further clarification.

1 MR. GOODMAN: No, I'd say we're not in
2 approval. We are not opposing it. We're not writing
3 in and saying, we do not want this. We're essentially
4 not weighing in and saying we do not want this. We're
5 essentially not weighing in and asking for some
6 guidance.

7 Given past precedent with cases we have three
8 units, very similar make up in the neighborhood, which
9 is a 10-foot rear addition that is feasible. And
10 within similar cases. Within this year you've come
11 back and asked us, no, don't do this, even though
12 you've agreed to it.

13 So, we're just trying to understand --

14 CHAIRPERSON HILL: I understand.

15 MR. GOODMAN: -- the difference.

16 CHAIRPERSON HILL: And I don't know whether
17 that provided a whole lot of clarification for you or
18 not.

19 MR. GOODMAN: Sure, I mean, I understand and I
20 read this and I try to go back to a neighborhood who
21 says he cannot have 10 feet, and we're adding 27. So,
22 it's just every case is unique. Completely understand
23 that. We are not in support of this, but we're not
24 opposing the rear addition.

25 We would prefer probably not to have it, but

1 if this is within what is feasible, adjoining
2 neighbors are in support of it.

3 CHAIRPERSON HILL: But I'm sorry, just
4 providing clarification for me. The vote that you all
5 took at five, to two, to one.

6 MR. GOODMAN: Yeah.

7 CHAIRPERSON HILL: That was for this project
8 the way it is.

9 MR. GOODMAN: Sure. And so, what we -- if you
10 read further down between the two, is that this is --

11 CHAIRPERSON HILL: Sorry. Okay. The first
12 half of it, essentially, supports the three-unit
13 exception. And then the lower half, I believe, asks
14 for feedback and says that we aren't taking within one
15 to -- the second paragraph, or for the bullets. The
16 ANC, however, does not support or oppose rear addition
17 and asks the Board of Zoning Adjustment if this waiver
18 is allowable given the stipulated requirement for a
19 special exception in the recent case, which we listed.
20 The BZA has denied a rear addition below the
21 allowable 10 feet.

22 So, we're weighing in --

23 CHAIRPERSON HILL: Sure. Okay.

24 MR. GOODMAN: -- saying yes to special
25 exception for three units, and taking no stance on the

1 others, knowing that past precedent has said, no, this
2 isn't allowable.

3 CHAIRPERSON HILL: Okay. I understand. I
4 mean, right. You do not support or oppose. Okay.
5 All right. Okay.

6 Does the Board have any -- so now, just since
7 we have, and you've been here all this time, would you
8 like any further clarification from the Office of
9 Planning? Does that kind of work for you? Do you
10 kind of think you want to have a conversation later?

11 MR. GOODMAN: Yeah, I think conversation
12 later. And the March meeting, we talked with -- I
13 talked directly with Office of Planning as well and
14 got a very different view of this, and I was told the
15 Office of Planning would likely oppose this.

16 So, you know, I think with anything, depending
17 on who you talk to and within zoning there is changes
18 and stuff is a bit fluid, and neighborhood by
19 neighborhood somewhat. So, I take it I talked to one
20 person at one time and we're here --

21 CHAIRPERSON HILL: No, I mean, because I
22 understand that it is difficult, or it would be more
23 helpful for the ANC to understand, and the explanation
24 that I'm hearing from OP in this particular case
25 again, is based upon the massing that they stated

1 and --

2 MR. GOODMAN: Yeah.

3 CHAIRPERSON HILL: -- that the two neighbors
4 on opposing sides were in support, and they took a
5 look at it again as a whole and as unique case.
6 That's why they're in support at this time. However,
7 the last case, which I don't again recall or remember,
8 it was again a very specific case that had different
9 criteria that the Office of Planning was looking at.

10 MR. GOODMAN: Yes, yeah. And so, I talked to
11 Office of Planning directly about this case with this
12 rear addition and got a different answer. So, it's
13 just, it's interesting now to me.

14 I don't want to bring you bad cases where
15 opposing stuff not on valid grounds. We're trying to
16 work within the thing, and when we see clearly defined
17 and --

18 CHAIRPERSON HILL: I understand. I'm not --
19 when did you have a conversation with the Office of
20 Planning and they didn't think they were going to
21 support this?

22 MR. GOODMAN: At the March BZA case for the
23 prior case that we had mentioned.

24 CHAIRPERSON HILL: Oh, for the prior case.
25 Okay. All right.

1 All right. Does anyone have any questions for
2 the commissioner?

3 Okay. All right. Thank you.

4 All right. Is there anyone here wishing to
5 speak in support?

6 Is there anyone here wishing to speak in
7 opposition?

8 [No audible response.]

9 CHAIRPERSON HILL: Okay. All right. So, Mr.
10 Sullivan, it's back to you. Is there anything else
11 you'd like to add?

12 MR. SULLIVAN: Thank you, Mr. Chair. And I
13 think I would just like to -- I have an idea of what
14 the 10-foot waiver is available for. I think the
15 Zoning Commission adopted the 10-foot as a baseline.
16 But then they adopted the waiver with it and it's not
17 a variance, it's not a special exception, I think it's
18 a lower standard.

19 To give you all the opportunity to vet a
20 project and say, this project is extraordinary,
21 there's something different about this project, and we
22 think the 10-foot rule shouldn't impede this project.
23 And some of the other things that come into play, of
24 course, are Office of Planning support, which they
25 have opposed the 10-foot waiver in other cases, and

1 they support it in this case. And the neighbors'
2 support of course. And the biggest thing is the fact
3 that the mass and the scaling is pushed back.

4 One other thing I would add is, I know in the
5 past the Board has compared the proposed scale of an
6 addition with a conversion to what can be done as a
7 matter of right. And this actually can still be done
8 as a matter of right because of vesting with the 10-
9 foot rule, but only as two units. So, and it's been
10 done in the past as well.

11 So, I think all those things come into play
12 and the only criteria that the Board is held to with
13 granting a waiver, is the criteria in I, Section I,
14 that any addition shall not have a substantially
15 adverse effect on the use of enjoyment of any abutting
16 or adjacent property.

17 And in fact, I think -- and the purpose of
18 that is, if you're going to go past the 10 feet,
19 traditionally you're thinking of going 15 feet or 20
20 feet. And what's the impact that's going to have on
21 the neighbors. Well, we think we've moved all the
22 impact back and pushed it either off the property or
23 to the back of the property, and we think that's
24 reflected in the neighbors' support as well.

25 So, and of course we're happy to revise

1 whatever drawings we need to -- and get those in as
2 quick as possible.

3 CHAIRPERSON HILL: Sure. Okay. I think there
4 are -- there is another question. But before I move
5 on, the condition in terms of the -- I know the
6 applicant is in agreement with the condition which is
7 to create a vegetative green wall along the rear
8 addition sidewall that faces the adjacent neighbor to
9 the east, provided the neighbor concurs, a maintenance
10 agreement between the applicant and the neighbors may
11 be needed.

12 You agree with this condition. Okay. All
13 right.

14 You had a question, Ms. White?

15 MS. WHITE: Yes. I'm looking at your letter
16 where you're asking the developer to follow through on
17 early agreements with the community to start rodent
18 abatement prior to beginning demolition and
19 construction work, and provide exterior lighting on
20 the rear extensions to further illuminate the rear
21 parking and alleyway behind these properties. So, I'm
22 assuming that was agreed to, but I don't think we
23 raised it today. So, I wanted to know if that was one
24 of the conditions for --

25 MR. GOODMAN: That was one of the conditions

1 that ANC mentioned in the very very early conversation
2 when they met at the neighborhood restaurant. The
3 neighbors had drafted some wish list items, regardless
4 of what proceeded, whether there was a rear addition
5 or not, or what not, they wanted at least these two
6 minimum things and then parking was the third.

7 MS. WHITE: Yeah, because I noticed one of the
8 letters that came in, I think at 2:00 a.m. this
9 morning, it mentioned the rodent issue. So, I wanted
10 to know if that was going to be incorporated.

11 MR. HIRSHFIELD: Yes. We've since secured the
12 site.

13 MS. WHITE: Okay.

14 MR. HIRSHFIELD: Fencing around the site. And
15 we actually just purchased the blighted property last
16 week.

17 MS. WHITE: Okay.

18 MR. HIRSHFIELD: Because it was in blight, it
19 took a lot longer to acquire it.

20 MS. WHITE: Uh-huh.

21 MR. HIRSHFIELD: But yeah, rat abatement, the
22 lighting sights, securing the site, and then as well,
23 you know, agreements with the neighbors to secure
24 their backyards because you know, while we're doing
25 construction there will be some impact to their yards

1 that we want to mitigate.

2 MS. WHITE: Okay.

3 MR. HIRSHFIELD: So, yes.

4 MS. WHITE: Good.

5 CHAIRPERSON HILL: Okay. All right. Mr.
6 Hart, you had another question?

7 MR. HART: Just a really simple one. The ANC
8 letter also talks about, or letter talks about the
9 repositioning existing solar panels, and you all are
10 repositioning existing solar panels on an adjacent
11 property to minimize impact of the roof addition?

12 MR. HIRSHFIELD: Yeah, this is 433, Ross
13 Margulies. We have a solar panel agreement with him.

14 MR. HART: That's fine. That's fine.

15 MR. HIRSHFIELD: Yeah.

16 MR. HART: I just wanted to make sure that was
17 addressed.

18 MR. HIRSHFIELD: Yeah, and I think that's part
19 of the record.

20 MR. HART: Yeah. And I thought I'd seen it --

21 MR. HIRSHFIELD: Yeah.

22 MR. HART: -- I just wanted to make sure
23 that --

24 MR. HIRSHFIELD: Yeah. No, thank you.

25 CHAIRPERSON HILL: Okay. Anybody else have

1 anything else? Okay.

2 Then, I think we're going to have to see plans
3 that are whatever the plans are that you guys are
4 actually -- I know that as Mr. Hart mentioned, the
5 iterations and the process that you've gone through.
6 So, that's something that we'd like. I'm going to
7 close the record except for those plans, if you can
8 provide those to us and unless the Board wants
9 anything else.

10 I, Mr. Hirshfield, again, am -- I do see the
11 tremendous amount of work you've gone through to work
12 with the neighbors, and also try to provide some
13 things that they could get from the development and
14 everything.

15 I mean, if you could you know, take a look at
16 an IZ component, just to look at it. And if you know,
17 I mean, I know what that means. And so for you to
18 offer that up I understand that they're four-bedroom
19 units, which is also something that we as the Board
20 and the community are always looking for in terms of
21 more family property. And you seem very reasonable.
22 You know, and if you think it's possible, I'll just
23 leave it at that because that's the only kind of thing
24 with me a little bit. I mean, I don't really think
25 there's completely separate properties. You know, we

1 could go through that exercise where like you can
2 stick a hallway -- you know, you can put up a wall
3 somewhere that you know, will get torn down after
4 you're done. You know.

5 But just kind of, if you could just kind of
6 take a look at that and if, you know, 85 percent,
7 whatever you think you might be able to do if it's
8 possible, great. You know?

9 MR. HIRSHFIELD: Okay. Understood.

10 CHAIRPERSON HILL: They'll carve out a little
11 special place for you somewhere.

12 Okay. So, is that it? Okay, then when do we
13 think we can get plans, and how much in a hurry are
14 you guys?

15 Yeah, sure.

16 MR. SULLIVAN: We can do them by tomorrow or
17 Friday. So, if it's possible to have a decision in
18 July, great.

19 CHAIRPERSON HILL: Mr. Miller, you had
20 something?

21 MR. MILLER: No, I just wanted to add to share
22 your comments about the Inclusionary Zoning. And to
23 submit, I guess -- I don't know whether it's worth
24 asking to submit what you -- you made a reference that
25 it wouldn't be the larger sized units, it wouldn't be

1 three or four-bedroom units. I guess I would want to
2 know what the alternative would be if you were to do a
3 fourth and sixth unit as -- or, would you just cut
4 back on the number of units to two units and four
5 units, and therefore you wouldn't even have to be here
6 for that part of it?

7 So, I guess I might want a submission on that
8 issue.

9 MR. HIRSHFIELD: Yeah, I think the nature of
10 the design is that all these units go from basement to
11 roof. So --

12 MR. MILLER: So, that does make it more of a
13 family, I understand what you're saying.

14 MR. HIRSHFIELD: Yeah. So, it would be tough
15 to --

16 MR. MILLER: But I think it would help the
17 record --

18 MR. HIRSHFIELD: Tough to make a small unit,
19 you know, or to carve out a -- but we could come up
20 with a plan, talk about a plan.

21 MR. SULLIVAN: Yeah, we can submit
22 something --

23 MR. MILLER: Okay.

24 MR. SULLIVAN: -- in private and --

25 MR. MILLER: I think of it --

1 MR. SULLIVAN: And I'm thinking something more
2 along the lines of a contribution to the Housing
3 Production Trust Fund too, might be more feasible.

4 MR. MILLER: Okay. Well, I think --

5 MR. SULLIVAN: Or might fit well within the
6 project and still --

7 MR. MILLER: So, I would appreciate you
8 considering that. I appreciate all of the
9 considerations that you've given to the ANC concerns,
10 the neighbors' concerns, the Office of Planning's
11 early on concerns. So, I do commend your outreach to
12 all those folks.

13 MR. SULLIVAN: Thank you.

14 MR. MILLER: And I appreciate your
15 consideration of that.

16 CHAIRPERSON HILL: Mr. Sullivan, what did you
17 just say about IZ? I'm sorry, I missed it. Someone
18 was talking to me.

19 MR. SULLIVAN: I just, one thing that comes to
20 mind is a contribution to the fund, like in the lines
21 of a penthouse.

22 CHAIRPERSON HILL: Right.

23 MR. MILLER: Housing Production Trust Fund
24 contribution.

25 CHAIRPERSON HILL: Right. Sure. Okay. Okay.

1 So, what I was just reminded of is that anything we
2 ask for, there has to be seven days with which people
3 can respond. And so, that's going to kick us into
4 September regardless because I have to --

5 MR. COHEN: Commissioner. Commissioner.

6 CHAIRPERSON HILL: Yes? I'm not a
7 commissioner, but that's okay.

8 MR. COHEN: Oh, sorry. Yeah. Wanted to
9 mention that you can waive that rule if the Board
10 finds that there's good cause to do so. You can waive
11 that seven-day requirement window.

12 CHAIRPERSON HILL: Okay. I don't know
13 we've -- that one I thought was kind of like a hard
14 fast -- we can waive the seven-day requirement. Okay.

15 So, and Mr. Hirshfield, again like, we're also
16 -- I mean, we're here as I was going to say, public
17 servants, you know, trying to do our best to kind of
18 move through these cases as I think you also have been
19 a very good contentious developer. So, I'm trying to
20 be careful of a couple of things, and I'm just going
21 to kind of speak through this, or talk through this.
22 And please, if any member of the Board would like to
23 join in.

24 The first thing I guess is again, you know,
25 how badly is it going to harm you in terms of

1 financing or anything like that, to kick this into
2 like the first week of September in terms of making a
3 decision? What does that do to you. You're here now.

4 And the reason why I ask is because what we're
5 waiting for is now the drawings --

6 MR. HIRSHFIELD: Right.

7 CHAIRPERSON HILL: -- that what have you, Mr.
8 Hart clarified. And then the other thing that we are
9 -- I am interested in, is a analysis or some kind of
10 thought in terms of the IZ component that, you know,
11 and perhaps you could, you know, maybe even go away
12 and chat with your client or something, you know,
13 about the contribution. And I don't know, you know,
14 contribution to the IZ component, and also -- so, the
15 two questions I have for you is, number one, how badly
16 is it going to hurt you to go into September?

17 And then, number two, I suppose if there is
18 some way that we can hear your thoughts on an IZ
19 component or an IZ contribution, see where that gets
20 us.

21 MR. HIRSHFIELD: Right. Right. I guess, you
22 know, with the floorplans it's, we had them as one.
23 It was just that when we separated the two cases -- so
24 some of that is just logistics of you know, we could
25 have them in a day. But the other you know, as far as

1 the IZ component, I'd probably need a few days to --

2 CHAIRPERSON HILL: You'd have to think about
3 it.

4 MR. HIRSHFIELD: -- think about it. Yeah.

5 CHAIRPERSON HILL: Right. So, what does
6 September really do to you? At the very -- the first
7 week of September.

8 MR. HIRSHFIELD: Yeah, I mean, it --

9 CHAIRPERSON HILL: Six weeks.

10 MR. HIRSHFIELD: It's just, you know, the
11 uncertainty of not moving forward, and the financial
12 burden of, you know, having the project be at a
13 standstill. Especially with, you know, neighbors that
14 want us to kind of secure the site and start. So, you
15 know, we've made some progresses --

16 CHAIRPERSON HILL: Okay. Okay. Okay. Okay.

17 MR. HIRSHFIELD: -- that we're starting.

18 So --

19 CHAIRPERSON HILL: So, Mr. Hart, you're the
20 architect here in terms of the plans. And so, you
21 pointed out the differences. I mean, those are the
22 things that we've now asked for. The OAG has just let
23 us know that we can waive the seven-day requirement.
24 If the Board is -- since it's just those plans that
25 are at issue in terms, and again, the way that I think

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1 those plans happened is because like, you know, there
2 was the mirror image of things and that the iterations
3 that you kind of spun through them as they kind of got
4 to where they were going, I would be comfortable
5 waiving the seven-day requirement to have plans
6 submitted by Friday. And then we could come back for
7 a decision again. Mr. Miller, you're going to be here
8 anyway or not, submitting absentee for -- and I think
9 there was a previous thing and I can't remember what
10 it was now.

11 MR. HART: Mr. Chair.

12 CHAIRPERSON HILL: Yes.

13 MR. HART: Just because we have the ANC
14 commissioner here, and because I think the seven days
15 was to kind of provide them, give them an opportunity
16 to be able to kind of give some comments on this, do
17 you have any thoughts on us waiving the seven-day?

18 MR. GOODMAN: I don't. Based on the things
19 you said, I don't believe that there would be neighbor
20 or ANC feedback on it, in terms of the IZ is kind of a
21 whole new question I would just having considered.
22 I'll just add while I've got the microphone open, I
23 believe I could probably get a full support of this if
24 there was a full unit of IZ in this building, if that
25 would help.

1 CHAIRPERSON HILL: Yeah.

2 MR. HART: Yeah. And I just asked only
3 because I think that if you are comfortable with us
4 doing -- I wouldn't have a problem with doing it. I
5 just wanted to make sure that the one -- the other
6 party that would be here --

7 CHAIRPERSON HILL: Sure.

8 MR. HART: -- had a chance to be able to say
9 something. So, I would be okay with doing that.

10 CHAIRPERSON HILL: Sure. So, that I forgot, I
11 forgot that the commissioner was here.

12 MR. MILLER: Yeah, and I'm also okay with it.
13 And Commissioner Goodman can also submit anything --
14 we could waive -- he can submit it up to you know, his
15 own comments or --

16 CHAIRPERSON HILL: Right. So --

17 MR. MILLER: -- ANC comments, whatever
18 comments you have about what's submitted if you have
19 time to do it.

20 CHAIRPERSON HILL: So we're going to see --

21 MR. MILLER: You don't have to do it.

22 CHAIRPERSON HILL: So we would see plans on
23 Friday that basically are going to be the plans that
24 we're seeing now, except with further clarity as to,
25 you know, some of the questions that Mr. Hart had

1 risen. And the seven-day requirement right is really
2 primarily for the ANCs or the affected parties. And
3 so, I would again be back on to waiving that seven-day
4 requirement, getting the plans here by Friday so that
5 we can take a look at them. And then, Mr. Hirshfield,
6 again, really I really would like to see something.

7 I mean, like I'd like to see some IZ
8 contribution, some token of some kind because you
9 know, I think that you know, even -- I'll let you know
10 like, because again, I'm -- I really appreciate all
11 the stuff you've done. I mean, like we've basically
12 you know, we've said so many kind things to you about
13 how great you are and how wonderful you're doing, and
14 all these things. But again, it was Mr. Miller that
15 the concept of it being one unit does throw you into a
16 variety of different things, meaning one project.

17 And so, you don't want to get us back to that
18 situation.

19 MR. HIRSHFIELD: Understood.

20 CHAIRPERSON HILL: So, by Friday --

21 MR. HIRSHFIELD: Yes.

22 CHAIRPERSON HILL: -- if you could again then
23 submit something to us that gives us something in
24 terms of your opinion on IZ, a unit, or a contribution
25 and how you're also arriving, Mr. Sullivan, since we

1 have already done this once before today, the
2 multiplier in terms of how you're getting to whatever
3 it is that you are possibly getting to for the IZ
4 contribution.

5 So, I'd like to see that by Friday. And then
6 we will do whatever we do by the following Wednesday.

7 MR. HIRSHFIELD: Okay.

8 CHAIRPERSON HILL: Okay. So, is that clear?
9 Okay.

10 And then the ANC, again sir, you can submit
11 anything you like after Friday. You know, we'll take
12 it up until -- you know, I think you get to submit
13 anything, even the day of the way it works.

14 Mr. --

15 MR. COHEN: Mr. Chair, it's fine.

16 CHAIRPERSON HILL: Yeah, no. Sorry, I was
17 just mind blanking. So, OAG --

18 MR. COHEN: It's okay.

19 CHAIRPERSON HILL: -- it seemed like he was
20 trying to say something.

21 MR. COHEN: No, just to err on the side of
22 caution I would advise the Board to make a motion to
23 waive 602.3.

24 CHAIRPERSON HILL: Okay. Okay.

25 MR. COHEN: To make sure that we're on the

1 record there.

2 CHAIRPERSON HILL: Okay. All right. Okay.
3 So, I would go ahead and make a motion to waive 602.3
4 in this case to allow the applicant to submit the
5 material that we've asked for by Friday, and again
6 waiving 602.3 and the seven-day requirement.

7 MR. HART: Seconded.

8 CHAIRPERSON HILL: Motion has been made and
9 seconded.

10 [Vote taken.]

11 CHAIRPERSON HILL: Okay. So, that motion
12 passes, Mr. Moy. All right?

13 Okay. And then you guys are all good? Okay.
14 Yeah. Okay. All right. Great.

15 And what is it, Commissioner, thanks for
16 sticking around. That's great. If there's any -- are
17 there any other ANC commissioners here?

18 Okay, you're the last one. Okay. There you
19 go.

20 All right. We're going to take a two-minute
21 break.

22 MR. MOY: Before you do that, Mr. Chair.

23 CHAIRPERSON HILL: Oh, sure. Sorry.

24 MR. MOY: Just very quickly. So, when the
25 Board readdresses this next Wednesday, is that a

1 hearing or a decision meeting?

2 CHAIRPERSON HILL: Decision meeting.

3 MR. MOY: Okay.

4 CHAIRPERSON HILL: I think, right? You guys
5 are good with that?

6 MR. MOY: Okay. Then what I'd also like to
7 do, Mr. Chair, and I neglected to do this earlier on,
8 even though everybody knew, but this is for the
9 transcript, so to the people who read the transcript
10 will know that the presentation from the applicant
11 also included Case Application No. 19525 of Quincy
12 Street Townhomes I, LLC, same relief, but this is
13 located at 431 Quincy Street Northwest, Square 3236,
14 Lot 88. That's just for the record.

15 CHAIRPERSON HILL: Okay. No, thank you,
16 right, because they're two separate cases.

17 MR. MOY: That's correct.

18 CHAIRPERSON HILL: And then --

19 MR. MOY: Mr. Sullivan, I'm assuming when you
20 make your filing you'd also make the filing also into
21 the other case application.

22 MR. SULLIVAN: Correct. Thank you, guys.
23 Okay.

24 MR. MOY: Thank you.

25 CHAIRPERSON HILL: Right, thank you. And

1 that's what I just remembered. I think, if you could
2 revise your self-cert, is that what it was, for the
3 variance? And then pay the fee.

4 MR. SULLIVAN: Correct. Thanks.

5 CHAIRPERSON HILL: Okay? So, we can get all
6 that taken care of. That's what it was. Okay. All
7 right. Now we're going to take two minutes. Okay?

8 Thank you. Thank you all very much.

9 MR. HIRSHFIELD: Thank you for the hearing.

10 [Off the record from 5:45 p.m. to 5:51 p.m.]

11 CHAIRPERSON HILL: Okay, let's all get back
12 together.

13 [Discussion off the record.]

14 MR. HART: I think we need to start with the
15 case.

16 CHAIRPERSON HILL: Oh, is it that late again?
17 It's that late again, getting rained in.

18 All right. All right, Mr. Moy.

19 MR. MOY: All right. I see that the
20 applicants have come to the table to see if I can get
21 the case application right. So, I believe it's 19526
22 of Denise Vogt and Frank, is it Leone, Leone?

23 UNIDENTIFIED SPEAKER: Leone.

24 MR. MOY: Leone. Thank you. Captioned and
25 advertised for special exception relief under Subtitle

1 D, Section 5201. This is from the lot occupancy
2 requirements, Subtitle D, Section 1004.1, and the rear
3 yard requirements, Subtitle D, Section 1006.1 to
4 construct a three-story rear addition to a one-family
5 dwelling, R-17 Zone. This is at 2417 I Street
6 Northwest, Square 28, Lot 98.

7 CHAIRPERSON HILL: Okay, great. Thank you.
8 Were you all sworn in before earlier? No? No, I
9 didn't think so. Okay. I can't believe I can
10 remember that.

11 If you all wouldn't mind standing and get
12 sworn in by the secretary? You'll just stand and take
13 the oath. Oh, anybody else who's here. Great.

14 MR. MOY: Here I am.

15 [Oath administered to the participants.]

16 CHAIRPERSON HILL: Okay, great. Thank you.
17 And I see that you've filled out your witness cards
18 and that you've given them to the gentleman to my
19 right. So, if you could just introduce yourselves
20 from my right to left, please?

21 MR. SULLIVAN: Good afternoon, Mr. Chair.
22 Marty Sullivan on behalf of the applicant.

23 MS. PHAM: Chau Pham with Bonstra/Haresign
24 Architects.

25 MS. VOGT: And I'm Denise Vogt, the homeowner.

1 CHAIRPERSON HILL: Could you pronounce your
2 last name again? I'm sorry.

3 MS. VOGT: Vogt.

4 CHAIRPERSON HILL: Vogt?

5 MS. VOGT: Vogt, yes.

6 CHAIRPERSON HILL: Okay, great. Okay. Mr.
7 Sullivan, did you schedule all your cases today?

8 MR. SULLIVAN: I'm just lucky like that.

9 CHAIRPERSON HILL: Oh, really? Because --
10 yeah. Okay.

11 All right. I'm going to let you go ahead and
12 go first. I don't have a lot of questions, actually.
13 This is the first one today I don't have a lot of
14 questions about. And so, unless the Board has any
15 specific things, I think a brief presentation would be
16 sufficient in terms of what you're trying to achieve
17 in terms of the relief you're requesting, as well as
18 the standard to which we should grant that relief, Mr.
19 Sullivan. So, I'm going to go ahead and put five
20 minutes up there just so I know, and then you can
21 start whenever you'd like.

22 MR. SULLIVAN: Okay, thanks. I think we'll
23 start with the architect to briefly show the project.

24 MS. PHAM: Okay. So, the building in black is
25 the existing house of the client. And as you can see

1 in red, we are proposing a six and a half feet
2 addition, and it's currently at 60 percent lot
3 occupancy, and with the six and a half feet it will go
4 up to 70 percent. And as you can see, it doesn't
5 intrude to the current character and sizes of many of
6 the houses in that block. And most of the houses in
7 that block exceed the 60 percent lot occupancy, or
8 don't meet the required rear setback.

9 And so, the building outline is the house.
10 And then this is the rear. And so, we're only doing
11 the addition at the rear, so that's going to be only
12 seen from the back.

13 And this is just the main floorplan. As you
14 can see the six and a half feet addition is at the
15 rear, leaving a 19 and a half feet rear setback.

16 And this is the proposed rear elevation.
17 We're keeping the parapet at the same height as what's
18 in the front. A section of the proposed -- the red
19 dash line is the existing and as you can see again,
20 the six and a half feet extension at the rear.

21 And we also did shadow studies and as you can
22 see, it doesn't affect the -- impact the light or air
23 with the surrounding neighboring buildings. And yeah.

24 MR. SULLIVAN: And I would just add that we
25 did make a change in midstream at which for comments

1 that were submitted both by the Historic Preservation
2 Office, but also by one of the neighbors, and then
3 once we made that revision that neighbor was in
4 support. So, we have the support of both adjacent
5 neighbors.

6 CHAIRPERSON HILL: Okay. All right. Does the
7 Board have any questions for the applicant?

8 [No audible response.]

9 CHAIRPERSON HILL: Okay. I'm going to turn to
10 the Office of Planning.

11 MS. BROWN-ROBERTS: Good evening, Mr. Chairman
12 and members of the BZA. Maxine Brown-Roberts from the
13 Office of Planning.

14 Basically, the Office of Planning recommends
15 approval of the special exception, and therefore, for
16 brevity I will stand on the record.

17 Except for, we did note in our application
18 that the applicant may have needed a special exception
19 from Subtitle C, Section 202.2, and in fact, they
20 don't. That section relates to an expansion of the
21 nonconforming structure, and the current structure
22 meets the requirements. So they really don't need
23 that. Okay?

24 Thank you, Mr. Chairman. And I'm available
25 for questions.

1 CHAIRPERSON HILL: Thank you. Thank you.
2 Does anyone have any questions for the Office of
3 Planning?

4 MR. HART: Actually, one. I know this is a
5 simple question but, in the table on page 3 of your
6 report, it talks about parking, that one space is
7 required, zero existing and zero proposed. Is one
8 space really required for --

9 MS. BROWN-ROBERTS: Well, it's a single-family
10 home.

11 MR. HART: Okay. Just, I was just -- more of
12 a curiosity than anything.

13 MS. BROWN-ROBERTS: Yes.

14 MR. HART: Thank you.

15 MS. BROWN-ROBERTS: But they're grandfathered,
16 so.

17 CHAIRPERSON HILL: Okay. Now I got for you,
18 have curiosity questions.

19 This is for the applicant. You guys aren't
20 going as far back as the neighbor to the right,
21 correct, in terms of the rear?

22 MS. PHAM: Correct.

23 CHAIRPERSON HILL: Right. And the reason why
24 you're not trying to do that is you're just going up
25 to what we can grant by special exception?

1 MS. PHAM: Yes.

2 CHAIRPERSON HILL: Okay. All right. Okay.
3 All right. Does anyone have any other questions?

4 [No audible response.]

5 CHAIRPERSON HILL: Okay. Is there anyone here
6 from the ANC?

7 Is there anyone here wishing to speak in
8 support?

9 Is there anyone here wishing to speak in
10 opposition?

11 [No audible response.]

12 CHAIRPERSON HILL: Okay, Mr. Sullivan, turning
13 back to you, is there anything else you'd like to add?

14 MR. SULLIVAN: No. Thank you, Mr. Chairman.
15 We're available for any questions, and that's all we
16 have.

17 CHAIRPERSON HILL: Okay, great. I'm going to
18 go ahead and close the record. Is the Board ready to
19 deliberate?

20 Okay. Again, based upon the analysis of the
21 Office of Planning and the support of the ANC, which
22 is seven, zero, to zero, as well as the three levers
23 in support, I was comfortable with granting the
24 application, again primarily from the analysis of the
25 Office of Planning. Does anyone else have anything

1 they'd like to add?

2 MS. WHITE: No, I concur with you, Mr.
3 Chairman. This is a pretty simple one.

4 CHAIRPERSON HILL: Okay. Then I'm going to go
5 ahead and make a motion to approve Application No.
6 19526 as read by the secretary.

7 MS. WHITE: Second.

8 MR. HART: Second.

9 CHAIRPERSON HILL: Motion has been made and
10 seconded.

11 [Vote taken.]

12 CHAIRPERSON HILL: Motion passes, Mr. Moy.

13 MR. MOY: Before I read the vote, I forgot who
14 seconded. Oh, okay.

15 MS. WHITE: It's a dual second.

16 MR. MOY: That was kind of a silent second.
17 All right. I'll record the vote as four, to zero, to
18 one. This is on the motion of Chairman Hill to
19 approve the application for the relief requested.

20 Seconding the motion, Ms. White. Also in
21 support, Mr. Robert Miller, Vice Chair Hart, a board
22 seat vacant. Motion carries, sir.

23 CHAIRPERSON HILL: Could we get a summary
24 order?

25 MR. MOY: Yes, sir.

1 CHAIRPERSON HILL: Thank you. Thank you all
2 very much.

3 [Pause.]

4 MR. MOY: The next case application before the
5 Board is Application No. 19528 of Edwin and Katherine,
6 is that pronounced Coyle?

7 MS. COYLE: Yes.

8 MR. MOY: Coyle. Thank you. Captioned and
9 advertised for special exceptions under Subtitle C,
10 Sections 703.2(a) through (b), from the parking
11 requirements of Subtitle C, Section 701.5, and from
12 the use restrictions under Subtitle U, Section
13 301.1(g). This would expand an existing accessory
14 structure for residential use in the RF-1 Zone at
15 premises 716 16th Street Southeast, Square 1092, Lot
16 31.

17 And for the record, Mr. Chairman, I believe
18 there's an ANC 6B letter in the case record.

19 CHAIRPERSON HILL: Oh, great. Thank you, Mr.
20 Moy.

21 All right. Good evening.

22 MS. COYLE: Hi.

23 CHAIRPERSON HILL: Please, if you would state
24 your name for the record from my right to left?

25 MR. COYLE: Yeah. I'm Edwin Coyle. I live at

1 716 16th Street, homeowner.

2 MS. COYLE: Katherine Coyle, and I live with
3 him.

4 CHAIRPERSON HILL: Okay.

5 MS. FOWLER: I'm Jennifer Fowler. I'm the
6 architect.

7 CHAIRPERSON HILL: Okay. All right. Ms.
8 Fowler, I assume you're going to start to present to
9 us today.

10 One of the main questions I had was again kind
11 of like, what happened at the ANC. But I'm going to
12 have an opportunity now to get a better understanding
13 of that, so I don't think you're going to have to
14 specify too much on that. Unless the Board has any
15 other questions, I can see that you got 10, to zero,
16 to zero in support. They have 10 members of their
17 ANC. Oh, my gosh. And so, that's a big ANC.

18 If you could go ahead and again briefly speak
19 about the application, what you're trying to
20 accomplish, and the standard with which you think we
21 should grant it, that would be helpful. I'm going to
22 throw five minutes on the clock just so I know where I
23 am, and you can begin whenever you'd like.

24 MS. FOWLER: Okay. Thank you so much. So,
25 the homeowners have an accessory structure at the rear

1 of the property. It's been in existence for decades.

2 They've owned the property for 30 years, and in this
3 time it's never been functioning as a garage. It does
4 have a curb cut from the alley, but it has a wall and
5 an AC unit that's at the rear.

6 We submitted for permit at DCRA and got
7 feedback from the Zoning Administrator that he thought
8 it should be considered an existing parking space,
9 even though it really hasn't functioned that way, but
10 you know, it could be converted to be a parking space.

11 So, theoretically, we're removing a parking
12 space in order to create living space in this
13 accessory structure, which is the major part of the
14 relief that we're asking for today.

15 The second portion is also because we're
16 expanding an existing structure. We're basically
17 bumping the roof up to accommodate a loft space. This
18 triggers the relief for U-301.1, because we're
19 expanding an existing accessory building for a living
20 space.

21 So those are the two elements that we're
22 requesting relief for. And again, it's an existing
23 structure. We're not changing the footprint. We're
24 only bumping up the roof and basically finishing it
25 out for more of an in-law suite. It's not a legal

1 rental, it's just an extension of the living space of
2 the main house.

3 Again, the garage hasn't -- or the shed
4 structure has not operated as a garage as far as they
5 know, and we did submit information into the record
6 regarding that. There was some -- or a written
7 document from a neighbor who's been on the block for
8 decades, who also stated that.

9 The property is very well-served by
10 transportation. It's a .2 mile walk from the Potomac
11 Metro Avenue Metro stop, and there's about 10 bus
12 lines that stop at that Metro stop as well. It's also
13 very close to bikeshare.

14 There's also a number of garages in the alley.
15 This alley has an interior lot that's been divided up
16 into parking. So, there's -- the Coyles actually own
17 a garage on that alley, as do other neighbors, and
18 there's some off-street parking. And most people have
19 off-street parking in that square.

20 So, there really is not a -- as far as losing
21 that theoretical space, there's -- I think it's a good
22 area where there's not going to be much of an impact
23 because the parking is relatively easy. Thank you.

24 CHAIRPERSON HILL: Okay. Does anyone have any
25 questions for the applicant?

1 All right. Going to turn to the Office of
2 Planning.

3 MS. FOTHERGILL: Good evening. I'm Anne
4 Fothergill with the Office of Planning.

5 The Office of Planning recommends approval of
6 the two special exceptions that have been requested.
7 We did alert the applicant that the DCRA raised to us
8 that there might be some discussion of whether or not
9 this would be considered a separate dwelling unit, and
10 so we raised that to the applicant and we just raised
11 that to the Board as something. But it is self-
12 certified and they have had conversations with DCRA
13 and they have applied for the relief that they think
14 is appropriate, and we recommend approval of the two
15 special exceptions.

16 CHAIRPERSON HILL: Okay, great. Thank you.
17 Does anyone have any question for the Office of
18 Planning, or does the Board have any questions for the
19 Office of Planning? No? Okay.

20 Do you have any questions for the Office of
21 Planning?

22 MS. FOWLER: No, I just wanted to -- the extra
23 relief she was talking about. We did have actual
24 comments from DCRA, which is what we were responding
25 to. And these were the elements that they were

1 looking for. So, we felt pretty comfortable that we
2 were -- and we don't have a cooking facility in the
3 unit. It's more of a living space. So, but thank
4 you.

5 CHAIRPERSON HILL: Okay, great. Thank you.

6 Let's see. I had a question. You guys have
7 been there for 35 years? Thirty years? Did you move
8 in when you were 10?

9 MS. COYLE: Far too nice.

10 CHAIRPERSON HILL: Yeah, okay. All right.
11 So, you've been there for 30 years. Wow, that's
12 incredible. You've seen a lot of changes. Okay.

13 Well, congratulations. That's a long time to
14 be there. And I mean that. I mean, I've been over
15 there by the cemetery there with the dog park and all
16 that stuff. And so, you know, okay.

17 Is the ANC here? Anybody here from the ANC?
18 Is anybody here wishing to speak in support? Is there
19 anyone here wishing to speak in opposition?

20 All right. Ms. Fowler, going to turn back to
21 you. Is there anything else you'd like to add?

22 MS. FOWLER: Nothing else. Thank you.

23 CHAIRPERSON HILL: Okay. Does the Board have
24 anything else? Okay. Going to close the hearing.
25 Hearing has been closed. Is the Board ready to

1 deliberate? Okay.

2 I can start. I don't have any problem with
3 this. I think that the Office of Planning and their
4 report is very concise. I think that the applicant
5 has sought out quite a lot of community outreach in
6 terms of also the Capitol Hill Restoration Society,
7 and also the ANC and the fact that they got a
8 unanimous vote 10, to zero, to zero. Again, my view
9 is that the applicant meets the criteria as outlined
10 by the Office of Planning.

11 Does the Board have anything else they'd like
12 to add?

13 [No audible response.]

14 CHAIRPERSON HILL: Okay. Going to go ahead
15 and make a motion, then, to approve Application No.
16 19528 as read by the secretary.

17 MR. HART: Seconded.

18 CHAIRPERSON HILL: Motion has been made and
19 seconded.

20 [Vote taken.]

21 CHAIRPERSON HILL: The motion passes, Mr. Moy.

22 MR. MOY: Staff would, excuse me, record the
23 vote as four, to zero, to one. I'm sorry. I'm
24 starting to lose my voice.

25 Chairman Hart making the motion to approve the

1 application.

2 CHAIRPERSON HILL: I made the motion. That's
3 okay.

4 MR. MOY: Oh, isn't that what I said?
5 Chairman?

6 CHAIRPERSON HILL: Chairman Hill.

7 MR. MOY: What did I say?

8 CHAIRPERSON HILL: Chairman Hart. Chairman
9 Hill made the motion.

10 MR. MOY: Well, I got the first letter right.
11 But anyways, Chairman Hill made the motion to approve
12 the application for the relief requested. Seconded
13 the motion, Vice Chair Hart. Also in support, Ms.
14 White, Robert Miller, we have a board seat vacant.
15 Motion carries, sir.

16 CHAIRPERSON HILL: Thank you, sir. Summary
17 order.

18 MR. MOY: Thank you.

19 CHAIRPERSON HILL: Thank you. Thank you all
20 very much.

21 MR. MOY: All right. If we could have parties
22 to the table to Case Application No. 19531 of
23 Specialty Lending Group as amended for a special
24 exception relief under Subtitle D, Section 5201 from
25 the minimum side yard requirements of Subtitle D,

1 Section 303.5; special exception under Subtitle C,
2 Section 202.2 for -- this is for a nonconforming
3 structure. This is for an addition to, what was I
4 going to say? Nonconforming structure to permit an
5 existing nonconforming one-family dwelling. R-1-B
6 Zone at premises 2908 South Dakota Avenue Northeast,
7 Square 4341, Lot 10.

8 CHAIRPERSON HILL: Good evening. If you could
9 introduce yourselves from my right to left? Please,
10 go ahead and introduce yourself.

11 MR. LEVIN: Hi. My name is --

12 CHAIRPERSON HILL: I think you have to push
13 the button. Sorry.

14 MR. LEVIN: My name is Jeff Levine and I'm
15 with Specialty Lending Group.

16 MS. MAZO: Samantha Mazo with the law firm of
17 Cozen O'Connor, and we represent the applicant.

18 CHAIRPERSON HILL: Okay. And you all have
19 been sworn in?

20 MR. LEVIN: Yes.

21 CHAIRPERSON HILL: Okay. All right, great.

22 Okay. Ms. Mazo, I assume you're going to be
23 presenting to us?

24 MS. MAZO: Sure.

25 CHAIRPERSON HILL: I don't have a lot in terms

1 of questions for you. I think that the record is
2 pretty full and concise. I think that unless the
3 Board has any specifics, I would just like to hear in
4 general, kind of a brief outline as to what it is
5 you're requesting us to approve and why you think you
6 meet the standard for us to approve it. And I'm going
7 to go ahead and put five minutes on the clock, just so
8 I know where we are. And then you can begin whenever
9 you'd like.

10 Does the Board have any other things they'd
11 like applicant to specifically address?

12 [No audible response.]

13 CHAIRPERSON HILL: Okay. Then please, help
14 yourself.

15 MS. MAZO: Yeah, hi. Good evening. Very
16 briefly, Samantha Mazo, law firm of Cozen O'Connor.

17 We are here today to request special exception
18 relief from the side yard requirement, and the
19 existing nonconforming structure requirement of the R-
20 1-B Zone. We have a structure here that was an
21 addition to a prior existing structure. The existing
22 structure had a nonconforming side yard. That side
23 yard was extended as a result of an addition to the
24 property.

25 Again, the property is zoned R-1-B. I tend to

1 have problems on the -- anyway. The property was
2 zoned R-1 -- or is zoned R-1-B. As we stated before,
3 it is an existing structure that has been created.
4 The structure is on a block with other -- sorry, here.
5 We're back. The structure is on a block with other
6 structures that have been extended or additions have
7 been added to other prior existing structures on this
8 property.

9 Here is a picture of the structure as you can
10 see the adjacent property is fenced with an
11 approximately six-foot tall fence. Again, we're here.
12 The side yard that was existing was 3.1 feet. That
13 side yard was extended. Such extension now requires
14 special exception relief.

15 Importantly there is -- there was community
16 outreach. We have letters of support from both the
17 northern and the southern abutting neighbors, and it's
18 the southern abutting neighborhood that would be most
19 impacted.

20 The project was presented at an SMD meeting
21 and discussed thoroughly there. Our project was also
22 presented at the ANC. We have unanimous support from
23 ANC 5C. That report is in the record at Exhibit No.
24 38. We also have support from the Office of Planning
25 and DDOT.

1 The application does satisfy the requirements
2 for special exception relief. The standard, you know,
3 is fairly well-established and courts have found the
4 special exception relief is presumed to be
5 appropriate, provided that the relief of the
6 requirements are met, which is the case here.

7 The project is harmonious with the purpose and
8 intent of the zoning regulations. Project remains a
9 single-family home. The southern side yard width has
10 not been reduced from what was there before, and it is
11 also similar to other -- the width on other southern
12 side yards in the neighborhood.

13 The relief will not adversely affect use of
14 the neighboring properties. The compliant -- there's
15 a compliant zoning northern side yard and front yard.
16 There's a large rear yard, there's a fence between
17 this property and the abutting property to the south.
18 Light and air will not be unduly affected. The large
19 rear yard and the front yard help to prevent -- help
20 to protect any light and air impact to the adjacent
21 property.

22 Also, the privacy will not be changed, or has
23 not been changed. There's a fence between the
24 property and the neighboring property to the south.
25 The side yard width has not been reduced. The

1 addition does not substantially visually intrude upon
2 the character or scale of the pattern of the homes.
3 The southern side yard is similarly sized to other
4 properties and has not been reduced from what was
5 before. And that we provided the appropriate plans
6 and the lot occupancy is 34.7 percent.

7 With that, I'd be happy to answer any
8 questions.

9 CHAIRPERSON HILL: Does the Board have any
10 questions for the applicant?

11 [No audible response.]

12 CHAIRPERSON HILL: Okay. I'm going to turn to
13 the Office of Planning.

14 MS. THOMAS: Good afternoon, Mr. Chair. Karen
15 Thomas for the Office of Planning.

16 CHAIRPERSON HILL: I think we're in the
17 evening time.

18 MS. THOMAS: Evening. Oh, yes. After 6:00.
19 Sorry.

20 And we concur with the applicant's report, and
21 we stand on the record of our report. Thank you.

22 CHAIRPERSON HILL: Okay, thank you. Does the
23 Board have any questions for the Office of Planning?

24 Does the applicant have any questions for the
25 Office of Planning?

1 MS. MAZO: No, thank you.

2 CHAIRPERSON HILL: Okay. I'm going to turn to
3 the audience. Is there anyone here from the ANC?

4 Is there anyone here wishing to speak in
5 support?

6 Is there anyone here wishing to speak in
7 opposition?

8 [No audible response.]

9 CHAIRPERSON HILL: I'm going to turn back to
10 you, Ms. Mazo. Do you have anything else to add?

11 MS. MAZO: I do not. The application
12 satisfies the special exception standards and we would
13 hope that the Board approves it. Thank you.

14 CHAIRPERSON HILL: Okay. Great. Thank you.
15 I'm going to close the record. Is the Board ready to
16 deliberate?

17 So, I would agree with the Office of
18 Planning's analysis. I also am comfortable that the
19 ANC 5C is in support, as well as the letters of
20 support from the nearby neighbors.

21 I would just like to clarify again that even
22 though this property has already been built, we do
23 look at it as if it hasn't been built. I mean, we're
24 judging it by the standard in which whether or not
25 this should or shouldn't -- should meet the standard.

1 And I am in satisfaction that it meets the standard.

2 Does the Board have anything else they'd like to add?

3 So, I'm going to go ahead and make a motion to
4 approve Application No. 19531 as read by the
5 secretary.

6 MR. HART: Second.

7 MR. MILLER: Second.

8 CHAIRPERSON HILL: Motion has been made and
9 seconded.

10 [Vote taken.]

11 CHAIRPERSON HILL: Motion passes, Mr. Moy.

12 MR. MOY: Staff would record the vote as four,
13 to zero, to one. This is on the motion of Chairman
14 Hill to approve the application for the relief being
15 requested.

16 Seconded the motion, Mr. Robert Miller. Also
17 in support, Ms. White, Vice Chair Hart, we have a
18 board seat vacant. The motion carries.

19 CHAIRPERSON HILL: Thank you, Mr. Moy.
20 Summary order.

21 MR. MOY: Yes, thank you.

22 CHAIRPERSON HILL: Thank you. Thank you all
23 very much.

24 MS. MAZO: Thank you.

25 MR. MOY: All right, Mr. Chairman, I believe

1 the next case is Application No. 19535 of Evangelia, I
2 believe, and Theodore Pelonis, captioned and
3 advertised for a special exception under Subtitle F,
4 Section 5201.1, from the maximum lot occupancy
5 requirements of Subtitle F, Section 304.1, to
6 construct a rear addition to an existing one-family
7 dwelling. This is in an R-A-2 Zone at premises 1519
8 12th Street Northwest, Square 310, Lot 35.

9 Have you taken the oath? I'm just curious.

10 MS. PELONIS: Yes.

11 MR. MOY: Perfect.

12 CHAIRPERSON HILL: Okay. Thanks. Okay. Did
13 you guys take the oath this morning?

14 MS. PELONIS: I took it this morning and he
15 just took it.

16 MR. PELONIS: I was part of the group that
17 just took it.

18 CHAIRPERSON HILL: I see. I was just curious.
19 So you've been here since 9:00.

20 MS. PELONIS: I've been here since -- yeah. I
21 was --

22 CHAIRPERSON HILL: You've been here since
23 9:00.

24 MS. PELONIS: I've seen it all.

25 CHAIRPERSON HILL: Okay. So (not in English).

1 MS. PELONIS: Oh, (not in English).

2 CHAIRPERSON HILL: Go ahead and introduce
3 yourselves, please, from right to left.

4 MS. PELONIS: Sure. So, my name is Evangelia
5 Pelonis, applicant and owner of 1519 12th Street
6 Northwest.

7 MR. PELONIS: Theodore Pelonis, owner of 1519
8 12th Street Northwest.

9 CHAIRPERSON HILL: Okay. So who is going to
10 be presenting to us today?

11 MS. PELONIS: I will be. So, as Mr. Moy said,
12 we're seeking --

13 CHAIRPERSON HILL: Okay. I'm sorry, just
14 before you get that far.

15 MS. PELONIS: Sure.

16 CHAIRPERSON HILL: I'm just curious real quick
17 because again, I don't have a lot in terms of --

18 MS. PELONIS: I'll be brief.

19 CHAIRPERSON HILL: -- a lot of, yeah,
20 specificity. I appreciate that you've been here all
21 day and if you'd like to, you can do a real long
22 presentation. But I don't think there's a lot of
23 questions that we have, unless the Board has anything
24 else they'd like to specifically ask, I'd just again,
25 would like kind of like a brief overview as to what

1 you're trying to do and why we should grant the
2 relief.

3 MS. PELONIS: Yes.

4 CHAIRPERSON HILL: And so I'm going to put
5 five minutes on the clock just so, again, I know where
6 I am. And then you can start whenever you'd like.

7 MS. PELONIS: Okay. So, yes, we are 1519 12th
8 Street Northwest in the RA-2 Zone. We're seeking a
9 special exception for lot occupancy. We have a 60
10 percent lot occupancy by right. We're currently at 62
11 percent. That was a project that was constructed
12 prior to someone selling off a parking spot in the
13 back. So it was conforming when that addition was
14 built and was within the 60 percent. We're currently
15 seeking 70 percent. If that additional spot was part
16 of the lot, we would be at 64 percent, just to kind of
17 give you the full overview.

18 We have you know, done a tremendous amount of
19 community outreach and speaking to various neighbors,
20 including e-mails to neighbors. And at the end of
21 February. And then also, you know, the CDC and the
22 ANC meeting, it was a unanimous seven, zero vote at
23 the March 8th meeting, and that's Exhibit 12. We have
24 two letters of support, Exhibit 29 and 31. No issues
25 with light, air, privacy, and the back addition to the

1 house is -- it goes back three feet, 10 inches, and is
2 within the character of the other houses within that
3 area.

4 And happy to answer any questions.

5 CHAIRPERSON HILL: Does the Board have any
6 questions for the applicant?

7 MS. WHITE: Mr. Chairman, was there a
8 preliminary matter on this case, or am I mistaken?

9 CHAIRPERSON HILL: I don't know. It does say.
10 Hold on.

11 MS. WHITE: For a waiver? Or, no?

12 CHAIRPERSON HILL: I guess. Mr. Moy, is that
13 right, that the Office of Zoning understands the
14 applicant posted the signs late and they're requesting
15 a waiver for the 15-day posting requirement? Is that
16 still applicable?

17 MR. MOY: I don't know about that one. There
18 is an affidavit of posting that was submitted into the
19 record, dated July 14th, which would have been Friday.
20 So, that is in the record.

21 MS. PELONIS: Yes, and that is correct. So we
22 are seeking a waiver from the 15-day posting. We lost
23 track of time, in all honestly, and we just weren't --
24 I picked them up on Friday, posted them during the
25 thunderstorm on Friday afternoon, and they've been up

1 on the front door ever since then.

2 CHAIRPERSON HILL: Okay. Okay. Ms. White,
3 thank you for pointing that out.

4 I don't have an issue granting the waiver.
5 Does the Board have an issue granting the waiver?

6 MS. WHITE: No.

7 CHAIRPERSON HILL: Okay, then we can do that
8 by consensus. So we're just going to go ahead and
9 grant that waiver, then, for you. And thank you, Ms.
10 Hart (sic), for pointing that out. Was there
11 anything -- I'm sorry, Ms. White for pointing that
12 out.

13 Is there anything else the Board would like to
14 ask of the applicant?

15 No. Okay. I'm going to turn to the Office of
16 Planning.

17 MR. JESICK: Thank you, Mr. Chairman and
18 members of the Board. The Office of Planning is happy
19 to rest on the record in support of this very small
20 addition.

21 I just wanted to point out that we are
22 recommending that an additional area of relief be
23 granted, and that is relief from Subtitle C, Section
24 202.2. Thank you.

25 CHAIRPERSON HILL: Okay. I forgot to mention

1 that. Thank you.

2 And is the applicant aware of the Office of
3 Planning's recommendation that you add C-202.2 to your
4 application?

5 MS. PELONIS: Yes, we are. So we are asking
6 you to request to amend that verbally if possible.

7 CHAIRPERSON HILL: Uh-huh. Sure. Okay. So,
8 Mr. Moy, you got that?

9 MR. MOY: Yes, sir.

10 CHAIRPERSON HILL: Okay. All right. Great.
11 Okay. Okay, that's good. Does anybody have any
12 questions for the Office of Planning?

13 Does the applicant have any questions for the
14 Office of Planning?

15 MS. PELONIS: We do not.

16 CHAIRPERSON HILL: Okay. So, I'm going to
17 see, is there anybody here from the ANC?

18 Is there anybody here wishing to speak in
19 support of the application?

20 Is there anyone here wishing to speak in
21 opposition to the application?

22 [No audible response.]

23 CHAIRPERSON HILL: All right. I'm going to
24 turn back to the applicant. Do you have anything else
25 you'd like to add?

1 MS. PELONIS: No. Thank you for your time.

2 CHAIRPERSON HILL: Okay. Great. Thank you.
3 Then, I'm going to go ahead and close the hearing.
4 And is the Board ready to deliberate?

5 Okay. So I, again, from the review of the
6 case and the analysis that was provided from the
7 Office of Planning, I would be satisfied in terms of
8 their analysis and their support.

9 Also, I feel that ANC 2F being in support,
10 DDOT in support, and then the two letters in support
11 from adjacent neighbors, that also does help in terms
12 of my comfort.

13 However, I'm again, just primarily resting on
14 the analysis from the Office of Planning.

15 Is there anyone else that -- would the Board
16 have anything else they'd like to add?

17 [No audible response.]

18 CHAIRPERSON HILL: Okay. Then I'd go ahead
19 and make a motion to approve Application No. 19535,
20 pursuant to 11-DCMR, Subtitle X, Chapter 9 for a
21 special exception under Subtitle F, Section 5201.1
22 from the maximum lot occupancy requirement of Subtitle
23 F, 304.1, to construct a rear addition to an existing
24 one-family dwelling in the R-2 Zone, including C-202.2
25 at the premises 1519 12th Street Northwest, Square

1 310, Lot 35.

2 MS. WHITE: Second.

3 CHAIRPERSON HILL: The motion has been made
4 and seconded.

5 [Vote taken.]

6 CHAIRPERSON HILL: The motion passes, Mr. Moy.

7 MR. MOY: Staff would record the vote as four,
8 to zero, to one. This is on the motion of Chairman
9 Hill to approve the amended application as he has just
10 read into the record.

11 Seconded the motion, Ms. White. Also in
12 support, Mr. Robert Miller, Vice Chair Hart, board
13 seat vacant. The motion carries, sir.

14 CHAIRPERSON HILL: Thank you. Summary order,
15 Mr. Moy.

16 MR. MOY: Yes, sir. Thank you.

17 CHAIRPERSON HILL: Thank you.

18 MR. JESICK: Mr. Chairman.

19 CHAIRPERSON HILL: Sure, of course. Sorry.

20 MR. JESICK: Sorry to interrupt. DCRA wanted
21 me to be very sure that Section C-202 relief was
22 granted as a variance. It's a quirk in Subtitle F and
23 it does not fall under 5201.

24 CHAIRPERSON HILL: Okay. I'm sorry. So, did
25 I read that wrong? I said C -- when I read the motion

1 I added C-202.2.

2 MR. JESICK: I just want to be clear on the
3 record that it's a variance, not a special exception.

4 CHAIRPERSON HILL: Okay. All right. So, then
5 I would go ahead and make a motion again to include C-
6 202.2 as a variance.

7 MR. JESICK: That's correct.

8 MR. COHEN: That's correct. You'd have to
9 make another motion, though.

10 CHAIRPERSON HILL: Okay. Then, I'm going to
11 remake a motion.

12 So, I'll make the motion again of Application
13 No. 193 -- 19535, pursuant to 11-DCMR, Subtitle X,
14 Chapter 9, for a special exception under Subtitle F,
15 5201.1 for the maximum lot occupancy requirement of
16 Subtitle F, 304.1, and C-202.2 as a variance, to
17 construct a rear addition to an existing one-family
18 dwelling in the R-A-2 Zone at premises 1519 12th
19 Street Northwest, Square 310, Lot 35.

20 MS. WHITE: Second.

21 CHAIRPERSON HILL: Motion has been made and
22 seconded.

23 [Vote taken.]

24 CHAIRPERSON HILL: Okay. Thank you for the
25 clarification.

1 So, the motion passes, Mr. Moy.

2 MR. MOY: Yes, same vote count, four, to zero,
3 to one.

4 CHAIRPERSON HILL: Okay. So, are you good?

5 MR. MOY: Yeah, I'm good.

6 CHAIRPERSON HILL: Okay. All right. So, same
7 thing for you guys. Have a nice evening.

8 MS. PELONIS: Thank you.

9 MR. PELONIS: You as well. Thank you.

10 CHAIRPERSON HILL: Okay, thank you.

11 All right. Mr. Moy, is there anything else
12 before the Board today?

13 MR. MOY: No, no it's not. I'm smiling
14 because you're beating your record of last week by a
15 half hour.

16 CHAIRPERSON HILL: Oh, in terms of -- I wonder
17 how long we really -- is this --

18 MR. MOY: You went to 7:00 last week.

19 CHAIRPERSON HILL: Oh, good. Well, I'm glad.
20 That's when I don't mind winning.

21 All right. Okay. Then, we stand adjourned.
22 Thank you.

23 [Whereupon, at 6:30 p.m., the public hearing
24 and meeting were adjourned.]

25

CERTIFICATE OF TRANSCRIPTIONIST

I, Kimberly Lawrie, do hereby certify that the foregoing proceeding was transcribed from a digital audio recording provided to me by Olender Reporting and thereafter was reduced to typewriting by me or under my direction.

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Kimberly Lawrie,
Legal Transcriptionist