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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Public Hearing

Case No 14-11D [Text Amendment to Subtitle A § 301 -
11 DCMR (Vesting Provision for Zoning Commission Case
No. 14-11B).]

6:35 p.m. to 7:25 p.m.
Thursday, September 14, 2017

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

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Attorney General:

12 ALAN BERGSTEIN

13 MS. LOVICK

14

15 Office of Planning:

16 JENNIFER STEINGASSER

17 JOEL LAWSON

18

19

20

21

22

23

24

25

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

2 CHAIRPERSON HOOD: Okay. Are we ready to get
3 started? Good evening, ladies and gentlemen. This
4 is a public hearing of the Zoning Commission for the
5 District of Columbia. Today's date is September the
6 14th, 2017. My name is Anthony Hood. We're located
7 in the Jerrily R. Kress Memorial Hearing Room.

8 Joining me this evening are Vice Chair
9 Miller, Commissioner May, and Commissioner Turnbull.
10 We're also joined by the Office of Zoning staff, Ms.
11 Sharon Schellin, as well as the Office of Attorney
12 General, Mr. Bergstein and Ms. Lovick. We want to
13 welcome Ms. Lovick to the Zoning Commission. Also,
14 Office of Planning, Ms. Steingasser and Mr. Lawson.

15 This proceeding is being recorded by a court
16 reporter. It's also webcast live. Accordingly, we
17 must ask you to refrain from any disruptive noises or
18 actions in the hearing room. Excuse me. This
19 proceeding is being recorded by a court reporter.
20 It's also webcast live. Accordingly, we must ask you
21 to refrain from any disruptive noises and actions in
22 the hearing room, including display of any signs or
23 objects.

24 Notice of today's hearing was published in
25 the D.C. Register, and copies of that announcement

1 are available to my left on the wall near the door.

2 The hearing will be conducted in accordance
3 with provisions of 11 DCMR, Chapter 5 as follows;
4 preliminary matters, presentation, in this case, it
5 will be by the Office of Planning, report of other
6 government agencies, report of any ANCs,
7 organizations and persons in support, organizations
8 and persons in opposition.

9 The following time constraints will be
10 maintained in this hearing. Office of Planning has
11 up to 60 minutes. I know we don't need 60 minutes.
12 We have read the materials. Organizations, five
13 minutes. Individuals, three minutes.

14 The Commission intends to adhere to the time
15 limits as strictly as possible in order to hear the
16 case in a reasonable period of time. The Commission
17 reserves the right to change the time limits for
18 presentations if necessary, and notes that no time
19 shall be exceeded.

20 All persons wishing to testify before the
21 Commission in this evening's hearing are asked to
22 register at the witness kiosk to my left, and fill
23 out two witness cards. These cards are located to my
24 left on the table near the door. Upon coming forward
25 to speak to the commission, please give both cards to

1 the reporter sitting to my right before taking a seat
2 at the table.

3 When presenting information to the
4 Commission, please turn on and speak into the
5 microphone, first stating your name and home address.
6 When you are finished speaking, please turn off your
7 microphone so that your microphone is no longer
8 picking up sound or background noise. The staff will
9 be available throughout the hearing to discuss
10 procedural questions. Please turn off all electronic
11 devices at this time so not to disrupt these
12 proceedings.

13 At this time, the Commission will consider
14 any preliminary matters. Does the staff have any
15 preliminary matters?

16 MS. SCHELLIN: No, sir.

17 CHAIRPERSON HOOD: Okay. So, with that we
18 will go directly to the Office of Planning. Ms.
19 Steingasser.

20 MS. STEINGASSER: Chairman Hood,
21 Commissioners, the Office of Planning recommends the
22 Commission adopt the text as advertised, with no
23 changes, and should the Commission adopt the text, we
24 also recommend a continuation of the emergency action
25 until such time as that text becomes final. That's

1 all.

2 CHAIRPERSON HOOD: Okay. Thank you, Ms.
3 Steingasser. That definitely was not 60 minutes. I
4 really appreciate that.

5 Okay. I think that her presentation is very
6 fitting for what we have, the materials. I think the
7 record speaks for itself, and we have reviewed that.
8 So, let me open it up. Any questions or comments?

9 [No audible response.]

10 CHAIRPERSON HOOD: Okay, not seeing any. I
11 will ask one question, Ms. Steingasser, and I think
12 we -- this may have come up previously. There is a
13 reason that we said March the 20th, and I was
14 thinking today when I was revisiting it, why didn't
15 we just say January 1st. There's a reason why we
16 said March the 27th for the cutoff date. And can you
17 refresh my memory, or was there something that we --
18 some other things that we took into consideration?

19 MS. STEINGASSER: That was the day the
20 Commission set the case down for public hearing.

21 CHAIRPERSON HOOD: Okay. All right. That's
22 why we did that. All right. All right. Anything
23 else, Commissioners?

24 Let me see. All right. Let's call up our
25 witnesses. All we have is three for tonight's

1 agenda, I believe. So far, all we have is three.
2 I'm just going to ask, let me just call who I see on
3 the list, and anyone else can come up and join at the
4 table.

5 Kevin Cummins, Sheryl and Leonard Bennett,
6 and Betsy McDaniel.

7 We have two opponents and one undeclared. I
8 would ask that when you come up, and before you begin
9 speaking, if you could let us know whether you are in
10 favor, opponent, or undeclared, at that time.

11 Did you have a chance to --

12 UNIDENTIFIED SPEAKER: I attempted to sign
13 in.

14 CHAIRPERSON HOOD: Okay. She will help you.
15 See Ms. Schellin, she'll help you.

16 UNIDENTIFIED SPEAKER: Thank you.

17 CHAIRPERSON HOOD: And while you're getting
18 that together, we'll go ahead and get started.

19 Ms. McDaniel, you can go ahead and -- since
20 you, you can get started and then we'll come to, I
21 believe, the Leonards? The Leonards. Okay. Let's
22 go to you, Ms. -- let me say this. Is Kevin
23 Cummins --

24 MS. MCDANIEL: I don't see him.

25 CHAIRPERSON HOOD: Okay. Not seeing him.

1 MS. McDANIEL: He signed up in advance.

2 CHAIRPERSON HOOD: He signed up in advance?
3 Yeah, that's what I'm saying, I see his names. I
4 don't see Mr. Cummins. So, Ms. McDaniel, you may
5 begin.

6 MS. McDANIEL: Good evening, Chairman Hood
7 and Commissioners. I'd hoped to get the band back
8 together, and I guess I didn't do a very good job for
9 what I hope is our farewell performance here.

10 I just don't understand what happened between
11 March 27th, when you unanimously said that there was
12 no vesting period needed, and 14-11D. I think the
13 original 14-11 was set down in July of 2014. 14-11B
14 was set down in April of 2016, and I think it's a
15 little late for people to send in the e-mails and
16 say, I didn't know anything about it. It's been a
17 very widely discussed issue, and there have been
18 multiple, multiple hearings, multiple notices in the
19 register. And I'm just really, really disappointed
20 that after it was so resoundingly voted unanimously
21 not to have a set down -- I mean, a vesting period,
22 that you've changed your minds.

23 I just don't know what else to say. I don't
24 know if you don't remember the pictures that we
25 showed you during 14-11, but even a 10-foot bump back

1 is a lot. If your deck is 10 feet deep, and you have
2 a 34, 40-foot wall next to your deck or your balcony,
3 that's a lot.

4 And as I believe Mr. May said, you know, you
5 can always go to BZA, you know. It's by special
6 exception. It's not totally outlawed, you can get a
7 special exception. And to have these 30 and 40-foot
8 bump backs, and I think Ms. Grosso can tell you what
9 it's like. I mean, she lives with it on her block.
10 It's really a quality of life issue that no one
11 should have to deal with. And I think it's past time
12 to put an end to this. So, thank you very much.

13 CHAIRPERSON HOOD: Okay. Thank you. Let's
14 go to the Leonards. Ms. Grasso, if you can come
15 forward, so we can have your testimony as well. But
16 we'll go to the Leonards, Mr. and Mrs. Leonard first.

17 MR. BENNETT: Good evening, Commissioner and
18 Commission. Thank you all for having us here. I
19 think that we are in stark contrast to what Ms.
20 Grosso just indicated.

21 I'm sorry. I guess we're all messing up
22 names. Ms. McDaniel.

23 CHAIRPERSON HOOD: Why don't you give us your
24 name? Identify yourself and your wife.

25 MR. BENNETT: My name is Leonard Bennett, and

1 this is Sheryl Bennett.

2 CHAIRPERSON HOOD: Sheryl Bennett. Okay.

3 MR. BENNETT: In terms of, you know, the
4 notices going out, let me just give some background.
5 We purchased our home in Southeast D.C. in a historic
6 area. We purchased the property in June of 2016. I
7 actually have a printout that I can circulate with
8 you all as well. And we worked with our developer,
9 with our architect, on all the plans, made sure they
10 were in conformance with the then in place, D.C.
11 Regulations, and in fact we had an additional layer
12 of -- we had an additional layer of review with the
13 Historic.

14 So essentially, we got to a point where we
15 were going through our historic review toward the end
16 of 2016, into the beginning of 2017. We got our
17 historic signed off by HPRB and started moving
18 forward with a few of their recommendations with our
19 plans, and we actually submitted all of our plans to
20 zoning on the 31st of March.

21 So just a few days after the initial cut-off
22 date, the 27th. And up to that point, we had no idea
23 that this was in the pipeline. And for that reason,
24 we're asking that, you know, that you extend the
25 vesting period an additional, from the 27th to the

1 31st, for our case.

2 Regarding the addition, our addition is 19
3 feet. Our neighbors are in agreement that it's fine,
4 that they've given letters of support and we've
5 gotten a unanimous letter of support from our ANC.

6 Do you have anything to add?

7 MS. BENNETT: No, I mean --

8 CHAIRPERSON HOOD: Pull the mic in front of
9 you.

10 MS. BENNETT: Oh, I'm sorry.

11 CHAIRPERSON HOOD: Identify yourself.

12 MS. BENNETT: I would just concur with
13 everything that my husband has said. But in just
14 mentioning that, you know, we're not sophisticated
15 developers, or we bought a house, we want to live in
16 D.C. and you know, we're young and don't have much
17 money and we are doing what we can, and it's been
18 almost a year of trying to get all the permitting and
19 to submit something to only be told that it's four
20 days too late.

21 I understand your concerns, but you also,
22 from our perspective, we really had no idea that this
23 was coming down the pike and we've spent thousands
24 upon thousands of dollars in architectural and
25 engineer fees, and we'll have to pay more if you

1 know, if we go through a special exception and it's
2 not approved.

3 And so, I understand that there is a process
4 and it's not completely outlawed, but if we are
5 rejected at the special exception, through the
6 special exception, for only being four days late
7 after having expended time and money almost a year
8 now, there's a concern for us that this is unfair and
9 it's not fair to people who are trying to move into
10 the city. And, you know, we've bought a home that
11 was derelict and that was being used for drugs and
12 all sorts of other nefarious purposes, and we just
13 want a home to live in.

14 And at this point, telling us to either go
15 through the special exception or to change our plans
16 is a significant increase in cost and time. And
17 right now we're supporting mortgage and rent on two
18 homes.

19 MR. BENNETT: I just have one last thing to
20 add. In terms of, we all know there's a crisis in
21 the District with the availability of affordable
22 housing. You know, obviously, there are pros and
23 cons to everything that you all do on this
24 commission, but restricting the ability to create
25 more affordable housing by restricting the size of

1 homes, I think that's something also to be
2 considered.

3 You know, we do intend to have some
4 additional space for a rental in our property, and
5 you know, that just means there's a higher inventory
6 of affordable housing for persons who need it.

7 MS. BENNETT: Thank you.

8 CHAIRPERSON HOOD: Thank you. Thank you.
9 Let's go to Ms. Grosso. Hopefully, I'm pronouncing
10 your name right. Grosso.

11 MS. GROSSO: You are. Thank you.

12 CHAIRPERSON HOOD: Okay.

13 MS. GROSSO: Good evening, I'm Lynn Grosso
14 and I own and live in the rowhouse at 74 W Street.

15 I'm here to urge you to reconsider the 14-11D
16 proposal which allows for an open-ended vesting
17 period for any building permit application filed and
18 accepted as complete prior to March 27th, 2017.

19 I've read many of the letters entered into
20 the record, like yours I think. I may have read a
21 letter from you, or a similarly situated family. And
22 I believe that a reasonable, but very short vesting
23 period may be appropriate. The letters that I read
24 often describe active and rigorous efforts to
25 finalize efforts to finalize permit applications

1 immediately before the publication of 14-11B after
2 significant investment of time and resources by DCRA
3 and also by the applicants. I understand that.

4 I hope you'll consider my situation, however.
5 I share a party wall with a property on which there
6 appears to be a filed building permit on December
7 23rd, 2015. Though the owner provided, around that
8 time, provided me with thumbnail sketches of
9 floorplans that appear to add a fourth story and
10 extend back about 24 feet, the application was filed
11 presumably representing that there had been adequate
12 notice to the immediate neighbors that share a party
13 wall, even though the notice fell far short of
14 meeting the District's requirement for proper notice.
15 And we made notice to the developer of this.

16 I don't know if this permit filed in 2015 was
17 filed, was quote, "filed and accepted as complete,"
18 by DCRA, but it sits in the permit system with no
19 action since the last entered status of project docs
20 accepted on January 6th, 2016, just a couple weeks
21 after the filing of the permit application.

22 The property has been vacant for two and a
23 half years now. The windows are broken. There are
24 weeds that are overgrown, and there has been no
25 indication of any good faith effort or intention to

1 proceed on this application. Not to me, and I don't
2 think to DCRA, given the status in the tracking
3 system.

4 Yet, with the proposal before you today, this
5 shell of a permit application may indefinitely vest
6 development rights that are exempted from the
7 limitations and protections of 14-11B. This has real
8 and detrimental implications on my property rights.
9 For as long as this dormant permit application is
10 pending, many improvements that I would make, such as
11 the installation of solar panels or HVAC upgrades,
12 are not protected as a matter of right, and therefore
13 not practical because some day the developer who owns
14 the house next to me might proceed.

15 So many decisions about my home hang in the
16 balance of whether this permit application is dead or
17 may someday move forward. So, I think it
18 fundamentally is not right to allow this to
19 indefinitely loom over decisions about my home and I
20 urge you to adopt a much more restrictive vesting
21 period, perhaps a month to six months immediately
22 prior to March 27th. Thank you.

23 CHAIRPERSON HOOD: Okay. I want to thank you
24 all. Is there anyone else who would like to testify?

25 [No audible response.]

1 CHAIRPERSON HOOD: Okay. Let me open it up.
2 Commissioners, any questions of this panel? It seems
3 to be our only panel. Or comments?

4 MR. MAY: I wanted to --

5 CHAIRPERSON HOOD: Commissioner May.

6 MR. MAY: Just for the -- you know, if you
7 have already gone through the process, you've done
8 the design, you got through HPRB, and the ANC is in
9 support and you have neighbors on either side that
10 are in support, it's not that heavy a lift to get a
11 special exception. And you know, your architect or
12 your engineer may be telling you that it's going to
13 cost thousands of dollars, do it. But you could come
14 down with a simple set of plans. I mean, I don't
15 know what's involved in terms of the fees that's
16 associated with it, but it's not that complicated and
17 the BZA hears cases like this that are presented by
18 owners with some frequency. And, you know, if you
19 already have the architect and engineers on board,
20 they can you know, probably just print out the
21 drawings that you'd need to be able to do it.

22 It shouldn't be that difficult or onerous
23 given how far you've already come. So, you know, I
24 wouldn't necessarily think that it's going to be an
25 extraordinary extra burden for you since you already

1 have what sounds like a good project.

2 I would also note that we've had a number of
3 these come before the BZA since the 14-11B was
4 passed, so the original restriction on this, and you
5 know, I think that almost all of them, by the time
6 they get to the BZA, you know, are in a similar sort
7 of circumstance. The ANCs have approved a number of
8 them, or voted to approve them, or they've gotten
9 through Historic Preservation, Office of Planning's
10 support, things like that.

11 So these sorts of exceptions are happening on
12 a regular basis, so it's not as frightening a burden
13 as it may seem. That's all I can say in terms of
14 encouraging you from this point.

15 MS. BENNETT: May I -- can I just ask a
16 question in response to what you just said?

17 MR. MAY: Yeah.

18 MS. BENNETT: So, these applications that are
19 going before the BZA are being approved? Is that
20 what you're saying?

21 MR. MAY: I've seen a number of them
22 approved, yeah.

23 MS. BENNETT: Do you know for those that are
24 being rejected, do you know what the grounds are for
25 rejection?

1 MR. MAY: I don't know. I can't remember
2 when we had one that was rejected.

3 MS. BENNETT: Okay.

4 MR. MAY: I mean, usually what will happen is
5 that if it's something that doesn't make it past the
6 ANC, or the Office of Planning doesn't agree with it,
7 you know, it doesn't come to the BZA until they've
8 made changes to get through those sorts of approvals.
9 But it helps a lot to have the ANC approval, the
10 abutting neighbors' approval, and of course the
11 Office of Planning's approval.

12 And I mean again, it sounds like you're
13 already -- you know, you've already cleared those
14 hurdles. So, I can't obviously predict exactly what
15 will happen when you go to BZA.

16 MS. BENNETT: Right.

17 MR. MAY: But in my experience, and I don't
18 know how many have I -- I mean, maybe others have had
19 experience as well, but you know, I was in yesterday
20 at BZA and we approved one or two just yesterday.
21 So.

22 MR. TURNBULL: I would just maybe add a
23 caveat to what Mr. May said, is that yes, a lot of
24 them are getting approved. I think key, what I have
25 found is that a key element is that you get your

1 neighbors' approval. You've talked to them, they
2 know. I mean, that's a big item for a lot of them.
3 That's where the hang-up gets where, if you haven't
4 talked to your neighbors and they feel that you're
5 imposing, if there's been sunlight, shade studies on
6 the property, and the impact on their property, how
7 much you're going beyond, that's a key factor that
8 the BZA does look into very carefully. So, if you
9 have that then your burden becomes a lot lighter.

10 But the key is to talk to your neighbors and
11 make sure they understand.

12 MS. BENNETT: Thank you. And I'll just say,
13 I mean, as my husband has stated, we did get approval
14 from our abutting neighbors. Our concern is
15 obviously where there's -- we don't have much
16 information, and maybe I'm not looking in the right
17 place, but in terms of what precedent has been
18 established with these cases that are being approved
19 and what kind of -- what needs to be submitted in
20 terms of making a convincing argument.

21 We have letters from the neighbors, but we
22 don't have, for instance, a sunlight or air study.

23 MR. TURNBULL: Well, if your neighbors have
24 not complained heavily about the impact of this, I
25 think that may be sufficient. I think most of the

1 cases that come, if the ANC has got an issue, or HPRB
2 has found some issues, and usually if it's at the
3 back of the building they're not going to raise that
4 much of a -- I mean, they talk about character of
5 what you're adding on to and how much you can see.
6 But a lot of that does get back to what I've seen on
7 some of the cases that I've sat on, is that it's the
8 neighbors, the impact to the neighbors. And if the
9 neighbors are very vehemently opposed to what you're
10 doing and you haven't sat down and talked with them
11 or made some modifications to adjust, maybe it's
12 windows looking on their property or something, and
13 that they're opposed to, there's no -- I would say,
14 on some of these things there's no real precedent
15 setting thing. It's really individually on the
16 actual lot and what the impact is to your neighbors.

17 And so, you can talk about a precedent, but
18 really on something like this, it's really on a case-
19 by-case basis. So, if you've satisfied everything
20 and you think you're in pretty good shape, I would
21 agree with Commissioner May that the lift then does
22 not become, should not become if you've done your
23 homework on it, should not be that bad.

24 CHAIRPERSON HOOD: Any other questions or
25 comments up here? Vice Chair Miller?

1 MR. MILLER: Yeah. Thank you, Mr. Chairman.
2 So, yeah, I'm sympathetic to your situation, but I
3 would echo what my fellow commissioners have said on
4 the cases. We rotate as Zoning Commissioners, as one
5 of the members of the BZA, and on the cases that I've
6 sat on where it's greater than 10 feet at special
7 exception, it really was key, it's all about the
8 adverse impact. And if your neighbors are saying
9 it's not adverse impact, the ANC says it's not an
10 adverse impact, HPRB has approved it, I mean, I think
11 we have a suggestion in the record that if there's an
12 HPRB approval or other approval, maybe we should do a
13 carveout, which I personally would be open to.

14 But we said it was four days, so it was April
15 1st that you -- March 31st that you filed for the
16 building permit. That's unfortunate. And I don't --
17 I think on the original, not on this particular 10-
18 foot rule case, but I think on the original 14-11, I
19 think I wanted a larger -- I voiced larger
20 grandfathering for things that were in the pipeline
21 so that people don't get caught up, who don't -- you
22 know, through no fault of their own. But I don't
23 think I prevailed on that issue.

24 But and how much further back do you go than
25 your abutting neighbor?

1 MR. BENNETT: Nineteen feet.

2 MR. MILLER: Nineteen feet. Okay.

3 MR. BENNETT: And there is a dogleg in the
4 building so that you can't see any of it from the
5 front.

6 MR. MILLER: It's set back. There's a set
7 back?

8 MR. BENNETT: Yes.

9 MR. MILLER: Increased set back beyond
10 whatever the side yard --

11 MR. BENNETT: Correct.

12 MR. MILLER: -- requirement is. Yeah. Okay.
13 Well, thank you for coming down. Thank you all for
14 your testimony. Appreciate it.

15 CHAIRPERSON HOOD: Okay. I'm not going to
16 say that it wouldn't be a heavy lift. You know, I'm
17 a realist. I'm not going to say what will happen. I
18 never know what happens down here. You know, you
19 never know how things are going to turn out. So, I
20 don't want you to leave out of here thinking that
21 you've heard from my colleagues, and I'll probably be
22 the one on your case if you have to come down, that
23 it's going to be automatically approved.

24 But I think that if you -- well, I don't want
25 anybody to be -- misinterpret that. Especially the

1 opponents, because we take, as Commissioner Turnbull
2 said, case-by-case.

3 You sound like you have everything in order,
4 but you never know what may show up. But what I will
5 say, that this office is very good. I don't know if
6 you've contacted the Office of Zoning. This office
7 is very good about assisting residents of this city
8 who do not do zoning all the time, and level the
9 playing field. So you can contact this office and we
10 have somebody who will be able to assist you. We
11 won't argue your case, but we'll tell you -- like we
12 do it one-on-one. I don't know if you all have seen
13 our one-on-one. We call it leveling the playing
14 field, so those who come down here and practice in
15 front of us all the time, and those who don't, we'll
16 level the playing field so you'll kind of know what
17 to expect. It sounds like you do have some things in
18 order, but I don't know what the specifics are of
19 your case. And you do have four days.

20 And I understand all that, but I would just
21 say, contact the office. I'm going to leave it at
22 that. Okay? Because we're not trying to put any
23 undue burden on anybody. Young millennials. You all
24 look like you're all about my age. So, we all are
25 millennials. No. I'm just, that's a joke.

1 So, we want to see how we can make it work
2 because we do want you to stay in the city. Okay?

3 All right. Let me ask you this, Ms. -- now
4 you've heard that -- and I'm not going to make this -
5 - I don't want to make this specific to any person.
6 You've heard the young folks. Well, you and I are
7 young too. But you've heard what they just said
8 about what they're trying to do. It sounds like they
9 are in the pipeline. And you mentioned that at first
10 we didn't have a vesting. We didn't have a vesting
11 rule. And I think because of what we heard for
12 people who are just like this, who were in the
13 pipeline, and we wanted to make sure we were fair,
14 and we -- most of all we wanted to make sure the
15 government was predictable, because they were
16 operating under a certain set of rules, and then we
17 changed them and we dealt with this 14-11.

18 So I really believe that what we're trying to
19 do is just to be fair. Would you agree with that
20 assumption? Even after you've heard, and I'm not
21 just trying to pinpoint this couple, but in general.
22 There are others who are out there like them.

23 MS. McDANIEL: Well, I'm very sympathetic
24 with them, and I will tell you this, BZA will approve
25 your exception. They approve too many exceptions. I

1 have no doubt that you will, you know -- and it's not
2 that hard to do. I've been to BZA all by myself, did
3 the application, and I got my exception. So, you
4 know --

5 CHAIRPERSON HOOD: I shouldn't have asked
6 that question because that's not what --

7 MS. McDANIEL: Okay.

8 CHAIRPERSON HOOD: I was asking you about us
9 not vesting. That's where I was going to.

10 MS. McDANIEL: I think you clearly -- it was
11 a year. This was a year in the making; a year when a
12 lot of horrible things were you know, permitted. I
13 think --

14 CHAIRPERSON HOOD: We were behind the cart
15 then, if you remember. Things were out there getting
16 done, and we were behind the cart trying to straight
17 -- we were trying to make something that was changing
18 the character of this city, and we were trying to put
19 some regulations in place. And I think that this
20 Commission did that.

21 MS. McDANIEL: But it's been years. The
22 whole process has been years. And it gets a lot of
23 publicity. I mean, I see the blog posts and you
24 know, it's been in the Washington Post, it's been in
25 DCist, it's been in Greater Greater Washington. All

1 the blogs cover this stuff.

2 CHAIRPERSON HOOD: But everybody doesn't read
3 the blog.

4 MS. McDANIEL: But it doesn't matter what you
5 do in the city, you hear it yourself, people say, I
6 didn't get a notice. You heard it yesterday. Mr.
7 May, I know you -- I didn't know about this, I didn't
8 know about that, about anything.

9 So yeah, it's tough, but it's also tough for
10 all of us who live with, you know, we've been
11 fighting this and working so hard and trying to help
12 neighbors, and it's tough for us too. You know, it's
13 not fun to go to your neighbor's house who has a
14 garden every summer and now they don't have a garden.

15 CHAIRPERSON HOOD: Okay.

16 MS. McDANIEL: Because their neighbor's
17 application was approved the day before the vesting
18 period was up.

19 CHAIRPERSON HOOD: Okay.

20 MS. McDANIEL: They got it the last day. So,
21 I think it all balances out, and I think you know, we
22 left here after March, thinking it was a done deal.
23 And if you want to talk about changing the rules,
24 that's what you did. You know, we thought it was
25 done, and then you changed the rules.

1 CHAIRPERSON HOOD: Well, you and I can talk
2 about that probably the rest of the evening. But we
3 have some other things that we have to handle. Ms.
4 Grosso, do you have anything you want to add?

5 MS. GROSSO: Well, I just wanted to say that
6 I do think that there is a safety net for people like
7 this that are making -- that have made a good faith
8 effort to try and comply with what they believed to
9 be the regulations in place.

10 I'm concerned that in my instance, there is
11 an entity that's just taken advantage of the
12 situation, and this application has just been hanging
13 out there. Even since March you'd think there would
14 be some impetus to move it along, and nothing at all
15 has happened. And I think the safety net that's
16 there will catch people like this, that have done --
17 tried to do everything right and not let the system
18 grant favor to an entity that's taking advantage of
19 it.

20 CHAIRPERSON HOOD: Okay. All right. Any
21 other question, follow up? Vice Chair?

22 MR. MILLER: No, so you'd like to see a
23 vesting period on the approval process from DCRA? I
24 mean, if someone hasn't acted on a construction
25 permit and done something within so much time, it

1 ought to be null and void.

2 MS. GROSSO: Well, I'm asking that it not be
3 indefinite.

4 MR. MILLER: Right.

5 MS. GROSSO: That yes, that applications
6 accepted and accepted as complete and filed before
7 March 27th, not just indefinitely be brought in.

8 MR. MILLER: Yeah. Yeah.

9 MS. GROSSO: That there be some reasonable,
10 reasonable term that would exclude ones that have
11 just been dormant. And I mean, you know, my lot is
12 only about 20 feet wide, I think. And to have the
13 extension go back 24, there are a lot of decisions
14 about what I do with my home that are kind of hanging
15 out there.

16 MR. MILLER: Right.

17 MS. GROSSO: Important decisions. And I have
18 absolutely no indication of what -- my hope is, that
19 this has not been filed and accepted as complete, but
20 I fear just this -- that it has. There's just one
21 single action in the system. There's no zoning
22 approvals, there's no electrical, there's no --
23 there's one single action, and I fear that that just
24 kind of holds it in this state.

25 MR. MILLER: Right.

1 MR. MAY: Have you actually seen the plans
2 for it, or the permit application?

3 MS. GROSSO: What I received when I got the
4 party wall notification were just, they were
5 thumbnail floorplans. There were no elevations,
6 there were no discernible pictures.

7 MR. MAY: Right. So, I mean, have you
8 attempted to go to DCRA or to ask them about it,
9 because you can get information about permit
10 applications by going there, that you can't get
11 online?

12 MS. GROSSO: I have not.

13 MR. MAY: Okay, so --

14 MS. GROSSO: I've --

15 MR. MAY: -- I think that would be wise, and
16 they can also advise you on when the application
17 might expire if there's no action on it. I think
18 it's probably, you know, a timeframe of a year or
19 something like that. I forgot. It's been a while
20 since I've -- well, any time I've ever filed for a
21 permit, I don't wait to move on it. But you can get
22 a lot of information from DCRA. It may be a little
23 time consuming to do that, but you can get more
24 information in person than you can get online.

25 MS. GROSSO: Okay.

1 MR. MAY: So.

2 MS. GROSSO: I am hopeful, yeah.

3 MR. MAY: Yeah.

4 MS. GROSSO: Thank you.

5 CHAIRPERSON HOOD: Vice Chair.

6 MR. MILLER: Thank you, Mr. Chairman. Yeah,
7 I was just going to raise the same point that
8 Commissioner Turnbull raised that, in terms of Ms.
9 Grosso's concern that perhaps we should consider at
10 some point in our vesting rules generally, that there
11 is an expiration period if it hasn't been issued
12 within a certain period of time. You know, whether
13 it's a year or two years, or after they vested, if
14 it's filed by the certain date that it vested. If
15 they haven't actually been issued a permit within one
16 year or two years, I think we should consider that
17 and I think that you've raised a valid point that I
18 think we will -- I can see the Office of Planning
19 noting our concerns.

20 So I think we will look at that issue. It
21 might not help in your particular case, although it
22 may. But so, I appreciate you bringing it to our
23 attention.

24 MS. GROSSO: Thank you. I appreciate your
25 consideration.

1 MR. MAY: So, I mean, that actually does
2 bring a question. I mean, is that something that we
3 could incorporate into the action from here on out?
4 I mean, not that we'd take action tonight, but could
5 we put in language that would say that the
6 application must be filed by March 27th, and it must
7 be issued within six months, or something like that?

8 MS. STEINGASSER: I'd have to check with DCRA
9 on what their rules are, on how they allow those
10 things. And then I'd also have to check with OAG
11 about whether it would require to be readvertised as
12 a new case.

13 MR. MAY: Right. So maybe those are things
14 that we should ask you to look into, and then we
15 could take that up when we deliberate on this at a
16 later date. Does that make sense?

17 MS. STEINGASSER: Yes. We'd be happy to
18 follow up on that, and we would ask then, that the
19 Commission extend the emergency action so that
20 those --

21 MR. MAY: Yes. I understand that, yeah.

22 MS. STEINGASSER: -- would hang -- yeah.

23 CHAIRPERSON HOOD: Okay.

24 MR. MAY: Is 120 days still going to be
25 sufficient?

1 MS. STEINGASSER: I think so.

2 MR. MAY: Okay. We can always extend it if
3 we have to.

4 MR. BERGSTEIN: The period within you would
5 take final action. So, assuming if you -- if you
6 went forward tonight, you would refer to NCPC 30
7 days, you would take final action after that, so that
8 would be well within the 120.

9 MR. MAY: Mr. Bergstein, I think when you
10 speak, you need to bring the microphone closer to
11 you.

12 MR. BERGSTEIN: Oh, I'm sorry.

13 MR. MAY: I could hear you, and --

14 MR. BERGSTEIN: Do you want me to repeat what
15 I said?

16 MR. MAY: No, I mean, I think it's pretty
17 clear. We could do it with a hold in 120 days.

18 MS. GROSSO: You know, I would just add that
19 as I was reading in the record, DCRA I think
20 indicated there was about 20, or maybe it was at
21 least 20 properties that fell into this band. And
22 so, I would think that there's got to be some
23 timeframe that you used to look back. I don't know.
24 And I don't know if the property I'm speaking of
25 falls in those 20 plus.

1 CHAIRPERSON HOOD: Okay.

2 MS. GROSSO: Thanks again.

3 CHAIRPERSON HOOD: Ms. Richards, are you here
4 to testify for this case?

5 MS. RICHARDS: Yes, sir.

6 CHAIRPERSON HOOD: Okay. Well, we're going
7 to go back and we're going to give you your three
8 minutes to go ahead and give us your testimony, and
9 then we're going to cut it off at that point.

10 MS. RICHARDS: Okay. May I approach?

11 CHAIRPERSON HOOD: Yeah, you can give me
12 your --

13 MS. RICHARDS: Thank you.

14 [Pause.]

15 MS. RICHARDS: Thank you. I'm here for the
16 Committee of 100 on the vesting proposal.

17 CHAIRPERSON HOOD: Could you identify
18 yourself? I know you.

19 MS. RICHARDS: My name is Laura Richards.
20 Okay?

21 The Committee of 100 opposes the further
22 vesting. We feel that we cannot improve upon the
23 words of Commissioner May when the Commission
24 deliberated on whether to add a vesting period to
25 July 1st. And at that time the commissioner said,

1 this is something that's been part of our public
2 discussion for some time and I fear that if we were
3 to have a vesting period through July 1st, that there
4 might be a rush of applications for pop-backs that
5 we're trying to have some controls over. We
6 recognized pop-backs were an issue back in the
7 original 14-11 case, dealing with pop-ups, and
8 unfortunately didn't fully address it. We're taking
9 the right steps and I just don't see a reason to
10 allow any further vesting.

11 I think we simply need to complete this
12 rulemaking, and then if folks need to push back
13 further than 10 feet, they would need the special
14 exception, and we wholly endorse that.

15 Now, notwithstanding the Commission's
16 decision at that point, not to vest, based on I guess
17 the, I guess, hearing from the approximately 20 or so
18 property owners whose applications were pending, you
19 did grant the 120-day emergency. And during that
20 period the pending people were allowed to go forward.

21 So, at this point Committee of 100 doesn't
22 see why any further vesting is needed. The number of
23 the -- I think the equitable argument was made that a
24 number of the people who had pending applications had
25 received zoning clearances, and they had all been

1 deemed complete. So, I would imagine that certainly
2 the people with the zoning clearance had, you know,
3 were good to go and have since been issued zoning
4 permits. And of the remaining people, some number
5 less than 20, we don't know how many there are, what
6 the circumstances are, but basically there's been an
7 additional four months to complete their
8 applications. You're not going to -- you know, no
9 one who wasn't in the pipeline on March 27th can get
10 in the pipeline.

11 So absent a complete showing of need or -- we
12 think the equities have shifted entirely to the
13 District and its need to stop these cringeworthy
14 projects. So, thank you.

15 CHAIRPERSON HOOD: Okay. Thank you very
16 much. Any other questions of Ms. Richards, or
17 anybody else?

18 All right. We thank you all very much. We
19 appreciate your testimony.

20 MS. RICHARDS: Sure.

21 CHAIRPERSON HOOD: Okay.

22 MR. MAY: So, I think actually if we are
23 going to get further information from the Office of
24 Planning it would be helpful to get an update on the
25 20 that were outstanding when we took this in,

1 because many of them probably have been issued.

2 MS. STEINGASSER: We did ask DCRA for an
3 update on those.

4 MR. MAY: Yeah.

5 MS. STEINGASSER: They did dive a lot --
6 delve a lot deeper into the permit status. There are
7 17 that are outstanding.

8 MR. MAY: That have not been -- not been
9 issued but that were filed?

10 MS. STEINGASSER: That have not been issued,
11 right. And four of those have zoning clearance.

12 MR. MAY: Of the 17?

13 MS. STEINGASSER: Of the 17. Uh-huh.

14 MR. MAY: Fourteen have zoning clearance.

15 MS. STEINGASSER: Four.

16 MR. MAY: Four.

17 MS. STEINGASSER: Right. And 13 are still --

18 MR. MAY: Got it.

19 MS. STEINGASSER: -- in the zoning review.

20 CHAIRPERSON HOOD: Let me ask the Office of
21 Planning, because this is weighing on me. Did we
22 send a clear signal that we would not do any vesting?
23 Did this Commission do that?

24 MS. STEINGASSER: At the -- on March 27th,
25 and I stand corrected, that was when the Commission

1 took final action on 14-11B, which was the pop-back
2 for matter of right. The issue of vesting had been
3 raised by many comments in the record, and the
4 Commission to discuss it, and declined to take
5 vesting.

6 And Ms. Richards just read into the record,
7 the discussion. And so, you had -- and with the
8 close of that, many of the applicants that were in
9 the process of being reviewed were unaware because of
10 the -- because it had been a year, so though it had
11 been in the public domain, there had not been a lot
12 of discussion and a lot of the architects were
13 unaware. And so, there were a lot of pending
14 permits. And the Department of Consumer and
15 Regulatory Affairs got a lot of complaints and a lot
16 of solicitation asking that they approach the
17 Commission and ask you to reconsider vesting.

18 CHAIRPERSON HOOD: Okay. So the
19 Commission --

20 MS. STEINGASSER: And so, we did.

21 CHAIRPERSON HOOD: The Commission operated
22 for the most part, on the information we had in hand
23 at the time that we dealt with this. And I do -- I
24 did read some testimony just handed in, and sometime
25 all of our discussion is not always presented. And

1 I'm not making any accusations. I'm just saying, you
2 know, you give us a piece of it but there is a lot
3 more to some of the things like what Commissioner
4 said, and as well as what I've said as well.

5 So anyway, I'll leave that where it is.
6 Right there in the parking lot.

7 Okay. Anything else, commissioners?

8 [No audible response.]

9 CHAIRPERSON HOOD: All right. Ms. Schellin,
10 what do we -- we have any other follow up? We have
11 any dates, or what are we --

12 MS. SCHELLIN: We need the Commission to vote
13 on extending the emergency action.

14 CHAIRPERSON HOOD: Yeah, I want to discuss
15 that, but I was saying as far as -- I'm pretty sure
16 that we -- I don't think that --

17 MS. SCHELLIN: Oh, to take this up --

18 CHAIRPERSON HOOD: Yeah.

19 MS. SCHELLIN: -- to deliberate? Ms.
20 Steingasser, how much time do you think you guys need
21 to get the information the Commission will want?

22 MS. STEINGASSER: Probably the first meeting
23 in October.

24 MS. SCHELLIN: Okay. So, October 16th. So,
25 since you are not bound by the 10-day rule on that,

1 since it's supplemental information, would you be
2 able to have that by October 10th?

3 MS. STEINGASSER: Yes, we would.

4 MS. SCHELLIN: Okay. So, if you could
5 provide that October 10th and we can put it on for
6 October 16th.

7 CHAIRPERSON HOOD: Okay. All right. The
8 other issue is the emergency action. Commissioners,
9 what's your pleasure? I think you're asking -- what
10 are they asking, 120 day?

11 MS. SCHELLIN: To take emergency action --

12 CHAIRPERSON HOOD: Emergency. Emergency.

13 MS. SCHELLIN: -- extended for another 120
14 days.

15 CHAIRPERSON HOOD: Twenty. Hundred and
16 twenty. All right.

17 Commissioners, what's your pleasure? Does
18 anybody disagree with not doing 120? And what if we
19 did 90? What difference would it make?

20 MR. BERGSTEIN: You can choose a lesser
21 period of time. This is being done to allow you to
22 complete your process. So you can anticipate how
23 long you think it was necessary to complete your
24 process. Plus, we have to put a notice of final
25 rulemaking if you do take final action. So, given

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1 what I'm hearing I think you're talking about mid-
2 November as an outer date to extend the emergency.
3 Maybe December 1st, whatever that comes up to.

4 CHAIRPERSON HOOD: Yeah, well, we better do
5 it -- the way things work around here, we better do
6 the 120.

7 Okay, Vice Chair Miller.

8 MR. MILLER: Just a question to the Office of
9 Planning. If we were to pick a day different than
10 March 27th, for the emergency action even, let's say
11 March 31st, just as an example, do we know how many
12 more applications would be, other than the one that
13 was presented tonight would be vested?

14 MS. STEINGASSER: We do not.

15 MR. MILLER: We don't.

16 MS. STEINGASSER: That would be a
17 difficult --

18 MR. MILLER: So maybe that's an additional
19 piece of information --

20 MS. STEINGASSER: Well, we'll see if they can
21 ferret it out. It's difficult to find those -- that
22 narrow a window on one specific item on a building
23 permit.

24 MR. MILLER: I mean, they might be able to
25 get a special exception --

1 MS. STEINGASSER: But we can certainly ask
2 them to take a look.

3 MR. MILLER: -- way before we take final
4 action at this point.

5 CHAIRPERSON HOOD: So, but I like what you
6 said. I mean, not just I'm operating on what one
7 person said, but March 31st. That was only a few
8 days. So, I mean, you know, come on. We're not that
9 hard of guys to work with, I don't think. Well, some
10 of us may be. But I know --

11 MR. MILLER: Yeah, I'm not ready to just do
12 it right now.

13 CHAIRPERSON HOOD: Yeah, and I --

14 MR. MILLER: The emergency action.

15 CHAIRPERSON HOOD: -- actually agree, and I
16 know there's going to be some grumbles. But you
17 know, you put yourself in the foot of people who are
18 having to put a lot of money out and they operated on
19 one thing. You know, I'm very sympathetic to that.
20 I put myself in that position at times. So, I don't
21 have a problem with even doing that.

22 I don't know, do we need to readvertise?

23 MR. BERGSTEIN: You would, then the --

24 CHAIRPERSON HOOD: Oh.

25 MR. BERGSTEIN: Wait. I would need to --

1 MR. MILLER: But not for the emergency.

2 MR. BERGSTEIN: -- put out a -- well, I need
3 to put out a notice of proposed rulemaking to change
4 that date. It doesn't add much time to it, but
5 technically speaking, it's just one more thing. We'd
6 have to put out a notice of emergency anyway. But if
7 you're going to change the date to the 31st, I need
8 to advertise that in a notice of proposed rulemaking.

9 CHAIRPERSON HOOD: Okay.

10 MR. BERGSTEIN: So, you're talking about if
11 we get to the Register -- it's too late. Next
12 Thursday we can get it by the Register. A week from
13 Friday it gets published. Add 30 days. Then you can
14 have a meeting.

15 CHAIRPERSON HOOD: All right. This is how
16 I'm going to do it. Let me entertain a motion to
17 change it to March the 31st, and let's -- let me do
18 it that way first, just that one piece.

19 MR. MILLER: On the emergency action, and the
20 proposed?

21 CHAIRPERSON HOOD: And the proposed.

22 MR. MILLER: And the proposed.

23 CHAIRPERSON HOOD: Yeah, the proposed. The
24 main piece.

25 MR. MILLER: Okay.

1 CHAIRPERSON HOOD: You want to --

2 MR. MILLER: Can I do a combined motion
3 and --

4 CHAIRPERSON HOOD: Yeah.

5 MR. MILLER: -- so we only have to vote --

6 CHAIRPERSON HOOD: Well, no, because it might
7 not --

8 MR. MILLER: -- once?

9 CHAIRPERSON HOOD: -- it might -- I want to
10 see how it's going to come out.

11 MR. MILLER: Oh.

12 CHAIRPERSON HOOD: Right.

13 MR. MILLER: Oh.

14 CHAIRPERSON HOOD: It might not pass. I want
15 to see how it's going to come out.

16 MR. MILLER: There you go.

17 CHAIRPERSON HOOD: There's four of us and I'm
18 just trying to see how things are going to work.

19 MR. MILLER: Signaling.

20 CHAIRPERSON HOOD: Yes.

21 MR. MILLER: Okay. So, on the notice of
22 proposed rulemaking to -- on the vesting to approve
23 14-11B with the change in date to March 31st, rather
24 than 2017, rather than March 27th. And I ask for a
25 second.

1 CHAIRPERSON HOOD: I'll second it. It's been
2 moved and properly seconded. Any further discussion?

3 [Vote taken.]

4 MR. TURNBULL: I'm just concerned that I am
5 sitting on a BZA case that involves this same issue,
6 and that case is being decided. It's before the BZA,
7 there's information still outstanding. So, I don't
8 know when they applied, so I can't vote. I'm not
9 going to vote on that.

10 CHAIRPERSON HOOD: Okay. So, that's going to
11 -- that motion is going to fail. All right.

12 Let's go to the regular motion, whatever you
13 all decide at that point.

14 [Pause.]

15 MR. MILLER: All right. So my motion wasn't
16 voted on, but it failed because it was going to fail.
17 So, I withdraw that motion.

18 So I would move that we take emergency action
19 on 14-11D as recommended by the Office of Planning,
20 which is the vesting provision for Case 14-11B, and
21 ask for a second.

22 MR. MAY: Second. That's for 120 days. You
23 said that, right? Yeah. Okay.

24 CHAIRPERSON HOOD: Okay. It's been moved and
25 properly seconded for 120 days on emergency action.

1 Any further discussion?

2 [Vote taken.]

3 CHAIRPERSON HOOD: Ms. Schellin, would you
4 record the vote?

5 MS. SCHELLIN: Yes. Staff records the vote,
6 four, to zero, to one to take 120-day emergency
7 action in Zoning Commission Case 14-11D, Commissioner
8 Miller moving, Commissioner May seconding,
9 Commissioners Hood and Turnbull in support.
10 Commissioner Shapiro not present, not voting. And I
11 would just ask if the Commission is directing staff
12 to forward this to NCPC for a 30-day comment period?

13 CHAIRPERSON HOOD: Yes.

14 MR. MAY: Well, I think, aren't we going to
15 wait to hear what further we have to say from the
16 Office of Planning on changes related to approval of
17 permits as opposed to just when permit applications
18 are filed?

19 [Discussion off the record.]

20 MR. MAY: Yeah, so we'd have to take it up on
21 the 16th. We'd have to note it, provide notice of
22 the final rulemaking, and go through the whole NCPC
23 process, and everything else.

24 MS. SCHELLIN: Yeah. And we might need
25 another emergency at that point, so, okay. We'll

1 just keep it in mind.

2 MR. MAY: That's why we did 120 days.

3 MS. SCHELLIN: Yeah.

4 CHAIRPERSON HOOD: Yeah.

5 MR. MAY: But we'll see. I mean, you know,
6 we'll see what happens on the 16th, what information
7 we get.

8 CHAIRPERSON HOOD: Okay. So, we don't have
9 to send the emergency. We don't need to do that, we
10 just --

11 MS. SCHELLIN: I can't unless you direct me
12 to, and that's the issue. The proposed. And that's
13 where we were. So if you change -- we're good.

14 MR. MAY: The emergency will be effect for --

15 CHAIRPERSON HOOD: No, we're good, but I want
16 to make sure --

17 MR. MAY: -- 120 days.

18 CHAIRPERSON HOOD: This is getting ready to
19 get longer than -- this is going to be 120 days in a
20 minute. I'm just trying to figure out. So, that's
21 all right. Forget it. October the 16th is when
22 we'll deliberate and make our final decision. Okay.
23 And it's 120, because it wouldn't --

24 MR. BERGSTEIN: You can't make a final
25 decision unless you send it --

1 CHAIRPERSON HOOD: Well, you know what I
2 mean. It's when we deliberate.

3 MR. BERGSTEIN: No, you want to deliberate
4 for the first time on it, fine.

5 CHAIRPERSON HOOD: Deliberate for the first
6 time, so we can then send it to NCPC, so hopefully we
7 won't have to take another 120 days, and then others
8 will still continue to have issues with what we've
9 done. So, we want to get this resolved and off our
10 plate. Anything else?

11 [No audible response.]

12 CHAIRPERSON HOOD: All right. With this, Ms.
13 Schellin, is there anything else?

14 MS. SCHELLIN: Not on this case, no.

15 CHAIRPERSON HOOD: Okay. With this, this
16 case --

17 MS. SCHELLIN: So, you need a break.

18 CHAIRPERSON HOOD: -- we're going to need
19 about five minutes before we get to the next case.
20 Thanks.

21 [Whereupon, the hearing adjourned at 7:25
22 p.m.]

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