

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER, 19, 2018

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LESYLLEE M. WHITE, Board Member
CARLTON HART, Board Member (NCPC)
LORNA JOHN, Board Member
MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILLIAN TONDRO, ESQ.
MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
ELISA VITALE
BRANDICE ELLIOTT

The transcript constitutes the minutes from
the Public Hearing held on September 19, 2018.

C-O-N-T-E-N-T-S

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Case No. 19550: Application of ANC 6C 8

Case No. 19819 Application of Southern Hills LP

Case No. 19804 Application of 716 Upshur LLC

Case No. 19811 Application of Columbia
 Heights Partners LLC

Case No. 19817 Application of Judith LaValle

Adjourn

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

9:43 a.m.

1
2
3 CHAIR HILL: The hearing will please come to
4 order. We're located in the Jerrily R. Kress Memorial
5 Hearing Room at 441 4th Street, NW. This is the September
6 19th Public Hearing of the Board of Zoning Adjustment of the
7 District of Columbia. My name is Fred Hill, Chairperson.
8 Joining me today is Carlton Hart, Vice Chair, Lesyllee White,
9 and Lorna John, Board Members. And representing the Zoning
10 Commission is Michael Turnbull.

11 Copies of today's agenda are available to you and
12 located in the wall bin near the door. Please be advised
13 that this proceeding is being recorded by a court reporter
14 and is also webcast live. Accordingly, we must ask you to
15 refrain from any disruptive noises or actions in the hearing
16 room.

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

22 All persons planning to testify either in favor
23 or in opposition must have raised their hand and been sworn
24 in by the Secretary. Also, each witness must fill out two
25 witness cards. These cards are located on the table near the

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1 door and on the witness table. On coming forward to speak
2 to the Board, please give both cards to the reporter sitting
3 at the table to my right.

4 If you wish to file written testimony or
5 additional supporting documents today, please submit one
6 original and 12 copies to the Secretary for distribution.
7 If you do not have the requisite number of copies, you can
8 reproduce copies on an office printer in the Office of Zoning
9 located across the hall.

10 The order of procedures, and special exceptions,
11 and variances, as well as appeals, are listed as you walk
12 into the door -- as you walk into the hearing room. The
13 record shall be closed at the conclusion of each case except
14 for any material specifically requested by the Board. The
15 Board and the staff will specify at the end of the hearing
16 exactly what is expected and the date when the persons must
17 submit evidence to the Office of Zoning. After the record
18 is closed, no other information shall be accepted by the
19 Board.

20 The Board's agenda includes --- so this is new
21 again. I mentioned this last week, primarily for the
22 attorneys in the room. The Board's agenda included cases set
23 for decision. After the Board adjourns, the Office of
24 Zoning, in consultation with myself, will determine whether
25 a full or summary order may be issued.

1 A full order is required when the decision it
2 contains is adverse to a party, including and affected ANC.
3 A full order may be needed if the Board's decision differs
4 from the Office of Planning's recommendations. Although the
5 Board favors the use of summary orders whenever possible, an
6 Applicant may not request the Board to issue such an order.

7 The District of Columbia Administrative Procedures
8 Act requires that the public hearing on each case be held in
9 the open before the public pursuant to Section 405 B and 406
10 of that Act. The Board may, consistent with its rules or
11 procedures, and the Act, enter into a closed meeting on cases
12 for purpose of seeking legal counsel on a case pursuant to
13 DC Official Code, Section 2-575(b)4 and/or deliberating on
14 a case pursuant to DC Official Code, Section 2-575(b)13, but
15 only after providing the necessary public notice in the case
16 of an emergency closed hearing after taking the roll call
17 vote.

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

24

25 Preliminary matters or those which relate to

1 another case will or should be heard today, such as request
2 for a postponement, continuance, or withdrawal, or whether
3 proper and adequate notice of the hearing has been given.

4 If you are not prepared to go forward with the
5 case today, or believe that the Board should not proceed, now
6 is the time to raise such a matter. Mr. Secretary, do we
7 have any preliminary matters?

8 MR. MOY: Good morning, Mr. Chairman, members of
9 the Board. The docket is as recorded on the agenda which is
10 on the wall bin to my left. There are preliminary matters,
11 but staff would suggest that the Board address those when a
12 case is called.

13 CHAIR HILL: Okay, great. Thank you. For those
14 of you who have been here before, I usually whip through that
15 thing. So that's how fast this day is going to go.

16 Let's see, if anyone is planning on testifying,
17 one way or the other, if you would please stand and take the
18 oath administered by the Secretary to my left.

19 MR. MOY: Good morning. Do you solemnly swear or
20 affirm that the testimony you're about to present in this
21 proceeding is the truth, the whole truth, and nothing but the
22 truth?

23 (Chorus of ayes)

24 MR. MOY: Thank you, ladies and gentlemen. You
25 may consider yourselves under oath.

1 CHAIR HILL: Okay. So just to again kind of give
2 a heads up as to how I think the day will move, we are going
3 --- well, we're going to delay our deliberations until the
4 end of the day unless I don't make it. And then we'll do
5 that before I leave. So therefore, the decisions -- our
6 meeting agenda is going to be at the end of the day.

7 Our hearing agenda is now going to move forward.
8 And we're going to go in the order in which we have, except
9 for one mistake that was put in the order, Application 19819
10 of Southern Hills will be the last to be heard. Otherwise,
11 we're going to be following the agenda. So, Mr. Moy,
12 whenever you have a chance.

13 MR. MOY: Thank you, Mr. Chairman. So with that,
14 I would call parties to the table to appeal Number 19550 of
15 ANC 6C as amended for appeal from the decision made on March
16 31st, 2017, by the Zoning Administrator, Department of
17 Consumer Regulatory Affairs, to issue a building permit
18 Number B, B as in Bravo, 17006219, as revised by B 1805207,
19 to permit the renovation of a one-family dwelling to two
20 separate one-family dwelling units, RF1 Zone at Premises 1125
21 7th Street, NE, Square 886, Lot 35.

22 This was last heard, Mr. Chairman, at, as you
23 recall, at the Board's hearing on May 9th, 2018.

24 MR. ECKENWILER: Mr. Chair, I just need to point
25 out that I have reviewed the record on this, and I'm ready

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1 to sit on the case.

2 CHAIR HILL: All right. Thank you, Mr.
3 Commissioner.

4 (Off the record comments)

5 CHAIR HILL: Okay, great. One other thing, I
6 suppose. If you're probably the fourth case, you'll be heard
7 probably after lunch. This one particular appeal will
8 probably take some time. And then I would assume the next
9 case also will probably take a little bit of time. So I'm
10 just trying to give you a heads up. Probably the fourth case
11 will be after lunch. But I'm not really sure. We'll see how
12 this goes.

13 If you could please introduce yourselves from my
14 right to left.

15 MS. LORD-SORENSEN: Good morning, Adrienne Lord-
16 Sorenson, assistant general counsel with the DC Department
17 of Consumer and Regulatory Affairs.

18 MR. LEGRANT: Good morning. Matthew LeGrant,
19 zoning administrator, DCRA.

20 MR. CUMMINS: Kevin Cummins, a District resident.

21 MR. ECKENWILER: Good morning, Mr. Chairman, Mark
22 Eckenwiler here on behalf of ANC 6C.

23 MR. BROWN: Good morning, Patrick Brown from
24 Greenstein, DeLorme and Luchs, on behalf of the property
25 owner, Atlas Squared.

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1 MR. BELLO: Good morning, Toye A. Bello.

2 MR. TAWED: Good morning, Tarique Tawed, property
3 owner, Atlas Squared.

4 PARTICIPANT: Mr. Chairman, I have two other
5 witnesses. I don't know if we need to introduce them now.
6 They're not at the table.

7 CHAIR HILL: Why don't we --- we'll bring them up
8 when it's your presentation.

9 PARTICIPANT: Very good.

10 CHAIR HILL: So, Mr. Eckenwiler, I believe we're
11 going to start with you.

12 MR. ECKENWILER: Mr. Chairman, I think there's a
13 pending motion.

14 CHAIR HILL: Thank you, Commissioner.

15 MR. MOY: Yes, Mr. Chair, that's the motion that
16 was filed on August 9th by the property owner to amend the
17 appeal to include the second revised permit that was issued
18 August 2nd, 2018. I'll check to see which exhibit number
19 that is.

20 CHAIR HILL: That's Exhibit Number 55. You know,
21 I remember the motion now. So does the Board have any
22 thoughts on the motion, I guess?

23 Mr. Eckenwiler, so as I understand it, the ANC and
24 DCRA were in agreement in terms of the permit for this?

25 MR. ECKENWILER: ANC 6C consented. And my

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1 recollection is that DCRA had likewise consented.

2 CHAIR HILL: Yes. And so, Mr. Cummins, did you
3 have any comments or thoughts on --- I know the permit just
4 got, again, over our recess in August. Are you aware of the
5 motion?

6 MR. CUMMINS: I am. And given that it was a
7 consent motion and consented to do so quickly, I just didn't
8 have time to respond in the record but have no objection to
9 that motion.

10 CHAIR HILL: Okay. So then unless the Board has
11 their own objections, I would go ahead and approve the motion
12 to amend the appeal.

13 MEMBER WHITE: Second.

14 CHAIR HILL: Okay, so the motion's been made and
15 seconded. All in favor say aye?

16 (Chorus of ayes)

17 CHAIR HILL: All those opposed?

18 (No audible response)

19 CHAIR HILL: All right. So, Mr. Eckenwiler, we're
20 going to start with you again as the Appellant. I'm trying
21 to remember the order, I guess. Well, we'll start with you,
22 and then I'll try to look up the order, because I'm ---

23 MR. ECKENWILER: I have the hearing procedures
24 here, Mr. Chairman, if you want to ---

25 CHAIR HILL: Oh, great. Sure, go ahead.

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1 MR. ECKENWILER: I can hand those out if you like
2 or just describe it to you. So preliminary procedural
3 matters, Appellant's case, then the respective case of
4 parties who are interveners, so that would be Mr. Cummins,
5 the administrative official's case, so that's DCRA, and then
6 parties in opposition. So that would be the property owner.
7 And then we go to rebuttal and closing.

8 CHAIR HILL: Okay, great. Thanks, I appreciate
9 that. And, yes.

10 MR. ECKENWILER: Do you want to --- I'm sorry to
11 interrupt, Mr. Chairman.

12 CHAIR HILL: Sure.

13 MR. ECKENWILER: Did you want an estimate of how
14 much time to put on the clock. I know you usually like to
15 ---

16 CHAIR HILL: I have a general idea. Well,
17 actually no, that's not true. Mr. Eckenwiler, how much time
18 do you think the ANC will need?

19 MR. ECKENWILER: It's hard for me to estimate with
20 any precision. If the Chair would put 45 minutes on the
21 clock, I will try and keep it under that.

22 CHAIR HILL: Wow, okay, okay. I only say wow
23 because I thought I was going to do 30. And so ---

24 MR. ECKENWILER: Well, let's see how it goes.

25 CHAIR HILL: Let's shoot for 30, because then

1 everybody'll get 30. But, Mr. Eckenwiler, I wasn't sure if
2 I was going to mention this, because I didn't want to give
3 too much air time to it all. But I did see on the news and
4 how, like, you came and --- you were there counter-protesting
5 to a controversial protest. And I commend you for your
6 participation in that. I think you know what I'm speaking
7 of.

8 MR. ECKENWILER: Thank you, Mr. Chairman.

9 CHAIR HILL: Yes. So all right. Okay, so you can
10 start. We'll put 30 minutes on there, and if you can kind
11 of go ahead and -- you know, there's a lot of information in
12 the record. Obviously as precise and as simple you can make
13 it for the Board is always helpful, Commissioner.

14 MR. ECKENWILER: Absolutely. So with that, Mr.
15 Chairman, this is the appeal of ANC 6C. Let me sort of give
16 an overview. This is a slightly odd order in which to do it,
17 but let me tell you there are four points of argument, four
18 separate bases on which the Board should order this permit
19 revoked as being in violation of the zoning regulations.

20 So one, there is an improper setback, in fact, a
21 lack of any setback of a rooftop structure. That's a
22 guardrail.

23 Second, it allows the removal of a protected
24 rooftop architectural element, in this case a cornice.

25 Third, it allows two principal structures on the

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1 lot. And then there's sort of a cascading series of
2 consequences from that that make all of that improper under
3 the regulations.

4 And then last, and probably the most complicated
5 issue is that it allows a rear addition more than ten feet
6 past an adjacent dwelling.

7 So, let me begin with a timeline. Because as you
8 know, just from having cited this motion, there's a lot
9 that's gone on procedurally and administratively with respect
10 to this appeal. So the original permit, that's B1706219, was
11 issued on March 31st of 2017. We filed this appeal on May
12 30th of 2017.

13 The property owner revised the permit, I'm going
14 to call that the first revised permit, and that's B1805207,
15 on April 18th, 2018. And you can find that, if you for some
16 reason want to consult it, that's at Exhibit 46A.

17 Most recently, and this goes to the motion that
18 the Board just decided, on August 2nd, 2018, the permit was
19 further revised. I'm going to that as the second revised
20 permit, that's Number B1811245. And you can find that at
21 Exhibit 55.

22 One other thing, there will be two documents.
23 Unfortunately, I don't have an electronic presentation for
24 you. But I'm going to refer repeatedly to two documents in
25 the record, so it may be convenient for you to have those

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1 ready at hand. The first is Exhibit 46 and its attachments.
2 That is ANC 6C's second revised pre-hearing statement. And
3 the second is Exhibit 59 and its attachments. That is our
4 reply.

5 So with that, the first ground for appeal here is
6 the failure to provide a mandatory minimum setback for a
7 rooftop guardrail. A section of the regulations, it's C
8 1502.1, sub (c), requires a one-to-one setback of any
9 guardrail from the edge of a roof in this particular zone,
10 which is RF-1.

11 The drawings for the current permit, so that's the
12 second revised permit, show a 36 inch railing with zero
13 setback from the edge of the roof. Now, if you will turn to
14 Exhibit 59 at Page 2, and I'll give you a moment just to make
15 sure everyone is there, you will see a detail from one of the
16 drawings for the current permit.

17 And there's an arrow and an oval that identifies
18 this 36 inch guardrail. It runs north/south. And the north
19 end of it, these drawings are all oriented opposite, south
20 is to the top. You can see that the north end of it at the
21 bottom is immediately adjacent to the edge of the roof. It
22 runs right up to the edge.

23 So that one's pretty straightforward. And I'm
24 happy to answer any questions, if the Board has any questions
25 on that. Otherwise, I'll move on to the second ground for

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1 appeal.

2 (No audible response)

3 MR. ECKENWILER: Okay. So the second ground is
4 the second revised permit illegally authorizes the removal
5 of a protected architectural rooftop element.

6 So when DCRA issued this original permit on March
7 31st of 2017, Section E-206 of the regulations did not list
8 cornices among the categories of protected rooftop elements.
9 It was not until a month later, at the end of April when
10 Zoning Commission Order 1411-B took effect, that E-206 was
11 amended to include the language "such as cornices."

12 So the original permit was not subject to this
13 restriction. However both subsequent revisions, which took
14 place on April 18th of this year and then August 2nd of this
15 year, occurred after that rule became final.

16 And under the regulations, Section A 301.4, any
17 permit amendment must, as a general matter, comply with the
18 regulations in effect on the date of amendment. And the
19 exception there is if there's a vesting provision. There is
20 no such vesting provision in this case.

21 Now, the cornice on the existing structure, so
22 this is 1125 7th Street, the property, along with identical
23 cornices on several other rowhouses in the same block,
24 including the adjacent dwelling, 1123, which Mr. Cummins owns
25 and resides in, you can see those at Exhibit 46, Pages 6

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1 through 8. There's a series of photographs that were
2 included in our second revised pre-hearing statement. So
3 I'll pause just to make sure the Board is able to examine
4 those.

5 And the drawings for the latest permit, the second
6 revised permit, clearly depict the removal of that cornice.
7 You can see that removal at Exhibit 59A, Sheet A4.1, which
8 depicts the existing and the proposed front elevations.

9 Now, one of the issues that's presented in this
10 appeal, and you'll see it if you're looking at Sheet A4.1,
11 is whether or not this particular element is a cornice. That
12 term is not defined in 11 DCMR. And so we resort to
13 Webster's Unabridged Dictionary which provides all the
14 fallback definitions.

15 As we've cited in our pre-hearing statement, a
16 definition from one of the many unabridged dictionaries is
17 that a cornice is a horizontal member, typically molded and
18 projecting, that crowns a composition such as a facade.

19 And that is precisely what the feature that's
20 visible in these photos, again, Exhibit 46, Pages 6 through
21 8, does. And while it's true that that cornice does sit
22 below the very top, it's not at the very, very top of the
23 parapet wall, it is abundantly clear that it rises above the
24 highest point on the roof.

25 Significantly, DCRA previously determined in

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1 writing that the feature in question is, in fact, a cornice.
2 So going back to the process by which DCRA reviewed the
3 application for the first revised permit, so that's the first
4 one that was subject to this rule, several important events
5 occurred.

6 So the April 5th, 2018 notes of DCRA Zoning
7 Reviewer, Mamadou Endall, flagged the fact that the removal
8 of the cornice was problematic. And you can see Mr. Endall's
9 notes at Exhibit 46E on Page 2 at the top of the page.

10 So I want to make sure I'm not going too fast.
11 Let me just pause and make sure they're no questions.

12 Second, the property owner ---

13 MR. HART: Mr. Eckenwiler?

14 MR. ECKENWILER: Yes?

15 MEMBER HART: I do have one question.

16 MR. ECKENWILER: Sure, Mr. Hart?

17 MEMBER HART: When you're talking about this
18 cornice, and I appreciate your methodical pace of this,
19 because it's very helpful to do that. I did have the
20 question on did you believe that the owner, I guess, should
21 have requested relief for this? Do you think that's the ---

22 MR. ECKENWILER: Yes.

23 MEMBER HART: -- the correct --

24 MR. ECKENWILER: Yes.

25 MEMBER HART: -- pathway they should have gone,

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1 as opposed to the --- you're saying DCRA just approved it
2 without having come to the BZA.

3 MR. ECKENWILER: So thank you for the question.
4 Yes, so Section E-206 says that a protected rooftop
5 architectural element may not be removed absent special
6 exception or relief. So that's exactly correct. And no such
7 relief has been granted in this case.

8 In response to the comments from Mr. Endall at
9 DCRA, the property owner submitted a letter dated April 16th,
10 2018, disputing Mr. Endall's analysis and claiming that the
11 feature in question, quote, "is not a rooftop element," close
12 quote, and is instead, quoting again, "applied trim." And
13 you can see that letter. That's at Exhibit 46F on Page 1 at
14 the very bottom.

15 And I raise this because one of the things to keep
16 in mind here is it's not just that this was a disagreement,
17 that this disagreement was expressed in writing very clearly
18 to DCRA. Not only was it expressed and in DCRA's permit
19 file, we know that DCRA considered this claim.

20 Because we have an April 18th email to the Deputy
21 Zoning Administrator, that's Cathleen Beaton, that email was
22 copied to, excuse me, Mr. LeGrant, the zoning administrator,
23 that noted this disagreement and sought the guidance of the
24 leadership within the Office of the Zoning Administrator.
25 And you can see that email, that's an email from Sean Gibbs,

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1 at Exhibit 46G.

2 So there was a disagreement. It was communicated
3 to DCRA. DCRA was well aware of it, and there was
4 deliberation over this point. And DCRA rejected this
5 argument because, on April 18th, the author of that same
6 email, Sean Gibbs, who became the zoning reviewer for the
7 first revised permit, Mr. Gibbs added notes into the permit
8 review record saying, quote, "Per review with the zoning
9 administrator, removal of the cornice is permitted."

10 So let's pause for a moment. I want to unpack
11 that. And by the way, you can see that. That's also at
12 Exhibit 46E on Page 4. It's the text that's in all caps.
13 So one, there's a very clear finding that the element in
14 question is a cornice. It's not a different word that's
15 used. They don't say it's like a cornice. It's a cornice.

16 Now, it's true that the permit was issued. And
17 we can see from Mr. Gibbs' notes that there was a purported
18 basis for authorizing its removal. That basis was on the
19 mistaken theory that there's a vesting provision under ZC 14-
20 11.

21 That's simply wrong. There is no such provision
22 anywhere in the regulations. And the opposition, filed by
23 both DCRA and the property owner, they do not claim that
24 there is any such vesting provision. So DCRA was right about
25 what this element is. They were wrong about whether or not

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1 it was permissible to remove it.

2 So what matters here is that DCRA unambiguously
3 found, in a circumstance where they, you know, they could go
4 either way, right, they didn't have to listen to what Mr.
5 Endall said. So there was no pressure to decide one way or
6 the other, other than the property owner arguing with them.

7 And DCRA went the opposite direction, found that
8 the feature in question on the front of the property is
9 within the protections of Section E-206. And they did so
10 over the express objections of the property owner.

11 And that same violation, because remember this was
12 all with respect to the first revised permit, the second
13 revised permit is identical in this regard, and so that same
14 error persists, and therefore the permit should be revoked
15 on this ground.

16 Now, let me add one additional sort of detail here
17 on this second ground for appeal. Even if the Board were to
18 disagree and find that the element in question is not
19 technically a cornice, the Board should still reach the same
20 result. Section E-206 is not limited to the list of features
21 named in its text. It explicitly applies to elements, quote,
22 "Such as the listed items."

23 So it's clear that its protections extend to other
24 similar but un-enumerated architectural features. Because
25 the feature here functions in the same fashion as a cornice,

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1 it defines the top of the facade, and that's not just on this
2 property but, you know, any of the companion rowhouses built
3 in the same style on this same block. To anyone viewing it
4 from the sidewalk, the Board could still find a violation of
5 E-206.

6 In sum this is, if not technically a cornice
7 under, you know, the narrowest possible definition of that
8 term, this is in the nature of a cornice. And the experience
9 of someone standing on the sidewalk, that's where those
10 photographs that are included in Exhibit 46, those were all
11 taken from the public sidewalk looking up at the buildings,
12 it reads exactly as a cornice.

13 So there is a fallback argument here, even if you
14 don't believe, after hearing all the evidence that this is
15 a cornice, you can still find that E-206 applies. However,
16 you don't really need to reach that point.

17 I submit to the Board that DCRA's written
18 determination, with respect to the first revised permit that
19 this is a cornice, really should be, if not dispositive, at
20 least, you know, highly persuasive to the Board. That is the
21 right analysis in our view. And it is fatal to the current
22 permit that's on appeal.

23 Our third ground, and let me pause again, make
24 sure I'm not going too fast. If not then the third --- and
25 these are all independent bases for appeal, any one of them

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1 is enough to require revocation -- the third ground is the
2 two principal buildings problem.

3 The second revised permit, like its predecessors,
4 authorizes not only the renovation of the existing row
5 dwelling but also the construction of a similarly dimensioned
6 three-story structure in the rear yard.

7 You can see those front and rear towers. And
8 actually that's not my term. I think the property owner may
9 have used that in the opposition PHS. If you want to see
10 those in elevation, Exhibit 59A, Sheet A, 4.2 gives you a
11 very good sense of --- you have these two large masses with
12 basically a connecting corridor. So if there are no
13 questions on that, let me proceed.

14 So the drawings for the second revised permit
15 include this connector. And because it does not meet the
16 requirements for joining the towers into a single building,
17 and we'll get in a moment to the particulars of what makes
18 something a single building or separate buildings, the
19 second revised permit illegally allows for two principal
20 buildings containing dwelling units on a single lot in
21 violation of the regulations applicable to the RF-1 zone.

22 Now, the definition for a single building, it
23 appears in a couple of different places. It's both in the
24 definitions in Subtitle B, but also there's a separate
25 section that breaks these things out, and it's a little more

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1 readable. So I'm going to refer to Section B, 309.1. And
2 that section has four separate prongs for what it takes for
3 something to qualify as a connector that makes two masses
4 into a single building.

5 Now, the current connector scheme differs
6 substantially from what was approved in the original permit,
7 but looking at what's authorized today under the second
8 revised permit, the first three prongs of that test are not
9 at issue. So we don't need to spend any time on those.

10 The fourth prong, and that's at B, 309.1, sub (d),
11 is an alternative test. And that may be satisfied in either
12 of two ways. If the connector is, quote, "common space used
13 by all,--" excuse me, "common space used by users of all
14 portions of the building, such as a lobby, recreation room,
15 loading dock, or service bay," so that's one way that a
16 connector can legitimately join two masses into a single
17 building.

18 In the alternative, if the connector is space ---
19 skipping over --- designed and used to provide free and
20 unrestricted passage, and those are the key words here,
21 between separate portions of the building such as an
22 unrestricted doorway or walkway. And it's important. Note
23 the term unrestricted appears twice in the regulation.

24 The connector here does not meet either test. So
25 it's helpful to look at this layout in detail for a very

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1 closeup view. Take a look at exhibit 46, Page 11, where
2 there is an extract from the drawings.

3 And to be fair, that drawing is from the first
4 revised permit drawings. But it has not changed, so far as
5 I'm aware, at all for the second revised permit. So it is
6 perfectly appropriate for the Board to examine it.

7 The west end of this corridor, so that's the
8 right-hand side of the drawing, remember south is up in these
9 drawings, leads to a locked door at the rear entrance, so
10 that's the kitchen of Unit Number 1. That's at the back of
11 the existing rowhouse. The east end, so that's to the left,
12 leads to a locked door to the living room of Unit Number 2
13 in the rear tower.

14 And there is a side door, so that's at -- you'll
15 see that at the top, that's on the south edge of this
16 connector, at the mid-point opens inward from the courtyard
17 between those two towers. So if we look to the text of the
18 regulations, this narrow space, it's three feet, eight inches
19 wide, is not a rec room, it is not a loading dock, it is not
20 a service bay.

21 The property owner clearly didn't think that it
22 was a lobby, because when the original permit was filed the
23 drawings labeled this space, which was configured somewhat
24 differently in terms of the grade but had basically the same
25 width, it was not called the lobby then. It was called the

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1 breezeway. It was only after we pointed out the legal
2 deficiencies that the property owner had a change of heart
3 and suddenly started labeling it a lobby after some of our
4 initial filings.

5 The Board should disregard that self-serving
6 description. And frankly, I think you can see just from
7 looking at this space, this is not a lobby. We're
8 intelligent people, and we know what a lobby is. You know
9 it when you see it. And this is not that.

10 So it does not serve as common space intended for,
11 you know, shared functional use. All this is is a means of
12 passage. And so the only possible way in which this can
13 qualify to join these two masses together into a single
14 building is under 309.1(d)2.

15 Unfortunately, that test also is not satisfied
16 here. Because it requires a qualifying connector to provide,
17 quote, "free and unrestricted passage." But if you look at
18 that first-floor plan, and that is Sheet A, 1.1 at Exhibit
19 59A, that's the full drawing for the current first-floor
20 plan, what I said before is the case.

21 CHAIR HILL: I'm sorry, Commissioner, which Page
22 are you on?

23 MR. ECKENWILER: I'm sorry, if you go to ---

24 CHAIR HILL: Fifty-nine?

25 MR. ECKENWILER: Yes, it's Exhibit 59A. Those are

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1 the drawings for the ---

2 CHAIR HILL: Which page were you on. I'm sorry,
3 I thought you --- did you have a page number?

4 MR. ECKENWILER: Yes, it's Sheet A, 1.1. Beg your
5 pardon, Mr. Chairman.

6 CHAIR HILL: Okay.

7 MR. ECKENWILER: So that gives you the --- that's
8 the full drawing. And I think that's the cellar and the
9 first-floor plan. If you'll examine the first-floor plan,
10 you can see it's what I described before. This is a
11 corridor, and it has locked doors at either end. Because
12 those doors are entrance doors for each of the two units.

13 Have I got that right, Mr. Chairman, am I ---

14 CHAIR HILL: You're okay. You're okay. I just
15 needed a little help. But I'm listening. Thank you.

16 MR. ECKENWILER: Okay. So it's presumably those
17 doors are locked. I can't actually see on the drawings it
18 says that they're locked. But those are clearly entrance
19 doors into units. It defines that space.

20 And what the Board really should keep in mind here
21 is that when the Zoning Commission -- obviously Commissioner
22 Turnbull will recall this, he has the scars from ZR16 --- the
23 Office of Planning and the Commission, when they re-wrote
24 this rule, you know, it used to be called the Meaningful
25 Connection Rule, and obviously the wording went through a

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1 number of changes here, there was significant concern about
2 fig leaf connectors, a lot of practices in the past that were
3 highly questionable.

4 And OP and the Commission were very concerned to
5 address that, to make connections truly meaningful. So among
6 other things, that's why it now says heated and artificially
7 lit. That was not a requirement before. But that's not
8 germane here.

9 What is germane is if we look to the record, so
10 for instance, Deputy Director of OP, Jennifer Stein Gasser,
11 wrote in a 2008 memo, she complained that, you know, for
12 instance, often two buildings are combined into one building,
13 under ZR58, by a single locked doorway.

14 And that was a criticism. The point was, you
15 know, that doesn't really combine these two buildings into
16 one building. That's a fiction. And in this case, we have
17 that same fiction just extended out in space. So it's not
18 just a single locked doorway, it's a corridor that's locked
19 at either end. And since it's locked at either end, it does
20 not, it cannot provide free and unrestricted passage between
21 separate portions.

22 Now, the initial DCRA zoning reviewer, for the
23 first revised permit, that's Mr. Endall I talked about
24 before, noted that deficiency. But for some reason, and the
25 reviewer notes don't make clear, this is 46E, Exhibit 46E,

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1 there was an about face within DCRA, and the first revised
2 permit was issued without explaining why this was acceptable.
3 And this violation was then carried forward into the drawings
4 for the second revised permit.

5 Now, the regulations do not allow a second
6 principal building on the property. The regulations do allow
7 an accessory structure. But the building in this case does
8 not qualify as an accessory building. Since I'm running a
9 little short on time, I'm not going to dwell on that.

10 I've detailed in our written submissions the
11 particular regulations that describe the envelope limits, the
12 sort of height and, you know, relative size. And since the
13 rear tower is essentially identical in volume to the front
14 tower, it cannot ever qualify as an accessory structure under
15 ---

16 CHAIR HILL: Yes, Commissioner?

17 MR. ECKENWILER: Yes?

18 CHAIR HILL: It's okay. Just don't --- it's easy
19 to follow you. So go ahead and take 45 minutes and just, you
20 know, let's get through. I mean, we've been waiting on this
21 for years.

22 MR. ECKENWILER: Okay.

23 CHAIR HILL: Okay.

24 MR. ECKENWILER: All right. Well, let me just
25 touch on it very briefly. An accessory building in an RF

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1 zone may be no taller than 20 feet and two stories. And more
2 importantly, an accessory building in an RF zone must be,
3 quoting their language in the regulation here, "subordinate
4 to," close quote, the principal building and, again quoting,
5 "secondary in size," close quote, to it. And you can find
6 that at Section E, 5000.1(a) and 5000.2.

7 And if you examine the drawings submitted in
8 support of the application for the second revised permit, so
9 looking at Exhibit 59A, Sheets A-4.2 and 5.2, they make very
10 clear that this is not in any way a subordinate structure.
11 It does not meet the, you know, the height limits.

12 So that's what I was saying in the introduction.
13 So since you have two principal buildings with a dwelling
14 unit in the rear, the rear structure, it fails all these
15 other requirements. And therefore, this was issued in
16 violation of the zoning regulations.

17 So let me pause there, make sure there are no
18 questions on that third ground for appeal.

19 MEMBER HART: With regard to the -- sorry, I'm
20 just making sure I got all of this. To get back to the
21 principal dwelling unit, the connector ---

22 MR. ECKENWILER: Yes.

23 MEMBER HART: -- you're saying that because the
24 locked doors are there on either side of this connector,
25 there isn't an ability for someone from the Unit 1 to be able

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1 to walk into Unit 2. They can have access to the connector,
2 whatever you want to call it, lobby, breezeway, whatever, but
3 they do have the ability to access that and then go into the
4 courtyard that's there. But no one else can, because you
5 have to have access to that by, you know, from either one of
6 the units.

7 MR. ECKENWILER: Yes, Mr. Hart.

8 MEMBER HART: Thank you.

9 MR. ECKENWILER: That's true. So any occupant of
10 either unit has access to the rear yard and therefore can,
11 in theory, walk the entire length of that connector. But the
12 truth is, there is absolutely no reason for the occupant of
13 Unit 1 ever to walk in the east half and vice versa. And I
14 know that the property owner is ---

15 MEMBER HART: I mean, unless they know them. So
16 they could just be going to say hi to their neighbor.

17 MR. ECKENWILER: They could, they could.

18 MEMBER HART: I understand your point. I'm just
19 saying that it's hard to kind of say never that something's
20 going to happen. It is unlikely that that might happen,
21 because there is -- unless they're going to actually visit
22 that person, they wouldn't be necessarily going down the set
23 of stairs, going across this, and then going up the other set
24 of stairs to get to that other door. I understand your
25 point. I just wanted to make sure that I got all of that.

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1 MR. ECKENWILER: No. You're quite right, Mr.
2 Hart. What does bear repeating though is that it's not just
3 enough that, you know, users of the entire structure or
4 structures have access and be able to walk, you know, the
5 full length of this. It has to provide free and unrestricted
6 passage between separate portions of the building.

7 So it's not enough that you can go into this,
8 there has to be unrestricted passage. And unrestricted here
9 is truly a key word in the regulation. It appears twice in
10 this sub-paragraph.

11 And so it's not just enough that I can walk up
12 to that front door. It needs to be unrestricted. I take you
13 back to Ms. Steingasser's memo, you know, pointing out, you
14 know, the fig leaf. And this is simply a somewhat longer fig
15 leaf.

16 MEMBER HART: And just to kind of make sure I
17 close this loop, so you're saying that there could never be
18 a connection between these two. There could never be an
19 instance, maybe I shouldn't use the word never either, but
20 it'd be very difficult to get to an instance where you could
21 have a connector that met these guidelines, the criteria.
22 Because you'd have kind of a weird first floor that you could
23 -- kind of anybody could access.

24 MR. ECKENWILER: You could certainly ---

25 MEMBER HART: Do you see what I'm saying?

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1 MR. ECKENWILER: You could certainly have, I mean,
2 picture sort of a typical office building where you might
3 have a couple of towers --

4 MEMBER HART: I'm trying to get more specific to
5 this particular instance where we have two units that are ---
6 one that's connected to the other one. But I'm just trying
7 to get to a --- unless it's a single building, then I don't
8 think that you're getting to a, you know, that connector
9 piece is going to be very very difficult to do then.

10 MR. ECKENWILER: Mr. Hart, I'd say there are
11 different ways that, you know, the regulations, for instance,
12 contemplate a rec room. You could have a shared rec room.
13 That's not what this is. I think we can all tell from
14 looking at it.

15 Yes, Ms. White? And I'm sorry, just one --- I
16 want to make sure I answered your question first, Vice Chair
17 Hart.

18 MEMBER HART: Sorry, I think you have. I'm just
19 trying to kind of get down to the, you know, where does this
20 leave us ---

21 MR. ECKENWILER: So ---

22 MEMBER HART: And so that's what I was trying to
23 get at.

24 MR. ECKENWILER: Theoretically, it's possible ---
25 I think the Board needs to decide this on the basis of the

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1 record before it. And what you've got here just, it just
2 ain't it.

3 Ms. White?

4 MEMBER WHITE: So another way of looking at it,
5 would you consider it a meaningful connection based upon the
6 configuration of these structures?

7 MR. ECKENWILER: It's a very clever attempt to
8 skate right along the edge of the regulations. But no, it's
9 a failed attempt to comply with the requirements of Section
10 B, 309.1. The test used to be meaningful connection and
11 sometimes, you know, people may use that. But really, what
12 we need to look to is the text of the regulation now. So
13 whether I consider it a meaningful connection or not really
14 is not the issue here.

15 MEMBER JOHN: Mr. Chairman?

16 CHAIR HILL: Sure.

17 MEMBER JOHN: I have one question. So
18 essentially, because the passageway --- because the lobby is
19 too narrow, and only two units have access to it, if I
20 understand you correctly, then that, you think, makes it not
21 a meaningful connection.

22 So if the property owner were to enlarge the
23 structure perhaps, make it wider, would that cure some of the
24 defect in your view?

25 MR. ECKENWILER: They could make it into a true

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1 lobby or a recreation room if they wanted, in some third
2 revision to this. The problem is, and we'll come to this in
3 the fourth ground, is that this rear extension is, in and of
4 itself, a violation of the zoning regulations. So the truth
5 is, it's kind of academic.

6 MEMBER JOHN: Well, I was just trying to
7 understand your point. Because here it seems only two units
8 would have access to this area. And I'm not sure if the
9 regulation requires all units to have access or if, under the
10 regulations, it would be sufficient if only two units had
11 access, and if there were doors at either end that could be
12 opened or locked, depending on security needs. I'm just
13 trying to understand what your argument is.

14 MR. ECKENWILER: My argument proceeds directly
15 from the text of the regulation. So at the risk of repeating
16 myself, again, Section B, 309.1 (d), so that's the fourth
17 prong, has two alternative ways in which a connection can
18 join two masses into a single building. One is common space
19 used by users of all portions of the building, such as a
20 lobby, recreation room, loading dock, or service bay. So we
21 can think of that as the shared space prong.

22 And that's not what this is. This isn't a place
23 for people to mingle, this isn't a place for people to sort
24 of load and unload stuff from trucks, or play ping pong, or
25 any of those things.

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1 And then the alternative test is the passageway
2 test which is required to provide free and unrestricted
3 passage, such as an unrestricted doorway or walkway. And our
4 argument here is this is not unrestricted. If you can't
5 actually walk between the separate portions, it does not
6 qualify. It does not join the two buildings together if
7 there are two locked doorways that separate those buildings
8 from this connector. So I hope that answers your question,
9 Ms. John.

10 MEMBER TURNBULL: Mr. Eckenwiler, I wonder if I
11 can, just to clarify, the rear yard we're referring to is
12 where the parking is?

13 MR. ECKENWILER: No, Mr. Turnbull. There is an
14 interior courtyard.

15 MEMBER TURNBULL: That's what we're calling the
16 rear yard?

17 MR. ECKENWILER: I'm trying to be scrupulous. And
18 if I misspoke, I apologize. That's the courtyard --

19 MEMBER TURNBULL: Okay.

20 MR. ECKENWILER: -- between the two towers. And
21 the two towers run the full width of the lot. There is an
22 area at the rear, so that's the far east end of the lot
23 behind the rear tower, where two parking spaces are provided.
24 So I'm not talking about that area. This is what's between
25 the two towers.

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1 MEMBER TURNBULL: Two towers.

2 MR. ECKENWILER: And I apologize for any lack of
3 clarity on that.

4 MEMBER TURNBULL: Okay. And that courtyard cannot
5 be accessed from either the rear or the front separately.
6 You have to go into one of the buildings' towers to get to
7 it.

8 MR. ECKENWILER: That's correct. There are
9 underground passage ways and ---

10 MEMBER TURNBULL: There's a cellar showing on
11 this, there's a corridor in the cellar.

12 MR. ECKENWILER: Right. There are corridors in
13 both the front and rear structures. And I'm quite certain,
14 because it was in their opposition pre-hearing statement,
15 that the property owner will be discussing that in some
16 detail. They have a view for how this satisfies the
17 regulation. I won't presume to characterize their argument
18 further.

19 MEMBER TURNBULL: Okay. But basically, the
20 habitable space on the first floor, those are locked doors.
21 And your argument is that you can't go from one to the other,
22 because each door is locked.

23 MR. ECKENWILER: Yes. That's correct.

24 MEMBER TURNBULL: Okay.

25 MR. ECKENWILER: And just to be clear, that's why

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1 it doesn't satisfy this second alternative prong under the
2 309.1(d). But then we also have to account for the other
3 prong that, you know, lobby, rec room, et cetera, prong, just
4 to be clear.

5 MEMBER TURNBULL: Okay, thank you.

6 MR. ECKENWILER: Sure. All right. So with that,
7 Mr. Chairman, I'll move on to the last ground for our appeal.
8 That is the illegal rear addition. As the Board is, I
9 suspect, painfully aware, the current regulations prohibit
10 the construction of a rear addition extending more than ten
11 feet past the rear wall of an adjacent dwelling in this zone,
12 an RF-1 zone.

13 Because the second revised permit authorizes a
14 rear addition well in excess of this limit, and because there
15 is no applicable vesting provision that would exempt it, the
16 revised permit must be revoked.

17 So that restriction, the ten foot pop-back rule,
18 as it's sometimes referred to, is in Section E, 205.4. And
19 if you examine Exhibit 59A, you can look at Sheet A, 1.1,
20 Sheet A, 4.2, and I believe this is at the very back, SP01,
21 that's the site plan. I think that's the very last sheet.
22 All of those will show you very clearly that this rear
23 extension goes --- it's a little more than 57 feet. I think
24 it's about 57.9, but it doesn't really matter. It's clearly
25 well in excess of ten feet.

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1 So we know it's over the ten foot rule. And we
2 also know that, under Section A 301.4 of the regulations, it
3 requires that any amendment of a permit shall comply with the
4 provisions of this title in effect on the date the permit is
5 amended. So every time you amend or revise a permit, you're
6 subject to the new rules, unless there is a vesting
7 provision.

8 So we know the default here is the second revised
9 permit, because it was issued after August 25th, 2017, when
10 the current text of E 205.4 came into effect, that it's, as
11 a general matter, subject to this ten foot pop-back
12 restriction.

13 Now, there is a vesting provision that could
14 potentially apply. And that's A 301.14. And that is
15 specifically aimed at these ten foot pop-backs. It was
16 adopted in ZC 1411-D by the Zoning Commission. Now, that
17 requires, under the text of that provision, that two separate
18 conditions be satisfied. So you have to meet them both.
19 Failing either one is fatal.

20 First, the building permit application for such
21 construction was filed and accepted as complete by DCRA on
22 or before March 27th, 2017, and not substantially changed
23 after filing, okay. So you've got a date that you have to
24 meet. You have to not substantially change after that
25 filing. The permit here fails not just one condition but

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1 both of these conditions.

2 So to begin with, the original permit here,
3 according to the records that we've provided to the Board,
4 was not accepted as complete on or before that key date,
5 March 27th of 2017.

6 In a September 12th, 2017, email to others at
7 DCRA, including Mr. LeGrant, Maximillian Tondro, and I know
8 you're all very familiar with Mr. Tondro, pointed out that
9 B-1706219, so that was the original permit, was submitted by
10 the Applicant on March 24th but was not accepted as completed
11 until March 29th. And you can find a copy of that email.
12 There are some portions that are redacted, but you can see
13 this text at Exhibit 46H, like Henry, okay.

14 Now, Mr. Tondro's email does go on to assert that
15 there were no changes required by DCRA, and he says that it
16 was therefore deemed, through some sort of magic, to have
17 been submitted earlier. But really, the statement that you
18 need to take at face value here is when this truly was
19 accepted as complete, in reality, was March 29th. And
20 therefore the original permit application was not submitted
21 in time to benefit from the vesting rule, A 301.14.

22 And that means that all the subsequent permits,
23 including the current one, the second revised permit, are
24 ineligible for the benefit of that vesting provision, okay.
25 So that's the timing defect.

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1 The second revised permit fails to meet the
2 standards for that vesting provision in a second and entirely
3 independent way. A 301.14 applies only where the application
4 is, quote, "Not substantially changed after filing," close
5 quote. If you compare it with the original permit
6 application, the multiple revisions since then show extensive
7 changes.

8 So let me walk you through some of those. You'll
9 see a lot of them, just to sort of preview much of what I'm
10 going to refer to, if you look at Exhibit 46 starting on Page
11 15. There's a series of detailed extracts from the permit
12 drawings.

13 So the first and second revised permits flip the
14 proposed internal configuration of every level in the front
15 building. It's flipped around from one side to the other.
16 And you can see that, Exhibit 46, Page 15. I can give you
17 citations to the full drawings if you need it.

18 The first and second revised permits radically
19 alter the proposed front facade, indicating entirely
20 different materials, increasing the projecting bay height
21 from two stories to three, and flipping the front entrances
22 to opposite sides. And you can see that, Exhibit 46, Page
23 16 compared with Page 17. And that's the before and after.

24 The roof hatches, there's one on each of the two
25 towers, have evolved not once but twice. The original permit

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1 began with a hinged coffin lid style hatch that flipped up
2 on its long side.

3 The first revised permit replaced that with the
4 tall daylighter 42-80 penthouse structure. And you can see
5 that on Page 18 of Exhibit 46, how that morphed. But it
6 didn't stop there. Once we pointed that out in our second
7 ---

8 CHAIR HILL: Commissioner?

9 MR. ECKENWILER: Yes?

10 CHAIR HILL: I just wonder, I mean, we've asked
11 questions and things. It doesn't necessarily come from your
12 45 minutes. But if I could just try to get you around the
13 45 minutes, if you could kind of start to wrap up a little
14 bit, that might be helpful.

15 MR. ECKENWILER: I'm pretty close to that, Mr.
16 Chairman.

17 CHAIR HILL: Okay, thank you.

18 MR. ECKENWILER: So in the latest iteration, the
19 second revised permit has yet another style of hatch. This
20 time it's a sliding hatch that slides across the rooftop.
21 There's no hinge. You can see that depicted at Exhibit 59A,
22 Sheet A-3.1.

23 And I alluded to this earlier. That breezeway
24 that connects these two towers has changed significantly from
25 the original permit drawings. It used to be substantially

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1 below grade responding to our comments in one of our earlier
2 filings that was materially changed to bring it up to grade.

3 And the first and second revised permits remove
4 the proposed separate kitchen facilities. When this was
5 initially approved, there were what appeared to be third and
6 fourth units, the front and rear cellar both had multiple
7 attributes. We pointed this out in our first revised pre-
8 hearing statement in detail.

9 Much of that has been pulled out. So if you look,
10 again, at Exhibit 46, you can see how, you know, like, the
11 kitchen facilities have been pulled out, some of the laundry
12 facilities have been pulled out, and so on.

13 So that's by no means an exhaustive list of the
14 extensive changes. Let me just pause. I can come back to
15 that in rebuttal if I need to.

16 Taken together these numerous differences, some
17 of which go directly to material zoning defects from the
18 original permit, reflect changes from the original permit
19 application that are substantial and therefore disqualify the
20 current permit, the second revised, from the application of
21 the vesting rule at A 301.14.

22 So for all those reasons, Mr. Chairman, and
23 members of the Board, ANC 6C respectfully urges the Board to
24 find that the second revised permit, as well as all the
25 predecessor permits that underlie it, violate the zoning

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1 regulations and that the Board, therefore, order revocation.
2 I'd be pleased to answer any further questions the Board has.

3 CHAIR HILL: Okay. Does the Board have any
4 further questions at this point for the Appellant?

5 MEMBER HART: Mr. Eckenwiler, as I said earlier,
6 I do appreciate your stepping through this. I think it was
7 very helpful and very organized. So it's very easy to see.
8 It's one thing when you read something as when you kind of
9 hear it, so I do appreciate that.

10 With regard to the accessory building, are you
11 also saying that, in some ways, the owner is kind of having
12 two --- they're making a statement that the connector makes
13 these buildings kind of one building and that if they were
14 one building, then the ten foot rule should apply. And it's
15 not applying.

16 So in some ways, they're kind of getting both of
17 best worlds, if you understand what I'm saying. The
18 connector makes the buildings two buildings --- makes the two
19 buildings one building. And so they get the benefit of being
20 considered one building with a connector.

21 But with regard to the ten foot rule, they're kind
22 of getting away from that. Because it's almost like there
23 are two separate buildings. They're being considered two
24 separate buildings. So they're not having to kind of deal
25 with that aspect of it.

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1 MR. ECKENWILER: At the risk of being
2 argumentative, yes, I'd agree that the property owner is
3 trying to eat his cake and have it too. But I'm sure that
4 Mr. Brown will want to respond to that.

5 MEMBER HART: And I understand that. I just
6 wanted to make sure that I was understanding that also
7 correctly.

8 MR. ECKENWILER: Yes. No, the way I'd look at it
9 if I just sort of stepped back from, you know, immersing
10 oneself in the regulations, I'd say what they're proposing
11 to do here is build two rowhouses on one lot. That's really
12 the gist of it.

13 MEMBER HART: Thank you.

14 CHAIR HILL: Okay. Anyone else?

15 (No audible response)

16 CHAIR HILL: Okay. So now what we're going to do,
17 we're going to do cross. And then we're going to take a
18 break, okay. So Mr. Cummins, do you have any cross for the
19 Commissioner?

20 MR. CUMMINS: By cross, what are you referring to?

21 CHAIR HILL: So cross examination are questions
22 that you have for the presentation that was just given.

23 MR. CUMMINS: No, I just asked to be heard for a
24 brief statement at a point that ---

25 CHAIR HILL: Sure. No, you'll get an opportunity

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1 right after the ANC.

2 MR. CUMMINS: Thank you.

3 CHAIR HILL: Okay. DCRA?

4 MS. LORD-SORENSEN: No.

5 CHAIR HILL: Okay. Mr. Brown?

6 MR. BROWN: If I could, Commissioner Eckenwiler,
7 you filed the original appeal in May of 2017 based on what
8 we refer to as the original building permit, B1706219.

9 MR. ECKENWILER: Correct.

10 MR. BROWN: And when you filed that appeal, did
11 you raise the first issue that you discussed this morning,
12 the 36 inch high guardrail running --

13 MR. ECKENWILER: The setback? That was not
14 presented in the initial appeal filing.

15 MR. BROWN: It was not?

16 MR. ECKENWILER: It was not.

17 MR. BROWN: You did not, okay. Even though if you
18 go to the permit plans that you attached to your pre-hearing
19 statement, the guardrail is shown on the plans.

20 MR. ECKENWILER: Can you just point me to a
21 particular exhibit that you're looking at?

22 MR. BROWN: It's your pre-hearing statement.

23 MR. ECKENWILER: So that's 46.

24 MR. BROWN: Well, no, it's your revised pre-
25 hearing statement.

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1 MR. ECKENWILER: And again, I apologize. The
2 first revised or the second revised? I'm not trying to be
3 troublesome.

4 MR. BROWN: No, no, no, no, no, no. I think it's
5 the first revised. And I can --- if it would help, I'll show
6 you the ---

7 MR. ECKENWILER: Sure.

8 MR. BROWN: -- the plans.

9 MR. ECKENWILER: Sure, yes.

10 CHAIR HILL: Yes. And then you can tell us where
11 you guys are.

12 (Laughter)

13 CHAIR HILL: No, that's all right. I'm also not
14 generally problematic.

15 PARTICIPANT: Yes.

16 CHAIR HILL: Okay, right.

17 MR. BROWN: And the permit drawings you submitted,
18 and you'll see at the top corner, it says B176219.

19 MR. ECKENWILER: I'll take your word for it. It
20 appears to say that. There's a lot of text overlaid there.
21 But I trust that you're ---

22 MR. BROWN: And then if you go ---

23 MEMBER HART: We are on Exhibit, what again?

24 (Off the record comments)

25 MEMBER WHITE: Thirty-five.

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1 MR. BROWN: That sounds right to me.

2 MR. ECKENWILER: Thirty-five B? Is that the
3 building plans, or C?

4 MR. BROWN: Unfortunately, Mr. Eckenwiler didn't,
5 I don't think, include exhibit sheets on these.

6 MR. ECKENWILER: I apologize for that. I filed
7 them separately, but no, they're not on the cover sheets.

8 MEMBER HART: And which page is it again?

9 MR. BROWN: I'm referring to Page ---

10 CHAIR HILL: Which exhibit?

11 MR. BROWN: A-5.2.

12 CHAIR HILL: Sorry, which exhibit?

13 MR. BROWN: One second.

14 (Off the record comments)

15 MR. BROWN: It is Exhibit 35 C.

16 CHAIR HILL: Can somebody shut that back door for
17 me over there on the right?

18 MR. BROWN: Plans, yes, 35 C, Tab C, plans and
19 drawings. And if you see --- I think ---

20 MR. ECKENWILER: Mr. Brown, I don't mean to cut
21 you short, but I think I understand what you're getting at.
22 And so just in the interest of brevity, the first issue that
23 I presented an argument this morning with respect to the
24 guardrail setback ---

25 MR. BROWN: Yes.

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1 MR. ECKENWILER: -- it wasn't ---

2 CHAIR HILL: It was in your first application --

3 MR. ECKENWILER: -- was not in --

4 CHAIR HILL: -- in your first appeal.

5 MR. ECKENWILER: It was not in our first revised
6 pre-hearing statement which was filed on April, I believe
7 April 18th.

8 CHAIR HILL: Okay, Mr. Brown, is that your
9 question?

10 MR. BROWN: Well, that, and it wasn't referenced,
11 and I think he's already said this, it wasn't referenced in
12 the original appeal he filed, even though the issue existed
13 at that time, correct? You did not raise, in your original
14 appeal, which is Exhibit ---

15 MR. ECKENWILER: Twenty, I think.

16 MR. BROWN: No, no.

17 MR. ECKENWILER: I'm sorry, no. You're quite
18 right.

19 MR. BROWN: Your original appeal, the statement
20 is brief.

21 MR. ECKENWILER: Yes. That sounds right.

22 MR. BROWN: Exhibit 3, 530217. And in that
23 statement, you did not raise the guardrail issue.

24 MR. ECKENWILER: In none of the filings, so the
25 very initial appeal filing, the first pre-hearing statement

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1 or the first revised pre-hearing statement, all of which went
2 to the original permit. That's correct. The guardrail issue
3 was not presented in any of those submissions.

4 MR. BROWN: And then a companion question, and you
5 referred to it as a cornice, the facade trim or element that
6 we claim, rooftop architectural element potentially, the
7 original permit also provided for the removal of that
8 element, correct?

9 MR. ECKENWILER: That's correct.

10 MR. BROWN: All right. And in your appeal of that
11 permit, you never raised that question as a matter of the
12 appeal?

13 MR. ECKENWILER: Because the original permit was
14 issued at a time when E-206 did not reference cornices, yes.

15 MR. BROWN: But it did reference architectural
16 rooftop elements which you're also alleging in your current
17 filing --- violation. You've said it's a cornice, but if
18 it's not a cornice, it's a rooftop architectural element.
19 Is that correct?

20 MR. ECKENWILER: I said it's a cornice or in the
21 nature of a cornice. And I don't want to recap my whole
22 argument, but it was basically a list of things. And the
23 language of the regulations has "such as" these things. So
24 we know that it includes those things and things like those
25 enumerated things. The word "cornice or cornices,

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1 technically, was not present in the regulation at the time
2 the original permit was issued.

3 MR. BROWN: But the basic regulation did exist at
4 the time of the original ---

5 MR. ECKENWILER: 8206 existed at the time of the
6 original permit. And the amendment to it, for purposes of
7 this appeal, largely goes to the insertion of the word
8 cornices.

9 CHAIR HILL: Okay, is that it?

10 MR. BROWN: Yes.

11 CHAIR HILL: Okay, great. Thank God. All right,
12 So just as far as the cross, I just hate the cross. All
13 right. Do we want to take a break now, or do you want to try
14 to hear from Mr. Cummins?

15 PARTICIPANT: Fine.

16 CHAIR HILL: All right. So, Mr. Cummins, if you
17 would like to go ahead and have an opportunity to give us
18 your presentation, I got the impression that it wasn't as
19 long as Commissioner Eckenwiler's. But I thought
20 Commissioner Eckenwiler did a good job of walking us through
21 those issues that we're going to now have questions on from
22 DCRA.

23 But please, I'm going to go ahead and just let the
24 timer run and pleased to have an opportunity. I know that
25 you have been very patient in kind of getting to this point.

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1 Because it's been some time that, you know, we've had delays,
2 and there were --- the last time, I think, we came forward,
3 you also were not interested in the delay. And the delay
4 took place primarily because there was a new attorney from
5 DCRA. At least I remember that being one of the
6 possibilities. So please, as you like.

7 MR. CUMMINS: Good morning. And I'll try to be
8 very brief. My name is Kevin Cummins. I reside at 1123 7th
9 Street NE, which is an adjacent rowhouse that shares a party
10 wall with the property in question here in the permits in
11 question.

12 In fact, my property directly --- and go to the
13 heart of why we have zoning regulations in the first place,
14 to protect, you know, neighborhood character but also
15 adjoining properties' access to light and air.

16 And building this huge, you know, two-building
17 structure will cast deep shadows over my property, and be
18 very imposing in nature, and essentially create a double ---
19 create the possibility, because I have an identical lot and
20 presumably the same property rights as my neighbors on each
21 side.

22 It creates the possibility of having a double row
23 here where that was never contemplated. And it's completely
24 inappropriate, particular for the type of alley we have on
25 this trapezoidal block.

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1 I'm not the only neighbor who's commented. There
2 is Exhibit 28. There's also the statement from the neighbor
3 across the alley, directly across from the subject property.
4 That's also in the record.

5 And that statement describes some clear zoning
6 issues as well as the general concern about this being an
7 inappropriate structure outside the zoning regulations that
8 apply to the property, including there's a description there
9 of the building connector issue as well.

10 You just don't --- one of the things that was the
11 discussion I just would like to raise, we talked already
12 about there being locked doors, so the inhabitant of Unit 1
13 or the Tower 1 is not going to go outside their kitchen and
14 then traverse the lobby, you know, open, presumably a locked
15 door to the second tower and just breeze into the living room
16 there.

17 And in addition, if you look at the door in the
18 mid-point of the corridor, it's such a narrow corridor, when
19 that door is open, which opens inward, it effectively blocks
20 --- you have a wall blocking the free and unrestricted
21 passage.

22 So again, there are a lot of fig leaf issues that
23 Mr. Eckenwiler described as zoning issues very clearly. And
24 I think any single of those four grounds that he outlined,
25 you know, calls for this permit to be revoked on zoning

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1 issues.

2 The Board should also be aware though, there are
3 a number of irregularities outside of, strictly speaking, the
4 zoning regulation --- what the jurisdiction of this body is
5 to consider as part of the zoning.

6 But there are a number of other irregularities
7 associated with the permit. Some of those are described in
8 the ANC statement as well, the issuance of the permit in
9 eight days for a permit fee of \$36.30, the fact that the
10 plans --- and there are numerous revisions. Some of those
11 revisions the permit record described as for legal purposes
12 highly raises some questions.

13 And in addition, some of the plans just aren't
14 accurate. The site plan, for example, does not describe the
15 current conditions, the existing site conditions as is
16 required. Again, that's a building code issue. But as
17 you're looking at the plans, like, one of the things to
18 consider is, you know, they should have the drawings done
19 correctly.

20 And you have some very basic things where there's
21 a detached garage on the current existing --- behind the
22 current existing two-story rowhouse that is partially
23 demolished. But it's not even properly placed on the site
24 plan. It doesn't touch the property line. It's set back
25 approximately four feet.

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1 And why that's significant is because you have not
2 quite four feet of publicly maintained alley space which will
3 now, if the permit is allowed, will become the private
4 parking space with a fence around it for the rear yard,
5 fenced rear yard for the new second tower, as DCRA describes
6 it.

7 So that essentially --- that's one of the things,
8 where some of these other irregularities that are outside the
9 zoning regulations, I did point out on my written statement
10 in some detail that I think should just also be a
11 consideration. And the Board should certainly be aware of
12 that as they deliberate on the very clear zoning violations
13 associated with the issuance of this permit.

14 I'd be happy to answer any questions. Again, I
15 submitted a statement and a revised statement. One other
16 thing I should point out as well is there was a question of
17 timing and whether Mr. Eckenwiler raised things in 2017 that
18 he can't talk to in 2018. This has been going on so long.

19 I do want to point out my first statement
20 certainly did raise the facade issue, the removal of the
21 facade and that violation. So to the extent that that should
22 be factored into whether it's germane to consider that clear
23 zoning violation, I do want to point that out.

24 But other than that, I'd be happy to pause for any
25 questions. My main purpose in being here is as a neighbor.

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1 And I am thankful for the ANC to bring this case on behalf
2 of the ANC. But I share a party wall with this property, and
3 I'm the most directly impacted resident, who is mostly
4 directly impacted by DCRA's decision to issue this permit and
5 subsequent revisions improperly in clear violation of the
6 zoning regulations.

7 CHAIR HILL: Okay. Thank you, Mr. Cummins.

8 MR. BROWN: Mr. Chair, could I interject. And I
9 did not interrupt. I was going to object during his
10 testimony. And I didn't want to interrupt him.

11 CHAIR HILL: Okay, I appreciate that. But you're
12 interrupting me real quick, Mr. Brown.

13 MR. BROWN: All right.

14 CHAIR HILL: So just give me ---

15 (Off the record comments)

16 CHAIR HILL: No, well, I don't know. If you were
17 here last week, that was much worse. I just wanted to ask
18 a question, if the Board had any questions of Mr. Cummins at
19 this point?

20 (No audible response)

21 CHAIR HILL: Okay. Now, Mr. Brown, you had an
22 objection to something that Mr. Cummins said?

23 MR. BROWN: Well, and I put it --- and I responded
24 to his statement. It's in the record. And I think it was
25 --- I didn't want to interrupt him speaking.

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1 CHAIR HILL: Okay.

2 MR. BROWN: But I want to --

3 CHAIR HILL: I appreciate that.

4 MR. BROWN: -- reference that I responded to many
5 of the comments he said. And he clearly admitted that he was
6 talking about things beyond the zoning regulations. And our
7 job here, regardless of where we sit, is tough enough with
8 the zoning regulations. And we should be mindful that that's
9 our task.

10 And Mr. Cummins has availed himself of other
11 administrative tribunals, OH in particular. And those issues
12 will be, I'm sure, resolved there. But we ought to focus in.
13 And I want to focus in on the zoning regulations.

14 CHAIR HILL: Okay. So you're trying to point us
15 to certain exhibit through response to Mr. Cummins, is that
16 correct?

17 MR. BROWN: Yes. And yes, property owners
18 response to intervener's revised pre-hearing statement.

19 CHAIR HILL: Okay. Tell me that exhibit number
20 again please?

21 MR. BROWN: Fifty-eight.

22 CHAIR HILL: Fifty-eight, okay. So I do remember
23 the response. So that's noted. And, Mr. Brown, again, I
24 appreciate that you're doing your job for your client. Mr.
25 Cummins is just trying to make sure that this doesn't get

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1 built next to his house. So he's not exactly an attorney,
2 I would imagine. But I appreciate that he's speaking to
3 things outside of the zoning regulations.

4 Did you have any --- well, first, I'm going to
5 turn to DCRA. Did you have cross for Mr. Cummins?

6 MS. LORD-SORENSEN: No.

7 CHAIR HILL: Okay. Mr. Brown, did you have any
8 cross for Mr. Cummins?

9 MR. BROWN: No. But, Mr. Chairman, you made a
10 statement that he's here to make sure it's not built to his
11 house. That's not what we're here for. We're here to
12 determine whether this permit is in compliance with the
13 zoning regulations.

14 CHAIR HILL: Oh, Mr. Brown, I clearly know why
15 we're here.

16 MR. BROWN: Yes.

17 CHAIR HILL: And the Board knows why we're here.
18 And I just want to let you know that I clearly know why I'm
19 here. And those four items that the ANC Commissioner brought
20 up, those are the four items that we're going to be focusing
21 on. Do you have anything else, Mr. Cummins?

22 MR. CUMMINS: No. No cross.

23 MEMBER HART: Oh, okay. No cross. All right.
24 So can we go ahead and take a break. Is that all right? So
25 we'll take, like, a ten minute break real quick. All right,

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1 thank you.

2 (Whereupon, the above-entitled matter went off the
3 record at 11:00 p.m. and resumed at 11:12 p.m.)

4 CHAIRMAN HILL: The Board's reconvening, and it
5 is 11:12. Okay, great. A couple of quick points here. I
6 guess, at the break, we found out that there was a lot of
7 people here who are wishing to speak on Application 19819,
8 so we're going to put that back second again because there's
9 people here who have children and things such as this.

10 If you have any complaints about that, you should
11 bring children, young children. We're doing that next. This
12 is going to take a while, so whoever's out in the hall, they
13 can stay out in the hall. This still isn't done any time
14 soon. Ms. Lord-Sorenson, we'll go ahead and put 45 minutes
15 on the clock, I guess. That's great.

16 Whatever you do -- pardon me? Hold on a second.
17 Mr. Secretary, if you want to go up to the secretary -- I
18 can't speak to you directly. I can't speak to anybody
19 directly. People had questions to the secretary, so I'm a
20 little confused. We're apparently going to take three
21 minutes here.

22 (Whereupon, the above-entitled matter went off the
23 record at 11:14 a.m. and resumed at 11:16 a.m.)

24 CHAIRMAN HILL: All right, we're back. Ms.
25 Lord-Sorenson, again, as I mentioned, you can start whenever

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1 you like.

2 APPLICATION 19819

3 MS. LORD-SORENSEN: Good morning, Chairman Hill
4 and members of the Board. We're here today because the
5 appellant, Advisory Neighborhood Commission 6C, alleges that
6 the zoning administrator erroneously issued Permit B1805207,
7 which allowed the permit holder, Atlas Squared LLC, to
8 renovate and convert 1125 7th Street Northeast, the property,
9 from an existing single-family dwelling to a two-unit
10 townhouse.

11 On August 2, 2018, DCRA issued a revised permit,
12 B1811245, which is now incorporated into the record. DCRA's
13 position is that the zoning administrator correctly issued
14 the August 2nd revised permit, after determining that the
15 drawings were compliant with the zoning regulations. As
16 heard earlier today, there are four issues pending before the
17 Board.

18 Now, I'd like to ask the zoning administrator a
19 series of questions, following Commissioner Eckenwiler's
20 presentation earlier today. I'd like to direct your
21 attention first to architectural plan A-3.1, which can be
22 found at BZA Exhibit 57, at Page 10.

23 PARTICIPANT: Yes.

24 MS. LORD-SORENSEN: Appellant asserts that the
25 guard rail, this structure right here, that the guard rail

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1 on the roof violates the one-to-one setback. The plans show
2 that the guard rail at the property line. My question to
3 you, zoning administrators, does the location of the guard
4 rail comply with the one-to-one setback?

5 MR. LEGRANT: I believe it does. The section that
6 requires the one-to-one setback of the guard rail set forth
7 in DCMR 11-C59.2 I've interpreted as when the guard rail is
8 on the edge of the roof, parallel or on the edge of the roof,
9 running along the edge, that, I believe, is the focus of that
10 provision.

11 In this case, as you're showing, there is a guard
12 rail that comes off perpendicular to the property line. I
13 have, in this case and other cases, approved such
14 configurations, such that the guard rail is there for life
15 safety purposes.

16 MS. LORD-SORENSEN: The next issue that was raised
17 by Commissioner Eckenwiler pertains to the cornice.

18 MEMBER TURNBULL: Could you just clarify what
19 drawing you're looking at?

20 MS. LORD-SORENSEN: A-3.1. It was BZA Exhibit 57,
21 at Page 10. DCRA noted it as Attachment E, as in egg.

22 CHAIRMAN HILL: Do the architects on the Board
23 have any questions?

24 VICE CHAIR HART: Just one question. What we're
25 talking about is this area, right here?

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1 MS. LORD-SORENSEN: Yes, that's the perpendicular
2 area the zoning administrator --

3 VICE CHAIR HART: So you're just saying that does
4 not need to be set back from this -- is that south? I'm so
5 confused as to the direction here. Is that the southern
6 wall?

7 MR. LEGRANT: I'm not sure it's the southern wall,
8 but right, my position is it does not need to be set back
9 from that. That's a side property line that comes off
10 perpendicular from that.

11 VICE CHAIR HART: But it is set back from the
12 back. I don't know if that's actually showing up. What
13 happens around the -- let me see if I can -- what happens
14 around the entire property? What happens around the edge of
15 the -- is there a railing or anything that goes around the
16 entire roof? What happens between the roof deck and the edge
17 of the property or the building?

18 MR. LEGRANT: Although that wasn't raised, I
19 believe my recollection of the rest of the roof plan is that
20 it has -- it meets the setback when the railing is running
21 parallel or at the roof edge. It's only -- the issue here
22 that was raised has to do with around this roof hatch.
23 There's two portions of this railing. One is perpendicular,
24 that I've spoken to. Then as it makes the turn to the left,
25 there, then, that, of course, is -- certainly meets at least

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1 all the setbacks.

2 VICE CHAIR HART: I'm also looking at the area
3 that is all of this, so this entire area is a roof deck,
4 correct?

5 MR. LEGRANT: Yes, I believe so.

6 VICE CHAIR HART: So that has to have a railing
7 around it, as well?

8 MR. LEGRANT: The building code would require, as
9 I understand the building code, it would require a protective
10 guard rail. That would be the -- if it's not shown there,
11 I'm not sure the other drawings show it. Maybe the property
12 owner can speak to that, as to the presence or not of a
13 compliant guard rail around the rest of the roof deck.

14 VICE CHAIR HART: Okay. Thank you.

15 MEMBER TURNBULL: Mr. Hart, are you saying that
16 would have to be one-to-one?

17 VICE CHAIR HART: That was my --

18 MEMBER TURNBULL: That was our assumption. That
19 would be a one-to-one setback for the guard rail around the
20 perimeter of the building.

21 MR. LEGRANT: I would say yes.

22 MEMBER TURNBULL: Okay.

23 MR. LEGRANT: The other thing is, now I recall,
24 the building employs the use of a parapet. The parapet is
25 not a feature that is subject to the one-to-one setback. Now

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1 that I'm recalling, I believe -- and the property owner may
2 be able to confirm -- that in this case, as well as other
3 cases, an applicant will use a parapet sort of double duty
4 as meeting the building code requirements for fire safety,
5 as well as, if it's a sufficient height, to function as a
6 guard rail. I have long interpreted that is not a feature
7 that's subject to the one-to-one setback.

8 VICE CHAIR HART: Unless it's about the Height Act
9 height?

10 MR. LEGRANT: Correct.

11 MS. LORD-SORENSEN: Zoning Administrator, the next
12 issue pertained to the cornice. Do you recall when the
13 original permit was issued for this project?

14 MR. LEGRANT: I believe -- the revised or --

15 MS. LORD-SORENSEN: The original.

16 MR. LEGRANT: I don't have that date before me,
17 but it's -- oh, March 31, 2017. My apologies, yes.

18 MS. LORD-SORENSEN: At the time the original
19 permit was issued, did the zoning regulations list cornices
20 as a rooftop architectural element?

21 MR. LEGRANT: It did not. The subject provision
22 was E-206.1 had a list of provisions of specified rooftop
23 architectural elements, including dormers, turrets, and
24 towers.

25 MS. LORD-SORENSEN: Were the zoning regulations

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1 ever amended to include cornices?

2 MR. LEGRANT: They were.

3 MS. LORD-SORENSEN: Do you recall when those
4 amendments went into effect?

5 MR. LEGRANT: Yes, the Zoning Commission Order
6 1411-B was effective on April 28, 2017.

7 MS. LORD-SORENSEN: What did this amendment do to
8 the definition of rooftop architectural elements?

9 MR. LEGRANT: It added other elements, specified
10 additional elements, including cornices and porch roofs to
11 be considered as protected rooftop architectural elements.

12 MS. LORD-SORENSEN: After Zoning Commission Order
13 No. 14-11B went into effect on April 28, 2017, were there
14 revisions to the original permit?

15 MR. LEGRANT: There were.

16 MS. LORD-SORENSEN: Were these revisions subject
17 to Zoning Commission Order 14-11B?

18 MR. LEGRANT: No, they were not.

19 MS. LORD-SORENSEN: And why weren't they?

20 MR. LEGRANT: When an amendment to the zoning
21 regulations goes into effect, the overall issue of vesting
22 is were there substantial deviations from the plans that
23 would then be subject to the revised text amendment itself?
24 If there was a major alteration, such as an increase or
25 decrease of the height of the building, the gross floor area,

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1 or number of dwelling units, those, then, I have treated as
2 triggers. You have to do an analysis, taking into account
3 the new text that's been added by the Zoning Commission. In
4 this case, there were changes to the plans that did not
5 either increase the gross floor area, nor the building
6 height, nor the number of units. The basic mass of the
7 building stayed the same. There was changes to some interior
8 layout. There was changes to the exterior façade and
9 materials, and there were changes to the roof hatch element.

10 MS. LORD-SORENSEN: Do you recall whether the
11 initial plans called for the removal of the cornices?

12 MR. LEGRANT: They did not. Right, the initial
13 plans showed there was an existing cornice that was to be
14 removed.

15 MS. LORD-SORENSEN: The plans that were submitted,
16 the initial plans that were submitted depicting the removal
17 of the cornices pre-dates the effective date of Zoning
18 Commission Order No. 14-11B.

19 MR. LEGRANT: That's correct.

20 MS. LORD-SORENSEN: I would like to direct the
21 Board's attention to Architectural Plan 5.2. It can be found
22 at BZA Exhibit 57, at Page 8. DCRA noted it as Attachment
23 D. Appellant alleges that the rare tower of the townhouse
24 is a separate building, and thus constitutes an illegal
25 second principal building. In your opinion, Mr. LeGrant, are

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1 there two buildings or one building on this property?

2 MR. LEGRANT: The plans depict one building?

3 MS. LORD-SORENSEN: Why is that?

4 MR. LEGRANT: The two masses of the second
5 building, which have been described as towers, have a
6 connection that is compliant with the provision that governs
7 the regulation of single buildings, B-309.

8 MS. LORD-SORENSEN: Could you please just explain,
9 using Architectural Plan A-5.2, how this particular
10 connection satisfies 11-B DCMR Section 309.1?

11 MR. LEGRANT: As was presented by the appellant,
12 the aspects of B-309 include -- the first three criteria
13 really are not at issue. It's of grade, it's enclosed, it's
14 heated and artificially lit, so it's condition space, it's
15 enclosed, portion of the building that connects the two
16 towers.

17 The question has to do is, too, does it meet the
18 final criterion of it's -- set forth in Subsection D, which
19 I'll read, is it either one, a common space shared by users
20 of all portions of the building, such as a lobby, recreation
21 room, loading dock, or service bay; or two, space is designed
22 and used to provide free and unrestricted passage between
23 separate portions of the building, such as an unrestricted
24 doorway or walkway.

25 My analysis of this connection is that it

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1 functions as a common space, used by all users of the
2 building, all portions of the building. It does, as was
3 noted, function as a corridor, but in addition, as a doorway
4 that leads to the interior courtyard. Residents of both of
5 the units that are coincident with the two towers must, if
6 they want to -- this one way to access the courtyard is to
7 go through the doors from their respective units to this
8 common space and use the side door that would then allow them
9 to access the courtyard.

10 With that perspective, I believe it does qualify
11 as common space that allows people to use that -- to be able
12 to -- they share this space, to be able to access, in this
13 case, the closed courtyard between the two towers.

14 MEMBER TURNBULL: Mr. LeGrant, do you really think
15 that there is unrestricted access between one tower and the
16 second tower?

17 MR. LEGRANT: The second point to which you're
18 noting, this space required free and unrestricted passage.
19 Here, residents of both towers or both units can utilize that
20 hallway. This configuration, although it's fairly unique --
21 I will note there are other buildings that have a corridor
22 that residents of individual units, they would not obviously
23 be able to access, through a locked door, the other units
24 that other residents have, but they can utilize that
25 corridor.

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1 MEMBER TURNBULL: I guess I would argue that if
2 it's one building, you should be able to go from one building
3 to the other building unrestricted, but here, there are
4 locked doors. I guess my feeling is that's not an
5 unrestricted passageway. It's actually two separate towers
6 that may have a link, may have a physical attachment that's
7 heated and air conditioned and everything else, but that it
8 doesn't really meet the intent of totally unrestricted
9 access.

10 MR. LEGRANT: Of course, you're noting the second
11 point, and that's why I started with the first point. It's
12 a common space that users -- you have to -- one or the other.
13 If it's a common space that all users of the building can use
14 to utilize this passageway with the connection to the door
15 to the court, I believe it would meet that first standard.

16 CHAIRMAN HILL: I've got a quick question. If the
17 property owner actually -- I was just looking through all the
18 plans and waiting to get to this point, so we can figure out
19 what's going on. How many units are in the building? I
20 thought there were three.

21 MR. BROWN: Just two.

22 CHAIRMAN HILL: There's two units.

23 MR. BROWN: Front and back.

24 CHAIRMAN HILL: The one unit from the one unit in
25 the back, right? This will be something you can show me

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1 later. I don't want it to take away from their time right
2 now. I'd like to see where -- how the walkway is that you
3 get to this lobby common area, if there's a back door, if
4 there's back doors, how do people actually get in and out of
5 this building? Mr. LeGrant -- sorry, Ms. Lord-Sorenson.

6 MS. LORD-SORENSEN: The final issue that was
7 raised had to deal with the rear addition. At the time that
8 the permit was approved, was the permit subject to the pop
9 back rule?

10 MR. LEGRANT: No, it was not.

11 MS. LORD-SORENSEN: Why not?

12 MR. LEGRANT: The permit, in my evaluation, was
13 deemed -- the application was deemed complete for processing
14 prior to the effective date of the text amendment that then
15 subjected projects to the ten foot or pop back regulation.

16 MS. LORD-SORENSEN: Earlier, you stated that --

17 MEMBER TURNBULL: Could you repeat, just for the
18 record, those dates?

19 MR. LEGRANT: I think we're going to get to the
20 dates in a moment.

21 MS. LORD-SORENSEN: When did the Zoning Commission
22 order 14-11B, the text amendment you just mentioned? When
23 did that go into effect?

24 MR. LEGRANT: April 28, 2017.

25 MS. LORD-SORENSEN: In your opinion, when was the

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1 permit accepted?

2 MR. LEGRANT: March 24, 2017.

3 MS. LORD-SORENSEN: You stated earlier, Mr.
4 LeGrant, that the applicant had made revisions to the permit.
5 Were these revisions subject to the ten-foot limitation?

6 MR. LEGRANT: No.

7 MS. LORD-SORENSEN: Why not?

8 MR. LEGRANT: Again, the language in the
9 regulations is is there substantial changes to the plans?
10 Looking at both the original permit and the revised permit,
11 I looked to see if the intensity of the use of the building,
12 in terms of the number of units and square footage, had
13 changed, which did not -- those two units, the original two
14 units and the revised permit, square footage was the same,
15 the mass of the buildings were the same, the height was the
16 same, and the number of stories or levels also was unchanged.

17 With that analysis, I concluded that despite the
18 changes, some interior changes, the roof hatch, exterior
19 cladding, that it was not -- it did not rise to a level of
20 being a substantial change. Therefore, it was vested -- the
21 revised permits were vested in the regulations prior to the
22 effective date of 1411-B.

23 MS. LORD-SORENSEN: No further questions.

24 VICE CHAIR HART: Mr. Chairman, Ms. Lord-Sorenson
25 or Mr. LeGrant, can you tell us where you're taking the

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1 vesting from? Where are you saying that we are able to use
2 the first date of the -- the first permit, which was in early
3 2017, as the date for all of these -- that it kind of anchors
4 all of these other amendments? Because I think that's part
5 of what Mr. Eckenwiler brought up was that the changes that
6 you are calling -- I'm not sure what you're calling them, but
7 you're not saying that they are rising to the level of a new
8 permit. They are -- I don't want to characterize them as
9 minor, but I can't think of any other term. They're just not
10 a major change. Can you tell us where you're taking that
11 from?

12 MR. LEGRANT: When an application is submitted to
13 DCRA, it goes through an initial vetting to see if sufficient
14 information exists in order to begin a review, not only by
15 the Zoning Administrator, but by the other disciplines in
16 each area that administer the building code. March 24, 2017
17 was the date that the plans and the application were accepted
18 as sufficiently complete. That is the point in which, then,
19 we note that the rules in effect at that point in time govern
20 the application.

21 VICE CHAIR HART: You were saying that it is
22 vested by that date, but what -- is there something in the
23 building code or something in the zoning code that allows you
24 to say this is the date of vesting?

25 MR. LEGRANT: I believe the language in the zoning

1 code refers to an application that is deemed sufficiently
2 complete to do a review, and then procedurally, what we do
3 in our building permit system, we have an electronic
4 application tracking system that notes those dates
5 specifically. It is the function of the intake function of
6 the permit operations division that somebody submits an
7 application which, of course, these days, is an online
8 submittal. They look at the information.

9 Sometimes there's back and forth to get to the
10 point where an application begins, is deemed complete enough,
11 and then in the parlance of the tracking system, it changes
12 its status to under review. That is the point that we -- not
13 only for this application, for any application -- deem as the
14 date in which it's deemed complete for zoning code purposes.

15 VICE CHAIR HART: I'm going to move on from that
16 piece. With regard to the rooftop embellishments or cornice
17 or however you want to talk about that, your contention is
18 that the -- that this predated the change, so that it would
19 be -- I don't want to use the word "grandfathered," but
20 that's certainly the term that is coming to mind -- so that
21 it would not be vested. It would not be -- that would not
22 be an issue.

23 MR. LEGRANT: Correct.

24 VICE CHAIR HART: Can you talk a little bit more
25 about the cornice and why you -- what you consider it?

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1 MR. LEGRANT: Two points. I think DCRA laid it
2 out in her statement. One, is it truly a rooftop
3 architectural element, or is just a portion of the façade?
4 It exists on the façade, but part of the analysis I look to
5 see if it's a rooftop architecture element, is it part of the
6 roof? Now, there isn't a lot of criteria in the zoning
7 regulations, so I have to make a judgment call.

8 In this case, it fell on the fact that it's a
9 horizontal band on the façade that's not up at the actual
10 roof level, where the edge of the roof comes out. It's below
11 that. That was one aspect. I think the most important
12 aspect was, as you noted, the vesting, is it vested in the
13 rules prior to the Commission amending the list of rooftop
14 architecture elements.

15 I'll be up front with the Board. After the
16 initial provision went into effect, we had several
17 applications, not only this one, in which it was what about
18 the cornice, what about the porch roof, what about a chimney
19 that might have some architectural merit? Those aspects,
20 we're looking at case by case.

21 In some cases, I believe that the cornices might
22 fall into a category of being protected and not. The
23 Commission, then, was very clear in adding it. They said no,
24 cornices must be protected. In this particular case, though,
25 that decision came -- or the effective date of 14-11B came

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1 into effect after the application was deemed, so I made the
2 decision, and we shared here some of the internal discussions
3 of my staff, which were brought to me for making the final
4 decision as to whether it was, in fact, a protected element.
5 I determined it was not.

6 VICE CHAIR HART: Do you see the -- Mr. Eckenwiler
7 also brought forward the internal discrepancy that someone
8 had an issue, or at least thought that it might be considered
9 a rooftop embellishment. You have, in the past, looked at
10 cornices as being part of the -- in other buildings in the
11 city -- as being part of the -- as a rooftop embellishment,
12 a rooftop element?

13 MR. LEGRANT: Prior to the Commission's action,
14 to be frank, I think my office, my reviewers might have not
15 been completely consistent. Some reviewers are well, it's
16 not in the list of things; it's not protected. Some of them
17 were it looks like -- because the key in some of these
18 language is such as, elements such as would be. The
19 Commission then provided, I think, further guidance to say
20 we must look at these cornices as protected rooftop
21 architecture elements after the certain effective date of
22 that text amendment.

23 VICE CHAIR HART: So yes, you have seen?

24 MR. LEGRANT: Yes, I have seen some.

25 VICE CHAIR HART: And have included them as -- not

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1 included -- and have concluded that they are a rooftop
2 element?

3 MR. LEGRANT: In some instances, yes.

4 VICE CHAIR HART: Do you have examples of those?

5 MR. LEGRANT: I would have to look back in our
6 records. We could probably find some.

7 VICE CHAIR HART: I think it would be helpful to
8 see what those are, so that we have, at least, some
9 comparison as to what some of those elements might be to say
10 that it is or is not one. It would be helpful for us to, I
11 think, understand that. With regard to the building
12 connection -- I'm sorry I'm asking so many questions here.

13 CHAIRMAN HILL: No, that was a good question. I
14 like all the good ones. Keep the good ones.

15 VICE CHAIR HART: I'll just make sure I have that
16 criteria, good questions only. With regard to the
17 connection, a meaningful connection between these two
18 buildings, it seems like the intent of the zoning regulations
19 were that they were trying to make there to be a way in which
20 people could actually move from one part of the building to
21 the other, using the connection.

22 Because the connection is -- it's not intended to
23 be -- it didn't seem to me to be an intent to have it just
24 to make two unrelated buildings connected to each other, so
25 that is why there was the issue of if there is an

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1 unrestricted access. They could have not had the word
2 unrestricted in there at all, and it could have just said
3 access to it. This would kind of meet that. But it seemed
4 like there was an intent to have the unrestricted part of it
5 be an issue. Mr. Eckenwiler brought this to our attention,
6 as well. If you could speak to that a little bit and to how
7 you perceive that aspect of it, the unrestricted aspect of
8 that.

9 MR. LEGRANT: As I noted in response to, I think,
10 a question from Commissioner Turnbull, the subject provision
11 here is B-309.1(d)(1) and (2). You're correct that there is
12 -- one of the criteria is that the space is designed and used
13 to provide free and unrestricted passage, but preceding that
14 is the common space, common space shared by all users of
15 portions of the building, such as lobby, recreation room,
16 loading dock, or service bay, or -- the or is you can do one
17 or the other.

18 You don't have a feature that has free and
19 unrestricted access. You can have a common space. In my
20 review of several projects, they come in all sorts of
21 configurations of these common spaces that are sometimes an
22 apartment house, a condominium building that has many units.
23 There'll be a large space. In the smaller buildings, they
24 have -- I've seen one where they have a fairly modest lobby
25 with mailboxes. So that is a space that is used, again --

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1 shared use by all users of the building. I think one of the
2 key criterion here was, in my view, was that this is a means
3 of access to the adjacent closed courtyard because of the
4 side door off, so the users use this to gain access to that
5 court. Looking at all the aspects of this, I concluded that
6 it did meet the first criterion as a common space.

7 VICE CHAIR HART: Thank you.

8 MEMBER WHITE: So a common space would be defined
9 as space that would be used by all of the occupants in the
10 building, and in this case, was that true?

11 MR. LEGRANT: Yes, the wording is shared by all
12 users of the building. Here, we have residents of the two
13 units at each end of that connection that would come out and
14 be able to use that space to gain access to the court.

15 MEMBER WHITE: So the fact that it could lock, or
16 the fact that you would need a key in order to be able to
17 enter that part of the building would have no bearing on your
18 definition of common space?

19 MR. LEGRANT: Correct.

20 MEMBER WHITE: Thank you.

21 VICE CHAIR HART: I have another question, kind
22 of a follow up. Is a building connector defined in the
23 zoning code, or anything that would -- is there any
24 definition that this particular connection would fall within
25 in the zoning code?

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1 MR. LEGRANT: In the definition of building, it
2 includes language as to what constitutes a building -- I
3 believe this regulation that was included in 016 by the
4 Commission further, as was noted here, further elaborated or
5 described the criteria for that -- for the connection. Even
6 though the definition generally refers to -- definition of
7 building refers to what a single building is, this regulation
8 is much more specific.

9 VICE CHAIR HART: You're talking about in the
10 zoning code, itself, in Section B, was it?

11 MR. LEGRANT: B-100 is the definitions.

12 VICE CHAIR HART: I'm trying to kind of hit all
13 of these pieces. With that -- and I asked the question to
14 Mr. Eckenwiler, but I'll ask it to you, as well. This is
15 with regard to this building issue and what the -- there are
16 two structures -- I've now heard them called towers, but
17 whatever.

18 There are two buildings that are considered one
19 building because of this meaningful connection that you're
20 saying that this lobby or breezeway or whatever you want to
21 call that makes. That, then, to me, brings the one building
22 into two -- the two buildings into one building? It makes
23 it one building? So could you walk me through the issue of
24 the rear -- the ten-foot rule? I think that what we're
25 talking about is really when the permit was vested, so that

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1 kind of comes into play with this, as well, I think.

2 MR. LEGRANT: Yes. DCRA's position is it's not
3 two buildings. It's two portions or two masses or two towers
4 of a single building. How does it qualify for a single
5 building? It has to meet the criteria of B-309.1. When we
6 look at -- when we did our review, we said okay, this
7 particular design has a couple of masses. If it was two
8 separate buildings, in this particular zone, you cannot have
9 two principal buildings.

10 The analysis, then, must be is it a single
11 building? Oh, they have this connection. Does the
12 connection meet B-309.1? As I've described, it was my view
13 that it does. So at that point, it's a single building.
14 Then, the question is regardless of if this did not have this
15 connection, or if the masses were pushed together, then is
16 it subject to the ten-foot limitation or pop back rule?

17 Then, as DCRA has described, we know that 1411-B
18 set forth that projects after the effective date would be
19 subject to the rule. It's my view that the project was
20 vested in the regulations prior to the effective date of that
21 rule.

22 Therefore, it is not subject to the setback rule,
23 if this application was deemed -- if the Board granted the
24 appeal and the building permit was revoked, then it becomes
25 a clean slate, and the property owner came in tomorrow with

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1 the same design, it would then -- oh, we have a rule that's
2 now effective. It would be subject to at least a special
3 exception for extending ten feet beyond the rear wall of an
4 adjacent property. I don't know if that -- that walked
5 through my view of how those two aspects interact.

6 VICE CHAIR HART: No, I appreciate it. I think
7 that does -- that is helpful to understand what your thought
8 process was for it. I'll leave it there, but I do appreciate
9 the responses.

10 MR. LEGRANT: Thank you.

11 CHAIRMAN HILL: Anyone else? Just a quick
12 question, Mr. LeGrant, to follow up with Mr. Cummins. Again,
13 due to -- there was a discussion about the vesting and so
14 forth. Again, this would not -- this would be under the
15 ten-foot rule. This would have to come before us again for
16 special exception if this were to come before you again
17 today?

18 MR. LEGRANT: Yes.

19 CHAIRMAN HILL: So it's not like something would
20 happen next door to this -- I'm just speaking to Mr. Cummins,
21 saying this could happen again and again in different lots,
22 in his lot. It could, I suppose, if it came before us under
23 a special exception and we approved it, but it's not
24 something that's by right now.

25 MR. LEGRANT: Correct.

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1 CHAIRMAN HILL: Again, why is it not by right now?

2 MR. LEGRANT: Because the Zoning Commission
3 amended the zoning regulations in 1411-B that said in
4 addition to all the other development standards that apply
5 to this zone, that rule is you cannot extend more than ten
6 feet -- a rear addition cannot extend more than ten feet
7 beyond the rear wall of an adjacent property for an attached
8 or semi-detached dwelling.

9 CHAIRMAN HILL: Got it. This, again, your
10 analysis is this is a rear addition.

11 MR. LEGRANT: The subject application is a
12 conversion, an addition, including a rear and vertical
13 additions.

14 MEMBER TURNBULL: Mr. Chair, I just wonder if I
15 --

16 CHAIRMAN HILL: Sure, please.

17 MEMBER TURNBULL: So going forward, if you're
18 looking -- again, calling up on the same line of questions
19 as the Chair, you would still see it as one building because
20 of the connection, but it would have to then meet the
21 ten-foot rule.

22 MR. LEGRANT: Correct.

23 MEMBER TURNBULL: Basically, of all the objections
24 that we've heard or we're talking about, the key one would
25 be the ten-foot rule going forward in this case?

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1 MR. LEGRANT: Well, it would fail --

2 MEMBER TURNBULL: And the cornice, too, I guess,
3 would fail, maybe.

4 MR. LEGRANT: If the Board were to grant the
5 appeal, then an identical application that would come in with
6 the same characteristics, then in terms of that 1411-B
7 vesting for the cornice and the pop back, those would no
8 longer be a matter of right. It would be subject to special
9 exception before this Board.

10 MEMBER TURNBULL: Okay, thank you.

11 CHAIRMAN HILL: Right, and again, just while we're
12 talking about it, the vesting is another part of this
13 discussion, in that the changes that they made -- and we've
14 had this discussion before with the zoning administrator, in
15 terms of what changes have happened and whether or not they
16 meet the criteria to vest or not. So again, your position
17 is that this does vest. The changes that they have made do
18 not take it outside of the vesting provision.

19 MR. LEGRANT: That's correct.

20 CHAIRMAN HILL: All right. Does the ANC
21 commissioner have any questions on cross?

22 MR. ERICKSON: Yes, Mr. Chairman, I have a number
23 of questions for Mr. LeGrant.

24 CHAIRMAN HILL: Sure.

25 MR. ECKENWILER: Mr. LeGrant, did I understand you

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1 to say that with respect to setbacks for railings on roofs,
2 that you believe there is a different rule for setbacks from
3 the front of the building versus the side wall?

4 MR. LEGRANT: No. I believe I spoke to the -- in
5 terms of the setbacks applicable to rooftop elements, that
6 there is -- the code, itself, differentiates that there's
7 certain specified setbacks, depending on a rear wall, front
8 wall, or side wall.

9 MR. ECKENWILER: Just to pick up on that point,
10 which I think is a little different from what you said
11 earlier, there is a requirement for setbacks from a side wall
12 of a building?

13 MR. LEGRANT: There is.

14 MR. ECKENWILER: Is that located in Section
15 C-1502.1(c)?

16 MR. LEGRANT: Yes, that's, I believe, the correct
17 provision.

18 MR. ECKENWILER: Does that require a setback --

19 CHAIRMAN HILL: Can you say that one again, Mr.
20 Commissioner, 1501 what?

21 MR. ECKENWILER: The reference is C, like Charlie,
22 1502.1, Subsection C. This section is captioned Penthouse
23 Setbacks.

24 CHAIRMAN HILL: Okay, thanks.

25 MR. ECKENWILER: Mr. LeGrant, do you see, in

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1 1502.1(c), where the regulation requires, quote, a distance
2 equal to its height from the side building wall?

3 MR. LEGRANT: Yes.

4 MR. ECKENWILER: Do you also see, in the prefatory
5 language, so going up before Subsection A, the very
6 introduction in 1502.1, where it says, quote, any guard rail
7 on a roof?

8 MR. LEGRANT: Yes.

9 MR. ECKENWILER: So your testimony earlier,
10 though, was that there was not a setback requirement in this
11 particular case. Can you explain why, in light of the text
12 of the regulation?

13 MR. LEGRANT: Sure. As I noted, I've interpreted
14 that provision to mean when the guard rail is at the roof
15 edge, on the roof edge or parallel with the roof edge, that
16 it is subject to setback. I will note that when it's, in
17 this case -- and I've done this in other cases, as well --
18 that it's perpendicular, and it's a guard rail for life
19 safety purposes, I have said that particular aspect is not
20 subject to the setback.

21 MR. ECKENWILER: Can you point me to any language
22 here in the regulation that draws that distinction?

23 MR. LEGRANT: That's my interpretation.

24 MR. ECKENWILER: So your answer is no?

25 MR. LEGRANT: Right, there's not specific language

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1 in the regulation.

2 MR. ECKENWILER: So there's no distinction drawn
3 on the face of the regulation between a railing that's
4 parallel to the side building and a railing that is
5 perpendicular to the side building wall?

6 MR. LEGRANT: That's correct.

7 MR. ECKENWILER: Turning to the issue of the
8 cornice -- let me go back here for a moment. Let's go back
9 to April of earlier this year, the application for the first
10 revised permit. The original permit had already been issued.
11 There was a pending appeal. The property owner submitted to
12 DCRA and, therefore, review came through your office for this
13 first revised permit. Do you remember receiving an email
14 from Shawn Gibbs about this question of whether or not the
15 feature on the front of 1125 7th Street was a cornice or
16 applied trim?

17 MR. LEGRANT: As you presented, there is an email
18 in the record about this --

19 MR. ECKENWILER: I'm just asking if you remember
20 getting that email.

21 MR. LEGRANT: I do.

22 MR. ECKENWILER: Do you remember having any
23 conversations with Mr. Gibbs about that question?

24 MR. LEGRANT: I did with both Mr. Gibbs and Mr.
25 Dow.

1 MR. ECKENWILER: Mr. Gibbs was seeking your
2 guidance on this question, was he not?

3 MR. LEGRANT: Yes, he was.

4 MR. ECKENWILER: What guidance did you provide Mr.
5 Gibbs?

6 MR. LEGRANT: After I spoke with Mr. Gibbs and Mr.
7 Dow about the issues they raised, I, as in the case of many
8 issues that my staff bring to my attention, I had to make a
9 determination. I appreciated their analysis, and I made my
10 decision.

11 MR. ECKENWILER: I'm asking what was your
12 decision?

13 MR. LEGRANT: My decision was that the cornice in
14 this particular case was not subject to the regulation,
15 E-206.1.

16 MR. ECKENWILER: Let me clarify my question. Did
17 you determine that the feature in question was, in fact, a
18 cornice?

19 MR. LEGRANT: There was a discussion as to whether
20 it would qualify as a cornice or not. I know that there is
21 different views in my staff as to whether it was a cornice
22 or not a cornice. At the end of the day, whether -- in that
23 internal discussion as to whether it was a feature that
24 deemed as to be a protected -- A, was it a feature that would
25 be subject to that provision; and B, was it subject to the

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1 E-26.1 as it affected that point in time, I concluded that
2 it was not a -- that the removal of that cornice --

3 MR. ECKENWILER: Hold on, because I really want
4 to divide this into two separate questions. The first one
5 is just a simple labeling question.

6 CHAIRMAN HILL: Commissioner Eckenwiler?

7 MR. ECKENWILER: Yes.

8 CHAIRMAN HILL: I'm not trying to -- I think he's
9 answered it, in that he made his own determination as to what
10 he thought.

11 MR. ECKENWILER: Well, Mr. Chairman, with respect,
12 I don't think Mr. LeGrant is because he keeps sliding over
13 into saying well, it wasn't protected because of some vesting
14 rule. I do want to come to that, but I think there's two
15 separate issues here. One, whether or not Mr. LeGrant found
16 that the feature in question was a cornice, and then we can
17 come --

18 CHAIRMAN HILL: I believe Mr. LeGrant though found
19 that the feature in part did not need to be protected.

20 MR. ECKENWILER: Well, the reason I'm asking these
21 questions at the official record, the reviewer notes for Mr.
22 Gibbs used the term "cornice."

23 CHAIRMAN HILL: So your question, again, to Mr.
24 LeGrant, is whether or not he thought it was a cornice.

25 MR. ECKENWILER: Yes.

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1 CHAIRMAN HILL: Okay, Mr. LeGrant, do you think
2 it's a cornice?

3 MR. LEGRANT: No.

4 CHAIRMAN HILL: Okay.

5 MR. ECKENWILER: So Mr. LeGrant, going then to the
6 -- actually, let's hold on that for a moment. If you can
7 look at Exhibit 46-E, these are -- I'll represent to you
8 these are the reviewer notes for the first revised permit.
9 If you'll turn to Page 4, the fourth page on the printout,
10 you'll see some notes there that were made by Shawn Gibbs.
11 That's visible at the bottom of Page 3, the preceding page,
12 dated April 18th. About two thirds of the way down the first
13 paragraph at the top, all in caps there, you'll see that the
14 word cornice is used. Do you see that?

15 MS. LORD-SORENSEN: Where are you?

16 MR. ECKENWILER: I'm looking on -- this is Page
17 4 of Exhibit 46-E. There's a block of text at the top.

18 MS. LORD-SORENSEN: Is there a particular tab?

19 MR. ECKENWILER: I think I just said E, 46-E.

20 VICE CHAIR HART: What we're trying to do, Mr.
21 Eckenwiler, is that DCRA -- it may not have been Mr. LeGrant,
22 but DCRA called it a cornice, and in this case, they said the
23 removal of the cornice is permitted, as the original
24 application predates ZC-1411. That's what you're talking
25 about.

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1 MR. ECKENWILER: Right.

2 VICE CHAIR HART: So you're saying they called it
3 a cornice, so they should --

4 MR. ECKENWILER: They called it a cornice.

5 VICE CHAIR HART: They're considering it a
6 cornice, but they're just saying no.

7 MR. ECKENWILER: That's right. They made a
8 determination. After they got an argument from the property
9 owner, they decided it was a cornice. The reviewer notes
10 made in the official record by Shawn Gibbs reflect that
11 determination.

12 VICE CHAIR HART: You're asking the DCRA to -- why
13 DCRA, in their comments, call it a cornice, when Mr. LeGrant
14 is not calling it a cornice?

15 MR. ECKENWILER: Precisely.

16 MR. LEGRANT: Mr. Gibbs, as well as many of my
17 staff worked for me, and sometimes they bring issues to me
18 which I disagree and I overrule their initial comment or
19 determination.

20 MR. ECKENWILER: That was the case with Mr. Daw's
21 comments on this, that this was a cornice that could not be
22 removed absent special exception relief, and you can see his
23 notes in the same exhibit, on Page 2.

24 MS. LORD-SORENSEN: Chairman Hill, I'm going to
25 object because Mr. LeGrant has already testified -- he

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1 testified repeatedly that he's made the final decision. His
2 staff came to him, and he decided it was not a protected
3 element.

4 CHAIRMAN HILL: Okay, I was just waiting for Mr.
5 -- I think, Commissioner Eckenwiler, you've done a great job,
6 and we've got a lot of things to talk about in terms of the
7 cornice. I think that Mr. LeGrant is being pretty clear, in
8 terms of he overruled his staff on those two independent
9 issues.

10 MR. ECKENWILER: Mr. Chairman, I'm happy to move
11 on.

12 CHAIRMAN HILL: Okay.

13 MR. ECKENWILER: Moving on, then, to the vesting
14 provision. Mr. LeGrant, you're undoubtedly familiar with
15 Section A-301.4, which I'll represent to you that says that
16 any amendment of a permit shall comply with the provisions
17 of this title in effect on the date the permit is amended.
18 That's correct, right?

19 MR. LEGRANT: Yes.

20 MR. ECKENWILER: Except, of course, if there is
21 an explicit vesting provision that exempts a permit amendment
22 from the operation of that rule, correct?

23 MR. LEGRANT: Correct.

24 MR. ECKENWILER: Can you point me to the
25 particular provision that would exempt a permit amendment

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1 from the E-206 rooftop architectural element rule?

2 MR. LEGRANT: As I believe I testified, the key
3 aspect, we have to read on in A-301.4 to A-304(b). I'll just
4 read this, A-304. Except as provided in Subtitle A-301.1.9
5 through 301.13, any construction authorized in this permit
6 may be carried to completion, pursuant to the provisions of
7 this title in effect the date the permit is issued, subject
8 to the following conditions: a) the permit holder shall
9 begin construction work within two years of the date of which
10 the permit is issued; and b) any amendment to the permit
11 shall comply with the revisions of this title in effect on
12 the date the permit is amended.

13 MR. ECKENWILER: So the word "cornices" was
14 inserted into Section E-206, effective April 28, 2017,
15 correct?

16 MR. LEGRANT: Yes.

17 MR. ECKENWILER: The permit in this case was
18 amended not once, but twice, in 2018, so both times
19 subsequent to the date that language was added to E-206,
20 correct?

21 MR. LEGRANT: Yes.

22 MR. ECKENWILER: And therefore, under 301.4(b),
23 any amendment, those amendments to the permit were subject
24 to the new language of E-206, correct?

25 MR. LEGRANT: I'll take issue with that. The way

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1 I read the zoning regulations is the changes to the permit
2 changes that, A, are substantial changes to the overall
3 permit that I noted previously; and B, are they germane to
4 -- did the revised permit change something that would have
5 been, quote/unquote, caught by the new regulation. In this
6 case, I determined that the original permit included both the
7 removal -- included the removal of the cornice and,
8 therefore, is not subject to -- it was vested prior to
9 1411(b)'s effective date of adding that to --

10 CHAIRMAN HILL: Commissioner Eckenwiler? I'm just
11 going to ask do you know how many questions -- I understand
12 that we're going to have to, as the Board, figure out the
13 vesting issues and whether or not things have changed to the
14 point where the other rules are going to come in to apply.
15 I'm asking because we're going to have to take a break. How
16 many more questions do you have?

17 MR. ECKENWILER: I have a number of questions,
18 honestly, Mr. Chairman.

19 CHAIRMAN HILL: Okay, but Commissioner Eckenwiler,
20 I'm going to take a break, and then we're going to see how
21 long the cross is going to go on because basically, you've
22 given your presentation. The DCRA has given his
23 presentation. Your crossing against all of the things that
24 they're presenting upon, which basically is saying all of the
25 things they're presenting upon, you disagree with. I'm just

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1 trying to get a timeline here. Then the property owner's
2 going to have to do their presentation, as well. What I
3 would think that's in the benefit of the ANC, for the
4 appellant, is to clarify the things that you want us to focus
5 on, I suppose, in cross. I'll let you go ahead and -- I'm
6 going to talk to OAG and see how long cross goes on, as well.
7 We're going to take a quick break, okay?

8 MR. ECKENWILER: Mr. Chairman, if I may just
9 respond, and I'll do it briefly. I only get one opportunity
10 to cross-examine Mr. LeGrant. This is it.

11 CHAIRMAN HILL: You've done appeals and such
12 before. I always get a little -- and the Board can totally
13 chime in. If they're getting information from this, this is
14 helpful -- I'm just trying to speed it up, in getting to
15 where it's helpful for us. I think you've raised a lot of
16 issues that we're going through, and there's a lot of
17 information in the record.

18 At least for me, as well -- when there's a lot of
19 different regulations thrown around, a lot of different
20 things thrown around, it's kind of hard to follow, unless
21 we've been doing this full time, all the time. What I'm
22 trying to get at is I think it's better if the Board has an
23 opportunity to ask its questions and hear the whole thing
24 more fluidly than we're currently doing. But at the same
25 time, you're going to have another opportunity for rebuttal.

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1 I'm just trying to also see -- we're now in -- 9:30, 10:30,
2 11:30 -- three hours.

3 MR. ECKENWILER: Mr. Chairman, I'll try to go
4 faster when we come back from the break.

5 CHAIRMAN HILL: Sure, that would be great.

6 MR. ECKENWILER: If that would please --

7 CHAIRMAN HILL: Because I'm going to find out from
8 OAG -- I'm going to talk to OAG and find out how long this
9 is supposed to go on, and then I'm going to talk to the mayor
10 and see if I can figure out whether this was a good idea for
11 me or not. We're going to take a ten-minute break.

12 (Whereupon, the above-entitled matter went off the
13 record at 12:16 p.m. and resumed at 12:24 p.m.)

14 CHAIRMAN HILL: Okay, Mr. Moy.

15 MR. MOY: Thank you, Mr. Chair. The hearing's
16 back in session, and the time is 12:24 p.m.

17 CHAIRMAN HILL: Commissioner Eckenwiler, I guess
18 what I'm just trying to get at, again -- and I really -- I
19 appreciate everything that you're trying to do.

20 MR. ECKENWILER: Mr. Chairman, you want me to move
21 it along?

22 CHAIRMAN HILL: No, I can't say -- I thought that
23 the presentation -- and it's a very complicated presentation
24 -- was done very well on the ANC's part, and I appreciate the
25 ANC very much. I remember everything that was going on.

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1 It's getting a little convoluted. So if you can just try to
2 just succinctly hit whatever the crosses are that you want,
3 and whatever the answer is that you get, if you don't like
4 the answer, we're listening, and then we'll believe it or not
5 believe or then ask our questions. I appreciate you trying
6 to move it along. Thank you. Please continue.

7 MR. ECKENWILER: Mr. LeGrant, going back to the
8 issue of the cornice and the supposed vesting, I just want
9 to understand, are you relying, for this vesting exception
10 to the rule in A-301.4, are you relying on 301.14?

11 MR. LEGRANT: Can you say that again?

12 MR. ECKENWILER: I'm asking if Mr. LeGrant, who
13 says that there is a vesting provision that allows the
14 removal of what I'm calling the cornice -- I'm trying to
15 ascertain whether the specific provision of text that he's
16 relying on is A-301.14 that would take this outside the rule.
17 Whenever you amend a permit, you've got to apply with the
18 rules in effect at the time of the amendment.

19 MR. LEGRANT: I'm relying on the totality of the
20 zoning rules together. I look at A-304, A-301.4, and
21 A-301.14 together to come to a conclusion that this -- in my
22 view, the application is deemed vested in the rules prior to
23 1411(b).

24 CHAIRMAN HILL: Okay.

25 MR. ECKENWILER: I have no further questions on

1 the cornice. Mr. LeGrant, going then to the one building
2 versus two buildings question, I just want to understand.
3 We heard a lot of testimony about the fourth prong of the
4 test, under B-309.1, so that's 309.1(d). I want to
5 understand, do you believe that the connector in this case
6 satisfies both (d)(1), the shared space, and (d)(2), the
7 unrestricted access prong, or is it only one of those two
8 that you think is satisfied?

9 MR. LEGRANT: I believe an argument can be made
10 for both prongs, but I rely on the first prong, the common
11 space shared by users of the building, as the definitive
12 prong.

13 MR. ECKENWILER: Okay. Thank you.

14 CHAIRMAN HILL: Shockingly, Commissioner
15 Eckenwiler, I'm with you. I'm totally here.

16 MR. ECKENWILER: Okay, great. I'm going to move
17 on, then, to the last issue, which is the more than ten foot
18 rear addition question. Mr. LeGrant, I understood you to
19 testify that the application, the original permit application
20 in this case was accepted by DCRA on March 24, 2017. Is that
21 correct?

22 MR. LEGRANT: That's correct.

23 MR. ECKENWILER: I'd like you to look at Exhibit
24 59-A -- excuse me, I beg your pardon. Give me a moment here.
25 I beg your pardon; I misspoke, Exhibit 47-E. That is the

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1 building permit application history.

2 PARTICIPANT: Which document?

3 MR. ECKENWILER: I'm sorry; I -- this is Exhibit
4 47-E. That's the property owner's prehearing statement in
5 opposition. Does that make it clear?

6 CHAIRMAN HILL: I'm at 47-E. I'm still trying to
7 -- we're at 47-E.

8 MR. ECKENWILER: Directing your attention, Mr.
9 LeGrant, to --

10 MR. LEGRANT: Give me a moment to locate that.

11 MR. ECKENWILER: Sure.

12 CHAIRMAN HILL: Commissioner Eckenwiler, you're
13 asking questions in this case, in cross, concerning the
14 vesting?

15 MR. ECKENWILER: Correct. I want to talk about
16 the -- because the vesting provision, recall, has two
17 requirements in it. One is a timing issue, and then the
18 other one is whether or not the application is substantially
19 changed.

20 CHAIRMAN HILL: Mm-hm.

21 MR. ECKENWILER: At the moment, I'm just focusing
22 on the first of those two.

23 CHAIRMAN HILL: Okay.

24 MR. LEGRANT: Commissioner, can you just show us
25 exactly --

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1 MR. ECKENWILER: Sure. I'm going to hand you
2 Exhibit 47-E and direct your attention to the second page of
3 that, toward the bottom. There's an entry here for Permit
4 Application B1706219, so the bottom section on that page.

5 MR. LEGRANT: Okay, we're trying to locate a
6 comparable document. This is Page 2 of 4, dated, at the
7 bottom, is July 11, 2018. It's the permit status depiction.
8 I'm looking at --

9 MR. ECKENWILER: I'll represent to you it's the
10 -- you don't need to read the whole thing. I'm directing
11 your attention to the block of text at the bottom dealing
12 with what we're referring to as the original permit. What
13 acceptance date does that show there?

14 MR. LEGRANT: There's two dates. One is the plan
15 review -- under the plan review coordinator, Project Docs
16 accepted --

17 MR. ECKENWILER: For Project Docs accepted, it
18 says March 23rd, doesn't it?

19 MR. LEGRANT: Right, and then the -- yes.

20 MR. ECKENWILER: Why would that date be different
21 from the date that you gave?

22 MR. LEGRANT: There's two systems that DCRA uses.
23 This is the Project Docs. Then we also have Acela. Acela
24 is our permit application tracking software. They work in
25 concert to one another, but if it was one entry in one

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1 system, then it can go into another system. I'm speculating
2 -- I'm not 100 percent sure. I'm speculating that the plans
3 in Project Docs were accepted on March 23rd, and then that
4 was transmitted to the permit operations division for --

5 CHAIRMAN HILL: Okay, I understand. Commissioner.

6 MR. ECKENWILER: Yes. Directing your attention,
7 then, Mr. LeGrant, to -- this is the email from Max Tondro.
8 That is Exhibit 46-H. That's a September 12, 2017 email from
9 Max Tondro to you and to Paul Goldstein.

10 CHAIRMAN HILL: What does it say, Mr.
11 Commissioner?

12 MR. ECKENWILER: I'm sorry?

13 CHAIRMAN HILL: What does it say?

14 MR. ECKENWILER: What it says -- let me wait until
15 Mr. LeGrant has the document in front of him, if I may, Mr.
16 Chairman.

17 CHAIRMAN HILL: That's okay. I'm just trying to
18 understand why you're asking it.

19 MR. LEGRANT: Likewise, once you -- I've seen this
20 before, but why don't you slide it over to show exactly.
21 This is the redacted email from --

22 MR. ECKENWILER: This is the redacted email. I'll
23 represent to you that what Mr. Tondro says in his email to
24 you is that in this case, the original permit application,
25 quote, was not accepted as completed until March 29th. I'm

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1 just curious; did you know Mr. Tondro to be an untruthful or
2 an unreliable person?

3 CHAIRMAN HILL: I don't know about that, anyway,
4 Mr. Commissioner.

5 MR. ECKENWILER: I'm curious. I don't -- this is
6 --

7 CHAIRMAN HILL: It doesn't matter. Your question
8 is that he submitted something saying that it was incomplete.
9 Repeat your question again.

10 MR. ECKENWILER: No, my question was -- if I may,
11 Mr. Chairman, I'm going to the fact that we have documentary
12 evidence here from Mr. Tondro. I want to know if Mr. LeGrant
13 thinks that Mr. Tondro had any reason to be untruthful here,
14 or if Mr. Tondro is not reliable.

15 CHAIRMAN HILL: But what does that have to do with
16 -- I don't understand.

17 MR. ECKENWILER: Because this says that the
18 application was not accepted as completed until March 29th.

19 CHAIRMAN HILL: Okay, so you're back to the timing
20 again.

21 MR. ECKENWILER: On the timing issue, exactly.

22 CHAIRMAN HILL: So we've moved off of -- where
23 were we? You were on -- what point were you on?

24 MR. ECKENWILER: We're still -- we've been on --

25 VICE CHAIR HART: What you're trying to look at,

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1 Commissioner Eckenwiler, was the exact date of the
2 application being accepted --

3 MR. ECKENWILER: Accepted as complete.

4 VICE CHAIR HART: -- accepted as complete, and
5 what you're saying is that there are differences inside of
6 DCRA that have differences of dates for when that has been
7 accepted as complete.

8 MR. ECKENWILER: By my count, at least three
9 different dates, so far, Vice Chair Hart.

10 VICE CHAIR HART: So what you're trying to find
11 out from Mr. LeGrant is which date is the true one and why
12 is that date the true one, and the other ones are not true?

13 MR. ECKENWILER: I'd like to know specifically why
14 Mr. Tondro's email can't be relied upon.

15 MR. LEGRANT: As with other internal
16 deliberations, I treat this, Mr. Tondro's, as information
17 that he asserted at that point in time. Following that
18 communication, looking at all the information available, I
19 concluded it was a different date than Mr. Tondro initially
20 indicated in that email.

21 CHAIRMAN HILL: Okay. Commissioner Eckenwiler,
22 how much more time do you need?

23 MR. ECKENWILER: I just have a couple more
24 questions, Mr. Chairman. We can go to the -- so the second
25 prong of the vesting rule, A-301.14, requires that in order

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1 to benefit from vesting and not be subject to the ten-foot
2 restriction on a rear addition, the application must not have
3 substantially changed.

4 CHAIRMAN HILL: You question -- do you question
5 that it has substantially changed? I am curious of this.
6 Where do you think that it substantially changed?

7 MR. ECKENWILER: I would like to direct Mr.
8 LeGrant's attention to Exhibit 59-A. That is our ANC 6C's
9 reply. It's a set of the plan drawings.

10 CHAIRMAN HILL: Okay.

11 MR. ECKENWILER: We can start at Drawing A-1.1.
12 That's ANC 6C's reply, Exhibit 59-A. These are the plan
13 drawings.

14 CHAIRMAN HILL: Yes, got to A-1.1.

15 MR. ECKENWILER: A-1.1. Do you have that before
16 you, Mr. LeGrant?

17 MR. LEGRANT: Yes, I do.

18 MR. ECKENWILER: Do you see all these -- I don't
19 know what to call them, these sort of cloud -- these
20 notations here flagging numerous areas on the drawing?

21 MR. LEGRANT: They're termed "bubbles," the
22 bubbles around certain features.

23 MR. ECKENWILER: Right. Those bubbles reflect
24 changes to an application, do they not?

25 MR. LEGRANT: I believe in this case, that's

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1 correct, that they do indicate -- showing areas that were
2 subject to changes from the previous iteration of plans.

3 MR. ECKENWILER: If you turn the page and look at
4 A-2.1, you see additional bubbles showing further changes,
5 correct?

6 MR. LEGRANT: Correct.

7 MR. ECKENWILER: If you look at A-4.3, you can see
8 that there are further changes, bubbles, correct?

9 MR. LEGRANT: Yes.

10 MR. ECKENWILER: The same thing, also, you would
11 say is true for A-5.2 and A-5.3?

12 MR. LEGRANT: Yes.

13 MR. ECKENWILER: No further questions, Mr.
14 Chairman.

15 CHAIRMAN HILL: Okay, great. Just so I can follow
16 through with what I think the question -- so I just
17 understand, Mr. LeGrant, you don't think of any of those
18 changes changed the project significantly enough that these
19 other things -- it would change the vesting issue.

20 MR. LEGRANT: That's correct.

21 CHAIRMAN HILL: All right. Now, we're going to
22 turn over to the property owner.

23 MR. CUMMINS: Sorry, do I have an opportunity to
24 cross?

25 CHAIRMAN HILL: Oh, sorry, Mr. Cummins. Yes,

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1 please, go ahead.

2 MR. CUMMINS: I'll try to be brief, but I am a
3 non-lawyer, so I'll try to speak plainly, as well, to the
4 zoning regulations. Mr. LeGrant, I have a question about
5 changes -- you stated that the changes were not significant
6 and, therefore, didn't affect whether it would be -- the
7 vesting would apply or not. I wanted to call -- you brought
8 up Sheet 84.2, I believe, in your presentation, in your
9 PowerPoint slide. Could you bring that up again?

10 MR. LEGRANT: Give us a moment.

11 MR. CUMMINS: It was the only slide that you
12 presented the plan.

13 VICE CHAIR HART: Is that an elevation?

14 MR. CUMMINS: It's the side elevation.

15 VICE CHAIR HART: Right-side elevation.

16 MR. LEGRANT: Is that it?

17 MR. CUMMINS: 84.2.

18 PARTICIPANT: No, I don't have 84.2.

19 MR. CUMMINS: Which was the slide you pulled up
20 when you presented to the Board earlier?

21 MR. LEGRANT: Was it the plan view?

22 MR. CUMMINS: It was a plan view. There, that's
23 it.

24 MR. LEGRANT: That's a section.

25 MR. CUMMINS: Building section, excuse me, 85.2.

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1 There is a bubble circling lobby and the connector, and
2 there's an area that says vented crawl space in between the
3 two buildings. Do you see that?

4 MR. LEGRANT: Yes.

5 MR. CUMMINS: Does that indicate a change from
6 Permit B1706219?

7 MR. LEGRANT: It indicates that there was some
8 changes to that portion of the building.

9 MR. CUMMINS: Is this connection fully above
10 grade?

11 MR. LEGRANT: Yes.

12 MR. CUMMINS: Was the connection in B1706219 fully
13 above grade?

14 MR. LEGRANT: I would have to look back. I
15 believe it was.

16 MR. CUMMINS: I'd like to draw the Board's
17 attention to the ANC's statement, Exhibit 3, that clearly
18 shows that it's not above grade, and noting that this area
19 -- that one of the changes from the breezeway to the lobby
20 was a change from making the area that was below grade here
21 into vented crawl space. If it were --

22 CHAIRMAN HILL: Hold on, give me one second. Ms.
23 Lord-Sorenson, I don't know what we're going to end up with
24 here at the end, but it probably is going to be with -- I'm
25 trying to -- the Board will try to figure out -- there's a

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1 lot of stuff, in terms of timing and the vesting period, so
2 we're going to have to come up with some timeline, at some
3 point. I'm just going to ask of that. Then also, what I'd
4 like to know, again, is the changes that have happened over
5 the different permits that might have kicked this into where
6 it would no longer be vested and how, maybe, you got to the
7 decision that you got to.

8 Because I understand the arguments, and also the
9 cross that is being presented, which is also helpful, in that
10 changes significant -- the appellant believes that
11 significant changes have taken place, so that this would no
12 longer be allowed. It doesn't qualify for the vesting
13 period.

14 MR. CUMMINS: That's not quite my question,
15 actually. The B1706219 permit did not meet the zoning
16 regulations.

17 CHAIRMAN HILL: Technically, I wasn't trying to
18 ask your question. I was just trying to clarify, for me,
19 what I wanted to know later, maybe, just because I'm a little
20 -- this seems to be kind of what we're talking about. The
21 last question you had was that was this above grade in the
22 previous design, right? I would like to see whatever the
23 previous design was, and whether it was above grade. Mr.
24 Cummins, please --

25 MR. CUMMINS: If the connection, the lobby, as

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1 it's described here, were not fully above grade, would it
2 meet the rezoning regulations requirement?

3 MR. LEGRANT: I would have to look at the
4 specifics of that drawing to be able to tell you.

5 MR. CUMMINS: Just hypothetically, is it not the
6 requirement of B-309, I believe, that the connection be fully
7 above grade?

8 MR. LEGRANT: You're correct. The requirements
9 of B-309 is that the connection be fully above grade.

10 MR. CUMMINS: And your testimony is that B1706219
11 was fully above grade?

12 MR. LEGRANT: Yes.

13 CHAIRMAN HILL: Whoa, slow down.

14 MR. CUMMINS: Sorry, the permit in the plans in
15 the original permit.

16 CHAIRMAN HILL: Okay, that's fine. Thanks, great.

17 MR. CUMMINS: The vented crawl space, why is that
18 change indicated on this sheet here? If there's no change
19 in the grade, why is that a vented crawl space?

20 MR. LEGRANT: I do not know why there is a change
21 to a vented crawl space. That might be a question for the
22 applicant.

23 MR. CUMMINS: Okay, I'll move on. I'm trying to
24 be respectful of everyone's time. There's also a bubble
25 around the front building, in this case, showing a bay

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1 projection into the public space on the right side of the
2 sheet. Do you see that?

3 MR. LEGRANT: I do.

4 MR. CUMMINS: Is that bay projection the same
5 height as it's depicted in the original permit, B1706219?

6 MR. LEGRANT: I think there was testimony earlier,
7 and my recollection is it was not, that they added -- the bay
8 feature added a portion from the top of the second to the top
9 of the third.

10 MR. CUMMINS: Was there a balcony projection in
11 B1706219, where there's now a third-floor enclosed bay
12 window?

13 MR. LEGRANT: I don't --

14 (Simultaneous Speaking.)

15 MR. LEGRANT: I don't recall.

16 MR. CUMMINS: Would that be a change to the
17 building envelope or the zoning envelope between the original
18 permit and the revised permit?

19 MR. LEGRANT: I would say it is a change to that
20 portion of the façade, yes.

21 MR. CUMMINS: Would this change in the bay
22 projection be considered a significant amendment to a permit?

23 MR. LEGRANT: I don't believe so.

24 MR. CUMMINS: Okay, I have no further questions.

25 CHAIRMAN HILL: Okay, thanks, Mr. Cummins.

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1 MR. BROWN: Not to belabor it, could I follow up
2 real quickly? I didn't get to cross-examine. Two questions,
3 quickly, Mr. LeGrant.

4 CHAIRMAN HILL: Mr. Brown, I didn't even get to
5 say yes.

6 MR. BROWN: I thought --

7 CHAIRMAN HILL: I was looking over at OAG for a
8 second. I just got confused. That's okay.

9 MR. BROWN: I thought you were nodding. My
10 apologies.

11 CHAIRMAN HILL: No, that's all right. That's
12 okay. Please go ahead. I'm not trying to be flippant. I
13 just was, I guess, making a joke. Okay.

14 MR. BROWN: Mr. LeGrant, DCRA's position is the
15 original permit was accepted on what date as complete?

16 MR. LEGRANT: March 24th.

17 MR. BROWN: Of 2017?

18 MR. LEGRANT: 2017.

19 MR. BROWN: The last question from Mr. Cummins,
20 the bay window projection, that's located in public space,
21 correct?

22 MR. LEGRANT: That's correct.

23 MR. BROWN: Public space is not subject to the
24 zoning regulations. That is separately permitted, correct?

25 MR. LEGRANT: The projection into public space is

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1 subject to a separate approval from the public space
2 management administration of DDOT.

3 MR. BROWN: So you don't view the change in that
4 as a zoning event.

5 MR. LEGRANT: In this particular case, in terms
6 of the vesting, no.

7 MR. BROWN: Thank you.

8 CHAIRMAN HILL: Okay, so back to, again, Ms.
9 Lord-Sorenson. The March 24th date, I guess I keep coming
10 -- I'm kind of coming back to it. Eventually -- and I don't
11 even know if this is going to be whatever the eventual
12 question ends up being, but I would be curious as to what was
13 allowed in March 24, 2017, and then what things have changed
14 since then to this. I don't know yet what I'm asking. That
15 wasn't particularly helpful, probably.

16 MS. LORD-SORENSEN: Quick question, Chairman Hill.
17 Are you trying to obtain the previous designs, or just a
18 list?

19 CHAIRMAN HILL: I guess I was trying to more make
20 a mental note that March 24th is going to be important. I'm
21 going to move on for a second.

22 MEMBER JOHN: Mr. Chairman.

23 CHAIRMAN HILL: Yes, sure, please.

24 MEMBER JOHN: I have a question for DCRA. This
25 concerns Exhibit 47-E. That is the -- I don't know what

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1 page, Page 2 of 4.

2 MR. ECKENWILER: I'm sorry; I didn't quite catch
3 what you're referring to.

4 MEMBER JOHN: 47-E. I'm trying to get Exhibit E.
5 I think that was up before, and there was some discussion.
6 Scrolling down to Page 2 of 4, at the end of that page,
7 there's a notation -- I lost my page. There's a notation
8 that --

9 PARTICIPANT: This one?

10 MEMBER JOHN: Yes, B1706219 was accepted into
11 Project Docs on March 23, 2017. Can you explain what that
12 means? Then immediately below that, there was another date
13 that said under review, March 29th.

14 MR. LEGRANT: Right. So, again, as I testified,
15 the two systems were this Project Docs, and we have Acela.
16 The Project Docs, which is the software for managing planned
17 submissions. The Project Docs accepted on March 23rd is sort
18 of the initial submission. I do not construe the words
19 Project Docs accepted as the same as complete for processing.

20 The next date under there, it says Project Docs
21 under review. March 29th is when the plans were deemed ready
22 for review under the Project Docs system. I testified in the
23 intervening point, in the Acela system, the March 24th is the
24 date was deemed sufficiently complete for review, and then
25 that was the date that is important, in terms of the vesting

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1 date.

2 MEMBER JOHN: Thank you.

3 VICE CHAIR HART: So you're saying that it took
4 a day between the time that you got it, and then you've
5 accepted it for review? Am I understanding that correctly?

6 MR. LEGRANT: Yes.

7 VICE CHAIR HART: Is that typical? Because it
8 seems like the other ones, they last for a couple of months
9 sometimes.

10 MR. LEGRANT: It varies.

11 VICE CHAIR HART: You've done -- you've had cases
12 where there are -- there's a lot of moving parts here. So
13 you're saying within a day, there was enough time to be able
14 to get it, and then be okay with that within that 24-hour
15 period? Because that's really quick to me. That seems
16 really quick.

17 MR. LEGRANT: Yes, and my experience is it varies,
18 depending upon the completeness and robustness of the
19 information submitted. Some applicants submit information
20 that is not complete, and there's a back and forth to get to
21 that point where it's deemed sufficiently complete for
22 processing. In this case, the one day, it does occur. I
23 won't say it's the common time frame, but it does occur,
24 where an application is then deemed to have enough
25 information, in that time frame, to be complete.

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1 VICE CHAIR HART: Okay.

2 MEMBER TURNBULL: Mr. LeGrant, also, on Page 4,
3 we see this thing repeated again. We find the date 4/04 for
4 Project Docs accepted, and then we find one later on --

5 MR. LEGRANT: This is the same exhibit? I'm
6 sorry, Commissioner.

7 MEMBER TURNBULL: The same exhibit, but Page 4,
8 continuing on. It looks like there's further reviews. We
9 have later dates. Are these all revisions, then? The last
10 one I'm looking at a plan review coordinator, Project Docs,
11 accepted 9/18/2018.

12 MR. LEGRANT: I believe those reflect the
13 revisions that we had discussed.

14 MEMBER TURNBULL: Those are the revision dates.

15 MR. LEGRANT: Yes.

16 MEMBER TURNBULL: If there's such a difference
17 between these, what we're looking at here, and your Acela
18 thing, can we see -- can you provide us the Acela documents
19 to find out what dates are really accepted and what they're
20 not accepted?

21 MR. LEGRANT: One moment, here. I'd like to look
22 at the exhibit again, if you may, Commissioner.

23 MEMBER TURNBULL: Oh, sure, apologies.

24 MR. LEGRANT: Commissioner Turnbull, what I hear
25 you saying is you'd like to also see the information on the

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1 Acela system?

2 MEMBER TURNBULL: Yes.

3 MR. LEGRANT: Yes, we could provide that, yes.

4 MEMBER TURNBULL: I'm just curious as to -- if
5 you've got two systems, how does anybody really know what's
6 the real date?

7 VICE CHAIR HART: Actually, just to kind of
8 piggy-back on that, it seems as though what Commissioner
9 Eckenwiler has provided is a -- I think that's his exhibit,
10 this Exhibit 47-E. In the exhibit, it actually -- in one of
11 the highlighted parts for this particular project, it says
12 consolidation of permit applications, and it gives a list of
13 three different applications, renovation of existing
14 single-family dwelling unit to a two-unit townhouse, and then
15 some other things with that.

16 But there are some other dates that are kind of
17 preceding this, that lead up to this. So it wasn't like this
18 was the first time that this has actually been before this
19 -- at least permits for this particular house have been
20 before the -- or property have been before the -- excuse me,
21 been before the ZA, the DCRA. Am I reading that correctly?
22 There have been other permits that were before 2017.

23 MR. LEGRANT: Right; I believe that's correct.
24 I would have to look at the particular permits. Sometimes,
25 in projects, an applicant may secure a preliminary permit to

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1 do some demolition or site work or something for that
2 address. That, ultimately, is related to the overall
3 project. Here, I'd have to look at the specific and so we
4 could provide what those specific permits were and how they
5 related to the original and revised permits.

6 VICE CHAIR HART: I appreciate that. The reason
7 I bring that up, also, is because something that Commissioner
8 Eckenwiler brought forward to our attention, also, was
9 Exhibit 46-H, which is this email that was from Mr. Tondro.
10 In it, it says there is a technical issue -- and I'm kind of
11 reading verbatim -- there is a technical issue that -- in it
12 that was used as a revision to two applications that have
13 been canceled five months earlier.

14 To me, that means that there's something that has
15 gone prior to this permit, that was approved in March,
16 whatever the date was, March -- I can't think of the date now
17 -- 24th, 29th, 24th. There were things that preceded this
18 to get us to this point. That's why I was trying to figure
19 out what were the -- the date.

20 The ability for DCRA to review a case within a day
21 seems really hard, if this is the first time you've seen it,
22 but it may be different if you've actually been looking at
23 this for months, and this is the culmination of that. I
24 don't know what that is, but it would be helpful to actually
25 understand that. I think this goes to what Chairman Hill

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1 also brought up, which is this timeline that talks about some
2 of this stuff. There's a lot of dates being thrown about.
3 I want to make sure we get that correct.

4 MR. BROWN: Mr. Hart, we can certainly address
5 that from our end, given that we have a history.

6 VICE CHAIR HART: And you haven't presented yet.

7 CHAIRMAN HILL: All right. Just to let everybody
8 else know who's here, we're going to have presentation by the
9 property owner, then we're going to get to do cross again.
10 Then after cross is finished, we're going to have rebuttal
11 by the appellant, and then the other members will be able to
12 do cross of that rebuttal. Then we're going to go to
13 conclusions or a closing argument, which we may or may not
14 ask for in written form.

15 We'll have to see how it goes. To let you all
16 know -- and I asked the Office of the Attorney General if
17 there was a more efficient way that I could do this, and
18 there's not. There's just a lot information. There's
19 nothing to do about it. I kept thinking this one was going
20 to go away. It was like every single time you all showed up,
21 you're like we're working on it. It'll all work out. Then
22 you all are here. Finally, it's the building owner's turn.
23 I believe, Mr. Brown, you were about to say something.

24 MR. BROWN: Yes, but we need a second to get the
25 computer back. We have a PowerPoint presentation. I

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1 submitted hard copies to the Board secretary and copies to
2 the parties here. What I'd like to do is I'd like the
3 property owner to say brief words, and then I'd like to have
4 my expert -- my witnesses join me up here at the table.
5 We'll go through each of the four issues one by one and have
6 them all simultaneously. Let's see if we can get this to
7 work.

8 MR. TAWED: Good afternoon.

9 CHAIRMAN HILL: Thanks so much. Mr. Moy, if you
10 could start that clock for me? Thank you. Go ahead.

11 MR. TAWED: Sure, good afternoon -- it's no longer
12 morning -- Mr. Chairman, members of the Board. I'm the
13 property owner at 1125 7th Street Northeast. Thank you for
14 the opportunity to speak. I'll keep it short because it's
15 already been a long morning already. We purchased the
16 property in June of 2015. It was a vacant property. There
17 was nothing going on there. It had been sitting there.

18 We pretty quickly submitted plans in September of
19 2015, to answer Mr. Hart's question earlier about timeline.
20 In September of 2015 we submit for a foundation permit. In
21 April of the following year we submit for a main building
22 permit. We're actively engaging with DCRA, answering
23 questions, comments, and the permit application gets canceled
24 in October of 2016. When we bought this, our intent,
25 particularly under the old regulation, we had a matter of

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1 right project, where we could have done a massive addition
2 in the rear. This pop back that everybody talks about, by
3 right, we could have done nearly a 40-foot addition in the
4 rear. We chose not to, really, for two reasons. One, we
5 think it's a more thoughtfully designed project, where you're
6 getting more light and air for both units on our property,
7 and it actually preserves the light and air of both of our
8 neighbors.

9 We actually reduced the existing building by a few
10 feet, and then set the rear unit further back. Our goal all
11 along has been to comply. We have never once tried to make
12 this difficult, really, for anyone. If there were any
13 comments, if there was anything that we could do to
14 facilitate the process, we did.

15 It's unfortunate that it took so long, but mostly
16 it was out of our control. It was a building code issue that
17 wasn't generated by us. Let's put it that way. It was
18 generated elsewhere, and that had to get resolved at OAH.
19 Ultimately, we believe that it resolved in our favor.

20 It was really up until that, to bring us here,
21 where we can finally get whatever the zoning code issues are
22 resolved to both Mr. Eckenwiler and Mr. Cummins' satisfaction
23 and, ultimately, yours, as well. That's really it. Two and
24 a half minutes, not bad.

25 CHAIRMAN HILL: Oh, you're part of this whole

1 thing. You get credit, sir, for all of this. All right, Mr.
2 Brown.

3 MR. BROWN: I want to spend a few minutes just
4 laying the background a little. One, and I have the slide
5 up here, this is RF-1. There have been four issues raised,
6 but in all other respects, the typical RF-1 zoning is in
7 compliance. Two units flat is permitted. The building meets
8 the height, lot occupancy, rear yard pervious surface,
9 off-street parking, so that I just want to start with that
10 baseline, notwithstanding the four outstanding issues we
11 have.

12 I'll respond to those. In here, this slide, the
13 permit history. At the top, you'll see the three -- original
14 permit for March of 2017, the revised permit April of 2018,
15 and the second revised permit of August of 2018. Mr. Hart,
16 to your question about prior permits, if you look at the
17 left-hand column, below original permit, you'll see
18 description there.

19 There were two permits separately filed, one for
20 excavation underpinning, and the other for the actual
21 addition work referenced there, both submitted previously,
22 that were canceled by DCRA. When it came time -- when that
23 occurred -- you can respond to this more fully -- the
24 applicant, the property owner, went to DCRA and said why did
25 you cancel my permits? They engaged in a discussion about

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1 resubmitting those permits in the system. The advantage that
2 occurred -- and I've provided documentation in my filings --
3 both those earlier permits that were canceled were then
4 incorporated into the original permit application. Both
5 those permits have been extensively reviewed, one for six
6 months, one for nine-plus months. They weren't starting from
7 scratch, but the original permit was created out of whole
8 cloth, a single complete stand-alone permit that incorporated
9 the substance of the two earlier permits.

10 I think, one, that was done in conjunction with
11 DCRA, and two, the product that was submitted had been battle
12 tested through the system and was of a higher caliber, as far
13 as completeness and preparation for processing. With that
14 --

15 VICE CHAIR HART: Mr. Brown, just a quick
16 question.

17 MR. BROWN: Yes.

18 VICE CHAIR HART: Why did you say they were
19 canceled by DCRA? Do you have -- let me ask it this way.
20 I don't remember seeing this -- could you point me to where
21 this is written, so I could actually get a little bit more
22 background on this?

23 MR. BROWN: It's showed in the permit tracking,
24 where you see the permits were canceled. I wasn't involved
25 at the time, but Mr. Jawed could --

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1 MR. JAWED: I can answer that. We were never
2 given a reason. We asked multiple times.

3 VICE CHAIR HART: Okay, that's fine. I just
4 didn't know if there was --

5 MR. JAWED: We were just stonewalled, nothing
6 given.

7 MR. BROWN: It was unilateral and surprising, I
8 think.

9 MR. JAWED: And without warning. Just one day --
10 not even an email.

11 VICE CHAIR HART: I hear you. Okay.

12 MR. BROWN: I'd like to just quickly, just so that
13 we have a baseline, a starting point, here is the footprint,
14 the surveyors plat that was part of all the applications,
15 showing 7th Street and the rear parking. You have the front
16 unit and the rear unit connected through that connection,
17 just to give you that background. With that, I'd like to
18 invite Mariah and Will. If we could, once again, introduce
19 themselves.

20 CHAIRMAN HILL: Yes, if you could introduce
21 yourselves, please.

22 MS. RIPPE: I'm Mariah Rippe. I was the designer
23 on this project.

24 MR. TEASS: Good afternoon. My name is Will
25 Teass. I'm a principal with Teass Warren Architects. I've

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1 been brought in for a peer review on this project.

2 CHAIRMAN HILL: Mr. Teass, are you here just for
3 this case?

4 MR. TEASS: I am not. I have another case before
5 the Board today.

6 CHAIRMAN HILL: All right, please go ahead.

7 MR. BROWN: Also, Mr. Bello. I've submitted
8 resumes for Mr. Bello. Also, actually, one more, Vince Ford.
9 Vince Ford is the retired chief building inspector for DCRA.
10 I've submitted his resume. I'd like Mr. Bello to be an
11 expert witness in zoning purposes.

12 He's the former Zoning Administrator and has been
13 accepted repeatedly in that context before. Mr. Teass I
14 would like to have submitted, and his resume's in the record,
15 as an expert in architecture. Then Mr. Ford as an expert,
16 his resume is also attached, in building permits
17 applications. He has been also recognized as an expert here,
18 and at OAH, in permitting matters.

19 CHAIRMAN HILL: Right, so everybody's already in
20 the book.

21 MR. BROWN: Mr. Teass is in the book, aren't you,
22 and Mr. Bello, and I believe Mr. Ford has also -- because
23 he's been in your book.

24 CHAIRMAN HILL: I'm sorry; what's your name again?

25 MS. RIPPE: My name's Mariah Rippe. We were the

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1 firm hired to do the drawings.

2 CHAIRMAN HILL: So you're here as an expert in?

3 MS. RIPPE: The drawings on the project, itself.

4 MR. BROWN: She's more of a fact witness.

5 CHAIRMAN HILL: I'm just trying to understand
6 whether we have to evaluate her expertise to include her into
7 the book. You're saying you're just going to use her as a
8 fact witness.

9 MEMBER TURNBULL: Yes, I don't think we have a
10 category for a fact witness as an expert. I'm sorry.

11 CHAIRMAN HILL: Has her resume been submitted?

12 MR. BROWN: It has.

13 CHAIRMAN HILL: Where is it submitted?

14 MR. BROWN: It's attached to my prehearing
15 statement, 47, starting with J-1, 2, 3.

16 CHAIRMAN HILL: I'm sorry to do this to you.
17 What's your name, again?

18 MS. RIPPE: Mariah Rippe.

19 CHAIRMAN HILL: Could you please tell us how
20 you're an expert?

21 MS. RIPPE: I'm the one who produced the drawings
22 and worked through this project with the client.

23 CHAIRMAN HILL: You're an architect?

24 MS. RIPPE: I'm not a licensed architect. I work
25 at a firm where we have licensed architects and engineers.

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1 MEMBER TURNBULL: Well you can't be qualified as
2 an architect, then.

3 MR. BROWN: We're not calling her as an architect.
4 We're calling her as somebody who was involved in the
5 preparation --

6 MEMBER TURNBULL: We don't have a category. What
7 do we call this person? You say a fact finder. I don't --

8 MR. BROWN: A fact witness.

9 CHAIRMAN HILL: She's just a witness.

10 (Simultaneous Speaking.)

11 CHAIRMAN HILL: She's not an expert. That's fine.
12 You're a witness. We'll move on. All right, Mr. Brown, go
13 ahead.

14 MR. BROWN: Mr. Bello, Mr. Teass, and Mr. Ford are
15 in the book.

16 CHAIRMAN HILL: Okay, I got all that.

17 MR. BROWN: What I'd like to do is, briefly, with
18 Ms. Rippe, she can give us just a brief description of the
19 permits -- and I think one of the things the Board wanted to
20 know is the changes that occurred from the original permits
21 to the subsequent permits. If I could, perhaps the most
22 efficient -- do you want me -- I'll ask you questions?

23 MS. RIPPE: (Off-mic comment.)

24 MR. BROWN: The original permit, which were
25 1706219, which was issued March 31, 2017, that permit

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1 included the removal of the façade trim or cornice or rooftop
2 embellishment that --

3 MS. RIPPE: Correct.

4 MR. BROWN: It also provided for the rear
5 addition.

6 MS. RIPPE: Correct, yes.

7 MR. BROWN: And an above-grade connection --

8 MS. RIPPE: Correct.

9 MR. BROWN: -- between the front and the rear.
10 You were also responsible for the revision of that permit
11 that was issued in April of 2018.

12 MS. RIPPE: Correct.

13 MR. BROWN: You made changes to the above-grade
14 connection, but did not change the footprint of it.

15 MS. RIPPE: Correct. The footprint has not
16 changed throughout the entire process.

17 MR. BROWN: Were there changes in the rear
18 addition?

19 MS. RIPPE: No.

20 MR. BROWN: Were there changes in the overall
21 footprint of the building, including the front connection and
22 rear?

23 MS. RIPPE: There's not been any changes in the
24 overall footprint, height, use of the building.

25 MR. BROWN: The roof hatch was changed in the

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1 second permit.

2 MS. RIPPE: Correct.

3 MR. BROWN: Going back to the original permit,
4 important, it showed the perpendicular guard rail that's on
5 the current permit.

6 MS. RIPPE: Correct.

7 MR. BROWN: In the second revised permit, and
8 again, was there change made to the footprint of the
9 building?

10 MS. RIPPE: No.

11 MR. BROWN: Was there change made to the
12 connection?

13 MS. RIPPE: No.

14 MR. BROWN: Was there a change made to the removal
15 of the, quote, cornice?

16 MS. RIPPE: No.

17 MR. BROWN: Was there -- there was a change to
18 show the newly constructed addition at 1127 7th Street.

19 MS. RIPPE: Correct. During the process of this
20 permit, the neighboring structure to the left, which was 1127
21 7th Street, constructed -- had a permit and constructed their
22 structure. Our permit drawings did not reflect that from our
23 original permit because it was not constructed during the
24 time of our initial site visit and construction and original
25 permit. Therefore, we modified our drawings to reflect that

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1 new structure.

2 MEMBER TURNBULL: How did you modify them?

3 MS. RIPPE: We showed the neighboring structure.
4 It wasn't there before, but we showed that neighboring
5 structure on our drawings. It extended beyond what was there
6 previously, and we showed how its footings interacted with
7 our footings and how its structure interacted with our
8 proposed structure.

9 MR. BROWN: All right, no questions about the
10 permit history? What I'd like to do is start one by one
11 through the issues. We'll start first with the guard rail.
12 Ms. Rippe, the point you made is that the guard rail has been
13 shown consistently in all the permit iterations?

14 MS. RIPPE: Correct.

15 MR. BROWN: If I could, Mr. Ford -- I'm going to
16 surrender my seat. If you could -- and this goes back to
17 your career at DCRA -- could you tell us the origin of the
18 guard rail requirement?

19 MR. FORD: The guard rail requirement came into
20 the codes back in the late 1990s. I had it placed in the
21 code, the D.C. supplemental code. I was on a building and
22 was almost blown off, so I had placed in the code that any
23 walking surface within six feet of the edge of the building
24 would have to have a guard rail. Thus, it was placed in the
25 code. Now, that did not pertain to buildings that had

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1 parapet walls that would act as a guard because parapet walls
2 are about 30 inches up from the roof, so that acted as a
3 guard. But if it's across the face or opening of the
4 building edge, then that's a life safety issue. I had it
5 placed in the code. It's still there.

6 MR. BROWN: The guard rail that's running
7 perpendicular to the party wall, it's there to meet that code
8 requirement.

9 MR. FORD: That's correct. The main reason I put
10 it there, because if there's equipment on the building and
11 equipment has to be serviced, I don't want a workman being
12 blown off the building.

13 MR. BROWN: Any -- Mr. Teass, on the guard rail,
14 please tell the Board your experience on this particular type
15 of guard rail, perpendicular to the party wall.

16 MR. TEASS: I think that the key issue here -- and
17 it was discussed earlier -- is that there's a section of the
18 railing that's parallel to the property line, and that's
19 subject to the zoning setback. There is -- and in
20 conversations we've had with the Zoning Administrator on
21 other projects, when a portion of the guard rail is related
22 to life safety, as Mr. Ford indicated, the setback didn't
23 apply in that case.

24 In this case, the piece of guard rail is serving
25 solely to provide a life safety function. I think it's

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1 important to note that visually, that guard rail is entirely
2 below or at the same height, and thus not visible, due to the
3 parapet wall. The parapet wall extends around the
4 circumference of the roof to provide fall protection for
5 anyone who's on the roof.

6 MR. BROWN: The parapet wall is taller than the
7 --

8 MR. TEASS: That's correct.

9 MR. BROWN: As it relates to being set back from
10 the rear or the front of the roof, as the case may be, it's
11 set back one to one, or in excess of one to one.

12 MR. TEASS: My understanding, yes, is that the
13 railing, the perpendicular piece of railing that's shown in
14 the illustration, which is parallel to the front and the back
15 building face, meets or exceeds the one-to-one setback
16 relationship.

17 MR. BROWN: Mr. Bello, in your experience, both
18 as a Zoning Administrator, would this perpendicular guard
19 rail be subject to a setback requirement?

20 MR. BELLO: Just to underscore the testimony
21 that's been given so far, the setback would be applicable to
22 the wall that it's parallel to, which would be the front wall
23 of the building. In this particular case, what would have
24 been a requirement for a guard rail is set by the party wall,
25 the parapet wall. So there, in fact, is no guard rail on the

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1 side.

2 MR. BROWN: If there are no questions, I'd like
3 to move on to the --

4 VICE CHAIR HART: If you were trying to -- if you
5 were subject to the setback -- I don't know if Mr. Toye or
6 Mr. Brown wants to answer it -- then what happens to the --
7 how would you solve that? Do you have to -- if you were
8 subject to it, you'd have to change something, so what would
9 that do to the design? I don't know.

10 MR. BELLO: What we're saying here is that the
11 purpose of the guard rail is served by the parapet wall. You
12 will note that there isn't any walking space, per se, between
13 the roof hatch and the side wall, so the height of the
14 parapet wall actually serves the purpose of --

15 VICE CHAIR HART: It's not that I don't understand
16 the purpose of the guard rail. What I'm saying is if this
17 were required to actually be set back, how would you go about
18 doing that? It may be you; it may be the architects, Mr.
19 Teass. I don't know.

20 MR. BELLO: I think I'll let the architect answer
21 that.

22 MR. TEASS: As it's currently shown, the guard
23 rail is providing protection for the entirety of the roof
24 surface, which is also protected by the parapet. I think an
25 alternate design solution would be to restrict, so instead

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1 of the full roof area being accessible, you would only limit,
2 and you would place the mechanical units, which you see in
3 the illustration, within a, if you would imagine, a square
4 within a square or a rectangle within a rectangle, where all
5 portions of that guard rail were basically -- served to
6 protect an occupant from falling down the opening that's
7 created when the doors open.

8 VICE CHAIR HART: So you would move that
9 perpendicular portion of the rail to go to the back, and then
10 put the air handling units -- move them out of the way?

11 MR. TEASS: I don't know if there's a slide of the
12 roof. I think I could communicate it best in a drawing form,
13 but I think if you were to think about the -- instead of that
14 railing being from the piece of parallel railing to
15 transitioning to a perpendicular railing that extends to the
16 property line, if you were to almost reverse that condition
17 and extend the railing to what is the plan north of this
18 sheet, encompass around the mechanical units, encompass on
19 any other relevant portion of roof, I think that would be one
20 way to look at it as a way to have that comply with the
21 setback.

22 VICE CHAIR HART: Okay.

23 CHAIRMAN HILL: Mr. Hart, did you understand that?

24 VICE CHAIR HART: It looks like they're doing a
25 lot more than what I would think they would want to do, but

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1 --

2 MEMBER TURNBULL: Mr. Teass, if you want, there
3 is a laptop computer screen over there. If you click -- if
4 you go over that, you can draw on it, and it will show up on
5 the drawing. If you click red or black and use your finger
6 on the screen, you can draw or sketch what you're talking
7 about.

8 MR. TEASS: Can you switch the slide to an overall
9 roof plan, or an overall -- even the building footprint would
10 be sufficient. That would be sufficient. Here, the red line
11 -- right now, that roof structure occurs approximately in
12 that portion of the front building, that portion of the
13 building, and then there's a similar condition at the rear
14 portion of the building. Right now, the guard rail extends
15 from the property line, and then it takes a right angle and
16 extends down the length of the hatch. If that hatch were
17 reconsidered, so that you actually --

18 PARTICIPANT: Here's an eraser.

19 MR. TEASS: If we erased those portions here and
20 we created a space on the roof that conforms -- so you're
21 addressing the setback in front from both sides and from the
22 rear. Again, the whole roof is protected from somebody
23 falling off the roof by the parapet. I think that would be
24 one option, an alternate design strategy to create a solution
25 that conforms to both the building code and the zoning code,

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1 if need be. Hopefully that was reasonably clear.

2 VICE CHAIR HART: I understood that.

3 CHAIRMAN HILL: Mr. LeGrant, this is where I get
4 a little confused in some of this stuff that's going on. If
5 that were to happen, they would need a new permit again, and
6 that wouldn't be considered a change that would have kicked
7 them into any of the new issues.

8 MR. LEGRANT: Well --

9 CHAIRMAN HILL: It's not a substantial change.

10 MR. LEGRANT: Right.

11 CHAIRMAN HILL: It's not a substantial change.

12 MR. LEGRANT: I don't believe it would be a
13 substantial change. It might be a revision. It might be a
14 change that would trigger a building permit revision. My
15 limited understanding of the authority of an inspector under
16 the building code is they are given some authority to make
17 changes in the field that don't rise to the level of needing
18 an actual revision to the building permit. As to whether
19 this alternate proposal would do that, I do not know.

20 CHAIRMAN HILL: All right, thank you. Anybody
21 else? Okay, Mr. Brown.

22 MR. BROWN: I'm going to move on to the cornice
23 issue. I'm using that as a shorthand. I'm not acknowledging
24 that this is -- in fact, deny vehemently it's a cornice.
25 I've got a picture here, a picture of -- an actual picture

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1 and a drawing. Again, Ms. Rippe, in the original permit and
2 all the subsequent permits, there were no changes from the
3 removal of that façade element.

4 MS. RIPPE: Correct, no changes.

5 MR. BROWN: The first permit was issued March 31,
6 2017.

7 MS. RIPPE: Correct.

8 MR. BROWN: Which was before the cornice provision
9 was enacted.

10 MS. RIPPE: Of April 28th, correct.

11 MR. BROWN: Mr. Teass, for a moment, we're
12 considering this as a rooftop architectural element, not
13 including the definition of cornice. Please explain your
14 conclusion about why this isn't a rooftop element.

15 MR. TEASS: Can you advance to Slide 17, please?

16 MR. BROWN: Which one?

17 MR. TEASS: It's the definition with the graphic
18 and entablature.

19 MR. BROWN: That one?

20 PARTICIPANT: No, the next one down.

21 MR. TEASS: There we go. I think that this
22 diagram and the definition from Webster's Dictionary speaks
23 to the -- our understanding of a cornice, and that it's not
24 the entire assembly, which I think would be viewed as an
25 entablature. It's actually the cornice, which is just the

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1 top-most portion. In this particular case, if you go to the
2 previous slide, which shows the photograph, you can see that
3 there's actually several elements that form the crown or the
4 entablature of the building. The top-most piece is the
5 cornice. There's probably -- it's a little bit difficult to
6 see in this picture, but my recollection is there's somewhere
7 between three and four courses of brick, and then there's an
8 applied architectural element that sits below that. Overall,
9 you could consider the entire assemblage an entablature, but
10 I would postulate that only the top-most portion would be
11 considered a cornice, as per the definition and graphic.

12 MR. BROWN: So you wouldn't consider that façade
13 trim element as a rooftop?

14 MR. TEASS: Not according to my understanding of
15 what zoning defines as a rooftop architectural element.

16 MR. BROWN: Similarly, you don't consider it a
17 cornice.

18 MR. TEASS: Not the portion that sits below the
19 brick.

20 VICE CHAIR HART: Just a question, not the portion
21 that sits below the brick?

22 MR. TEASS: If I might, on the screen here -- I
23 don't know if there's a way to enlarge that photograph at
24 all, two more slides down.

25 PARTICIPANT: Is there?

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1 VICE CHAIR HART: Yes, but --

2 PARTICIPANT: Which one are you --

3 MR. TEASS: Actually, this works, right?

4 VICE CHAIR HART: Yes.

5 MR. TEASS: Here, the cornice is really just this
6 top --

7 CHAIRMAN HILL: Are you speaking into one of the
8 microphones? Sorry, Mr. Teass.

9 MR. TEASS: I'm sorry. The cornice, in this case,
10 is the portion of that overall assemblage. It's at the very
11 top. There is an existing masonry section of wall below the
12 cornice, and then there is a piece of façade trim or
13 architectural, basically, ornamentation that sits below that
14 brick. In my understanding and my view of that would be that
15 the top-most piece is the cornice. The pieces below,
16 overall, they might compose an entablature, but it's only the
17 top-most portion that's the cornice.

18 VICE CHAIR HART: Going along that line of
19 thinking, you're also saying because it doesn't, in your
20 mind, meet the definition -- yes, meet the definition of what
21 a cornice is, then it is just a -- some ornamental piece that
22 is not protected by the zoning regulations.

23 MR. TEASS: I would characterize it as a piece of
24 architectural ornamentation that had not previously been --
25 that had not been previously protected. I think under the

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1 revised definition that came out after the building permit
2 was issued, that would be a conversation I'd want to have
3 with the Zoning Administrator if we were to look at this for
4 a future project.

5 MEMBER TURNBULL: Mr. Hart, I think the intent of
6 the new regs is that there's a certain character to a
7 building like this that we're trying to protect. I think
8 that's where the discussion would come up with the Zoning
9 Administrator, as far as the cornice of the architectural
10 ornament.

11 VICE CHAIR HART: But isn't there also a certain
12 character of the neighborhood that you want to --

13 MEMBER TURNBULL: Of the neighborhood, right --
14 (Simultaneous Speaking)

15 VICE CHAIR HART: So if you have buildings that
16 are -- and this line is being kept for the row houses to the
17 north and south or east or west or wherever, but that are
18 adjacent to it, and you have a line of them, you're trying
19 to maintain that -- that's what the zoning regulations would
20 be doing, Commissioner Turnbull.

21 MEMBER TURNBULL: You're correct. The current
22 plan does nothing to enhance or to blend in with the
23 elevation of the street.

24 VICE CHAIR HART: I'm sorry I'm asking
25 Commissioner Turnbull all this, but the intent, also, was to

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1 be inclusive of different types of -- it would be hard to say
2 every name. In the language, it's always kind of such as
3 this, but were you really trying to be inclusive of all
4 types, or was it more trying to focus it on turrets and the
5 list of things that are actually -- that are currently
6 included in the language?

7 MEMBER TURNBULL: I think we were trying to do
8 that. I think the whole thing was that there was an aspect
9 to -- we were concerned, I think, as Mr. LeGrant was getting
10 to, trying to protect those elements that heretofore had not
11 been protected. I think we were trying to include those
12 elements that we thought were important for a structure to
13 maintain.

14 VICE CHAIR HART: Thank you.

15 CHAIRMAN HILL: Okay, Mr. Brown.

16 MR. BELLO: If I might just add, with all due
17 respect to Mr. Turnbull, I think these provisions were passed
18 as a part of the pop-up regulations, which were specifically
19 focused on restricting the ability of these kind of buildings
20 to convert to three or more units with massive additions on
21 them.

22 The Zoning Administrator, even right now,
23 interprets buildings that have turrets or some other rooftop
24 elements of being able to construct those additions if the
25 addition is set back three feet from those turrets. So these

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1 additions are still possible, but elimination of those
2 turrets are not. This seems to be more of an architectural
3 embellishment of the façade of the building.

4 CHAIRMAN HILL: Mr. Brown.

5 MR. BROWN: Yes. If there are no other cornice
6 questions ---

7 CHAIRMAN HILL: No, I think you can move on.

8 MR. BROWN: Okay. If I could -- my apologies.
9 I would like to focus in on the question raised about
10 whether, in fact, this is a single building. I've put up the
11 definition. I think we've all conceded that fully above
12 grade, enclosed, heated, and artificially lit has been
13 satisfied, so we focus our attention on Subsection D and the
14 either one or two and focus in on, first, common space. Mr.
15 Teass, you tell me which drawing you'd like for purposes of
16 common space.

17 MR. TEASS: If you could put up, yes, this slide,
18 I think, is helpful to understand how the overall building
19 operates. This structure, on the right-hand side here is the
20 street, on the left-hand side is the alleyway.

21 VICE CHAIR HART: Can we make this a little bit
22 larger? If you go down to the bottom -- anyhow, just make
23 it like it's a slide. That's the one. Thank you.

24 MR. TEASS: What you're seeing here is both the
25 cellar level and the first floor or the ground floor level

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1 of the building. Again, the street is to the right-hand
2 side. The two parking spaces that are accessed from the
3 alleyway are on the left-hand side, or to the east. What
4 we've tried to do is highlight some of the circulation paths
5 as to how these different portions of the building would be
6 used. I think one thing to note is that essentially, a row
7 house has two front doors. It has a front door to the
8 street, and then there's a front door to a yard, court,
9 alley.

10 You use that second front door as a way to get to
11 your parking space. You use it as a way to take your trash
12 out, to let your kids get to their bikes, etc. I think here,
13 it's important to understand how the building operates. I'm
14 going to try to utilize the drawing tools here to talk about
15 the resident of Unit A, the front portion of the building,
16 so they would come in off the street, be able to come into
17 their unit here.

18 They would also have a second front door that
19 takes them out, down into the common passageway into the
20 courtyard, and then traveling out. Then underneath the rear
21 portion here, by doing so, it allows them access to their
22 parking, as well as their trash and any other features they
23 would like to have in the rear portion of their yard.

24 Similarly, if you imagine the resident of the rear
25 portion of the building, they're actually accessing the front

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1 stairs coming down underneath a portion of the front
2 building, coming up into the shared courtyard, and then
3 entering their unit through that common area into one of the
4 two front doors for that unit. They have the ability to then
5 exit that unit and go out to grade, again, for the purposes
6 of utilizing their automobile or taking out the trash or any
7 number of other things that people do in their backyards.

8 I think, inherently, the area that's created
9 between the two buildings, there's a shared courtyard, which
10 I think the applicant spoke to earlier, in terms of the
11 design intent of providing light not just to these units, but
12 also to the neighbors, but also, inherently, there's a
13 pragmatic function, in that it connects the front unit to the
14 courtyard and to the rear parking space, as well as the rear
15 unit to the street, and also to that shared courtyard. It's
16 very much an integral part of this. I just don't see how it
17 could be viewed any other way.

18 MR. BROWN: Question?

19 CHAIRMAN HILL: I guess you can keep going.

20 MR. BROWN: Pardon?

21 CHAIRMAN HILL: You can keep going.

22 MR. BROWN: Mr. Bello, if you could, and if you
23 want to continue with this drawing, the connection --
24 discuss, in your view, from the zoning analysis standpoint,
25 the common use element.

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1 MR. BELLO: Whether you call that connector a
2 lobby or a corridor, I think it's without dispute that it is
3 common space that's accessible to the two occupants of the
4 building, and it does connect the two halves of the single
5 building. It also provides unrestricted passageway between
6 the two separate portions of the building, in the sense of
7 each occupant not only has access to that connector, they
8 also have unrestricted access to access the rear of the
9 property without hindrance. I think that the connection
10 actually complies with both of those provisions,
11 notwithstanding that you only need to provide -- comply with
12 one.

13 MR. BROWN: The definition of single building also
14 provides that the maintenance of the doors, locked doors to
15 each of the units is acceptable.

16 MR. BELLO: Section 309.2 states that
17 notwithstanding Subtitle B-309.1, a single building shall or
18 may contain multiple units or dwelling units that do not
19 share access. The code did anticipate this kind of design,
20 and the access that's simply not shared is the private access
21 to those two dwelling units.

22 MR. BROWN: Does this building exist, physically
23 and functionally, as a single building for purposes of
24 zoning?

25 MR. BELLO: Absolutely, it does.

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1 MR. BROWN: I spoke earlier about the RF-1
2 compliance. There are no restrictions in the RF-1 that would
3 prevent a single building two flat?

4 MR. BELLO: Not that I'm aware of, no.

5 MR. BINETTE: Questions?

6 CHAIRMAN HILL: Anyone? No, I think we'll have
7 questions at the end, Mr. Brown, so go ahead.

8 MR. BROWN: If we could, then, the final issue is
9 the ten-foot rear addition. I think we've had sufficient
10 testimony that the original permit, which included the rear
11 addition, was permitted March 31, 2017. That was prior to
12 the Zoning Commission enacting, on April 28th, the ten-foot
13 restriction. The subsequent permits -- and Ms. Rippe
14 testified to it and can answer any questions -- made no
15 change, ever, to the rear addition. It maintained the same,
16 so that there was no event that subsequently triggered the
17 ten-foot setback rule.

18 The other point that I think came up in DCRA's
19 testimony that was also in one of my prehearing statements
20 was the vesting provision, very specific, that was added by
21 the Zoning Commission later, that for permits that were
22 accepted prior to March 27, 2017, that were complete, that
23 those permits would be allowed to be processed to completion,
24 not subject to the ten-foot setback restriction. Mr. LeGrant
25 testified, and he's going to provide documentation that the

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1 original permit was accepted on March 24, 2017, which would
2 be subject to the vesting provision. But more importantly,
3 you've got a double vesting because vested as of March 24,
4 2017, but also vested because the original permit was issued
5 before the ten-foot setback rule ever existed, and no changes
6 were ever made to that. I think the question of vesting is
7 well established in the record. If I could ask Mr. Bello --
8 and this goes to both the cornice and the ten-foot setback
9 rule -- please describe the application of the vesting rule
10 to the -- based on the original permit and the subsequent
11 revisions.

12 MR. BELLO: Going by the Board's most recent
13 interpretation of the vesting rules, a property vests two
14 ways, one that they have filed before an amendment to the
15 zoning regulations, and that that permit be issued prior to
16 the final adoption of the amendment. This is the case here.
17 Not only was this permit filed before the adoption of the
18 amendment to the zoning regulations, a permit was issued to
19 the property.

20 Secondly, I think one has to take a look at the
21 practical applicability of these provisions. I would give
22 an example. If the owner of this property had proceeded to
23 construct on this property without any issues, and they had
24 constructed the ten foot beyond the adjacent property, they
25 had constructed their foundation walls on the first-floor

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1 level, and they decide to amend something about that zoning
2 regulations, the appellant's case would be that the Zoning
3 Administrator gets the opportunity to revisit all of the
4 zoning issues, which would be completely impractical because
5 this building would be halfway completed onsite. The point
6 is that not all revisions, per se, can be revisited in
7 totality. A revision has to have significance to the zoning
8 provisions in effect at the time that revision is applied
9 for, and there has to be a substantial deviation from what
10 was already approved.

11 CHAIRMAN HILL: Okay. Mr. Brown, we've gone --
12 I know we took up some of your time, in terms of questions,
13 but we're starting to get a little bit over.

14 MR. BROWN: Yes so.

15 CHAIRMAN HILL: Your microphone is not on. I'm
16 sorry.

17 MR. BROWN: My apologies. I think subject to
18 questions, we'll conclude.

19 CHAIRMAN HILL: Okay. I do have some questions.
20 Maybe we'll do this. The Board will have its questions.
21 Then we'll take a quick break. Then we'll do rebuttal, okay?
22 Then, we'll go through everything that we're going through.
23 This is great. It's so polite, hands and everything. Just
24 give me one second. Then afterwards, just let everybody else
25 -- I hate to tell you all this, but we're going to go to

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1 lunch.

2 MR. ECKENWILER: We can resolve the case in your
3 absence, Mr. Chairman.

4 CHAIRMAN HILL: I wish that were so true. I'm
5 sorry, Mr. Brown, you were about to say something.

6 MR. BROWN: Maybe, by rebuttal, you meant
7 cross-examination, but --

8 CHAIRMAN HILL: I wish.

9 MR. BROWN: We raced through my folks, so they're
10 all subject --

11 CHAIRMAN HILL: Rebuttal from -- not rebuttal,
12 cross from the other side, and that's going to happen. Then
13 we'll do rebuttal, and then you'll get to do cross on the
14 rebuttal, and then we're going to do the conclusions. This
15 is like a murder trial. To Mr. Cummins, he -- it's a murder
16 trial to him.

17 MR. CUMMINS: I'm here to kill this permit.

18 CHAIRMAN HILL: Right. That's good. We're all
19 having fun before lunch. Mr. Brown, my questions were really
20 kind of to the breezeway thing, so if the architect wants to
21 come up to whatever it was. I think it's 35.

22 PARTICIPANT: One of the slides?

23 CHAIRMAN HILL: Exhibit 35-C. It's the ANC's
24 prehearing statement.

25 MR. ECKENWILER: Mr. Chairman, our second revised,

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1 so really the operative prehearing statement is Exhibit 46.

2 CHAIRMAN HILL: I'm just trying to look at the
3 thing that says breezeway, and then has stairs going down.

4 MR. ECKENWILER: That would be Exhibit 35 was the
5 one addressing the original -- that's our first revised PHS,
6 and that addressed the original permit, when it was
7 characterized as a breezeway. That's correct.

8 CHAIRMAN HILL: All right, give me a second, then.
9 So I'm at the right place? If somebody could pull it up,
10 that would be great, 35-C, ANC 6's prehearing statement, Tab
11 C, plans.

12 PARTICIPANT: Is that --

13 CHAIRMAN HILL: No.

14 MR. ECKENWILER: Mr. Chairman, if I may, if you're
15 looking for the original permit plans, I submit that the more
16 convenient place to look is in the attachments to Exhibit 46.
17 I apologize. It's either 46-B or 46-D. If that's what
18 you're looking for, the place where it talks about breezeway
19 and shows what that connector used to look like --

20 CHAIRMAN HILL: Where are you saying, 46 --

21 MR. ECKENWILER: Yes, let me just get my hands on
22 that because, for convenience, every time I resubmitted a
23 PHS, I tried to put everything into it, so it'll all be in
24 one place.

25 CHAIRMAN HILL: That's all right. I can just ask

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1 about it. I can also ask about it. For me -- and this is
2 to the applicant -- again, the lobby and how the lobby is
3 being used. Mr. Teass, you had showed us how this -- people
4 would come in and out of their unit. What I'm just confused
5 about -- this might take longer, and maybe this will happen
6 after the break, but I'm kind of curious what's around --
7 either side of this building is another building, right? So
8 originally, I was trying to understand how this lobby was
9 going to be used.

10 That's what I'm trying to still get at. Even
11 beyond that, then, there was whether or not the grade had
12 changed at some point when it was determined to be called a
13 lobby, as opposed to a breezeway. I'm just kind of sticking
14 with this common connection thing to understand a little bit
15 more. You can show me whatever you want to show me that
16 shows what's on either side of this and how it's a lobby.

17 MR. TEASS: When you're referring to what's on
18 either side, do you mean the row house to the north and the
19 row house to the south?

20 CHAIRMAN HILL: That's one part, yes.

21 MR. TEASS: This is an attached row house. It has
22 a two-story structure to the south, and now a three-story
23 structure to the north, so there's no way to get to that
24 shared closed court without traversing one of the two
25 corridors that's located at the cellar level. Here, at the

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1 front, there is a below-ground --

2 CHAIRMAN HILL: Sorry; that's where I got
3 confused. It is a closed court?

4 MR. TEASS: It is a closed court. My
5 understanding that it meets the size and area requirements
6 for a closed court.

7 CHAIRMAN HILL: Sure as hell hope so. Walk me
8 through this again.

9 MR. TEASS: I think that I may have gone through
10 it a little bit quickly the first time, but on the lower
11 portion, the lower plan shown here is the cellar. The cellar
12 has two corridors that lead -- one leads from the street
13 down, underneath the front portion of the building, up into
14 -- there's a set of stairs, so you go down, and then you go
15 up to get to that closed court here.

16 There is a second set of stairs that you go down,
17 and then underneath the rear portion of the building here,
18 and another set of stairs that take you up to get you out to
19 the building. So at the cellar level, there is a corridor
20 that runs from the front of the property to the rear of the
21 property.

22 That corridor is interrupted by stairs that go
23 down at the street, come up into the courtyard, go back down
24 again under the other building, and then come back again to
25 get into the rear yard. That's how, at the cellar level, how

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1 the circulation works. When you move to the ground floor,
2 the first floor here, you're within, already, in that closed
3 court, so you have the opportunity -- a resident or a visitor
4 has the opportunity to enter in and come up the set of stairs
5 into the closed court and either go into Unit A, or they also
6 have the opportunity to go into Unit B. I would say
7 conversely, if the occupant of Unit B or the occupant of Unit
8 B -- sorry, the occupant of Unit A wanted to take their trash
9 out or go to their car, they would exit and go down
10 underneath the building.

11 VICE CHAIR HART: Yes, the hard part about this
12 is that because you have different levels that you're talking
13 about, it is a little bit hard because you are going down,
14 and then going back up to get to the same level that you
15 started at. At the street level, you are at zero elevation,
16 then you're going down eight feet, and then you have to go
17 back up to zero elevation at the closed court, and then you
18 have to go back down if you want to go out of the building.

19 That's the part that is a little bit -- kind of
20 confusing. Because you're doing this moving up and down.
21 It's hard to see it on the plan because -- it's maybe a
22 little easier to see in an elevation or a section, I guess,
23 but it is somewhat hard to follow if you're just looking at
24 it at a plan. I appreciate the colors, I think, because they
25 do help you understand what the path is. What you're just

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1 saying is the blue path on the bottom is kind of how you're
2 going from the street level down, and you're going through
3 the cellar, and then you're going back up to the same level
4 as the street in the courtyard, the closed court, and then
5 you can enter into the building.

6 MR. TEASS: Correct.

7 VICE CHAIR HART: The second building.

8 MR. TEASS: Correct. So I think that the blue
9 that you're seeing here reflects the occupant or the visitor
10 to Unit B, and the red is the circulation path to an occupant
11 or a visitor to Unit A.

12 VICE CHAIR HART: It's a long path for B to get
13 to their front door because they're having to go underneath
14 Unit A to get to their building.

15 MR. TEASS: Yes, I would agree.

16 VICE CHAIR HART: Which is just an unusual case
17 because you typically would be getting into your building
18 when you go down. That would be the entrance. This is an
19 entranceway to the building that -- to the portion of the
20 structure that's -- I don't -- I've got to say it is really
21 hard, when you're flipping this building and trying to
22 understand which direction you're going because some of the
23 drawings have the front of the building on the left-hand
24 side, some of them have the right. You're talking about east
25 and west being what you would consider north and south on a

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1 drawing, so it's made it really confusing as to where all of
2 this stuff is going. I'm following it because I'm
3 understanding where you're starting from, but that's not a
4 -- it's not optimal to go through plans and it's flipping
5 that way. I'm just saying, just in general.

6 MR. TEASS: Noted.

7 MEMBER TURNBULL: In the original breezeway, did
8 it still serve both buildings, or did it only have an exit
9 going down to the corridor?

10 MR. TEASS: My understanding is the original
11 permit that was approved had -- there was a courtyard, and
12 there was a connection. I think that the tunnel underneath
13 the front building -- and I'll look to Ms. Rippe for some
14 clarification on this, as well, but that corridor was only
15 serving the rear unit. In a sense, the corridor was still
16 serving the rear unit in both the original iteration and the
17 revised iteration.

18 MEMBER TURNBULL: I'm looking at Exhibit 35-C.
19 I sort of see this breezeway, and I see the stair coming
20 down. It looks like it goes to that cellar corridor, but it
21 only serves one unit. You really can't get to two units from
22 that breezeway.

23 MR. TEASS: I think in the original configuration,
24 there was a passage that went underneath the front building,
25 came up to an intermediate landing, so you could go out into

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1 the courtyard and presumably access Unit A, and then you
2 could also continue up into Unit B. That was one of the
3 things that was clarified in the revision to the permit.

4 MEMBER TURNBULL: Could you provide us with
5 something that shows what that looked like.

6 MR. TEASS: I don't have access to that right this
7 moment.

8 MEMBER TURNBULL: Okay. For the record, could we
9 get something that sort of shows the major change on the
10 breezeway as to what it really looked like?

11 MR. TEASS: We could certainly prepare an exhibit
12 that showed the two side by side.

13 MEMBER TURNBULL: Yes.

14 CHAIRMAN HILL: Okay, Ms. White.

15 MEMBER WHITE: Mr. Teass, did I pronounce that
16 correctly?

17 MR. TEASS: Thank you very much. Yes, you did.

18 MEMBER WHITE: Did you actually do the design for
19 these passageways?

20 MR. TEASS: We did not. We were brought in after
21 the project was permitted to understand -- both as an
22 independent peer review, to understand what the spatial
23 configuration was, and to understand any potential issues
24 that came out of it.

25 MEMBER WHITE: One of the issues on appeal is

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1 whether or not it's a single building. The appellant made
2 some arguments with respect to why it isn't a single
3 building. One of the issues had to do with the fact that you
4 don't have free and open access, some of it is locked. It's
5 not easily maneuverable from one part of the building to the
6 other part of the building. I'm trying to remember some of
7 his exact words. Basically said it's a restricted passage
8 that's locked. I just wanted to get your opinion on whether
9 or not that is the case with respect to that particular issue
10 on appeal.

11 MR. TEASS: Sure. I think if you were to think
12 about this not in this particular case, but if you were to
13 think about another type of building that you had two
14 portions of the building and a common lobby that connected
15 the two, you would still have a way for someone to get in off
16 the street, into the building. You would still have a lobby
17 that would be under some degree of security, but once you're
18 within, there's an area of common circulation.

19 That common circulation is open to everyone who's
20 coming to either lives or visit the building, but that you
21 still have a lock on your unit door. I think the way to
22 think about this is that you would have -- in this case,
23 there's a door here that goes into Unit B, and a door here
24 that goes into Unit A. Both of those doors would be locked,
25 but the intent is that the door in the middle that serves the

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1 courtyard would not be locked, so that it would allow that
2 free and unencumbered access from either Unit A or Unit B or
3 visitors to either of those units to come and go. My
4 understanding is, just to continue in that line of thought
5 for a moment, originally, where you were -- the idea about
6 this locked door, that you would have this -- in name only,
7 but operationally, those doors would be locked on a
8 consistent basis to prevent people come in and really use
9 that space. I think that's not the case here.

10 (Off-mic comment.)

11 MR. TEASS: Correct, it is not the case.

12 CHAIRMAN HILL: Okay, so Mr. Teass, you weren't
13 the original architect?

14 MR. TEASS: That's correct. We did not undertake
15 the design of this. We only undertook this as a peer review.

16 CHAIRMAN HILL: Got it. The original architect's
17 not here, is he, she as far as you know?

18 MR. TEASS: My understanding is that Mariah was
19 the project designer, who was working under the guidance of
20 a registered engineer, who reviewed this.

21 CHAIRMAN HILL: I got you. Okay. I'm going to
22 need a little bit more clarification as to this area.
23 Whenever we come back -- because we're coming back because
24 I still don't know how we're going to get to a decision, yet,
25 at this point. What I want to know, again -- I'm just stuck

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1 on the 309.1 part. Again, what I'm having difficulty
2 visualizing, because I'm not an architect, is the fully above
3 grade, the enclosed, the heating and artificially lit, and
4 either -- I understand, it's one or or -- either the one, the
5 common space shared by users of all portions of the building,
6 such as lobby, rec room, loading dock, or service bay, or
7 space that is designated and used to provide free and
8 unrestricted passage. You guys aren't the -- you're not
9 doing the two. You're just doing the No. 1, right? That's
10 what I understand.

11 MR. BROWN: No, I think we --

12 CHAIRMAN HILL: You're arguing both.

13 MR. BROWN: We're arguing both, but we --

14 CHAIRMAN HILL: Okay, fine. Then you can show me
15 in more clearly -- how I can clearly understand how you're
16 arguing both. Because now, I guess now that I'm thinking
17 about it a little bit more, you're just arguing the access
18 to the courtyard. Because in the drawings that we saw -- and
19 there's just so much stuff in the record, but of all the
20 stuff that we've seen, we just see a side view of something
21 that says lobby, so it's confusing to see how people are
22 accessing that.

23 It's a closed court. People are all coming in
24 from the front doors. If you can provide further clarity for
25 me, at least, to 309.1, and you can even think about it while

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1 we continue to go through this, if you want to, but it's just
2 harder for me to visualize how you're meeting 309.1. Thank
3 you. Anybody else got any questions?

4 MEMBER TURNBULL: Just following up on what you
5 said, the drawing that we have in front of us, showing the
6 exit way, I would like to see that on the original version
7 of the breezeway, somehow, how that worked on the original
8 drawings. I think you were going to get to that anyway.

9 MR. TEASS: Yes, I think that it's now common
10 practice by the Zoning Administrator's office to provide a
11 graphic example of before and after, and I think that we can
12 utilize that format to present an exhibit to the Board that's
13 more illustrative.

14 MEMBER TURNBULL: Okay, thank you.

15 MR. BROWN: Mr. Hill, in your focus on 309.1, but
16 you're not challenging or concerned about the above-grade,
17 heated, unlit/lit elements. I think we've moved beyond that.

18 CHAIRMAN HILL: I'm sorry. I'd like to see
19 something that is easier to understand, in terms of the fully
20 above grade, enclosed, heated and artificially lit. I'm
21 going to go back and look and find it. I'm sure it's all in
22 here, as well. But if you can help me out and show me where
23 it is, again, because I'm just having a hard time visualizing
24 it. Maybe that's because I haven't had anything to eat in
25 hours. Does anybody have any more questions before we take

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1 a quick break before we go to rebuttal -- not rebuttal,
2 cross.

3 MR. ECKENWILER: Mr. Chairman, if it helps -- I
4 don't know if it will -- I have exactly one question on
5 cross.

6 CHAIRMAN HILL: Oh, then let's do cross now. Go
7 ahead.

8 MR. ECKENWILER: If Mr. Brown is done. I just
9 want to make sure --

10 MR. BROWN: Yes, I'm --

11 (Simultaneous Speaking)

12 CHAIRMAN HILL: Mr. Brown, are you finished?

13 (Simultaneous Speaking.)

14 CHAIRMAN HILL: Okay.

15 MR. ECKENWILER: My question is for Mr. Teass.
16 Mr. Teass, if you can put before you Exhibit 46, this is ANC
17 6C's second revised prehearing statement. Starting on Page
18 6, there's a series of photographs.

19 CHAIRMAN HILL: Which one are you in again? Tell
20 us again. I'm sorry.

21 MR. ECKENWILER: This is 46. This is our most
22 recent prehearing statement, not in the attachments, but
23 rather in the body, there's a series of photographs, starting
24 on Page 6.

25 CHAIRMAN HILL: Forty-six.

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1 MR. ECKENWILER: I think you're looking at the
2 reply, Pat.

3 MR. BROWN: What are you looking --

4 MR. ECKENWILER: It's the second prehearing
5 statement.

6 CHAIRMAN HILL: Which page are you on of your --

7 MR. ECKENWILER: Page 6. There's some big photos
8 there. You'll know it when you see it. There we go. Mr.
9 Teass, if you can just take a look through those, I'll
10 represent to you that the captions on those are all correct.
11 These are all row houses in that same block, with the
12 addresses indicated under each photo.

13 My question for you, since you're here as an
14 expert, as a licensed architect, is to the person standing
15 on that sidewalk in front of these buildings, that lower
16 element, I think you, in your earlier testimony, said that
17 the larger projecting band, you considered that part of the
18 entablature, but not a cornice, per se, is that correct?

19 MR. TEASS: Yes, that's correct.

20 MR. ECKENWILER: But speaking from the standpoint
21 of someone standing on the sidewalk, looking up at this
22 building, isn't the visual experience for the average
23 passer-by who looks up at this the same as if -- it
24 functions, visually, as a cornice, from that point of view?

25 MR. TEASS: I think the first image you have on

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1 Page 6, in the upper left-hand corner, I think, speaks to the
2 condition that we're referring to, in that there's a
3 separation between the cornice and the trim below. What
4 you're seeing there is -- I believe that to be the subject
5 property, and that you're seeing there's a gap between the
6 two. I think it depends on your vantage point, but if you
7 were to look -- I would argue that yes, it's, overall,
8 compositionally an entablature, but I would not argue that
9 it would be viewed as a cornice.

10 MR. ECKENWILER: Nothing further, Mr. Chairman.

11 CHAIRMAN HILL: Okay, thanks. Mr. Cummins, just
12 give me one second. Does anybody have any questions? Okay.
13 All right, Mr. Cummins.

14 MR. CUMMINS: Yes, I just have a couple questions,
15 try to be very brief, and hopefully the responses can be,
16 too. For the design professional, the unlicensed -- Ms.
17 Rippe, did the original permit, B1706219, did that provide
18 20 percent pervious surfaces, as required by the zoning
19 regulations?

20 MS. RIPPE: From what I recall, yes, the 60
21 percent, we've never exceeded that, or we've stuck within
22 that real for the lot coverage, and the same with the
23 permeable spots. We have not changed that.

24 MR. CUMMINS: So there were no changes in the
25 design between the original permit and the revised permit to

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1 reflect the provided pervious surface?

2 MS. RIPPE: From what I recall, no.

3 MR. CUMMINS: I observe that does not appear to
4 be the case in the record, in terms of the permanent
5 drawings, where that was something that was in the original
6 ANC appeal that's a change between B1706219 and the second
7 revised permit before us today. But moving on, the
8 connection breezeway that became a lobby in the revised
9 permit, was that connection fully above grade in B1706219,
10 the original permit?

11 MS. RIPPE: Correct, the space was fully above
12 grade.

13 MR. CUMMINS: In B1706219, the original permit,
14 was the lobby breezeway connection fully above grade?

15 MS. RIPPE: Correct, there were stairs that went
16 down to the corridor, as well, but the lobby breezeway
17 section was fully above grade.

18 MR. CUMMINS: So was the connection, that entire
19 space between the two buildings, was that fully above grade,
20 the stairs that were -- were there stairs below grade within
21 the connection?

22 MS. RIPPE: There were stairs that went down to
23 the corridor, yes, but the lobby, itself, and the stairs
24 going to the unit was above grade.

25 MR. CUMMINS: Sorry, a new distinction between the

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1 lobby versus breezeway. The piece of the building -- if we
2 can go to -- if you look here, where it says -- on the
3 current plan, it says -- or if you look at the site plan as
4 being easier, the area, the connection between the two
5 buildings, there, that space where it says breezeway common
6 entrance, that entire rectangle that's there, that was
7 entirely, fully above grade?

8 MS. RIPPE: Correct, and then there was foundation
9 that was below grade.

10 MR. CUMMINS: I'm sorry; so there did exist --
11 there was --

12 MS. RIPPE: Foundation, yes, below grade.

13 MR. CUMMINS: So the connection was not fully
14 above grade.

15 MS. RIPPE: The connection is fully above grade,
16 but there's foundation supporting that connection which is
17 below grade.

18 MR. CUMMINS: When you enter -- I didn't mean this
19 to be a long question. We can maybe come --

20 VICE CHAIR HART: I think what you're getting to
21 is that Ms. Rippe is saying that the breezeway, itself, is
22 above grade, but the other part of it is not above grade.
23 There is a foundation part that's below grade. There's
24 stairs, also, that connect. I don't know what else the
25 question is. I understand that you're just trying to say

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1 that there is a portion that's below grade.

2 MR. CUMMINS: That is the question I have. It
3 does appear to be below grade on the plans.

4 (Simultaneous Speaking.)

5 MR. CUMMINS: The building section -- we can refer
6 to that later.

7 (Simultaneous Speaking.)

8 MR. CUMMINS: I don't want to belabor it. That's
9 something to look at in the plans. If this was a fully
10 compliant, fully functional, fully above grade connection
11 between the two buildings, why was it changed -- the entrance
12 changed from -- sorry, why is there now a covered walk space
13 underneath the lobby? What is the functional purpose of the
14 covered walk space -- sorry, crawl space, excuse me?

15 MS. RIPPE: The crawl space?

16 MR. CUMMINS: Yes.

17 MS. RIPPE: The crawl space is -- we raised the
18 footings up and made it a condition crawl space, versus
19 having the footings go down to the grade of the other
20 footings.

21 MR. CUMMINS: Were there stairs located in there,
22 where there's now crawl space?

23 MS. RIPPE: There were, to the corridor.

24 MR. CUMMINS: Did the entryway from the front
25 public street, 7th Street, was that on the -- it's currently

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1 depicted on the north side -- sorry, for the person who lives
2 in Unit 2, the rear tower -- the drawing you showed -- sorry,
3 Mr. Brown, if you could maybe just scan down to Slide, I
4 think it was 16. There, sorry -- is that 11? Apologies.
5 The passageway that's depicted here in blue, in the lower
6 drawing on Slide 11, was that corridor there approve in the
7 permit, B1706219?

8 MS. RIPPE: No, the front unit, we flipped the
9 interiors of that unit. We did not change the footprint of
10 the unit, we just flipped the interior aspects of that unit.

11 MR. CUMMINS: Did the corridor exist along the
12 north? It's currently depicted on the south side of the
13 property. Was that on the north side of the property?

14 MS. RIPPE: Correct.

15 MR. CUMMINS: So one would enter through the --
16 underneath the front door on the north side and go straight
17 through to what is now vented crawl space to access the
18 building?

19 MS. RIPPE: Correct.

20 MR. CUMMINS: So that was another change to the
21 permit between B1706219 and the revised permits?

22 MS. RIPPE: Correct.

23 MR. CUMMINS: Okay. Was there an area way in the
24 front of the building, on the south side, where there's now
25 an entryway? Did that area way exist in B1706219?

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1 MS. RIPPE: It flipped. We flipped the front of
2 the building. So yes, it did, it just was on the other side.

3 MR. CUMMINS: And with the door that's depicted
4 at that area way currently, would that be a locked door or
5 an open door, where anybody from the public could use to
6 access the lobby?

7 MS. RIPPE: It could be open.

8 MR. CUMMINS: So there would be no door there?

9 MS. RIPPE: No, there's a door, it's just not
10 locked.

11 MR. CUMMINS: Okay.

12 CHAIRMAN HILL: Okay.

13 MR. CUMMINS: That's all.

14 CHAIRMAN HILL: That's okay. Can you point me out
15 where the door is that's not locked? And by the way, can you
16 guys turn off your microphones? When more than one mic's on
17 at a time, it feeds back. Thank you.

18 MR. TEASS: I can answer that question here. So
19 what you're seeing here is the door at the cellar level.
20 It's really more of a gate that you would see, where you're
21 actually -- it's not a completely solid door, but it's a gate
22 that would be -- it would allow passage from both the
23 occupant of Unit B or a visitor to Unit B, or even, quite
24 frankly, the occupant of Unit A to come through that opening.

25 CHAIRMAN HILL: Okay. All right. Are you done?

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1 Are we good? Okay. Do you guys have any cross?

2 MS. LORD-SORENSEN: No.

3 CHAIRMAN HILL: Okay. We're going to take a quick
4 break. We're going to come back. We're going to take a
5 quick break.

6 (Whereupon, the above-entitled matter went off the
7 record at 2:10 p.m. and resumed at 2:25 p.m.)

8 CHAIRMAN HILL: Okay, we're going to get started
9 here again. We have a little bit of a different plan. What
10 we're going to do is we're going to have rebuttal from the
11 appellant, and then have an opportunity to cross the
12 rebuttal. Again, as efficiently as possible during the
13 rebuttal, please. Then we're going to probably continue this
14 because we're going to have a lot of questions now.

15 I'm sorry to let everybody know, but there's a lot
16 of questions that we're going to have, so there's going to
17 be information that we're going to request of everyone. And
18 then we're going to continue this, and then come back to do
19 the conclusions. That's the plan. Then we are going to take
20 a lunch break.

21 We have ordered lunch, so we're going to be able
22 to eat it out there, so it'll be faster, meaning we'll
23 probably get to -- well, we are going to get through
24 everybody, unless -- we're going to get through everybody.
25 That turns to rebuttal from the appellant. You can begin

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1 whenever you like.

2 MR. ECKENWILER: Thank you, Mr. Chairman. To
3 begin with, just sort of working through the --

4 CHAIRMAN HILL: Mr. Commissioner, I'm sorry; how
5 long do you think you're going to need for rebuttal?

6 MR. ECKENWILER: It's hard to say.

7 CHAIRMAN HILL: Okay. Ten minutes?

8 MR. ECKENWILER: I'm going to try and keep it
9 short. I know we've been here a long time.

10 CHAIRMAN HILL: Go ahead and start. I'm just
11 trying to put -- go ahead and start.

12 MR. ECKENWILER: With respect to the rooftop
13 railing, there is nothing in the text of the regulations to
14 support the distinction that was drawn in Mr. LeGrant's
15 testimony or the testimony that was offered on behalf of the
16 property owner. It doesn't say anything in there -- and I
17 think that's Section 1502.1(c).

18 It doesn't say anything about life or safety.
19 It's very clear. You need to have setbacks, under A, from
20 the front edge of the roof, B, the rear edge, C deals with
21 the side edge. It says one to one. Now, there's always room
22 for interpretation. I think we can all agree on that. But
23 when a regulation is clear on its face, the Board should
24 reject this attempt to sort of make up new arbitrary rules
25 that simply are not supported by the text of the regulation.

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1 Second, I want to anticipate, a little bit,
2 something that Mr. Brown went into earlier in his questioning
3 about the fact that the railing setback defect was not raised
4 in our initial appeal. That's true. I anticipate that Mr.
5 Brown's going to argue later that we're time barred with
6 that, and I just want to remind the Board that when we went
7 through the initial motion to incorporate, so that was the
8 first revised permit, ANC 6C thought that was not the proper
9 way to proceed. We thought that the appropriate way to
10 proceed was simply for us to file a new appeal because that
11 starts the clock all over again.

12 It truly is a brand-new permit. I'm just going
13 to say I hope you will reject the suggestion that we're time
14 barred. Every time they keep revising this permit, that
15 opens it up again for us to raise those issues. That's all
16 that I'll say on the railing.

17 CHAIRMAN HILL: I'll agree with you. Okay.

18 MR. ECKENWILER: With respect to the cornice, one,
19 this is not rebuttal. I think it's remarkable that Mr. Teass
20 admitted that there is a cornice on the front of this
21 building, and the plans show -- now he says it's a different
22 thing from what we've alleged. We've alleged it's that great
23 big band. He says it's that smaller band that does, in fact,
24 sit at the top of the parapet wall.

25 I'm happy -- if that's what he wants to argue,

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1 then we're fully in support of that. I really think the
2 whole thing is, if not a cornice, in the nature of a cornice.
3 But the point is there's a concession here now that that's
4 a cornice at the top of the parapet wall, that smaller
5 projecting band. That would likewise be removed under the
6 permit, the second revised permit. It sort of doesn't matter
7 which one you pick, that's a violation of E-206. Just to be
8 clear, again, here, Mr. LeGrant testified -- he couldn't
9 point to any specific provision in the zoning regulations
10 that would vest, or to use Vice Chair Hart's term,
11 grandfather that cornice removal.

12 The truth is, there isn't one, and you can't wave
13 your hands and say I'm just going to rely on the totality of
14 the zoning regulations because, again, it's very clear.
15 A-301.4 says when you amend a permit, you comply with the
16 regs in effect at the time of amendment, unless there's an
17 explicit exception. It has a cross-reference to those
18 various exceptions.

19 None of those applies. If you look at 301.14,
20 which was added under ZC 14-11, there is no reference -- it
21 references a bunch of other provisions, all of which have to
22 do with rear yards and depth of addition. It does not
23 reference E-206, and you cannot read it into there, and you
24 cannot invent some other non-existent subsection that vests
25 the cornice. It simply does not exist.

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1 There was also a suggestion from DCRA, both
2 written, and then I think it was implied in some of the
3 testimony, that we're time barred on this removal of cornice
4 objection, as well. As we said in our reply, Mr. Chairman,
5 that is frivolous because the language respecting cornices
6 was not in existence when the original permit was issued.
7 It was triggered -- its relevance to this proceeding was
8 triggered when the first revised permit was issued. That was
9 after cornices was added to E-206. And at the first
10 opportunity after that happened, we raised that objection.

11 There's really nothing more to say on that, except
12 that's frivolous. I have nothing more to say on the cornice
13 point. On the connector, Mr. Teass confirmed what I had
14 surmised from the drawings. The doors at either end of it
15 are locked. Mr. LeGrant has now conceded you can't have two
16 principal buildings, so he agrees with ANC 6C's position on
17 that point. Mr. LeGrant says that he relied on the common
18 space prong of B-309.1. He's not -- at least he did not
19 grant the permit on the basis of unrestricted passage.

20 The simplest way to think about this, Mr. Chairman
21 and members of the Board, really just sort of clear away the
22 underbrush. Let's forget about all the different
23 subprovisions and subparagraphs. Look at this backyard.
24 Frankly, we've got the drawing up here right now. This is
25 a Rube Goldberg arrangement, but I want you to think about

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1 an alternative universe, in which that connector is not
2 there.

3 What do you do if you're an occupant of one of
4 those two units? You can still walk down -- you have a set
5 of stairs leading from your unit, front or back, into that
6 interior courtyard. If you wanted to go the other direction,
7 so this sort of crisscross thing, you'd still walk across
8 that interior courtyard, go through the subterranean
9 corridor, come out the other side, basically going under the
10 other person's unit. That tells you why this connector is
11 a fig leaf.

12 It's not doing anything, other than trying to
13 weave together these two masses. It serves no function,
14 other than to attempt to circumvent the zoning regulations.
15 You could have no connector there at all. You could have two
16 L-shaped connectors that come out with separate doorways into
17 the backyard, and the function would be exactly the same.

18 You've still got to go outside. You're still
19 going to get rained on or snowed on or whatever. It's not
20 doing any of those things mentioned in 309.1(d)(1) or (2).
21 It's just a Rube Goldberg device to circumvent, and that's
22 all. Bear with me one moment. Frankly, Vice Chair Hart, I
23 think you expressed a number of concerns that there was a
24 lack of clarity of the function of why it's this way.

25 It is that way because it really does not make

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1 sense. You can conceive of someone building dwelling units,
2 but put aside the zoning regulations, just in terms of the
3 function of having two units on this lot, people can come in
4 and go out. You don't need to have that corridor there. So
5 I'll leave that. I have nothing further there on the
6 connector and the fact that there are two buildings.

7 And then finally, with respect to the ten-foot pop
8 back rule, Mr. LeGrant actually testified a couple different
9 things. One of the things he said was that the plans were
10 ready for review on March 29th.

11 I think the implication, and there is testimony,
12 is that they weren't ready for review before that date. He
13 said, at various points -- and I think this is also in DCRA's
14 written submission -- that they have deemed this application
15 to be accepted on March 24, 2017. And actually, that was
16 even in Max Tondro's email that I showed you earlier. I
17 think it was one of the exhibits to 46. It might be 46-H.

18 Deeming is just another way of saying I'm going
19 to call something what it isn't. I'm going to pretend that
20 the truth is something other than what it actually is. And
21 Mr. Tondro's email tells you what really happened is that
22 this application was accepted as complete on March 29th. No
23 amount of hand waving and deeming changes that fact.

24 I can say if my grandmother had wheels, she'd be
25 a bicycle, but she's not a bicycle. The truth is, this

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1 deeming is -- it's not real. So that goes to the timing and
2 the lack of entitlement for this deep rear addition, even
3 assuming it is a single building, to the benefit of the
4 vesting provision in A-301.14.

5 However, there's a second prong. So even if you
6 decide that this was timely filed and accepted as complete,
7 it has to have not substantially changed. Now, I walked
8 through with Mr. LeGrant. You saw, in the attachment, all
9 the exhibits -- all the sheets, excuse me, to Exhibit 59-A.
10 Those were all the drawings that were submitted in support
11 of the current permit, the second revised.

12 We looked at the bubbles, and the bubbles within
13 bubbles. There are literally dozens of changes that are
14 shown there. Various of the witnesses today have tried to
15 argue -- they have argued that the phrase substantially
16 changed in A-301.14 is somehow further constrained.

17 There was an argument that well, the rear addition
18 didn't really change, or the changes weren't really
19 significant with respect to the zoning regulations. They
20 didn't expand the building envelope. Again, that's not what
21 the text says. It says substantially change. It doesn't say
22 substantially change with respect to the zoning regs. It
23 doesn't say substantially change in that rear portion that
24 goes back more than ten feet.

25 The language is much broader than has been argued

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1 to you. Furthermore, as I detailed earlier, several of those
2 changes that have happened since the original permit
3 application do, in fact, go directly to zoning issues. Bear
4 with me one moment. So remember, we had this back and forth
5 where they added that really tall daylighter penthouse, and
6 then once I pointed out that was a mistake and violated the
7 regulations, it went away again. Then we went to a third
8 kind of hatch. That had zoning implications, in terms of the
9 setback, in terms of height.

10 The breezeway -- and I'm puzzled by this. Ms.
11 Rippe insisted, repeatedly, in her testimony and in response
12 to the cross from Mr. Cummins, that the original connector
13 was above grade. And that's just not so. If you look at
14 Exhibit 46, that's our second revised prehearing statement,
15 in the last section, where there are all the documented
16 changes between the original permit and the first revised.
17 If you look at Page 19, this is -- it cannot be more clear.

18 Looking at Page 19, Exhibit 46, Page 19 of that
19 exhibit, there are two extracts from the respective sheets
20 A-5.2. One of them shows that breezeway, it's below grade.
21 There are stairs going down to the subterranean corridor that
22 used to be on the north side of the property. It later got
23 flipped to the south side.

24 As contrasted with what you see on the bottom half
25 of Page 19, again, this change was made only after we pointed

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1 out that this failed the completely above grade prong of the
2 regulations. So not only is that a change, that's a change
3 that had zoning significance. They knew they'd messed up,
4 and they're trying to fix it here. So even if you buy this
5 argument, which is not a good argument, that substantially
6 changed only means substantially changed with respect to the
7 zoning regs, this changed with respect to the zoning regs in
8 meaningful, material ways. I mentioned before, you can go
9 back to our first revised prehearing statement.

10 There were separate kitchen facilities originally
11 in the front and rear cellars that created what appeared to
12 be third and fourth units, both of which would be illegal.
13 There's a two unit maximum, RF-1 zone, so you can only do a
14 flat here. Again, those have been taken out. So that is not
15 only a change, it's a meaningful change within the scope of
16 the zoning regulations, if you have a narrower lens on what
17 substantially changed means.

18 They put in pervious surface. Previously, as we
19 showed in both our original PHS and the first revised, they
20 claimed they had 40 percent pervious surface, and that was
21 just flat out not true. There are big concrete drains
22 leading into pipes. That's not pervious surface, so the 40
23 percent number was a fiction.

24 By our calculations, I think it was something like
25 5 percent or 6 percent tops. They've fixed that now, so

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1 that's no longer a basis for appeal in and of itself, but
2 it's a change from the original application. It's a
3 meaningful change, in terms of the zoning regulations.
4 That's all I have on rebuttal, Mr. Chairman.

5 CHAIRMAN HILL: Okay, great. Mr. Brown, do you
6 have any cross for the commissioner?

7 MR. BROWN: Mercifully, no.

8 CHAIRMAN HILL: Mr. Cummins?

9 MR. CUMMINS: Just would like to briefly add, if
10 I may. I'll be as brief as I can.

11 CHAIRMAN HILL: This is cross-examination. You're
12 not adding anything. You're just --

13 MR. CUMMINS: Okay, I have a couple quick
14 questions.

15 CHAIRMAN HILL: I don't know what you're doing.
16 Sure.

17 MR. CUMMINS: Commissioner Eckenwiler, did the
18 original -- Mr. Brown stated that the original permit,
19 B1706219, revised two earlier permits. Did those two earlier
20 permits actually exist, or were those only permit
21 applications that never resulted in a permit?

22 MR. ECKENWILER: If you --

23 CHAIRMAN HILL: Mr. Brown's trying to say
24 something, but I'm just kind of confused what Mr. Brown's
25 trying to say or whatever. Okay, go on. What's -- you were

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1 going to object to something.

2 MR. BROWN: I object, one, it's beyond the scope
3 of his testimony, and two, he's misquoting my testimony.

4 CHAIRMAN HILL: Okay, but that's okay. What was
5 your question, again, Mr. Cummins?

6 MR. CUMMINS: Mr. Brown describing Permit
7 B1706219, I believe in response to Commissioner Hart's
8 question about how did this come up earlier? How could they
9 have approved it -- seen it one day and approved it in eight
10 days? It says in the permit description that it revises two
11 earlier permits, but that's not correct.

12 It's clearly, and the permit's tracking status
13 shows, there were earlier permit applications that never
14 resulted in permits. Those permit applications were
15 canceled. But then somehow, B1706219 was issued in eight
16 days as a "revision" to two earlier permits that do not
17 exist.

18 CHAIRMAN HILL: Now, I'm just trying to
19 understand. What are you asking?

20 MR. CUMMINS: I'd like to clarify because at
21 multiple points, it may have just been that he misspoke in
22 describing the earlier permit applications.

23 CHAIRMAN HILL: No, that's okay. You're crossing
24 --

25 MR. CUMMINS: So I wanted to ask Commissioner

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1 Eckenwiler if he --

2 CHAIRMAN HILL: I'm just trying to understand.
3 You're cross-examining -- I'm just trying to understand the
4 question. You're cross-examining Commissioner Eckenwiler,
5 and the question again is what?

6 MR. CUMMINS: Is he aware that B1706219 did not
7 revise earlier permits, but as was stated earlier, it was not
8 a revision to any earlier permit.

9 CHAIRMAN HILL: All right, Mr. Eckenwiler.

10 MR. ECKENWILER: If the Board will look to Exhibit
11 59 --

12 CHAIRMAN HILL: You guys have got to turn off your
13 microphones so just one of you is on. Mr. Brown, if you
14 could turn yours off, too, please.

15 MR. ECKENWILER: If the board will refer to
16 Exhibit 59-B, like Bravo, those are the attachments to ANC
17 6C's reply, you can see two sheets -- these were both
18 produced to me back in May, under FOIA -- that show, with
19 respect to two prior permit applications, that those were
20 canceled on October 3, 2016. Mr. Brown has just put up one
21 of his slides. There was, as we detailed -- I'm not going
22 to --

23 (Simultaneous Speaking)

24 CHAIRMAN HILL: That's all right; I'm just trying
25 to understand, what is your answer to his question? I'm just

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1 trying to understand.

2 MR. ECKENWILER: The answer is yes and no. There
3 were two prior applications that were -- at the time, they
4 were canceled in October of 2016. Since then, and during the
5 pendency of this appeal, they were magically resurrected and
6 somehow incorporated into the original permit that ANC 6C
7 filed an appeal against.

8 CHAIRMAN HILL: Okay.

9 MR. ECKENWILER: So the permit records were
10 altered, and we go into detail on that in our reply.

11 CHAIRMAN HILL: Did you get your question
12 answered?

13 MR. CUMMINS: Thank you. I realize everyone wants
14 to move on. There's a wealth of information in the written
15 record.

16 CHAIRMAN HILL: Okay. The point of this -- I'm
17 just -- anyway, the point of cross is, again, to help the
18 Board find clarity in what was just spoken about, not to
19 provide new testimony, go over old testimony. So do you have
20 any more questions for the -- what just happened with the
21 commissioner?

22 MR. CUMMINS: No.

23 CHAIRMAN HILL: Does the Board have any more
24 questions of anybody? I do think we're going to need stuff.
25 Can you all start to think about whatever you're going to

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1 need? I do have a couple of questions, I guess. Can you
2 start to articulate what you might need? Now, what we're
3 going to do is we're going to have this continued. We're
4 going to ask things of people to provide clarity to us.
5 Everyone will then have an opportunity to respond to those
6 things that we ask for. Then we'll come back here and
7 provide -- and then just do conclusions, really. We'll give
8 a lot of testimony. Everything's been done. You're just
9 going to have an opportunity to do a conclusion and answer
10 questions of us from all the things that we're going to ask
11 from you.

12 I do have one question for the zoning
13 administrator. In the item that the appellant had brought
14 up -- and I know it's just Page 19. That's the only thing
15 I can find right here, which is Exhibit 46, thank you --
16 Exhibit 46, Page 19, where, again, they're speaking of this
17 change from the breezeway to the lobby and the above grade
18 or -- was there a change to -- you don't see anything with
19 this change that's going forth that would have affected your
20 decision?

21 MR. LEGRANT: No, and I'll just note that the top
22 image breezeway does not appear to show the grade, where the
23 bottom image does show -- there's a dotted line that says
24 exterior existing grade.

25 CHAIRMAN HILL: Okay, so I would like -- all

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1 right, does anybody know -- because I've got to figure this
2 out, this part, before we come back again.

3 MR. ECKENWILER: Mr. Chairman, you can, of course,
4 refer to the full permit drawings, so Sheet A-5.2, for the
5 various iterations of the permit will show that in context,
6 including a grade datum, if that's what you're looking for.

7 CHAIRMAN HILL: Okay. Does anybody know what they
8 want to ask?

9 VICE CHAIR HART: I'd requested earlier some
10 information about the cornices. Really, it was just trying
11 to understand an example of when you would have seen this as
12 being a cornice, or what you would consider that. I'd asked
13 it earlier, and I think we've gone a little bit too far.
14 We've gone a little bit longer than I originally thought this
15 was going to last, but that's fine. I was just trying to
16 understand how you -- another instance where you would have
17 said oh, yes, that's a cornice, so we have an example of what
18 that is. Right now, I just --

19 MR. LEGRANT: Right, I understand. Prior to the
20 addition of the language that specified cornices, there are
21 examples of my office treating, nonetheless, cornices as
22 protected rooftop architectural features, so I will look into
23 my records, see if we find an example.

24 VICE CHAIR HART: I appreciate that. I'm kind of
25 looking for no more than ten of them, if you can find ten.

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1 I'm trying not to make this be exhaustive, so that we have
2 hundreds of these things. I just need to have a few examples
3 of that.

4 MR. LEGRANT: I'll be lucky to find ten.

5 VICE CHAIR HART: I just have to -- I wanted to
6 make sure that we were limiting it to something. I think
7 we've also asked for a timeline, as well. It's just there's
8 a lot of different moving parts here. Commissioner
9 Eckenwiler, I do appreciate your stepping us through this.

10 Mr. Brown, you've also provided a -- I think we
11 have pieces of all this, and it would be helpful for us to
12 hear that I guess I'm asking for DCRA to do that, since you
13 all have that. As part of that, could you state where you
14 have made the determination that it is a -- the permit has
15 been -- it's a completed permit? Because I think that's part
16 of the --

17 MR. LEGRANT: Yes, I understand.

18 VICE CHAIR HART: Because there's a completed
19 permit, and there's also a permit issuance, which are not
20 necessarily the same two dates. Because there were some
21 things that Mr. Brown described as the permits being issued,
22 and those were a couple of days after you all said that the
23 permit was complete.

24 MR. LEGRANT: Right, we'll provide a full timeline
25 for the sited permits, the permit review history, including

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1 when they were submitted, when they were accepted as
2 complete, and when they were issued.

3 VICE CHAIR HART: I know this is -- that's a lot,
4 but it's helpful to see that sequence.

5 MEMBER TURNBULL: I think Mr. LeGrant was going
6 to provide some information on the alternate tracking data
7 on the case, the other system.

8 MR. LEGRANT: Yes.

9 MEMBER TURNBULL: I think the owner was going to
10 provide some drawings showing the breezeway plan and some
11 more clarification on how that really worked, some better
12 drawings on that.

13 MR. JAWED: Yes, we understand what the Board is
14 looking for and will provide that.

15 CHAIRMAN HILL: Okay, is that it? All right.
16 Again, just to reiterate what Commissioner Turnbull just
17 mentioned again, for me, again, I'm kind of just wrapping my
18 head around the 309.1. I saw there was -- again, I'm just
19 trying to understand what's fully above grade, what's
20 enclosed, what's heated and artificially lit, and then how
21 that common space is shared by -- you can do them all, if you
22 want to.

23 Apparently, I thought the zoning administrator
24 seems to be only concerned with D(1), but both of you seem
25 to be saying that D(1) and (2) are there, so if you could

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1 just provide something that's easier to understand, that
2 would be helpful. That being the case, when do you think you
3 might be able to provide all of this to us -- actually, Mr.
4 Moy, I'm just going to turn it to you, then, because then
5 everyone has to have a chance to respond. Then we come back
6 for a continued hearing.

7 MR. MOY: Let me work backwards a little bit, Mr.
8 Chair. Looking at the docket, staff would suggest that in
9 terms of open dates, I'm basing it primarily on the fact that
10 the next several hearings approaching, we have appeal cases,
11 so avoiding those dates, then the available dates we could
12 use would be -- for a continued hearing could be October 3rd
13 or October 24th, but I don't know if you want to go that far
14 out.

15 PARTICIPANT: That's a pretty tight time frame to
16 submit and --

17 (Simultaneous Speaking)

18 MR. MOY: Working from those dates, then, would
19 be from -- asking of DCRA, the property owner, I guess, in
20 this case, it would be Will Teass -- I don't recall if the
21 Board asked for any information from the appellant -- when
22 those filings can be submitted into the record.

23 CHAIRMAN HILL: We didn't ask anything from the
24 appellant. The appellant, I'm sure, will have commentary on
25 what is submitted by DCRA and as what's going to be submitted

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1 by the property owner, so they'll be the ones that will be
2 submitting that. Then I guess I forget how this circle ends.
3 Then there's another seven days that they'll have to respond
4 back to that?

5 MR. MOY: -- response time, which I think the
6 Board should allow at least a week, minimum, but that's up
7 to the Board -- to respond to the filings.

8 CHAIRMAN HILL: Okay.

9 MR. MOY: So again, when DCRA can provide
10 requested information, and then when the property owner can
11 provide their filing.

12 MR. ECKENWILER: Mr. Chairman, I'm going to insert
13 myself into this, just to offer a suggestion, see if that's
14 agreeable to everyone. I think October 3rd is probably too
15 soon. I don't presume to speak for DCRA, but I think some
16 of this may take a little time to pull together, and I know
17 they have other responsibilities.

18 I would propose we continue this to October 24th,
19 have the filings from appellee, the property, and DCRA due
20 on October 10th, have the response from ANC 6C due October
21 17th, one week later, and then that gives the Board a full
22 week to have --

23 CHAIRMAN HILL: October what? We'd be back here
24 on the 17th.

25 MR. ECKENWILER: No, Mr. Moy, I thought, had

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1 proposed October 24th as the next hearing date.

2 CHAIRMAN HILL: Right.

3 MR. BROWN: Let me jump in. I have a personal
4 conflict.

5 CHAIRMAN HILL: That's okay; I'm not here the
6 24th, and neither is Ms. White. Are we going to have a
7 quorum just with the --

8 MR. ECKENWILER: Are you saying you want to miss
9 a moment of this?

10 CHAIRMAN HILL: That'd be perfect for Halloween.

11 MR. MOY: Does that work?

12 CHAIRMAN HILL: Okay, so we'll come back here on
13 the 31st, so let's work back from the 31st. We'll come back
14 here on Halloween, unless you've all got young kids. You
15 should trick or treat the day before, then.

16 MR. ECKENWILER: Mr. Chairman, you could put this
17 on earlier.

18 (Simultaneous Speaking.)

19 CHAIRMAN HILL: It's okay. We'll figure it out.
20 The 31st. If we work backwards from the 31st, Mr. Moy.

21 MR. MOY: Okay, for point of discussion, continued
22 hearing on October 31st, responses, let's say, a week before,
23 so that would be October 17th -- let's say October 24th. We
24 can make that October 24th for responses. Let's say for
25 filings from DCRA and the property owner, we can make that

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1 October 10th. Would that be enough time for responses, two
2 weeks?

3 MS. LORD-SORENSEN: Is it possible to move it to
4 October 12th?

5 PARTICIPANT: It's up to the Board.

6 MS. LORD-SORENSEN: It's just a Friday.

7 MR. ECKENWILER: No objection from appellant.

8 PARTICIPANT: That's fine.

9 MR. MOY: Mr. Chair, filings on October 12th,
10 which is a Friday.

11 CHAIRMAN HILL: Sure.

12 MR. MOY: Then responses October 24th, okay?

13 CHAIRMAN HILL: Sure.

14 MR. MOY: Then we see everyone back Wednesday,
15 October 31st.

16 MR. BROWN: On the 31st, is that for testimony on
17 the material that's submitted? What do you envision?

18 CHAIRMAN HILL: I'm going to look to OAG or
19 whatever. I'm done with testimony. We just have some
20 clarification as to what we wanted to hear. Then I suppose
21 there would be a conclusion. We wouldn't take new testimony.
22 We would just be taking a conclusion from, I guess, the order
23 that I remember it going. Appellant goes first, then the
24 property owner, then DCRA, in terms of your conclusions. Is
25 that correct?

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1 PARTICIPANT: Do you anticipate the Board having
2 any questions of the witnesses on the new material?

3 CHAIRMAN HILL: I do.

4 PARTICIPANT: Then it would be a continued
5 hearing.

6 CHAIRMAN HILL: No, it's going to be a continued
7 hearing. The question from over there was whether or not
8 there would be testimony. The Board's not asking for
9 testimony.

10 PARTICIPANT: Well, there would be responses to
11 the Board's questions.

12 CHAIRMAN HILL: There would be responses to the
13 Board's questions. Is that clear?

14 MR. BROWN: Yes, it is, but not testimony --
15 (Simultaneous Speaking)

16 CHAIRMAN HILL: Not testimony. You guys aren't
17 come and give us anything new. Everything that we're getting
18 from you is what we may or may not have questions for you,
19 and we might not have any questions for you. I don't know.
20 But then you'll do your conclusions. Are we done?

21 MR. MOY: I believe so.

22 CHAIRMAN HILL: Okay, so we're going to break for
23 lunch, and nice seeing you guys. See you on Halloween.

24 (Whereupon, the above-entitled matter went off the
25 record at 3:00 p.m. and resumed at 3:38 p.m.)

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1 CHAIRMAN HILL: All right, Mr. Moy, whenever you
2 like.

3 APPLICATION 19819

4 MR. MOY: Thank you, Mr. Chairman. The hearing
5 is back in session, and the time, I believe, is 3:38 p.m.
6 I also believe that the next case application before the
7 Board, if I can have parties to the table to Case Application
8 No. 19819 of Southern Hills LP, as amended, for special
9 exceptions under the theoretical subdivision provisions of
10 Subtitle C, Section 305, under the new residential
11 development requirements of Subtitle U, Section 421, use
12 provisions of Subtitle U, Section 320.1(b), and pursuant to
13 Subtitle X, Chapter 10, for variance from the height
14 requirements, Subtitle F, Section 303.1, to demolish the
15 existing apartment houses and construct five new apartment
16 houses, 42 attached principal dwelling units, and a new
17 community service center, RA-1 zone.

18 This is at 4201, 4209, 4219, 4333, 4337, and 4347
19 4th Street Southeast and 304 Livingston Terrace Southeast,
20 Square 6167, Lots 45, 46, 47, 48, 29, 50 and 51. Mr. Chair,
21 in your case records, under Exhibit 37-C, there are two names
22 with applicants requesting expert witness status.

23 CHAIRMAN HILL: Okay, good afternoon. If you
24 could please introduce yourselves, my right to left.

25 MR. MERINGOFF: My name is Brett Meringoff. I am

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1 senior vice president of Winn Development Company, the
2 developer and owner.

3 MR. FERRIS: Lawrence Ferris, with the law firm
4 of Goulston & Storrs, on behalf of the applicant.

5 MR. BINETTE: Michael Binette, partner with the
6 architectural team, the architects for the project.

7 MS. NALE: Sheila Nale, project manager with
8 Bohler D.C., civil engineers for the project.

9 CHAIRMAN HILL: Okay. Mr. Ferris, I guess you
10 submitted the resume -- oh, no, they're both -- oh, yes,
11 that's right. You submitted the resumes for both Mr. Binette
12 and Ms. Nale. I think --

13 MR. BINETTE: That's correct, and we also have a
14 third expert witness we'd like to proffer.

15 CHAIRMAN HILL: Who is that?

16 MR. BINETTE: Mr. Dan VanPelt with Gorove/Slade,
17 as an expert in transportation engineering. He should be in
18 the book, in the Board's book.

19 CHAIRMAN HILL: Yes, he is. Is he here? All
20 right, there you go.

21 MR. BINETTE: He's hiding back there.

22 CHAIRMAN HILL: Right, I was going to say -- okay.
23 I don't have any concerns with admitting Mr. Binette and Ms.
24 Nale into our expert testimony book. Does the Board have any
25 other thoughts? Okay, we'll go ahead and do that, allow you

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1 to provide your expert testimony. Mr. Ferris, I guess you're
2 going to be presenting to us?

3 MR. FERRIS: Yes, sir.

4 CHAIRMAN HILL: I guess it's a pretty big project,
5 so we could be talking about a lot of different things, in
6 terms of some of the stuff you're requesting, but I really
7 just wanted to ask a little bit about the variance, in terms
8 of the height, if you could focus a little bit on that, and
9 then the -- I don't know whether ANC -- did we get a report
10 from them? You can speak to your interactions with the ANC.
11 I'm going to go ahead and just -- I'm just going to put 15
12 minutes on the clock, just so we know where we are, and you
13 can begin whenever you like.

14 MR. FERRIS: All right. Thank you, Mr. Chair and
15 members of the Board. We're happy to present to you, today,
16 the proposed redevelopment of the roughly nine-acre site of
17 the Southern Hills Apartment Complex. The applicant proposes
18 to subdivide the property in a single record lot, raise the
19 seven existing apartment buildings, and redevelop the
20 property with five multi-family buildings, 42 street-facing
21 townhomes, and a 25,000 square foot community center.

22 We're here today to request four areas of relief,
23 a special exception under Subtitle U, Section 421, for
24 approval of new residential development in the RA-1 zone;
25 second, a special exception under Subtitle U, Section

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1 320.1(b) for the proposed community center, and a special
2 exception under Subtitle C, Section 305, to allow multiple
3 buildings on a single record lot, utilizing theoretical lots,
4 and lastly, the area variance the chair noted for the maximum
5 permitted height for three of the five multi-family
6 buildings, due to the significant grade change from the
7 street level. I would also note that we have withdrawn our
8 request for the side yard variance.

9 There is a revised self-certification in the
10 record, at Exhibit 42. Lastly, before we dive into our
11 presentation, I'll just note that we do have a report in
12 support of the application from ANC 8D, that's at Exhibit 43
13 of the record, as well as a report from the Office of
14 Planning recommending approval, and a report from DDOT noting
15 no objection to the application.

16 Leading off our presentation will be Brett
17 Meringoff, from Winn Development, who will give you some
18 background on the property and Winn's history with the
19 property and the area and their extensive outreach with the
20 Southern Hills Tenants Association, which represents the
21 current residents.

22 Then we'll move over to Mike Binette, with the
23 architectural team, who will give you an overview of the
24 project and various elements of the project design, and can
25 also speak to the change in grade and walk you through the

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1 architectural elevations that, I think, illustrate that issue
2 best, as far as the height variance is concerned. Then
3 lastly, we'll wrap up with Ms. Nale, from Bohler Engineering,
4 who will outline the site plan, walk through some of the
5 physical challenges associated with the site, and also speak
6 to some of the comments submitted into the record regarding
7 tree preservation. Mr. VanPelt is also on hand to answer any
8 questions the Board might have regarding the transportation
9 aspects of the project. Before we begin, I don't know if the
10 Board would like a full presentation or truncated or has any
11 other questions before we jump in.

12 CHAIRMAN HILL: What you had proposed is, I think,
13 fine enough with me. I don't have any specific questions,
14 other than what I had originally mentioned. If the Board
15 doesn't have anything else, we'll just go ahead and have a
16 truncated presentation.

17 MR. FERRIS: Great. I'll hand things over to --

18 CHAIRMAN HILL: I'm sorry; Ms. White.

19 MEMBER WHITE: If you could address the specifics
20 of the community center, too, and how you're meeting the
21 criteria for that as part of the presentation, that would be
22 helpful.

23 MR. FERRIS: Certainly, thank you. With that,
24 Brett.

25 MR. MERINGOFF: Thank you very much for having us.

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1 Winn Development Company is part of the Winn Companies
2 organization. We're a 47-year-old company headquartered in
3 Boston, and I oversee our office here, based in the District,
4 and all of our development activities in the mid-Atlantic.
5 We are the largest affordable housing manager in the country.
6 It's how the company started and continues to this day, and
7 we are also one of the largest developers of affordable
8 housing in the country, and in the region.

9 We have owned this property for more than 30
10 years, since 1980s. This property is also actually sitting
11 in between two other properties that we also own, called
12 Atlantic Gardens and Atlantic Terrace. Those two properties
13 total another 303 units. Between the three properties that
14 we have in the area, that's a total of 558 units.

15 In those 558 units, all of them are under
16 project-based Section 8 rental assistance from HUD. Southern
17 Hills is 255 units, currently consisting of efficiencies, one
18 bedrooms, two bedrooms and three bedrooms. Every single
19 unit, as I said, is receiving assistance from HUD and has
20 been.

21 I want to make it clear that our intention, as
22 part of this redevelopment plan, is to preserve that housing
23 assistance for all of the residents. It is actually one of
24 the primary tenets of our development plan from when we began
25 this process several years ago. The majority of the

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1 residents also have incomes that are roughly around 15
2 percent of the area median income, so this housing assistance
3 that they're receiving from HUD and the house, period, is
4 critical to their lives. We began this process, as I
5 mentioned, several years ago. It was more than three years
6 ago, actually, through outreach with the Southern Hills
7 Tenant Association.

8 They are organized, and they are led by their
9 president, who actually also happens to be our ANC
10 commissioner of the single member district for this property.
11 When we began the process, of course, we had to make
12 assurances and let the residents know that we were in this
13 with them. This is their home.

14 It was important to us that we didn't tell them
15 what the design of this should look like or should be, but
16 that they tell us. Then within that, of course, we have to
17 make it all work, as the developer and the owner. Another
18 priority of this property was to alleviate the challenges of
19 the current design. These properties were built in the
20 1940s.

21 Sorry, these buildings were built in the 1940s.
22 As you can see by the layout of the existing -- the existing
23 layout of the site, they are somewhat closed off or closing
24 off the green space between the buildings. What's actually
25 happening -- there's a substantial grade change on the site,

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1 which our expert witnesses will get into more technically.
2 What's really happening is that the green space, and also the
3 parking, as you see, is really just an inefficient and
4 undesirable layout, so it's not being utilized effectively.
5 We have children who are playing in the parking lot because
6 they can't find another level area or close to level area to
7 throw a football. Additionally, we are also very concerned
8 about securing the site.

9 There has been crime in the public space and along
10 3rd and 4th Street that we are constantly battling. We can
11 control what happens on our site. We work very closely with
12 the district commander and the Metro Police, as well as the
13 council member, but of course, we are constantly battling
14 crime of the neighborhood.

15 So part of our design idea with the tenant
16 association was that if we can create a more -- design that's
17 more conducive to providing visibility through the site,
18 throughout the site, and also connecting it to the street,
19 in order to create what we're calling eyes on the street,
20 that would also help give us some support in securing our
21 property and our residents and keeping them safe.

22 Additionally, as I mentioned, these units are for
23 families. We have a number of families with children. With
24 the efficiency units, we're looking to actually remove those
25 and turn them into one bedrooms. We're not going to replace

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1 the efficiencies. Also, we're going to increase the number
2 of three-bedroom units, so that we can make it better for
3 larger families. That increase is going from 20 to 47 units.
4 Additionally, as mentioned earlier, there is a community
5 building in the center, close to the center of the site.
6 That is a focal point and really, we think, a critical piece
7 to redeveloping the site.

8 The residents made it clear to us early on that
9 they would like to have additional services available to them
10 that are obviously easy to get to. Having it onsite couldn't
11 be more convenient. Also, they are looking for a community
12 or multipurpose room for the tenant association to hold
13 events, and also be much more active and bring the community
14 together.

15 Services or programs that we're envisioning are
16 learning center, daycare. We're also envisioning
17 entrepreneurship programs, and we're actually in discussions
18 with local universities, prominent universities, who are
19 interested in -- their community outreach and affairs
20 departments who are interested in or expressing interest in
21 working with us and providing services or offering resources
22 to us, in order to provide the services.

23 The financing for this will be driven by an
24 application to the Department of Housing and Community
25 Development for housing production and trust fund dollars,

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1 as well as HUD, which will follow. That is really the next
2 critical step, once we can nail down the entitlements. That
3 application is due at the end of September, so September
4 29th. With that being said, I'll pass it on to the next
5 witness.

6 MEMBER TURNBULL: Before you pass it on, I wonder,
7 could you touch upon -- and maybe you're going to -- is on
8 phasing, how you would --

9 MR. MERINGOFF: Sure. Right now, we are intending
10 to make an application to DHCD for Phase 1. The phasing will
11 -- so as it's laid out in the diagram, it will begin -- it's
12 currently planned to begin in the center of the site. The
13 reason is more for the construction logistics and bringing
14 the infrastructure in, but we wanted to make sure that we are
15 also getting the community building included as part of the
16 first phase, so that is up and running as soon as we can
17 possibly get it done.

18 I did fail to mention earlier that when the
19 neighboring properties -- just for a second, I'll mention we
20 completed a substantial rehabilitation, also through DHCD
21 financing, that completed last year. Those 303 units, we
22 actually relocated all of the households there, pulled them
23 out of the units for a temporary or short period of time.
24 We identified housing in the neighborhood. We provided all
25 of the resources, paid for all of the costs and expenses, did

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1 as best we could to minimize the disruption in their lives.
2 Obviously, it still is an undertaking for them -- and we
3 brought them all back. That was actually, at the time we
4 started, more than 270 households. Want to make it clear
5 that we are experienced in doing this, having just completed
6 it on these two properties, and think very carefully about
7 relocation, and also work with the residents very closely in
8 doing that and putting together the plan.

9 The tenant association actually has put together
10 a relocation committee, consisting of nine individuals, nine
11 residents, so we are working with them very closely. The
12 relocation will begin in the middle, with Phase 1A. We're
13 going to -- we will relocate those residents, and while they
14 are -- we'll use either vacant units on site, to the extent
15 there are not enough, then we will move to off-site units.
16 Again, that's all --

17 MEMBER TURNBULL: Off-site units are close by?

18 MR. MERINGOFF: Yes, typically, the way that we
19 did it on previous projects is we worked with the tenant
20 association to identify nearby properties, and each household
21 is actually offered more than one option. Typically, we keep
22 it two, but yes, they are given two options of properties
23 that are already approved by the tenant association. Then
24 once we complete Phase 1A, we will bring those residents
25 back, and we will also then relocate Phase 1B. We will have

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1 a couple of extra units on Phase 1A that we can use as
2 relocation units, but Phase 1B residents will also be
3 relocated then, through a combination of onsite and offsite.
4 Then we bring them back. We expect that they will be
5 relocated for roughly 24 months. We are working with our
6 general contractor as we get further in the process, but
7 we're working on bringing that timeline down.

8 MEMBER TURNBULL: Thank you.

9 PARTICIPANT: Just to finalize a couple of points
10 of the phasing, before we go off, what the new design
11 anticipates is actually -- 24 months is actually a phase back
12 in relocation, phased in vis-a-vis smaller buildings allow
13 for quicker move-ins for greater portions of the population
14 as each smaller building is completed.

15 PARTICIPANT: Any other questions from the Board
16 before we -- with that, Mr. Binette.

17 MR. BINETTE: Again, thank you, Mr. Chair and
18 members of the Board. We're very excited to be here because
19 we really feel we have -- this provides a significant
20 contribution to the community and really fills in what is
21 kind of a missing tooth, based on what we recently completed
22 in the renovations in Gardens and Atlantic Terrace.

23 What you see here is a peninsula of land between
24 these two that allows us, again, to complete that puzzle and
25 when all finished, you're talking about over 1,000 residents

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1 and over 600 children in this overall Winn community. This
2 sets a little bit of the context, in terms of scale, as we
3 get to the discussion about the relief we're seeking. We
4 have the Hendley Elementary School behind it, majority of our
5 600 students have come through there. We're surrounded by
6 not just Atlantic Terrace and Atlantic Gardens, of that
7 scale, but towards the right, on the screen, we really are
8 a community that is of analogous scale of what's going on
9 around us.

10 We try to work within that context. We are
11 seeking some relief, which I'll speak to more specifically.
12 We've really strived to maintain a community that fits in
13 from a scale, from an interaction, and overall design
14 perspective. A couple of things. What happens on this site
15 is it is somewhat of an island.

16 As you drive down 3rd Street, around Livingston
17 Terrace and 4th, you see the site is not just a peninsula,
18 but it's kind of a mesa up on a hill where these buildings
19 are isolated from the streets. That eliminates any ability
20 to have any kind of pedestrian interaction. Sidewalks here
21 are really just transitional.

22 What we want to do with our design, and why we're
23 seeking the relief, is to really engage this site, create
24 more porosity, as some of the points were brought out by
25 Office of Planning, really get these three properties and the

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1 overall community acting as one. You can see, in some of the
2 existing -- in these existing photos, the past needs for
3 security in terms of fencing. That has been a necessary
4 solution here, but it's somewhat archaic, in terms of
5 community planning and how do you make a place feel safe?
6 How do you make a place feel safe is you have eyes on the
7 sidewalk. You have people walking on the sidewalk. You have
8 direct entry units, where there is constant pedestrian
9 traffic.

10 In that sense, you can see the entire site is
11 really up on this grade. Those elevational changes from the
12 sidewalk up to the buildings vary from 10 to 30 feet around
13 the perimeter of the site. In our new scheme, what you see
14 before you is a variety of building types to really respond
15 to the various needs of the residents.

16 You've got seniors who really need and prefer,
17 historically, flats, as they age -- as folks age in place.
18 The mid-rises that you see, A, B, C, D, and E, are all
19 mid-rise buildings, center entrance lobbies, elevators,
20 direct access to internal drives and walkways, and also what
21 you see and what we'll be seeking relief from is C, D, and
22 E.

23 These sidewalks are basically -- these buildings
24 are really nestled into the hillside, so that from the inside
25 of the property, at the high point, it's a three-story

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1 building. The grade doesn't go up. The buildings don't get
2 taller. They get down; they drop to respond to the
3 corresponding grade to the sidewalk. Around the perimeter
4 of this site, the townhomes and these mid-rise buildings all
5 have direct entries, so each resident has its own front door.
6 It has their own front door. We think that is extremely
7 conducive to family living in the townhomes, but even in the
8 mid-rises, where we've got the two and -- we have 42
9 townhomes that we're proposing for three bedrooms.

10 That leaves us five units of three-bedroom flats,
11 which we understand and know there will be a need for people
12 that don't want multi-story housing, despite having a family.
13 The rest of the two bedrooms, again, smaller family units
14 that prevent kids from basically hanging out in the
15 corridors, hanging out in the elevators.

16 It really is conducive to having your own home,
17 and your own front door. We think that this design strives,
18 and hopefully achieves, a real community building, not just
19 for Southern Hills, but for the adjacent community. Again,
20 the scale of the buildings, they are fatter than some of the
21 '40s vintage buildings surrounding us.

22 The idea is these are more traditional and more
23 efficient double-loaded corridors that you're seeing, in
24 terms of trying to make the structural efficiencies a little
25 more valid today. Some of the views that get you the ideas,

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1 the three mid-rise buildings. Again, it's an extension of
2 the townhome type living, these entries. You can see, in the
3 back of these townhouse unit, they're two stories. On the
4 front, they're three because they drop, again, to match the
5 contour of the site. We're asking for the relief on building
6 height on Building C, D, and E, strictly as a result of the
7 unique topographical changes on this site here. We've taken
8 a very conservative approach to this.

9 The measurements we've taken are from the curve
10 of the sidewalk, so, in effect, though, we are asking for
11 relief in those three buildings. Building C, we're asking
12 for a height of 48 feet 11 inches, Building D, 44 feet 5
13 inches, and Building E, 46 feet, 11 inches.

14 Again, we think this is a unique condition, and
15 we think that, and believe, that the overarching design goals
16 are not -- while they do not meet the letter of the zoning
17 regulations, we think certainly seek to maintain the spirit
18 of what it's trying to accomplish. We just think the unique
19 characteristics of this site pose a unique challenge.

20 CHAIRMAN HILL: Okay, Mr. Binette. I appreciate
21 it. Mr. Ferris, I'm just trying to -- I was trying to kind
22 of focus a little bit more on the request for leave
23 concerning the height. I've had most of my questions
24 answered, so unless the Board needs to hear from the civil
25 engineer, at this point, I'm just going to turn it over to

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1 the Office of Planning, but go ahead if you have a question.

2 VICE CHAIR HART: Yes, actually, I didn't see any
3 site sections to understand -- the issue that you're -- the
4 site sections, in terms of the entire site. I know you have
5 building sections or building elevations that kind of show
6 through one building or another, but it was hard for me to
7 kind of gauge what the existing topography was versus what
8 the -- I see the photographs, but it's always helpful to
9 understand what that is, in terms of a section.

10 You kind of say okay, it's starting at this, and
11 then oh, I see, it's now having to do this. You can't do
12 this because of whatever. I'm assuming that there's kind of
13 a little plateau area, and then the ground actually moves
14 away from that plateau area on either side, which is why
15 you're calling it a peninsula.

16 MR. BINETTE: That's exactly right. Around the
17 three sites, that's exactly the case. It's a relatively flat
18 top, basic mountaintop here. It does fall slightly towards
19 Livingston Terrace, but you have a consistent slope around
20 the whole perimeter of the site.

21 VICE CHAIR HART: So on either side, east and west
22 of the peninsula, you said the drop-off is how much?

23 MR. BINETTE: It varies from 10 to 30 feet around
24 the perimeter of the site, from the side of the curb, from
25 the curb.

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1 VICE CHAIR HART: So what you're requesting is --
2 because you are trying to keep with the existing topography,
3 you have to move the buildings back, so that would then
4 create a taller building? That's the part that I'm trying
5 to -- you could always recess a building into the ground, so
6 that -- or enough so that you would be able to gain some of
7 the -- you would be able to not have to request as high a
8 building or more -- as much relief as you are. I'm just
9 trying to kind of get to that request.

10 MR. BINETTE: That's exactly right. I apologize
11 that we did not provide overall site sections, but we really
12 tried to focus on the three buildings where we were seeking
13 the relief.

14 VICE CHAIR HART: So this is the building that is
15 -- okay, D, so this is to the east, kind of mid-Phase 1A,
16 kind of east of that.

17 MR. BINETTE: Yes, along 4th Street. We focused
18 on each individual building, in terms of what was actually
19 going on with the topography. As you can see, on one side,
20 it's three stories and only 33 feet tall, but from the
21 regulations, BHMNP's starting point of the curve, those
22 curves are dropped so far down, so again, it's not the
23 building got taller, the building kind of dropped. The
24 façade got longer, if you will.

25 VICE CHAIR HART: I understand that. I guess,

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1 again, I think it would have been helpful to have where the
2 elevation -- where the topography -- kind of a dotted line
3 that shows this is what the topography started at, so this
4 is what we're having to do. You have to deal with cut and
5 fill and all that to deal with where these buildings go on
6 the site, but right now, I'm a little bit -- not sure of what
7 you started from to get to where you are. I kind of guess
8 it, but I'd rather not kind of guess it.

9 MR. BINETTE: Again, apologize for not providing
10 those through-cut sections. It does tend to be a typical
11 solution. The elevation on the -- what you're looking at
12 here, these elevations at Level 2 at 135, that's pretty much
13 a constant once you get up the hill from the perimeter. That
14 relationship, at least, is very much a constant for all the
15 buildings around the site, even the townhomes. The townhomes
16 are a story shorter internal to the site.

17 VICE CHAIR HART: Is the 123-6-124, is that the
18 existing --

19 MR. BINETTE: Sidewalk.

20 VICE CHAIR HART: But is that the existing --
21 that's an existing sidewalk.

22 MR. BINETTE: The public curb that runs the
23 perimeter of the property.

24 VICE CHAIR HART: Okay.

25 MR. BINETTE: We have actually not pushed -- we've

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1 done exactly what you just suggested, where the building is
2 nestled into the hill, but we've tried to bring it forward
3 to engage better with the street, as opposed to back more
4 towards the site, which has enabled a few things. Again, we
5 believe it's got better interaction for the sidewalk, and
6 it's created a much nicer variety and expanse of green spaces
7 within the property, itself.

8 VICE CHAIR HART: So you're also telling me that
9 the topography that you see here is the actual topography,
10 that's now? You're seeing a dip from 135 to 124 on the
11 northern side of this -- actually at both the east and west
12 elevation.

13 MR. BINETTE: That's generally about what is there
14 now.

15 VICE CHAIR HART: So you're saying that's what
16 it's -- what is kind of almost existing.

17 MR. BINETTE: Generally speaking, yes. That's the
18 exactly the reasons you talked about, the cuts and fills at
19 the same time.

20 VICE CHAIR HART: Okay, you can continue. I don't
21 have any other questions.

22 CHAIRMAN HILL: I'm going to turn to the Office
23 of Planning.

24 MS. ELLIOTT: Good afternoon, Chairman Hill,
25 members of the Board. I'm Brandice Elliott, representing the

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1 Office of Planning. I suppose in the interest of time, I'm
2 happy to stand on the record of OP's report. We are
3 recommending approval of all of the relief that's been
4 requested, minus side yards, since that has now been removed
5 from the proposal, but the height, number of stories, and
6 then also the special exceptions for a new residential
7 development, the community center, and the theoretical
8 subdivision. If there any questions, I'm happy to address
9 them.

10 CHAIRMAN HILL: Does anybody have any questions
11 for the Office of Planning?

12 MEMBER WHITE: Just quick questions. Could you
13 just quickly explain how they met the variance criteria?

14 MS. ELLIOTT: Sure. I think that the applicant
15 has provided some information, which does kind of mirror OP's
16 analysis. Essentially, there is an existing grade around the
17 property, creating this peninsula-like situation. It ranges
18 -- building height is measured from the center of the street.
19 So from the center of the street, there is an increase in --
20 the land sort of fluctuates between 10 and 30 feet in rise.

21 We think that given that topography -- excuse me;
22 the fire engine kind of threw me off. We think that actually
23 creates an exceptional situation that results in a practical
24 difficulty, understanding what the applicant is trying to
25 achieve with this development, bringing some of the buildings

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1 closer to the street, so that they interface more the public
2 realm, which actually creates better green space within the
3 site. We think that the few feet of relief that's being
4 requested is actually fairly -- it's consistent with the
5 grade differences that are already present on the site,
6 ranging from 10 to 30 feet. In general, we feel that the
7 topography results in that -- provides that exceptional
8 situation. I hope that clears it up. Sorry.

9 MEMBER WHITE: Maybe I missed it, but the
10 community center portion of it, can you address just the
11 non-profit aspect of how that's going to be handled going
12 forward? Because within one of the sections, the special
13 exception criteria, it requires that it not be run as a
14 profit type of entity, and that the income would not revert
15 back to the developer. I just wanted to make sure I could
16 check that box.

17 PARTICIPANT: Certainly, Brett can address that.

18 MR. MERINGOFF: Yes, this is meant to be a
19 building serving the low-income residents in the community.
20 These services are consistent with services that we provide
21 at our neighboring properties, and some that are being
22 provided in the limited space that's onsite are of no cost
23 to the residents.

24 VICE CHAIR HART: It will be operated as a
25 non-profit organization, correct?

1 MR. MERINGOFF: Yes, it will be.

2 CHAIRMAN HILL: Okay, great. Is there anyone here
3 wishing to speak in support of the application? Does anyone
4 here wish to speak an objection to the application? Is there
5 anyone here from the ANC? Okay, is there anyone here from
6 the ANC? Is there anyone here wishing to speak in support?
7 Is there anyone here wishing to speak in opposition? I'm
8 sorry; you can come on forward. I just didn't know what
9 three of those things you were here for.

10 MS. BUSHONG: Undeclared.

11 CHAIRMAN HILL: Okay, undeclared. Okay, come on
12 forward. You can sit over here on the right, if that's okay.
13 Okay, could you please introduce yourselves, from my right
14 to left?

15 MS. BUSHONG: Yes, good afternoon, my name is
16 Dolores Bushong.

17 CHAIRMAN HILL: Could you say that again, please?
18 I'm sorry.

19 MS. BUSHONG: Delores Bushong.

20 CHAIRMAN HILL: Bushong?

21 MS. BUSHONG: Yes. I think you should have my
22 testimony. If you don't, I might have some copies. You have
23 it?

24 CHAIRMAN HILL: We have it. Thank you.

25 MS. BUSHONG: Great, okay. Should I begin, or

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1 should --

2 CHAIRMAN HILL: No, just let me get the
3 introductions first.

4 MS. TADDEI: I'm Kristin Taddei. I'm the planning
5 advocate with Casey Trees. I also submitted our testimony
6 on the record, but wanted to provide some copies in color,
7 just in case you didn't have those.

8 CHAIRMAN HILL: Okay, Ms. Bushong --

9 MS. BUSHONG: Bushong.

10 CHAIRMAN HILL: I had a tough time today, sorry.
11 I'm going to go ahead and put three minutes on the clock for
12 you for public testimony, and you can begin whenever you
13 like.

14 MS. BUSHONG: Okay, thank you. As I said, my name
15 is Delores Bushong, and I'm here to talk about the trees on
16 the site. I've lived in Ward 5 for the past 26 years, but
17 I am one of three community representatives Urban Forestry
18 Advisory Committee, and a volunteer with Casey Trees. I
19 wanted to commend Winn Companies for having landscaping,
20 including trees, in this necessary redevelopment of
21 affordable housing.

22 I've looked at the plans and walked the site to
23 look at the trees that are currently on the property.
24 Unfortunately, most trees will be removed as new buildings
25 will be taking their places. However, there are some mature

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1 trees that can be kept if Winn makes small changes in their
2 plan. The commons building, which is the community building,
3 should be an asset of the redeveloping community, but it will
4 be a much more inviting place if the existing three trees
5 that are located in green space are kept and protected during
6 construction. Two are near the roadway, around the community
7 center, and their critical root zones may be compromised
8 unless the roadway is altered by a few feet.

9 The other tree, an elm, which has been
10 misidentified as a sugar maple, would require shifting of
11 only one unit to the other side of this cluster of townhomes.
12 You may be asking why it makes a difference to keep these
13 trees, when Winn will be planting more?

14 The few trees I have mentioned are mature, large
15 canopy trees, which can provide shade for people when they
16 come to the community building, which newly planted trees
17 can't for many years. I brought an example. One of the
18 London planetrees near that building is 68 inches in
19 circumference. This is on brown paper. This would be the
20 trunk.

21 CHAIRMAN HILL: You just have to -- there's a
22 camera. If you want to ask Ms. Taddei to stand over there,
23 over to the left there, there's a camera. Then everyone
24 watching at home --

25 MS. BUSHONG: Okay, so if you look at that, that

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1 tree, according to the National Society of Arboriculture,
2 uses a formula to put this tree at about 74 years old. The
3 new trees Winn will plant will probably be what we call two
4 to three-inch caliper. That's, again, the inches. So that
5 small orange dot on there would be the size of the trees
6 they're planting. If you can just visualize how the canopy
7 -- the shade would be for the large tree, for the London
8 plane, and the shade that would provide, but the shade that
9 very small tree that's going to be planted -- I'm glad
10 they're planting it, but my point is the number of years it
11 will take for it to provide shade. It will take many, many
12 years for the trees planted by Winn to provide the
13 environmental benefits of mature large canopy trees already
14 on this site.

15 Another redevelopment of affordable housing only
16 five minutes away also included new trees. In an article in
17 the Washington Post, on September 2, 2018, titled, "I don't
18 want to Die: as the Country Bakes, studies show poor city
19 neighborhoods are often much hotter than wealthy ones."

20 One resident sitting outside with friends told a
21 reporter all the trees are gone now, and it's way hotter now.
22 I urge Winn to keep these mature canopy trees that will
23 provide shade for the residents who come to enjoy the green
24 area around the community building. Thank you.

25 CHAIRMAN HILL: Thank you. Does the Board have

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1 any questions for the witness? Sure, go ahead.

2 VICE CHAIR HART: Could you just describe where
3 that tree is?

4 MS. BUSHONG: That tree is -- if you look at the
5 community center, and you see the one that's sort of shaped
6 like this, the tree is about right here. This is that area
7 of the community center, where my arms are, and it's right
8 about here, at this corner, near the roadway, but I think
9 it's in the green space.

10 CHAIRMAN HILL: Do you guys know what she's
11 talking about? I know you just pulled one up. You actually
12 can touch things down there that mark it somewhere. Right
13 there, to your right, I think there's something you can mark
14 if you touch the screen or circle what -- there you go.
15 There's a tree there now. Is that what the question --

16 VICE CHAIR HART: Yes, I was just wondering where
17 it was with respect to where the community center is going.

18 MS. BUSHONG: It's in the green space, but it's
19 near the roadway.

20 VICE CHAIR HART: This looks like it would
21 actually be impacted by the townhouses more so than the
22 community center, but I understand your point that there may
23 be an impact with the new development.

24 MS. BUSHONG: Right.

25 MEMBER TURNBULL: Can you pull up a plan of the

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1 new development, maybe? Okay, so that's where the tree is.

2 CHAIRMAN HILL: So the tree's remaining?

3 MS. NALE: Currently, right now, we do not have
4 it shown as remaining. As we had discussed with Casey Trees
5 on a site visit, and also, we're going to further investigate
6 the potential to have it be remaining.

7 There are some constraints with keeping an
8 existing tree in existence, based on the limits of
9 disturbance from the center of the tree, which is 15 feet,
10 which obviously that's in proximity of, and also making sure
11 that you don't disturb 40 percent of that tree's drip line.
12 So that is one thing that we would have to investigate to see
13 the feasibility of that in conjunction with the layout and
14 the development.

15 CHAIRMAN HILL: Okay, so that puts you on, Ms.
16 Taddei. I'm going to put three minutes on the clock for you,
17 as well.

18 MS. TADDEI: Can I actually request five minutes,
19 since I'm representing Casey Trees, and because I know I'll
20 go over three?

21 CHAIRMAN HILL: Sure. That's fine.

22 MS. TADDEI: Thank you. Good afternoon, Board
23 members. My name is Kristin Taddei, and I'm the planning
24 advocate with Casey Trees. As you may know, Casey Trees is
25 a Washington, D.C. based non-profit. It's our mission to

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1 restore, enhance, and protect the tree canopy of the nation's
2 capital. To fulfill this mission, we plant trees, monitor
3 the city's tree canopy, and work with decision makers,
4 developers, and residents to encourage tree planting and
5 protection.

6 We've been in touch with the development team
7 regarding the 24 special trees and two heritage trees at
8 Southern Hills, and our goal is to ensure that mature,
9 healthy trees are preserved, where possible, and that the
10 level of tree canopy after development exceeds the tree
11 canopy that exists today.

12 We were pleased to hear that the development team
13 has the support of the community for this project, and that
14 residents will be able to remain in their current homes until
15 new housing is available. We also understand that this
16 phased plan makes it difficult to preserve existing trees,
17 in some cases.

18 At a site visit on August 8, 2018, the development
19 team shared their plans to protect the critical root zone of
20 the two heritage trees on this property. That's at Figure
21 1, if you'd like to look at that. They've taken exceptional
22 care to do so, and we are very impressed with the steps
23 they've taken in this case. In addition, our independent
24 analysis shows that once trees in the landscaping plan reach
25 maturity, tree canopy will more than double on this site.

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1 These trees will provide a valuable community amenity, while
2 managing pollution, flooding, and erosion on this hilly site.
3 We do have four requests that we would like to bring to the
4 BZA today. I want to emphasize that our intent is not to
5 delay this project.

6 We understand that residents and the development
7 team would like this project to move ahead quickly. Rather,
8 we would like to request two small plan modifications and two
9 commitments before the BZA moves to approve this project.
10 These were sent to the development team a few weeks ago,
11 along with some other requests that the applicant kindly
12 agreed to, though we never heard back about these specific
13 requests.

14 Figure 3 will be helpful, I think, in illustrating
15 some of the points I'm going to make. We believe it would
16 be possible to relocate one of the proposed units along 3rd
17 Street Southeast to in Building G-6.

18 It appears that this modification would not impact
19 the critical root zone of the nearby heritage tree, and it
20 would allow the development team to preserve Special Tree
21 1670, which is an elm tree in very good condition. In
22 addition, slightly changing the orientation of the parking
23 lot entrance from 4th Street Southeast would allow the
24 development team to retain Special Tree 1666, a London
25 planetree with a very high, 85 percent condition rating. I

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1 think that's the London planetree that you've drawn here.
2 We also believe it would be possible to protect Special Tree
3 1667. This is a sweet gum tree with a 70 percent condition
4 rating, and it falls in green space near the intersection of
5 4th Street Southeast and Livingston Terrace Southeast.

6 We'd like to request that the development team
7 commit to protecting this tree, using metal tree protection
8 fencing and signage, per DDOT's tree protection requirements.
9 Finally, we'd like to request protection of Special Tree
10 1725. This is a very large healthy red oak, with an 80
11 percent condition rating, which is at the very edge of the
12 property, near 3rd Street Southeast.

13 In fact, there are two other mature oak trees on
14 the property, not included in the tree survey, that do not
15 interfere with the development, and we'd like to see these
16 trees preserved, as well. The development team plans to
17 install bio retention near these trees, but retaining them
18 -- and they're currently accepting over 10,000 gallons of
19 storm water per year, each -- will only strengthen this
20 robust storm water management plan.

21 Taking these actions would add over 5,000 square
22 feet of shaded green space, and even though we're only
23 requesting that 4 of the 24 special trees on this property
24 be retained, we urge the development team and the BZA to
25 consider these trees a significant community benefit. We had

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1 some time to discuss with the development team, during the
2 appeal earlier today -- we had a lot of time to talk about
3 it, and we appreciate them coming up to us to talk about it.

4 We understand that there are some site constraints
5 involving grading that may make protecting these trees
6 challenging, but we'd really like the development team to
7 make a good faith effort to explore these options and let us
8 know what they find. I'd also just like to note that over
9 the past month, the development team committed to including
10 trees in rain gardens and bio retention, where possible, and
11 working with Casey Trees to create a diverse palette of trees
12 that increases resilience.

13 We're appreciative of the developer's openness to
14 input and the commitments they've made throughout this
15 process, and we look forward to the BZA's review of the four
16 requests above. We're confident that if our suggestions are
17 implemented, this development will be a shining example of
18 environmentally conscious design that also meets the needs
19 of the community. Thank you for the opportunity to testify
20 today.

21 CHAIRMAN HILL: Okay, thank you, Ms. Taddei.
22 You've been before us before, correct?

23 MS. TADDEI: I have.

24 CHAIRMAN HILL: I forget which one most recently
25 you were here for.

1 MS. TADDEI: I get ZC and BZA mixed up. It might
2 have been St. Pauls.

3 CHAIRMAN HILL: We're the better looking one.

4 MS. TADDEI: This is true.

5 CHAIRMAN HILL: I'm going to tell Chairman Hood.

6 MS. TADDEI: I think it was St. Pauls townhomes.

7 CHAIRMAN HILL: Does anybody have any questions
8 for the witness? Okay, thank you all very much.

9 MR. FERRIS: Could we have the opportunity to
10 respond just briefly?

11 CHAIRMAN HILL: Yes, I usually ask people to go
12 away from the table, but if you want to, I guess you're
13 welcome to do it now, Mr. Ferris. You can sit right there,
14 I guess. It's not going to be hostile. Go ahead, Mr.
15 Ferris.

16 MR. FERRIS: It will not be hostile. We've
17 already begun discussions, as Ms. Taddei noted, but I'll let
18 Ms. Nale, from Bohler, walk us through the trees and some of
19 the issues.

20 CHAIRMAN HILL: Okay, great, thank you.

21 MS. NALE: Great, thank you. Again, I appreciate
22 the efforts that we have had with Casey Trees. I was present
23 on the site visit, as well as the developer, with Casey
24 Trees, on August 8th, to walk through the site and have the
25 site plan hand in hand to walk through some of the challenges

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1 that we experienced with grading and laying out this design
2 to meet the overall intent of the project community. I'm
3 going to walk through, tree by tree, and discuss some of the
4 constraints and some things that we could be accommodating
5 into looking into the feasibility of maintaining those trees
6 and their health, if possible.

7 To lead off with that, we have taken the trees
8 into great consideration with our overall design. The plan
9 that I have up, if you look in the northeast corner, just to
10 show the commitment that the development has towards
11 maintaining the trees, there's a shaded area. I should
12 actually be using this screen.

13 VICE CHAIR HART: Northeast is --

14 MS. NALE: It's northwest. It's right here.

15 VICE CHAIR HART: That would be south.

16 MS. NALE: Yes, northeast on the plan view. I
17 apologize for that. It's the southwest corner of the site,
18 northwest on the plan view. The corner of the site there,
19 we had two heritage trees onsite, and we did go to the
20 efforts of getting them tested, just to confirm their health,
21 and also having a specialist go out and map the root zones,
22 just to ensure that those trees would survive. We actually
23 accommodated the site layout to make sure that we weren't
24 impacting any of that root zone in development and in our
25 phasing period. That was done for both heritage trees onsite

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1 and accounted for in the current design that you see. The
2 four trees that Casey Trees is requesting us to look at, the
3 one in question is this tree right here, in the corner,
4 correct?

5 If you look at our site plan, we do have some
6 proposed trees in that area. We can commit to looking into
7 the feasibility if the root zones do not have an impact on
8 the adjacent developments. As you see here on the screen,
9 it doesn't necessarily require shifting the buildings, but,
10 again, it goes back to seeing where the roots are actually
11 at, and if any development or phasing is going to cause
12 impacts to those root zones, where the trees actually
13 wouldn't survive construction.

14 The second tree in question, which we talked about
15 briefly, was the tree near the existing building and current
16 conditions, but in the future, it is where the community
17 center is, and there are proposed trees. That, again,
18 relates to the fact that we can examine the feasibility, and
19 we can provide some input on if the building footprint was
20 modified, if there was any chance that we could keep that
21 without imposing the tree. We are in agreement that it would
22 be a beautiful feature to maintain.

23 CHAIRMAN HILL: Ms. Nale, I'm just going to
24 interrupt you one second. The first case went a lot longer
25 than I thought it was going to go, so I -- the general -- I

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1 guess that provided an opportunity for you guys to kind of
2 talk a little bit more.

3 I don't know what the Board's thoughts are, and
4 we could talk about it a little bit more, in terms of
5 discussion, but this -- you have now committed to -- the
6 developer has committed to doing what they can to provide
7 conditions for these particular trees to remain. Is that
8 what came about from your discussions, or just overall was
9 do your best to retain the trees that are -- I'm trying to
10 understand what you guys talked about today.

11 MS. NALE: Our agreement is to examine if it's
12 feasible, and if it is, we could commit to keeping them, but
13 we cannot make that judgment without further design analysis.

14 CHAIRMAN HILL: Okay, so you are committing,
15 before the Board, that you're going to have a good faith
16 effort to go forward to see if it's feasible, and if it is
17 possible, will do that.

18 MS. NALE: Correct.

19 CHAIRMAN HILL: The reason why I'm saying that's
20 great -- you're not here in support or opposition. This has
21 already gone -- I don't know what we're going to deliberate
22 now, but it has already gone through the ANC, and they're
23 doing a lot of different things to work through the standards
24 with which we need to approve or deny this. So to now come
25 up with conditions, it would be a more complicated process,

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1 in terms of -- what you're speaking of are conditions. It
2 would be tied somehow to what the order is. We're going on
3 with what the developer has now put forward as their good
4 faith effort, and I appreciate that you have as much time as
5 you had today to talk. So thank you for coming down.
6 Outside of that, is there anything else that you'd like to
7 add, Mr. Ferris?

8 MR. FERRIS: No.

9 CHAIRMAN HILL: Does the Board have any further
10 questions of anyone?

11 VICE CHAIR HART: Yes, I keep on going back to the
12 topography issue. I just want to make sure I also understand
13 this. You're measuring each of these buildings, the
14 buildings that you -- well, actually, each of the buildings
15 from 3rd and 4th, but you're actually -- or you're actually
16 measuring it from the parking areas, the parking lanes?

17 PARTICIPANT: Mr. Binette can speak to that, but
18 I believe we're measuring from the building face closest to
19 the street lot line. Is that correct?

20 MR. BINETTE: That's correct.

21 VICE CHAIR HART: So it's not the actual -- where
22 the parking areas are. This is from 3rd and 4th.

23 MR. BINETTE: That's correct, from the public
24 streets and Livingston Terrace.

25 VICE CHAIR HART: Or Livingston Terrace. Is that

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1 Livingstone? I think so. Okay.

2 MEMBER JOHN: Mr. Chairman, I have one question.
3 I am still struggling with the need for the additional
4 building height for those three buildings. If you could just
5 step me through how you measured that height for those
6 particular buildings and how the relief is necessary because
7 of the topography that affects those three buildings.

8 MR. BINETTE: What happens -- and again, I
9 apologize for not having a site section because that really
10 would clarify it. If you envision, this whole topography
11 issue has to do with -- if you picture a flat piece of land,
12 the height gets -- the height request gets tougher because
13 of how much the grade actually falls away to connect to the
14 street.

15 If you picture a plateau and the side is falling
16 in around it, that's what has created the variation in our
17 building height request, just based on the existing
18 topography and how it falls away from the buildings as
19 they're set into the site.

20 MEMBER JOHN: But for those three buildings is
21 what I'd like you to address.

22 MR. BINETTE: Certainly.

23 MR. FERRIS: Maybe you should walk through the
24 architectural elevations that capture that dimension as the
25 grade drops as you --

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1 (Simultaneous Speaking)

2 MEMBER TURNBULL: Ms. Nale, could you clear your
3 drawing? Just hit clear.

4 VICE CHAIR HART: We can clear it. Anybody can
5 clear it.

6 MR. BINETTE: What happens here, to use Building
7 D as an example, because the section you have before you,
8 each of the buildings has the same case, where they --

9 VICE CHAIR HART: Can you hit Ctrl-L on the
10 keyboard at the same time? Thank you.

11 MR. BINETTE: There? You can see there's
12 essentially a story difference from within the site to the
13 building dropping towards the sidewalk. Each of the three
14 buildings that we're seeking relief from varies somewhat.
15 Building C, for example, has a grade change elevation from
16 front to back of the building of 15'11". Building D has a
17 grade change of 11'5", and building E has a grade change of
18 13'11".

19 VICE CHAIR HART: This is Building D that we have,
20 that we're seeing. You're calling -- I'm not exactly sure
21 where the front and the back are the building. In the image
22 that you have here, you have the -- let's say the north side
23 of the building, which is over here, that goes down, right,
24 so that distance, that change in elevation is about 11 feet,
25 if I'm reading that correctly.

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1 MR. BINETTE: That's correct, 11'5".

2 VICE CHAIR HART: So the other buildings have even
3 greater change, but they're similar to this?

4 MR. BINETTE: Yes, exactly right.

5 VICE CHAIR HART: This grade, as well?

6 MR. BINETTE: Exactly right. For example, go to
7 E, that's even more severe because, again, the existing grade
8 from the middle of the site down to the -- the high side
9 here, the high side grade is always internal to the site.
10 The low point is always the street side, whether it's 3rd or
11 4th Street.

12 MEMBER JOHN: Excuse me; can you use your cursor
13 or your finger just to point to what you're referring?

14 MR. BINETTE: So what you see here, each of these
15 highlighted areas with the BHMP is the public street side,
16 so it's either 3rd Street or 4th Street. Again, the higher
17 level up in here is roughly the same, internal to the site.
18 So the high side of the grade of every building is internal
19 to the site, up on that existing plateau. Again, our height
20 is only -- it's an overall longer length of that height of
21 the building, but it's because the building roof drops, not
22 because the building goes up.

23 VICE CHAIR HART: So there's also -- the
24 topography on the other properties that Wynn owns, they're
25 fairly flat?

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1 MR. BINETTE: No. In fact --

2 VICE CHAIR HART: Because what we're trying to
3 figure out is the variances that you -- there's something
4 that's unique about this particular site. You're saying the
5 uniqueness is that the topography of this site is different
6 and causing some issues with -- and requiring you to have to
7 have relief from the variance -- excuse me, the zoning
8 regulations.

9 While I understand that topography is there,
10 topography is on Atlantic Terrace, Atlantic Gardens.
11 Topography is all throughout this area, so what is it about
12 this particular one that is causing the problem in your area,
13 in your property? You could configure the buildings
14 differently. There are multiple ways to develop this site.

15 So the issue that you're asking -- the thing that
16 you're asking for, the variance test is a very -- it's a much
17 higher bar than a special exception request. So we're trying
18 to get to that -- okay, this is what they're saying is the
19 issue that we need to -- this is why we should be granting
20 this relief, or we don't agree, and this is why we are going
21 to deny it. But right now, we're just trying to determine
22 that.

23 MR. BINETTE: It's an excellent point, and I
24 should have actually -- might have streamlined some of the
25 conversation. If you look at Southern Hills, the answer is

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1 simple. We're at the top of the hill. The internal part of
2 the site is on the top of the hill. If you look at Atlantic
3 Terrace, for example, it's a very analogous situation, except
4 it's the opposite. You wouldn't need a height relief request
5 because the four-story portions of the building fall down
6 away from 3rd Street.

7 Southern Hills is at the top of the hill that we
8 just happen to ring the crown, if you will. All the adjacent
9 properties actually taper away from the streets, so from a
10 street-side perspective, have that -- just a three-story --
11 a lot of three-story façade, although some of them have a
12 combination, depending on the orientation of the buildings.

13 VICE CHAIR HART: You're also saying that the
14 topography goes away from the site, kind of in the way that
15 I'm kind of showing in there --

16 (Simultaneous Speaking)

17 MR. BINETTE: Yes.

18 VICE CHAIR HART: I'm having to guess that. I'm
19 not saying that I know that.

20 MR. BINETTE: I apologize.

21 VICE CHAIR HART: I'm just saying that's what
22 you're telling us.

23 MR. BINETTE: Yes, sir. In fact, if you start at
24 Southern Hills, that's the hill. It drops to Atlantic
25 Terrace, and it continues to drop down to the Anacostia

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1 River, down all the way to the left of the screen. That
2 continues to fall away.

3 MR. FERRIS: Mr. Binette, would you just comment,
4 is it unusual for -- to have a site with this much street
5 frontage, where the entire street frontage, all the way
6 around the property, drops a significant amount from interior
7 of the site down to the street level. Is that unusual to
8 have -- I think we have roughly 400,000 feet of street
9 frontage. Throughout that street frontage, the grade drops
10 from the interior down to the grade. Is that common?

11 MR. BINETTE: Correct, from 10 to 30 feet in drop.
12 It's very unusual. It's unique. Again, we just happen to
13 be at the top of a hill, and all the surrounding areas,
14 again, just drop from that -- really, this does not show the
15 nature of that topographic change. These photos maybe show
16 it a little bit better.

17 MR. FERRIS: Can you also speak to what we would
18 have to do if we didn't get this variance? How would we have
19 to adjust either the unit makeup in these buildings and
20 relocation of those units, or would we have to shift the
21 buildings away from the street, which would be sort of
22 counter towards the entire concept of the site plan we're
23 proposing? How would we have to adjust if we didn't get this
24 variance?

25 MR. BINETTE: What happens is exactly that. You

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1 would orient all these buildings up on the plateau, away from
2 the street, continuing the social isolation that exists
3 today, of this property, from the public way. You would also
4 be compromising some of the green space and the multi-use
5 green spaces that we anticipated around the site for the
6 overall community.

7 MR. FERRIS: Alternatively, if we were to just
8 shave the top of these buildings, the top floor of these
9 buildings off, roughly how many units -- I believe in the
10 sim, we have 36 units that we would be losing, is that
11 correct?

12 MR. BINETTE: I think that's about right, yes.

13 MR. FERRIS: So we'd have to shift those units
14 interior to the site; otherwise building where right now we
15 have green space proposed, is that correct?

16 MR. BINETTE: That's correct.

17 CHAIRMAN HILL: Sure go ahead Ms. White.

18 MEMBER WHITE: I just wanted to ask Ms. Elliott
19 whether or not she -- whether or not you concur with that
20 analysis, in terms of this being an exceptional situation,
21 resulting in a practical difficulty for the developer, in
22 order to obtain this variance for this particular project.

23 MS. ELLIOTT: Sure. Yes, as noted in OP's report,
24 we are continuing to support the variance that's been
25 requested for the height and the number of stories. I think

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1 the applicant has gone into greater detail than OP did
2 regarding why that relief is necessary in discussing some of
3 the sections. I think we have seen plenty of requests for
4 height variances that we have not been supportive of. We
5 don't often review such drastic grade changes. I think that
6 was the major contributing factor in this case.

7 CHAIRMAN HILL: Ms. Elliott, could you quickly,
8 again, go over your analysis of the three prongs?

9 MS. ELLIOTT: Sure. The applicant has requested
10 height and number of stories, relief for height and number
11 of stories for only three of the buildings, Building C, D,
12 and E. Building C would have a height of 49 feet and four
13 stories. Building D would have 44.4 feet. Building E would
14 have height of 46.9 feet. In our analysis, what we found is
15 that this property does sit higher than adjacent properties,
16 and there is a grade change from the street that ranges from
17 10 to 30 feet.

18 So the relief that has been requested is within
19 that 10 to 30-foot range, but certainly on the lower end.
20 All of the height is generally for four to nine feet. That
21 is what we found to be the exceptional situation that results
22 in the practical difficulty in this case. I think the
23 applicant went into greater detail regarding some of the
24 difficulties with the grade. In terms of creating a
25 substantial detriment to the good -- I'm sorry, substantial

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1 detriment to the public good, we feel that granting the
2 relief actually allows the multi-family buildings to relate
3 better to the street. The problem with multi-family building
4 is it's difficult to adjust for height. It's a big block.
5 It's more difficult to -- for it to be constructed at a range
6 of heights that respond to the topography.

7 But allowing the apartment homes closer to the
8 public realm actually creates more functional open space
9 within the site, while also providing more interaction with
10 the street. We found there to be no substantial detriment,
11 as it relates to the public good. We also found that it
12 creates no substantial harm to the zoning regulations.

13 The requested relief for the height and number of
14 stories is within the range of height difference between the
15 street and the property. We did not feel that it was
16 excessive, given the topographical condition. Again, it
17 provides for an overall better development plan, allowing
18 those buildings to relate better to the street and providing
19 more functional space that can be programmed for the families
20 in that development.

21 CHAIRMAN HILL: Okay, thank you. Does anyone have
22 anything? I neglected to ask if you had any questions for
23 the Office of Planning?

24 MR. FERRIS: No questions, thank you.

25 CHAIRMAN HILL: Do you have anything you'd like

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1 to add in conclusion?

2 MR. FERRIS: In closing, I'm happy to walk through
3 all of the standards, but since the Board's questions have
4 focused on the height variance and on the community center,
5 I'll just iterate that I think we meet the standard for the
6 height variance in this case.

7 The site is unique, both because of the
8 significant grade change throughout the entire site around
9 the street frontage, and the fact that there are 255 units
10 onsite that we need to replace one to one, in order for all
11 of the residents to return to the property after
12 redevelopment. Both of those things constrain our planned
13 redevelopment.

14 So any units that can't be provided in the
15 multi-family buildings will have to be shifted to new
16 multi-family buildings, which will essentially absorb the
17 green space that the residents specifically requested. It's
18 one of the main tenets of this redevelopment plan, as Brett
19 outlined at the beginning of the presentation.

20 I think it's unnecessarily burdensome, we believe,
21 to require that the buildings be shifted in, or that those
22 units be shifted in such a way that would eliminate that
23 green space for the residents and move the buildings away
24 from the public realm, which is also a main tenet of the site
25 plan. There's no substantial detriment to the public good.

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1 This will improve the property's relationship with the public
2 realm and the adjacent develop and improve the lives of the
3 residents who live there currently. With respect to the
4 community center, I believe Brett Meringoff addressed those
5 issues substantially, but we believe the way that the
6 community center is sited in the programming, that there will
7 not be any objectionable conditions for the neighbors, and
8 that it will be reasonably convenient to the community.

9 We're happy to rest on the remaining application
10 materials we've submitted and ask that the Board approve the
11 application. We would note that we would ask that the Board
12 take a vote today, if possible, due to the timing of the DHCD
13 funding which, as Brett mentioned earlier, is set to trickle
14 at the end of the month, which is soon.

15 CHAIRMAN HILL: I'm going to go ahead and close
16 the hearing. Is the Board ready to deliberate? I can start.
17 My main concern, I guess, and what has been mentioned several
18 times is just a variance test with regards to the height,
19 which is something that I'm comfortable with the analysis
20 that was provided by the Office of Planning.

21 I don't know if my fellow colleagues will feel the
22 same way, but I would agree that they meet the test. I also
23 would agree that they've met the standards for the special
24 exceptions. I am also aware that the ANC, even though we
25 didn't get a vote count, they have been working with the ANC

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1 and have received approval from the ANC. In addition to
2 that, they've committed to working with the associations to
3 try to preserve as much of the tree canopy, in addition to
4 special trees that have been highlighted, and I think that
5 the developer is doing everything that they can. I feel very
6 comfortable with them meeting the special exceptions and the
7 variance. I'll be voting in support of this application.
8 Would anyone else like anything to add?

9 MEMBER WHITE: I'll add a few comments. I think
10 the concept is excellent. It's a wicked smart type of
11 layout. I've seen similar types of layouts in other cities.
12 But more important, I think they were successful in meeting
13 the criteria for the special exception and the variance.
14 That's why I kept asking those questions, to make sure we
15 could check the box.

16 I will be supporting the project, as well.
17 Obviously, affordable housing is very critical in this area,
18 so I think the concept, as well as the need, will do a lot
19 for the community. I'm also very thankful for the additional
20 feedback and support to give additional weight to this
21 project that was given to us by Ms. Elliott, so thank you for
22 that. Those are my initial comments. I think I can be very
23 supportive of this particular application today.

24 MEMBER TURNBULL: Mr. Chair, I would concur with
25 both your comments. Notwithstanding any sections through the

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1 site that would better explain the topography, I think I've
2 seen enough in the photographs of the site that I think are
3 explicit enough to show what the site actually looks like,
4 so I'm quite comfortable that granting the relief -- that
5 they are meeting the relief of the variance test. I think
6 it's a very -- it's a commendable project.

7 I also commend them on -- we didn't talk about --
8 one of the things that I see on the multi-family is the
9 amount of solar panels on the roof. I don't know what
10 percentage of the overall -- what it's providing, but I think
11 that's an excellent incorporation. If this was a PUD, it
12 would be very special to see something like this, something
13 that the Zoning Commission is always looking for. Very
14 commendable, and I think the project is very commendable.
15 I would be in support because I think they've met the test
16 for the special exception and the variance.

17 MEMBER JOHN: Mr. Chairman, I don't have a lot to
18 add, except that I do agree with everyone's analysis so far.
19 I thought that the special exception relief was fairly
20 straightforward. I was concerned about whether or not the
21 variance criteria had been met for the height relief, but
22 based on the explanation provided by the applicant and OP's
23 analysis, I do believe that the design now is a more
24 efficient and effective design with the added relief, so I
25 am able to support the application.

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1 VICE CHAIR HART: Most of the questions that I had
2 were with regard to the topography. I did actually find an
3 image -- I may have missed it previously -- in the civil
4 drawings. The last image actually just shows -- let me see
5 what exhibit this is, Exhibit 12-A-4, the last plans,
6 actually, it does show what all of the building height
7 measuring points are around the entire site.

8 I think what that does is help to show -- it just
9 shows what the applicant has been talking about, which is the
10 topographic change. You can see it on the photographs some,
11 but the photographs can be a little bit deceptive because of
12 just -- the camera angle sometimes gets the views a little
13 bit off.

14 But I will say that after looking at this kind of
15 image on this exhibit that I was speaking to before, it
16 actually shows what the actual building -- the building
17 height measuring points are very specifically, and it does
18 show that there is a fairly large grade change across the
19 site. It just looks at where those measuring points are on
20 both 4th and 3rd and Livingston Terrace.

21 I can support the application. I just was more
22 concerned about how these -- what the actual existing
23 conditions were. Because then it kind of speaks to what is
24 being -- it speaks to how the difficulties are with the
25 development because of the changes that you have to make to

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1 be able to develop and build the proposed structures. I'm
2 not going to add any more than my fellow Board members have
3 added, but I appreciate the information. That's it.

4 CHAIRMAN HILL: Okay, great. Then seven and a
5 half hours later, since we started, I'll make our first
6 motion. Going to make a motion to approve Application No.
7 19819, as captioned and read by the secretary, and ask for
8 a second.

9 MEMBER WHITE: Second.

10 CHAIRMAN HILL: Motion made and seconded. All
11 those in favor, say aye.

12 (Chorus of ayes.)

13 CHAIRMAN HILL: All those opposed?

14 (No audible response.)

15 CHAIRMAN HILL: Motion passes, Mr. Moy.

16 MR. MOY: Staff would record the vote as 5-0-0.
17 This is on the motion of Chairman Hill to approve the
18 application for the relief being requested. Seconding the
19 motion, Ms. White, also in support, Mr. Turnbull, Ms. John,
20 and Vice Chair Hart. The motion carries.

21 CHAIRMAN HILL: Okay, great, thank you, everyone.

22 MR. MOY: Thank you, Mr. Chairman. The next case
23 application is No. 19804 of 716 Upshur LLC. Mr. Chairman,
24 there's a request for a special exception under the
25 residential conversion provisions to Subtitle U, Section

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1 320.2. This would construct a three-story rear addition and
2 convert the existing principal dwelling unit to a three-unit
3 apartment house, RF-1 zone, at 716 Upshur Street Northwest,
4 Square 3135, Lot 91.

5 CHAIRMAN HILL: All right, great. If you could
6 please introduce yourselves, from my right to left.

7 MR. BUI: My name is Joseph Bui. I live at 728
8 Upshur Street Northwest.

9 CHAIRMAN HILL: Bui?

10 MR. BUI: Bui, B-U-I.

11 CHAIRMAN HILL: P-U-I.

12 MR. BUI: B, like boy.

13 CHAIRMAN HILL: Okay.

14 MR. VORA: Hi. My name is Amit Vora, the owner
15 of 716 Upshur LLC and the property.

16 MR. TEASS: Good afternoon. My name is Will
17 Teass, a principal with Teass Warren Architects, representing
18 the applicant.

19 MR. JONES: Yes, good afternoon. My name is
20 Timothy A. Jones. I am the Advisory Neighborhood
21 Commissioner for single member 4C08, which encompasses the
22 subject property.

23 CHAIRMAN HILL: Hi, Commissioner Jones. Sorry
24 you've been here this long, but you hung in there. Oh, we
25 have someone else. That's all right, please --

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1 MS. FRANCIS: Yes, my name is Patricia Francis,
2 and I live at 714 Upshur Street Northwest. I'm the neighbor
3 to the 716 property.

4 CHAIRMAN HILL: Okay, so you're immediately next
5 door?

6 MS. FRANCIS: Yes.

7 CHAIRMAN HILL: Okay. Mr. Teass, I guess you're
8 going to be presenting to us?

9 MR. TEASS: Yes, sir.

10 CHAIRMAN HILL: Okay, Mr. Teass, and is it Mr.
11 Vora? You're the property owner?

12 MR. VORA: Yes, that's correct.

13 CHAIRMAN HILL: Then Mr. Bui, you're here in
14 support, opposition?

15 MR. BUI: Opposition.

16 CHAIRMAN HILL: Okay, and Ms. Francis, you're also
17 here in support or opposition?

18 MS. FRANCIS: Opposition.

19 CHAIRMAN HILL: Okay, so we'll be taking support
20 and opposition a little bit later, so if you could just go
21 ahead and sit on back there, and we'll call you up. The ANC
22 is always a party, Mr. Commissioner, so you can stay here and
23 go ahead and be presenting in the same way. I did notice
24 that you did file a letter on behalf of the -- that you did
25 vote in opposition to this, correct?

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1 MR. JONES: That is correct.

2 CHAIRMAN HILL: I guess what'll happen now,
3 Commissioner, is you'll have an opportunity to present, as
4 well, being the ANC, you're an automatic party to the
5 hearing. They'll go ahead and give their presentation.
6 You'll have an opportunity to cross that presentation if
7 there's any questions you have.

8 You'll also have an opportunity to give a
9 presentation, and then the applicant will have an opportunity
10 to cross those questions, as well. Then we're going to go
11 ahead and come back to the applicant. The applicant will
12 have an opportunity to provide any rebuttal, and then also,
13 we'll do a conclusion.

14 I believe I got that correct, more or less. So
15 Mr. Tondro's over there. He can let me know if OAG is --
16 shifting seats left and right. OAG gets to home and we
17 don't, huh? That's interesting. Commissioner Francis, do
18 you have any questions about that?

19 MR. JONES: No, I don't.

20 CHAIRMAN HILL: Mr. Jones, I'm sorry, Commissioner
21 Jones. Commissioner Jones, I'm sorry. Then Mr. Teass, you
22 can go ahead and start. I'll put 15 minutes up on the clock,
23 just so I know where we are, and you can begin whenever you
24 like.

25 MR. TEASS: Thank you.

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1 CHAIRMAN HILL: Oh, Mr. Teass, just once again,
2 what I'd like to hear from -- primarily the Board would like
3 to hear, again, what you're proposing and the standard with
4 which you're meeting the criteria for us to grant or deny the
5 request.

6 MR. TEASS: Understood. The project we have
7 before you today is located at 716 Upshur Street, in the
8 Petworth neighborhood. It is an existing row house that is
9 located approximately mid-block between 7th and 8th Street.
10 We've identified here as the subject property on Slide 2.
11 One thing that we've added, the underlay was part of the
12 original filing.

13 We've also been keeping track of some neighbors'
14 letters of support, neighbors of opposition. Specifically,
15 the green dots represent letters of support; the red dots
16 represent letters of opposition. I would just like to
17 mention that we've encountered -- when we started the
18 project, we always encourage owners to go out and meet with
19 neighbors and walk around and canvas the neighborhood.

20 They had done so. Within the last seven to ten
21 days, the climate has shifted a little bit, so we're seeing
22 some more neighborhood opposition. But I also think it's
23 relevant to understand where some of those folks lived. The
24 subject property here, as I mentioned, is an existing
25 two-story with a cellar row house. It's one of similar

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1 structures along the south side of Upshur Street. The
2 property to the east, which I believe is one of the
3 constituents that's here this afternoon, is the owner of that
4 property, Patricia Francis.

5 Then the neighbor on the other side, Tina
6 Whitfield, signed a letter of support, which we've submitted
7 on file. Both those properties have an architectural feature
8 at the rear. One is a porch that's open, the other is an
9 existing two-story frame addition. The aerial photo here,
10 I think, shows the pattern of development.

11 Specifically, I think this speaks to the nature
12 of the relief that we're seeking, in that ultimately, we're
13 looking for a special exception relief on a three-unit
14 conversion. We meet the minimum standard for lot area, and
15 specifically, we are also seeking a waiver on the ten foot
16 rear addition rule.

17 One of the things I wanted to call your attention
18 to on this slide is there is a pattern of development on the
19 south side of those row houses where some of those row houses
20 have been expanded in various states over the years. This
21 is some views of the existing structure. We are proposing
22 to maintain the rooftop architectural feature. We are
23 proposing to maintain the porch roof and really, the intent
24 here is for the property, from the exterior, to match what
25 it is today. The images in the lower right-hand corner speak

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1 to the condition of some of the rears. On the lower
2 right-hand corner, you can see the property all the way to
3 the east, at the alleyway, has got a fairly substantial rear
4 addition. Our massing is generally governed by the depth of
5 that structure.

6 Whereas, you see it here -- it's about 56 feet,
7 and it's this structure, here. That's sort of informing some
8 of the massing that we're proposing for 716, which we thought
9 was appropriate at the time. The proposed structure is
10 highlighted in green here. We will be providing two parking
11 spaces in the rear.

12 We will be providing stairs that provide access
13 from those units to the rear to parking and to trash. Our
14 building section speaks to the preservation of that rooftop
15 architectural feature and the preservation of the porch. We
16 are proposing a configuration -- you've got a cellar unit,
17 a ground floor unit, and then the third unit is the second
18 and third floors.

19 There will be a roof deck. We are proposing a
20 rear addition, and we're proposing some stairs at the rear
21 that lead out to the rear yard and to the parking area and
22 trash area. At the ANC's request, we went and visited with
23 the ANC in August. They asked for some views from the public
24 right of way. I think there was some questions about what
25 this would look like from the street. We've been following

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1 the guidance, as set forth by the Zoning Commission and the
2 Zoning Administrator's office, in that we're maintaining a
3 three-foot distance back from the back side of that
4 architectural feature to minimize any change to the street.

5 You can see there's a little bit of visibility of
6 the proposed third-floor addition, the potential roof deck
7 beyond, but overall, the impact from the street is relatively
8 minimal. These are the elevations. On the right-hand side
9 is the street elevation, again, showing the preservation of
10 that rooftop architectural feature, preserving the porch, and
11 then the partial elevation above is the portion of the
12 building that's added behind.

13 Then on the left-hand side is what we call the
14 garden elevation, which is facing the parking. We've chosen
15 to represent this as sort of the rear side of the row house
16 and have focused on a bay projection feature, just so that
17 we have a little bit more visual interest on the rear, along
18 with the stairs that take you down to grade.

19 This is the elevation from the east side, showing
20 the extent to which we're adding on to the third floor and
21 to the rear. We are proposing to do a cementitious panel
22 wall facing both neighbors. You're seeing the privacy fence
23 and the stairs that come down. The elevation facing west is
24 substantially similar, in terms of its material and massing.
25 At that point, I'll try to keep my presentation relatively

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1 brief and, if there's any questions about the plans, be happy
2 to address them, but I think that's where the case currently
3 stands. In terms of meeting the burden of proof, this is a
4 special exception case, so I think that there a number of
5 criteria that need to be met.

6 The first is that we -- the building height is no
7 more than 35 feet. We're adhering to that regulation. The
8 regulation for the fourth dwelling unit, and every even unit
9 thereafter, being an inclusionary zoning unit is not
10 applicable, as we're only three units. There is an existing
11 residential building on the property.

12 We do meet the minimum area -- there's in excess
13 of 2,700 square feet on the property now. We're asking for
14 a waiver on the ten foot rule. Technically, our projection
15 is 26 feet from the rear wall, the shortest rear wall of the
16 two adjacent properties, to the bay extension, so from the
17 rear wall to the west neighbor to the back face of our bay.

18 We shall not interrupt or impede the function of
19 a chimney or solar panel. There's a chimney to the property
20 to the west. Part of the letter of agreement with them --
21 it was submitted as an exhibit -- was related to extending
22 their chimney. There's no solar panels on either property.
23 Then finally, the addition shall not have any adverse effect
24 on the neighborhood. Our contention is that we have a series
25 of similar row houses that have very deep rear yards. In

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1 some cases, those rear yards exceed 75 feet, so we are --
2 there's still plenty of access to light and air for adjacent
3 neighbors. Then finally, when viewed from the street or the
4 alleyway, we're not substantially visually intruding on the
5 pattern of development. I think from the street elevation
6 and from the rear elevation, I think that we're following
7 those guidelines that were set forth.

8 CHAIRMAN HILL: Okay, does the Board have any
9 questions of the applicant?

10 MEMBER WHITE: Just two questions. Tell me again
11 what the views are of the adjacent neighbors, what kind of
12 communications you've had with them, and whether or not
13 they're okay with the 26-foot extension. Also, tell me again
14 what type of arrangement you have with the neighbor with
15 respect to the impact on the chimney.

16 MR. TEASS: I will speak to the neighbor to the
17 west first, Ms. Tina Whitfield. The applicant originally,
18 before we even got started with the project, reached out to
19 both neighbors. They spoke and reviewed some early
20 conceptual sketches with the neighbor to the west. I think
21 that she's reasonably supportive of the project, signed a
22 letter of support, also understood the impact that the
23 proposed third-floor addition would have on the chimney and
24 understood the need for the chimney on her side of the
25 property to be raised and was willing for the applicant to

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1 undertake that work, in terms of both the design permitting
2 and the construction. I will actually, at this point --
3 because I did not meet with the neighbor to the east, Ms.
4 Francis, Mr. Vora did. I think I'd like to turn it over to
5 him to characterize the nature of his discussions with Ms.
6 Francis.

7 MR. VORA: Hi, yes. Before we started the
8 project, we kind of got a gauge of the immediate neighbors.
9 We did meet with Ms. Francis a few times on her porch. It
10 was myself, and I have a business partner, Sima, who met with
11 her, talked to her. At that point, when we started the
12 application into the ANC, the position was no position.

13 To my understanding, what was conveyed to us was
14 that there was no support of it; there was no opinion. We
15 asked her if she would like to go on record, and she elected
16 not to. I think some of that has shifted in the last few
17 days, which is -- it happens. We've met on multiple
18 occasions. Thank you.

19 CHAIRMAN HILL: Okay. Commissioner Jones, you
20 have an opportunity to just ask any cross-examination
21 questions of the presentation that was given by the
22 applicant. After that, you'll have an opportunity to present
23 your own testimony, in terms of what you came to talk about.
24 Do you have any cross-examination questions of the applicant?

25 MR. JONES: At this point?

1 CHAIRMAN HILL: Yes, at this point.

2 MR. JONES: Something I just made note of, a
3 deeper yard yards are deeper, but that's the only one that
4 would extend back is the unit extending back as far in the
5 block.

6 CHAIRMAN HILL: I'm sorry. Commissioner Jones,
7 your question is which?

8 MR. JONES: (Simultaneous Speaking) -- yards are
9 deep, but they have no structure that extends back what is
10 it the 26 feet that this structure will extend back.

11 CHAIRMAN HILL: Okay. I would confirm that,
12 correct?

13 MR. TEASS: I would disagree. We do have a
14 structure, on the image that's on the screen right now, in
15 the lower right-hand corner. I believe it's 712 Upshur has
16 a rear addition that extends back what we feel is a
17 comparable distance to what's being proposed. I'd also like
18 to point out that's the neighbor that's in between -- she has
19 a deep neighbor on the east side, and then what is proposed
20 would be a deep neighbor on the west side, so there is --

21 VICE CHAIR HART: Mr. Teass, you're talking about
22 this property here that I'm circling?

23 MR. TEASS: Yes, sir.

24 VICE CHAIR HART: So it's the one that's on this
25 side?

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1 MR. TEASS: Yes, sir. We're, again, in the site
2 plan view, you can see that.

3 VICE CHAIR HART: This one, here?

4 MR. TEASS: Correct.

5 CHAIRMAN HILL: Commissioner Jones, you have
6 another question in cross-examination?

7 MR. JONES: No, just to follow up on the center
8 that doesn't extend back as far as the subject property will
9 extend back. That's more or less like apples and pineapples,
10 not apples and apples.

11 CHAIRMAN HILL: Would you like to ask any more --
12 I'm just trying to -- it's just cross-examination on what
13 they said. You get your chance now, as the ANC commissioner,
14 to present your testimony as to why you guys are in
15 opposition. Can I go ahead and put 15 minutes on the clock
16 for you right now, as well? You can begin, then, whenever
17 you like for your testimony.

18 MR. JONES: Yes, okay. As indicated in the letter
19 chronicling the Commission vote on it --

20 VICE CHAIR HART: I think you can bring the mic
21 over here. If you could bring the mic closer, that would be
22 helpful.

23 MR. JONES: Okay.

24 VICE CHAIR HART: Thank you.

25 MR. JONES: In chronicling the circumstances that

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1 the Commission voted, it was 4-2-2, four in opposition, two
2 abstaining, and two in support. Being in my single member
3 district and a long-term resident of the neighborhood that
4 I knew the family, the Carter family, which was to the north
5 and the former family at 716, the Brown family.

6 One had a family of six, and the other had a
7 family of five. So we took a vote. Petworth is a
8 neighborhood with single-family homes and has one of the
9 fastest growing childhood populations in the city, so we're
10 going to need single-family homes up there that have not been
11 converted into multi-unit buildings.

12 It's like indicated in several letters received
13 from residents in opposition that is one of the primary
14 concerns, that it'll change the character of the neighborhood
15 from single family to multi-family. Also, I have some
16 background in the subject.

17 I'm a graduate of Howard University with a degree
18 in economics and a former participant and alumnus of Howard
19 University School of Business, where I took -- when we had
20 the real estate and housing management curriculum development
21 program, I took courses in property valuation from William
22 Harps, now deceased, and Elijah Gerwin, U.S. Army West Point
23 graduate, who was an engineer. I think I could speak upon
24 concepts of density and valuation, which I addressed in my
25 letter, which I documented the Commission's vote.

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1 CHAIRMAN HILL: Yes, we have the letter,
2 Commissioner Jones. I think that it's very clear that you've
3 been here, and you're giving your testimony to the vote that
4 took place. I guess what I've been told is that the way that
5 the report would need to come forward for us to give great
6 weight to is in a different format.

7 We didn't get that format, in order for us to give
8 it great weight. We technically can't -- I'm going to turn
9 to OAG now here just a little bit, the technicalities to how
10 we give or what the report is supposed to be, in order to
11 give the ANC great weight.

12 MR. TONDRO: Yes, good afternoon, Mr. Chair. Yes,
13 I believe it is the written report from the ANC that is
14 required to give them great weight. You can still consider
15 the testimony that the Commissioner provides.

16 CHAIRMAN HILL: We can still consider the
17 testimony that the Commissioner's providing, but we are not
18 able to give it great weight because it is not given to us
19 in the form of a report from the ANC, correct?

20 MR. TONDRO: Yes.

21 CHAIRMAN HILL: It's a bit of a technicality, but
22 --

23 MR. JONES: Could I address that comment? It's
24 extenuating circumstances, which I addressed in my letter,
25 that the Commission has a 48-hour internal policy, which

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1 precluded me presenting -- that being put on to the Form
2 1029, which I believe is the number of the ANC reporting
3 form.

4 CHAIRMAN HILL: Okay. I was just kind of pointing
5 out, Commissioner Jones. The opposition that you all have
6 had, or that you had at the -- you said the vote was 4-2-2
7 in opposition. It was in opposition -- we're looking at the
8 different regulations, in terms of how this can or can't meet
9 the criteria for us to grant this. The reason that the ANC
10 was opposed to this, was it -- can you clarify a little bit
11 for me as to why the ANC members were opposed to this
12 project?

13 MR. JONES: I think I previously stated, as far
14 as changing the character of the neighborhood. Other emails
15 I've received and interviews conducted with residents in the
16 neighborhood, the Upshur Street commercial district is
17 becoming noted for a restaurant scene and whatnot. Outsiders
18 are coming into the neighborhood and taking parking spaces,
19 which puts pressure on the valuable parking spaces that
20 currently exist in the neighborhood. Also, the character of
21 the neighborhood, which I think I may be regressing and
22 stating that again.

23 CHAIRMAN HILL: That's okay, so the character of
24 the neighborhood is the one that they seem to focus most
25 upon.

1 MR. JONES: Right.

2 CHAIRMAN HILL: Does anyone have any questions for
3 the Commissioner?

4 MEMBER TURNBULL: No, I don't have any. I wanted
5 to get back to the applicant, but I can wait.

6 VICE CHAIR HART: I did have one question. I want
7 to make sure I understood this, too. In the email that you
8 sent Mr. Jones, you did say that there was reduced -- it was
9 one about parking. I was trying to understand that. Where
10 is that? There was some issue about parking, as well.

11 MR. JONES: Yes, there was. I thought I just
12 stated that. The Upshur Street commercial corridor is
13 becoming a --

14 VICE CHAIR HART: No, actually, in particular,
15 what I'm asking is are you saying that the units that are
16 here would cause more impact on the parking? That's what
17 you're talking about, not all this other stuff that's
18 happening in the neighborhood. I understand that. You're
19 saying that in total, all of that stuff is impacting it, but
20 this is also impacting that.

21 MR. JONES: That is correct.

22 VICE CHAIR HART: Okay, thank you.

23 CHAIRMAN HILL: Does the applicant have any
24 questions in cross for the presentation that was given by the
25 ANC?

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1 MR. TEASS: I think just one question to the ANC
2 commissioner was did the ANC undertake a vote of support for
3 the application?

4 MR. JONES: The motion that was -- as stated in
5 my letter, the letter of support was introduced by the chair,
6 but the Commission and majority vote voted in objection to
7 that, which was opposition to the project.

8 CHAIRMAN HILL: Okay. I'm going to turn to the
9 Office of Planning.

10 MS. ELLIOTT: Good afternoon, again, Brandice
11 Elliott, representing the Office of Planning, and I have the
12 pleasure of sitting in for Stephen Mordfin today, who is
13 going to owe me future favors.

14 CHAIRMAN HILL: That was a very late day for him.

15 MS. ELLIOTT: The Office of Planning is
16 recommending approval of the requested special exception and
17 the waiver for the rear addition. Just to provide a little
18 bit of background regarding our analysis, these are actually
19 fairly large lots. They're about 1,000 square feet larger
20 than required by minimum standards, so as a result, we
21 thought that the proposed addition would not result in loss
22 of light and air to adjacent properties because they do tend
23 to have fairly large rear yards. They benefit from being
24 large lots. There would be no windows or openings on the
25 sides of the structure, so it would not intrude upon the

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1 privacy of adjacent properties. The third story addition
2 would actually be partially obscured by the existing dormers
3 on the front façade, and then set back a few feet, so that
4 actually preserves some of the character on the front façade
5 because it would not be as visible from the front street.

6 Then in terms of the alley, the addition is,
7 although slightly larger, maybe by a couple of feet, than the
8 existing addition that was spoken about to the west, it is
9 kind of a mix of various additions. So because it is not --
10 not everything has the same rear wall. It is sort of fitting
11 within the existing random pattern of rear additions along
12 the alley.

13 In addition, the property -- the development is
14 providing two parking spaces, which is required for the
15 number of units that would be provided in the conversion.
16 I'm happy to answer any questions you have, but I'll go ahead
17 and leave it on that note.

18 CHAIRMAN HILL: Does anyone have any questions for
19 the Office of Planning?

20 MEMBER TURNBULL: Yes, Mr. Chair, I do.

21 CHAIRMAN HILL: Sure.

22 MEMBER TURNBULL: Part of the problem, Ms.
23 Elliott, when we get into this, is that I think a lot of the
24 neighbors are obviously not architects or engineers and
25 understand these plans fully, so they suddenly find

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1 themselves looking at something that they don't really
2 understand. They're getting a form letter to say they're
3 either in support or have no objections, but there's nothing
4 that really says that they're objecting to it. It's kind of
5 like a fuzzy kind of form that they get from an applicant.

6 There's also a monumental stair on the one
7 property that Ms. Francis to the right. It's a huge stair.
8 It's got to be an impact on the privacy of her. If I was
9 living there, I would be objectionable to it. It's
10 ridiculous.

11 It's an affront for anybody who's going to be
12 there, and she's going to have to look up at people going up
13 and down the stair, in addition to the fact that she's now
14 sandwiched between two buildings, which she's the ice cream
15 with the wafer on either side. I guess I would think that
16 she's really impacted by this. Her light and air is down on
17 both sides.

18 I guess what I'm concerned about is that when we
19 look at these things, yes, it has a deep lot, but there is
20 also a concern about the neighbor who has to live with this.
21 Even though there's no windows, it does impact light and air
22 to her property. I don't know how Mr. Mordfin looked at that
23 or what, but obviously I'm putting you on the spot by asking
24 that. To me, it seems like that would be one of the
25 questions that I would want to really know about. Did OP

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1 really look at that and look at the conditions of what this
2 neighbor's going to have?

3 MS. ELLIOTT: I am not aware of the background
4 regarding the outreach with the neighbors, so I can't really
5 speak to the applicant's efforts in that regard. I think
6 privacy, in general, we generally look towards the actual
7 built -- the massing of the structure, so in this case,
8 because no windows were being provided along the sides, we
9 sort of thought that preserved the privacy of the neighbors,
10 but I acknowledge that you've made a point regarding the
11 stairs. I think that if the applicant -- it is the
12 applicant's responsibility to do that outreach with the
13 neighbors and to address their concerns. I think that's
14 probably a reasonable thing to follow up on.

15 MEMBER TURNBULL: Thank you.

16 VICE CHAIR HART: I'll also add to that, as well.
17 There is a third-floor balcony that's being proposed, as
18 well, that will also cause the issue about privacy to be a
19 concern. That wasn't a question. Sorry. I also had a
20 question about -- not question. I was concerned about the
21 very long stairwell, as well. The stairway, it seems -- it's
22 almost 25 feet long, which is a very long way in the back.
23 I didn't know if you had -- actually, this would be a
24 question for you, Ms. Elliott -- just thought about that.
25 Would you think that there would be screens or something on

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1 the balcony on the third floor? Currently, there's just a
2 kind of a railing, I guess, that's around it.

3 MS. ELLIOTT: I think I would have to defer to the
4 applicant regarding the material because it does appear to
5 just be a guard rail. You're talking about the deck?

6 VICE CHAIR HART: Yes, or actually the third floor
7 or the deck on top. Because there's a balcony on the back,
8 on the rear, that is not -- what do you call it? While it's
9 not all the way out to the sides, it still is something that
10 you can look down on the next-door neighbor, Ms. Francis, or
11 the other side. Mr. Teass, do you have a --

12 MR. TEASS: I do. I think that -- I'm going to
13 call your attention to the lower photograph here, on the
14 lower right-hand corner, that shows the existing property and
15 the presence of both a deck porch at the ground floor and a
16 deck and a porch at the rear porch.

17 I would argue that the degree of privacy is
18 essentially unchanged because you have the opportunity for
19 someone who lives in that structure right now to go out on
20 their second-story porch and look down onto the yard. I
21 think that's a prevalent pattern along that block, in that
22 there is a tradition, not just in this block, but throughout
23 the city, of having these porches that -- it's part of living
24 in the city. You understand that you're going to have
25 neighbors, and you're going to have neighbors in close

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1 proximity, and some of those neighbors are going to be able
2 to look over a privacy fence. We are proposing a stair. The
3 stair, as you're seeing here in the elevation -- these are
4 drawings that were presented to both neighbors, so it wasn't
5 just people showing up at the door and knocking and asking
6 to sign a letter.

7 Copies of the drawings were brought with them.
8 Again, I won't speak to the specifics, because I was not
9 there, but I think that in terms of the privacy issue, it's
10 really -- at the end of the day, it's not dissimilar to
11 what's there now, in terms of having a second-story porch.

12 VICE CHAIR HART: Is there a deck on top of the
13 roof now?

14 MR. TEASS: There is not a deck on top of the roof
15 now.

16 VICE CHAIR HART: Are views currently -- I'm
17 looking at Page 7, which is the roof plan. What I think I
18 understand it -- I'm sorry; I'm looking at -- I don't know
19 what this exhibit is. I'm sorry. Exhibit 38-A. Can you go
20 to the roof plan for this, wherever that is? This is Roof
21 Plan 15, Page 15. What I'm talking about is this area here,
22 which is the neighbor. That's their back, and this is the
23 roof deck. So at some point, they'll be able to look out,
24 over into the little court that's there. That condition
25 doesn't happen now. You just asserted that it's unchanged

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1 from what the existing condition, and that's not the existing
2 condition. So it is a little bit different than what is
3 currently there. I didn't know if -- what you or Mr. Vora
4 were proposing for the roof to protect the privacy of the
5 neighbor to the east. I think it's east.

6 MR. TEASS: First of all, I'd like to apologize.
7 We also have the balcony. We do have a balcony at the third
8 floor, which is located here, and you're seeing the stairs
9 below. I misunderstood the question.

10 VICE CHAIR HART: Let's talk about both things.
11 The misunderstanding is noted and understood.

12 MR. TEASS: Currently, what's proposed is a
13 parapet that runs along the east property line. That parapet
14 would function as a guard rail. There would be an
15 opportunity for someone standing here to peer over and look
16 down.

17 I think that if it was an issue -- if we had heard
18 that it was an issue of concern from the neighbor, there's
19 ways to redesign that upper level roof deck, such that there
20 would be no visibility from the roof deck to the adjacent
21 neighbors, really, on either side. We have set that roof
22 deck back. So we've got our guard rail here that's in excess
23 of 18 feet from the rear face of the building, and we're also
24 setting back in the front of the street fairly substantially.

25 VICE CHAIR HART: Okay.

1 CHAIRMAN HILL: Mr. Teass, as far as the long
2 stairwell, I've seen several stairwells with deep lots that
3 are similar in nature to this, but how come you chose this
4 kind of stairwell, or stairway, I should say?

5 MR. TEASS: The issue is that under traditional
6 circumstances, you might employ a spiral stair. A spiral
7 stair is not a permitted means -- it's not a permitted stair
8 outside of a dwelling unit when you have a multi-dwelling
9 unit property, so in order to have a stair, it has to meet
10 the stair criteria.

11 It could be redesigned so that it projects less
12 than it does currently, in terms of a series of switchbacks,
13 but I think we were also trying to preserve light and air for
14 the subject property, too, in terms of not putting a stair
15 in front of the windows at the living areas at the ground
16 floor and the second floor.

17 CHAIRMAN HILL: Okay, does the applicant have any
18 questions for the Office of Planning?

19 MR. TEASS: Not at this time.

20 CHAIRMAN HILL: Commissioner Jones, do you have
21 any questions for the Office of Planning?

22 MR. JONES: Yes, I would. Did the Office of
23 Planning take the demographics of the neighborhood into
24 consideration in formulating their decision?

25 MS. ELLIOTT: Commissioner, the Office of Planning

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1 conducts its review based on what the regulations require.
2 There is no specific requirement related to demographics.

3 MR. JONES: So I guess the answer is no, so that's
4 something that is not taken into consideration. That being
5 --

6 MS. ELLIOTT: I'm sorry, Commissioner; I would
7 add, though, that this is why there is a public process,
8 though, and why the input of the ANC is so valued during this
9 process. Because you do have a greater pulse on what's going
10 on in the community. Since the ANC is also -- can also be
11 a great weight, this is sort of the opportunity to provide
12 that information.

13 MR. JONES: That information has appeared in the
14 press, so I don't know why it seems like -- you should be
15 depending more so on the ANC to stay informed on what's
16 happening in the city if you are a resident and you are an
17 employee of the city.

18 CHAIRMAN HILL: Commissioner, do you have another
19 question for the Office of Planning?

20 MR. JONES: The only other question what I had
21 would be the hub which they would spin upon.

22 CHAIRMAN HILL: Say that one more time, sorry.

23 MR. JONES: They revolve around that, the
24 characteristic of the neighborhood.

25 CHAIRMAN HILL: I guess the question that I even

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1 had, at one point, also, was just the Office of Planning does
2 take the character of the neighborhood as part of the
3 regulations. You all did do that in your report.

4 MS. ELLIOTT: Sure. I think in the case of OP's
5 review, the character of the neighborhood is sort of -- it's
6 a review of the built environment. So we don't get into the
7 details, necessarily, of who's going to be living in those
8 units, but in terms of maintaining the physical character of
9 the neighborhood, that is certainly a bulk of our review.
10 In this case, because the structure is being largely
11 maintained, and then the addition, the third-story addition
12 is somewhat obscured from street view, we felt that was
13 considered with this --

14 (Simultaneous Speaking)

15 CHAIRMAN HILL: Okay. Any more questions,
16 Commissioner Jones?

17 MR. JONES: So you take the -- in the character
18 of the neighborhood, you are defining in what sense?

19 MS. ELLIOTT: As I stated, we're sort of -- we're
20 looking at the built environment, the existing structures
21 that are on that block, what they look like, the
22 architectural elements. That's what OP is reviewing, in
23 terms of character.

24 MR. JONES: Maybe I probably should have asked
25 what is considered planning because not only do you have the

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1 architectural character, you have the human element of the
2 community, as well. It seems to me with a neighborhood that
3 has the fastest growing childhood population, that seems like
4 there's a need for maintaining the inventory of single-family
5 houses. Because like I was indicating before, there's a
6 family on one side with a family of five, and the other one,
7 other side, is six.

8 If you have a fast growing childhood population,
9 you need to enhance the demand for single-family homes, not
10 one unit, two-bedroom apartments. If you're planning --
11 maybe I played too much baseball, but I was always taught the
12 best way to hit a curve is swing ahead of the curve.

13 CHAIRMAN HILL: Okay. Is there anybody here
14 wishing to speak in support? Is there anyone here wishing
15 to speak in opposition? If you could please come forward.
16 Have you all been sworn in, also? If anybody here who hasn't
17 been sworn in, if you could please stand and take the oath
18 administered by the secretary, over here to the left.

19 MR. MOY: Good afternoon. Do you solemnly swear
20 or affirm that the testimony you're about to present is the
21 truth, the whole truth, and nothing but the truth?

22 (Chorus of ayes.)

23 MR. MOY: Thank you.

24 CHAIRMAN HILL: Would you all come forward?

25 MEMBER TURNBULL: Commissioner Jones, do you think

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1 the ANC can submit a formal letter to the BZA?

2 MR. JONES: The current chair is out of town for
3 six weeks. That could be done, but it would have to be as
4 the vice chair versus the chair.

5 MEMBER TURNBULL: I was just curious whether or
6 not a formal record could be submitted.

7 MR. JONES: Okay.

8 CHAIRMAN HILL: Could you please introduce
9 yourselves from my right to left?

10 MR. BUI: Joseph Bui, 728 Upshur Street.

11 MS. T. FRANCIS: Tanya Francis, 714 Upshur Street.

12 MS. P. FRANCIS: Patricia Francis, 714 Upshur
13 Street.

14 CHAIRMAN HILL: I'm sorry; what were both of your
15 addresses?

16 MS. T. FRANCIS: 714 Upshur Street.

17 CHAIRMAN HILL: Oh, you're both there?

18 MS. T. FRANCIS: We're roommates. This is my
19 mother.

20 CHAIRMAN HILL: I just got a little confused, but
21 thank you. Each of you will get three minutes to present for
22 your testimony. Mr. Bui, where do you live, Mr. Bui, in
23 relationship to the project?

24 MR. BUI: If you're looking at the green house,
25 let's see, on -- for me, it's on the left side, I'm the

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1 second house in. Yes, that one. I actually also have --
2 many of the neighbors uploaded statements to the website.
3 I collected a few more last night, and I made 12 copies.

4 CHAIRMAN HILL: You can give those to the
5 secretary.

6 MR. BUI: Should I do it afterwards?

7 CHAIRMAN HILL: You can give it to him now. Mr.
8 Moy, while I have little -- Mr. Hart, could you just put a
9 mark on which Mr. Bui is there?

10 VICE CHAIR HART: What?

11 CHAIRMAN HILL: Can you touch -- which one is Mr.
12 Bui? Oh, Mr. Moy, I don't have one of these things where you
13 get to scribble on anything.

14 VICE CHAIR HART: Noted, Mr. Chairman.

15 CHAIRMAN HILL: All right, Mr. Bui, go ahead and
16 you can start whenever you like.

17 MR. BUI: I just want to say that I support our
18 Commissioner in his stressing that the demographics in this
19 neighborhood are leaning towards needing more single-family
20 homes and fewer units. There are many, many small units that
21 are becoming available in this neighborhood very quickly.
22 There is, down the street, a new building that will have ten
23 units at Timber Pizza, which is about 60 feet west of where
24 this drawing ends. Across the street from that, they're
25 building another ten-unit condo building above what used to

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1 be Kilroy's Cleaners. It's going to replace that. There
2 won't be a dry cleaner in the neighborhood anymore. Directly
3 across the street from my house, there were just eight units
4 put in, in split-level row houses, replacing a church. Past
5 that were another eight split-level, two units per row house
6 put in. All of these are -- they're usually two, sometimes
7 they're listed as three bedroom, but they're pretty small.

8 And what I've noticed is that a couple will move
9 in, and they will have a child, and they will move out.
10 That's happened several times in the Upshur Row ones, which
11 are the second set of four. The first set was just completed
12 last year, so that hasn't quite happened there yet.

13 There's lots of units for two people, two adults
14 or groups of adults, but there are not many single-family
15 units left in this area, if you look at this intersection
16 around it. There's even more construction going on across
17 the street from where the church was. They're putting in
18 more split units. Then, actually, I just found out that
19 Philips Shoe Repair, next to Kilroy's Cleaner, is owned by
20 an LLC and will almost certainly be replaced with more
21 condominium units.

22 So there's a lot of small units going in, but
23 there aren't that many single-family units. In fact, no
24 single-family units are being built, so we're just replacing
25 single-family units with more and more split-up units. I

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1 feel very sorry for the neighbors, particularly Ms. Francis
2 and Ms. Francis, who are going to be boxed in by this. My
3 main objection, however, is that this doesn't need to be
4 three units, maybe two units would be acceptable. These
5 two-unit flips have been fine, as far as I can tell from the
6 developers. They keep doing them. It's not a profit issue.

7 I don't imagine these units will be priced any
8 more affordably than a two-unit building. If I had my
9 choice, I would say keep it a single-family unit, maybe go
10 back the full extension. I agree that the extensions on the
11 yards are -- well, actually, to say that they're arbitrary
12 isn't even correct.

13 What's been colored dark here, that sticks out
14 from the back of all of these properties, with the exception
15 of the two on the end and the one next to mine, east of mine,
16 those are all, actually, wooden porches, or some of them are
17 -- they're wooden-framed structures. They're not brick. The
18 one that's sealed in, my neighbor's, is a wooden structure
19 with very old siding on it.

20 The ones that have been extended are just the two
21 on the ends. There is a flat brick line all the way across.
22 Everything else is just a wooden extension that has been
23 built over time. I, personally, think that those actually
24 were in the original buildings, so I don't consider those --
25 I would have to look at plans, but I don't think those were

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1 actually new. Some people have changed them or renovated
2 them. Anyway, that's my statement. I think the character
3 of the neighborhood has been single-family homes, and I hope
4 it can stay that way. It's why it's a desirable
5 neighborhood. Thank you.

6 CHAIRMAN HILL: Okay, do you have any questions
7 for the witness?

8 VICE CHAIR HART: Mr. Bui, you are both against
9 the extension of the building and the number of units?

10 MR. BUI: Yes, and I'm unaware, but doesn't the
11 roof construction --

12 (Simultaneous Speaking)

13 VICE CHAIR HART: Yes, it does --

14 MR. BUI: I'm against all three.

15 VICE CHAIR HART: Okay. I just wanted to make
16 sure that I understood that because sometimes, people are
17 kind of like I'm not against the number of units, but I'm
18 against the --

19 MR. BUI: Some of the letters I submitted are
20 specific. I eventually wrote a form letter to make it easier
21 for people. My form letter, if you look, has, actually --
22 I kept them in the same order to be, not necessarily fair,
23 but just to be -- I actually have support, object -- or do
24 not object, which is what the original form letter passed out
25 by the developer said, and I also have object.

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1 Then I have an additional section for more
2 comments. You'll see, in the three that I gave in today, and
3 in some of the ones that people uploaded, they have written
4 extensive comments, such as one neighbor objects to the pop
5 back, but does not mind the pop up because he felt the sight
6 lines were okay. The neighbors have different opinions about
7 different things. They're pretty uniformly against three
8 unit.

9 It's not actually a question of increasing
10 density, I think, as much as it is providing space for more
11 families to move in and not feeling that these units are big
12 enough for a family that can afford them to choose to move
13 into. I mean, these are not cheap units. They're not going
14 to be affordable housing. The people who move in there are
15 going to want to have a bedroom for the adults and multiple
16 bedrooms for children.

17 VICE CHAIR HART: Thank you.

18 CHAIRMAN HILL: Ms. Francis, I'm going to give you
19 three minutes, Mr. Moy, on the clock, please. You can begin
20 whenever you like.

21 MS. T. FRANCIS: Okay, so yes, we are right next
22 to the 716 property, and I am opposed to it because of the
23 size and the magnitude of it. I echo the statements made by
24 this gentleman and by Mr. Turnbull, thank you, because we
25 literally will be boxed in. Currently, when you come out of

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1 our back door and go down the steps, there's about 10 to 12
2 wooden steps. If I take five steps each way, I can see the
3 neighbors' yards. The structure, as planned here, will
4 obstruct that view completely. I'd be looking at a brick
5 wall, I think you'd say, so that's the reason why I'm not in
6 favor of this project. If they were to scale it back and
7 just turn it into a two-unit place, that would be less people
8 and, of course, it would not add to the traffic problem that
9 we already have.

10 We actually have traffic on Upshur Street now.
11 I want to say, respectfully, I'm a little disappointed that,
12 I believe, the Office of Planning, that you've already given
13 a preliminary approval without talking to the residents. I'm
14 curious as to how you can give a preliminary --

15 CHAIRMAN HILL: Ms. Francis, the Office of
16 Planning, they go through how they do their analysis with
17 regards to the different criteria for the approval, as we do,
18 as well, which is found in U-320.2, and then also in X-901,
19 within the regulations. The Office of Planning does think
20 about the people around them when they make their
21 recommendations, but that is just their recommendation.

22 Then their recommendation comes here before the
23 Board, and then we hear testimony from the ANC. We hear
24 testimony from neighbors, and we hear testimony from the
25 applicant, so that's what the process is. Please keep on

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1 going. I interrupted you, so please keep on going.

2 MS. T. FRANCIS: I can accept that, but just a
3 three-apartment unit in the middle of two row houses, it
4 sounds crazy because it is crazy. Our air and our view, all
5 of those qualities would be affected. So while we may not
6 be affected financially, our quality of life of living in a
7 single-family neighborhood will be dramatically affected.
8 That is the only reason why we're opposed to the project at
9 its magnitude. If they scale it back, then it would be okay.
10 But a three-unit apartment going up and going back, we would
11 literally be boxed in.

12 CHAIRMAN HILL: Okay. Does anybody have any
13 questions for the witness?

14 VICE CHAIR HART: Ms. Francis, thank you very much
15 for coming in, and Mr. Bui, as well, and Ms. Francis, as
16 well. I just had one curious -- one question about the
17 building that's actually just to your -- that's east of you.
18 Not on the west side, not where this project is, but the
19 building on the other side. That building is already moving
20 -- is already back -- it has an extension behind it.

21 MS. T. FRANCIS: It has a small wooden deck.
22 It's not anything --

23 VICE CHAIR HART: No, but it's already farther
24 back behind -- farther than your house is.

25 MS. T. FRANCIS: Correct, but it's not 26 feet.

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1 VICE CHAIR HART: When did that happen? Was that
2 something that happened -- I'm looking for it happened in the
3 last 15 years, or it's always been that way, and I just
4 didn't know.

5 MS. T. FRANCIS: I don't remember.

6 MS. P. FRANCIS: It's always been --

7 VICE CHAIR HART: You have to hit the button.

8 MS. P. FRANCIS: I'm sorry.

9 VICE CHAIR HART: It's okay.

10 MS. P. FRANCIS: Yes, the house that you're
11 referring to has always been that way, to my knowledge, and
12 I've lived in the neighborhood for more than 60 years.

13 MS. T. FRANCIS: You're talking about that part,
14 the brick part?

15 MS. P. FRANCIS: The Warren House, yes, that
16 extension was always there.

17 VICE CHAIR HART: Okay. I was just curious.
18 Sometimes they've been there longer; sometimes they're a
19 fairly new thing. I was just trying to understand what that
20 -- how long it had been there. Thanks.

21 CHAIRMAN HILL: Okay, Ms. Francis, you'll also get
22 three minutes, as well, to speak whenever you like.

23 MS. P. FRANCIS: Okay, thank you. Thank you
24 very much. As was stated earlier, I did meet Mr. Amit and
25 Mr. Simi. They did come around and tell me of the plans that

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1 they had for this project earlier this year. Both my
2 daughter and I told them that we were opposed to it. We did
3 not do it in writing, but we did meet with them two or three
4 times on the front porch, and we told them that we were
5 opposed to it, and we told them why. Basically, we're
6 opposed to it because we would be dwarfed and sandwiched in
7 between the property that's already there on -- that's
8 already been converted, and then the new property that
9 they're proposing would certainly interfere with our air and
10 our light.

11 Also, it drastically changes the character of the
12 neighborhood, as was stated earlier. There's no shortage of
13 available apartments in Petworth at this time. The
14 construction boom that we've over -- going through is almost
15 overwhelming, at times. You can't even get up and down the
16 street during the day, the traffic, for all the construction
17 that's going on.

18 For Upshur Street, this street is a street that
19 we have the bus, the Metro bus. The obstruction for the
20 traffic during the construction period at this time, with the
21 problems that we also have with trying to find a suitable
22 parking space, just thinking about it is almost overwhelming.
23 If the proposed project -- it extends too far because as the
24 diagrams had illustrated, there are other properties, older
25 properties, that have been extended, but none of the

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1 extensions is as far as the new property that is being
2 proposed.

3 CHAIRMAN HILL: Okay. Does anybody have any
4 questions for Ms. Francis?

5 MEMBER WHITE: Yes. This aspect of the project
6 does kind of make me -- I'm not quite there in being
7 comfortable with doing a 26-foot pop back for this particular
8 project. I still have to go through the analysis. But I'm
9 kind of on board with Mr. Turnbull, in terms of them being
10 boxed in, in a sense. I still have to go through the
11 analysis. Did you have any discussions about maybe Plan B,
12 in terms of what you would be willing to work with? You said
13 maybe reducing the units, pushing -- not going back as far.

14 MS. P. FRANCIS: As far. We've had -- not a
15 lot, but there have been other conversions in the
16 neighborhood, but none of them have been the single -- the
17 row houses that we have lived in. In fact, the house to the
18 right of me, that's been converted. The bottom unit is a
19 separate unit than the top part, so that's two. What he's
20 proposing on this side is for three. If he had some kind of
21 a plan, maybe for two units, as opposed to three, and the
22 extension that he's proposing on the back, it's too long.
23 It's much too deep.

24 MEMBER JOHN: Ms. Francis, I have a question for
25 you. So if the developer went back ten feet, which he could

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1 do by right, would that be something that you could live
2 with? By right, he can go back ten feet without coming to
3 the BZA.

4 MS. P. FRANCIS: It's possible. I think that's
5 something that we could certainly take into consideration.

6 MEMBER JOHN: I just wanted you to know that he
7 could go back ten feet without -- yes.

8 CHAIRMAN HILL: Okay, anybody else for the
9 witnesses? Okay. Thank you all very much. Thank you.
10 Thanks for waiting around this long, too. Mr. Teass, if you
11 could throw up, again, just something that shows the
12 extension. Right. Can you kind of show me around where ten
13 feet would be? I'm just kind of curious how back you can go
14 anyway, by right. You're going back 26.

15 MR. TEASS: Correct. The 26 feet is measured from
16 this point. This is our understanding of the zoning
17 administrator's interpretation that if you have structures
18 on either side, it's ten feet from the shallower of the two,
19 not the further of the two. And that, because this is an
20 uncovered porch, as opposed to an addition, we'd be measuring
21 from the rear wall here.

22 So the 26 feet is from this point, out to the
23 furthest point of the bay. Ten feet would probably put that
24 in line with what is appearing to be an addition or porch on
25 two properties over here. Just visually, that might be where

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1 the ten foot extent might be. So it's still shy of what
2 happened at 712, but still obviously creating an edge for the
3 neighbor at 714.

4 CHAIRMAN HILL: Again, just curious, are those the
5 two-bedroom/three-bedroom units?

6 MR. TEASS: They're one bedroom dens of the cellar
7 and at the ground, and then it's a three bedroom den at the
8 upper level.

9 CHAIRMAN HILL: Three bedroom den at the upper
10 level. Okay. So it could be family units.

11 MR. TEASS: I would certainly posit that. I could
12 go on, but I won't.

13 CHAIRMAN HILL: There's been a lot of discussion
14 about character. Character is analyzed in a variety of ways.
15 One of them is that some of the units that are going to be
16 here are family units, so you'll get more families there, as
17 well. Again, the criteria that we look at is under U-320.2,
18 and then X-901. Does the Board have any -- I'm sorry. So
19 now, since we've had cross and testimony, the applicant will
20 have an opportunity to give rebuttal against any of the
21 testimony that has been given. Do you have any rebuttal to
22 give, Mr. Teass?

23 MR. TEASS: No.

24 CHAIRMAN HILL: Okay, there you go. So then
25 usually, there would be cross-examination to rebuttal from

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1 any of the parties, but since there wasn't any rebuttal,
2 there isn't any cross-examination. Do you have any closing
3 you'd like to make?

4 MR. TEASS: Could I take a moment to confer with
5 my client?

6 CHAIRMAN HILL: Sure.

7 MR. TEASS: Apologies; I'm ready to --

8 CHAIRMAN HILL: That's all right. We're back.

9 MR. TEASS: I think that in conclusion, I'll keep
10 it relatively short. I've discussed this with the applicant.
11 We reached out early on in the process and felt like we had
12 a reasonable project. We were a bit surprised in the last
13 ten days, in terms of the neighborhood reaction, particularly
14 since we'd already made two trips. We've gone through all
15 the various notifications and outreach with regard to the
16 extent of neighbor opposition. So I think that we're just
17 a little bit surprised at the extent of it, at this stage.

18 CHAIRMAN HILL: Okay. I don't know where the
19 Board is. I don't think this is going to be as easy as I
20 thought it necessarily was going -- I didn't know where we
21 were going to get. As far as what -- I don't understand
22 necessarily what the light and air issues are to the neighbor
23 to your -- to the east, the Francis, the two ladies named
24 Francis.

25 Also, though, I do want to kind of -- well,

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1 anyway, if this were to pass, then the Francis' could
2 probably go all the way out and your building could get a lot
3 bigger, just to kind of make some weird observation. So, I
4 don't know. I would have liked to have talked to Mr. Morfin,
5 I guess, a little bit, in terms of how -- I guess he couldn't
6 stay with us this late. Was he here today, or no, you just
7 --

8 MS. ELLIOTT: I believe today is a holiday.

9 CHAIRMAN HILL: Oh, gotcha, right. See, I was
10 invited to things, too. I would want to see a shadow study.
11 Maybe you can go back out, then, and talk to the neighbor
12 next door and maybe explain what their options might be if
13 this were to pass or not.

14 Because then, if you go out as far as you get to
15 go out, and that other building is already as far out as they
16 get to go out, then you're just filling in the gap. That's
17 just me. Shadow study; I just want a shadow study, I guess,
18 because I want a shadow study between what the ten foot is,
19 and then what the 26 foot would be, the by right versus the
20 whatever. Anybody else?

21 MEMBER TURNBULL: Mr. Chair, I'm just looking at
22 Drawing 10 of the applicant's submission, which shows an
23 elevation of the side. That's what the applicant would --
24 that's what the Francis' would be looking at. They've got
25 that huge stair. They have this big blank wall.

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1 I just think it's out of scale for what -- it's
2 huge. I just think it is -- I think they need to go back and
3 redesign it and meet with the neighbors. I think they owe
4 that to -- I mean, I can't support this right now. I think
5 I just see that this needs to be refined. This needs to be
6 more sensitive to the house next door. I think they need to
7 develop a little bit more architectural ingenuity on how to
8 meet a house that's that much smaller. I think we're talking
9 about context, and we're talking about light and air. I just
10 don't think they've -- I don't think they've met the test,
11 the variance test to be able to do this.

12 I think the light -- there is Initiative E. If
13 I think the shadow studies will -- I'm not sure which is
14 north here and which is south. I'd have to go back and look
15 at the drawings. But to me, this is just a huge impact on
16 that neighbor. The stair is another issue that is just --
17 it's a solution.

18 It's a very simple solution to get out from that
19 level straight down, but it doesn't really take into account
20 the people on the other side of the fence. I don't think
21 there has been enough thought about access and egress and
22 thinking about the fact that there are neighbors next door.
23 You can say there's porches, and people look over each
24 other's fence.

25 I could say that about anything. But to me, when

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1 you go to this extent, you need to really think about what
2 you're doing. I think this is a lot more egregious than
3 simply having an exposed, an open porch. I think the
4 applicant -- again, I'm just speaking for me, but I'm just
5 saying that I -- right now, I could not support the
6 application the way it is now. I think it needs to be -- I
7 think there needs to be a little bit more input, I think some
8 more thought and some more sensitivity as to how they want
9 to add on to their existing house. That's just me.

10 CHAIRMAN HILL: Okay.

11 MEMBER TURNBULL: I don't think they meet the
12 test.

13 CHAIRMAN HILL: Okay. Mr. Teass, is the height
14 by right?

15 MR. TEASS: Yes, the height's by right, 35 feet.

16 CHAIRMAN HILL: So we're talking about the waiver
17 for the ten feet?

18 MR. TEASS: That's correct.

19 CHAIRMAN HILL: Okay, just wanted to understand.
20 Anyone else?

21 VICE CHAIR HART: Yes, Mr. Chairman, I have to
22 echo some of the comments -- actually, the comments that
23 Commissioner Turnbull just gave, especially with regard to
24 the back stair, what really struck me was actually looking
25 at some of the elevations from the Francis' side of the --

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1 I guess that's the east elevation.

2 I just was like wow, that's a really tall stair
3 that you're talking about. I understand that even if you did
4 two units, you'd probably have to have a stair back there
5 anyway, but it just seems like it's a fairly large wall that
6 leads to a stair that is -- it's just pretty high. The other
7 concern that I had was -- and I think I still do -- is around
8 the rooftop deck, I guess. I don't know if there's -- I
9 think I saw some windows on the extension that the -- on the
10 Francis' -- I guess the back of their building. It would be
11 helpful just to understand if there's something that you
12 could do to try to deal with that.

13 I don't know if it's moving it back or what, but
14 that just -- that part of it just -- I don't think that
15 putting in a screen is going to be the issue because I think
16 that's making it even taller. I don't know. It maybe makes
17 sense to move it back from that -- the small court that's
18 there. Those are the comments that I have.

19 MEMBER JOHN: Mr. Chairman, this is one of the
20 areas where we have the most difficulty, the ten-foot
21 addition, because we have struggled, from time to time, to
22 try to figure out what's the right mix. Clearly, it's a
23 special exception, so we can go beyond the ten foot, but
24 that's always a struggle.

25 Should it be 12 feet? Should it be 13, 14? When

1 is it ever appropriate? In this case, I am really troubled
2 by the 26-foot extension, even though it's a very long lot,
3 but I think when you look at the 26 feet, as well as the
4 massing of the structure, in general, I think there could
5 very well be a problem with light and air for the neighbors
6 at 714, the Francis family. To the extent that you can take
7 a more creative view of what you could do, based on the
8 comments that you're hearing from all of us, we've really
9 struggled with this.

10 To the extent that you can do something about the
11 26 feet -- of course, the height is a by-right addition, so
12 it's just the ten-foot extension. That's the only area where
13 we have discretion to waive that requirement as part of the
14 special exception criteria. To the extent that you can
15 improve on that, I think it might make it easier for us to
16 grant the waiver of that one provision. Was that clear to
17 you?

18 MR. TEASS: Yes, ma'am, it was.

19 MEMBER JOHN: Okay, thank you.

20 CHAIRMAN HILL: I guess I'm trying to think what
21 we're asking for. To me, Mr. Teass and Mr. Vora, I haven't
22 been here really a long time. Commissioner Turnbull, I
23 think, went through the process where you changed this,
24 wherein the people came and -- just so everybody knows,
25 before this change happened, you used to be able to go all

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1 the way back.

2 You could go all the way back, by right, and fill
3 out the lot because they were very long lots. The change
4 came to where the Zoning Commission said okay, you can go
5 back ten feet past your nearest neighbor. Right? And then
6 they made it a special exception after that. Special
7 exception means it's not as hard a test as a variance test,
8 meaning variance, it's a different standard, and it's a much
9 more difficult standard. They made it a special exception.
10 Special exception makes it a little bit more what's the undue
11 impact to the neighbors, to the community. I'm talking just
12 about the extension right now, as far as how far back you can
13 go.

14 That's where we -- now I'm just talking to my
15 Board members, who I guess I'll get to be with for a little
16 bit longer because this is what you're talking about. This
17 is what we tend to struggle with. The Office of Planning,
18 sometimes 20 feet's good, 28 feet's good, three feet's good.
19 You're just like, so where is the -- what is it?

20 The fact that it is a difficult thing to
21 understand, in terms of it being, again, undue impact to the
22 neighbors -- what's an undue impact? If you have a little
23 bit more shadow than you had before, is that an undue impact?
24 That's the kind of things that we go through when determining
25 what the regulations say, in terms of whether or not to

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1 approve or not.

2 They are able to do two units by right. This is
3 just now a conversion for the third unit. As far as the
4 character, in terms of the people that live in the
5 neighborhoods, we've had arguments either way as to who
6 should or shouldn't live in neighborhoods, so that's a whole
7 other very touchy subject. To get back to Mr. Teass, I guess
8 you want to -- you can come back because I guess we won't
9 vote right now because there's nothing to vote on, I guess.
10 I guess we could have this deliberation and see what happens,
11 but I think if you came back -- for me, if you came back with
12 what the by right, the ten-foot by right is, if the neighbors
13 understood what ten foot was going to be anyway, and then
14 what the 26 is -- I'd like to see the shadow study difference
15 between the 10 foot and the 26 -- I'm sorry, what you're
16 proposing and the ten foot.

17 It sounds like, and I would agree, that we're all
18 -- the stairs are very -- they seem, whatever, long. If you
19 can come up with a different solution to the stairs, and also
20 take Mr. Turnbull's comments into consideration, as well as
21 Board Member John -- Ms. White, I don't know if you had
22 anything different to add.

23 MEMBER WHITE: Nothing else. I think I made my
24 comments clear. I had concerns about the 26 feet. I'd like
25 to see an adjustment, but if you wanted to vote on it today,

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1 I would just have to share my opinions now.

2 CHAIRMAN HILL: Okay. Is there anything else?
3 Am I missing anything that you might like to see from them
4 when we come back?

5 MEMBER TURNBULL: No. My feeling is I think they
6 need to rework, go back and visit with the neighbors and have
7 some talk and maybe get a little bit more consensus from the
8 neighbors as to what they're doing.

9 CHAIRMAN HILL: Okay. Then I guess Office of
10 Planning could comment, again, on what comes forth, after
11 whatever the applicant presents. When do you think you'd be
12 able to put this together for us?

13 MR. TEASS: I think it's something that we could
14 do in relatively short order. I'd like to think that we
15 could meet with the neighbors, go back to the ANC, which I
16 believe is the second Wednesday in October. I think
17 submitting something after that, so if there's additional
18 comments, we'd have a chance to either incorporate those or
19 respond to those.

20 Pursuant to the discussion we had this morning,
21 I'm coming back on the 31st of October, so if we could -- if
22 I could request that as a date for continuance, that would
23 be amenable to me, and then the prerequisite number of days,
24 in terms of getting filings to the various parties.

25 CHAIRMAN HILL: Okay. So Mr. Moy, I guess if

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1 you're following along with that -- I don't know when --
2 Commissioner Jones, they would be trying to get back in front
3 of you again, in terms of a different plan. I guess that,
4 if possible, would happen in October.

5 MR. JONES: That's my understanding, as well, but
6 there's also residents -- concerning the residents on 7th
7 Street, which would be to the east of the subject property.
8 They had concerns about light and air, as well, and that was
9 submitted into the record in behest of that.

10 CHAIRMAN HILL: Okay. I guess we'll have an
11 opportunity to hear from the ANC again after they present to
12 the ANC with the new design.

13 MR. JONES: Mm-hm.

14 CHAIRMAN HILL: All right, so if we're back here
15 again on the 31st, Mr. Moy, then when would -- can you talk
16 me through some dates?

17 MR. MOY: October 31st?

18 CHAIRMAN HILL: Yes, October 31st.

19 MR. MOY: Was the Board thinking in terms of a
20 continued hearing or a decision?

21 CHAIRMAN HILL: Continued hearing, Mr. Moy, a
22 limited continued hearing based on -- I don't think the Board
23 would want to take testimony again about what is being
24 proposed now, only about whatever the new submissions would
25 be.

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1 MR. MOY: Okay, if it's a limited hearing, then
2 if the applicant can make their filing by Wednesday, October
3 17th. No responses, sir, or --

4 CHAIRMAN HILL: The ANC is a party. They'd have
5 time to respond.

6 MR. MOY: Okay, then if the ANC can respond by the
7 following week, which would be October 24th.

8 CHAIRMAN HILL: Sure, of course. You need to push
9 the button there, Commissioner.

10 MR. JONES: The next meeting of the ANC would be
11 the second Wednesday in October, which would be prior to the
12 date of the 17th. The next meeting would be the second
13 Wednesday in November.

14 CHAIRMAN HILL: You're saying that they can't get
15 on the ANC --

16 MR. JONES: October agenda.

17 CHAIRMAN HILL: They will not be able to get on
18 -- they cannot.

19 MR. JONES: That's correct.

20 CHAIRMAN HILL: They're unable to because your
21 agenda's full?

22 MR. JONES: No, because we meet the second
23 Wednesday of every month.

24 VICE CHAIR HART: Mr. Chairman, I think what he's
25 saying is if we have the drawings on October 17th, that would

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1 be after October 10th, which is when their ANC meets. I
2 think what we're looking at is having the applicant talk to
3 the ANC on October 10th, which is the second Wednesday, then
4 we get drawings that reflect whatever that -- whatever
5 discussion you all had, but those drawings would be on the
6 17th. It would be either incorporating them, or it would be
7 -- but they wouldn't be -- we would get drawings after the
8 meeting. We would kind of have to get the drawings after the
9 meeting, but I would surmise it would be fairly similar to
10 what we got on -- what you all saw on the 10th.

11 But I don't think that you need to have another
12 meeting to talk about the drawings that they would have
13 submitted to us on the 17th. I think the timeline works.
14 I just wanted to make sure that you all had -- the 24th is
15 really the response that we get from the ANC. You have a
16 time period in which to give that response on the,
17 quote/unquote, the updated drawings.

18 CHAIRMAN HILL: So then hopefully, Commissioner
19 Jones, they're going to present something to you that you can
20 vote on one way or another. Then we've asked them to present
21 to us whatever ends up happening on the 17th. Then you guys
22 will have an opportunity to, again, respond to whatever they
23 submit one way or the other.

24 MR. JONES: That's -- I'm confused. You said we
25 meet the second Wednesday of October, which is the --

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1 CHAIRMAN HILL: I have to look.

2 MR. MOY: It's October 10th.

3 MR. JONES: October 10th.

4 CHAIRMAN HILL: On the 10th, you guys are going
5 to present, I guess, whatever you can to the ANC, if you can
6 get on their calendar, and then you will present something
7 to us on the 17th. Is that what I heard, again?

8 MR. MOY: Yes.

9 CHAIRMAN HILL: So then you will have an
10 opportunity on the 10th, Commissioner, to see whatever it is
11 they're going to present to us on the 17th, or at least hear
12 from them. Then between the time you meet and the time they
13 present something, if they decide not to listen to you and
14 change and do whatever they want to do -- I'm just saying I
15 don't know what they're going to submit on the 17th -- then
16 you will have an opportunity to respond to whatever they
17 submit on the 17th.

18 MR. JONES: Would I be able to take a vote to the
19 second --

20 CHAIRMAN HILL: You won't be able to take a vote
21 again. Whatever you vote on the 10th is whatever you end up
22 voting on on the 10th, okay? But you will still have an
23 opportunity to respond to anything they submit to us, and
24 then you'll have an opportunity to come down here again, if
25 you'd like, on the 31st, although hopefully you don't have

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1 to, but you can come down on the 31st again if you like.

2 MR. JONES: Okay.

3 CHAIRMAN HILL: Mr. Moy, could you repeat the
4 dates again, please?

5 MR. MOY: The applicant would make their filing
6 on October 17th. On October 24th, the week following, can
7 be a filing from ANC and the Office of Planning. Then we
8 would have a limited hearing on October 31st.

9 CHAIRMAN HILL: Mr. Morfin will be on that,
10 supposedly?

11 MS. ELLIOTT: Oh, absolutely.

12 CHAIRMAN HILL: Okay, great. If he could just
13 kind of help us because he told us all about this. Then,
14 again, just to clarify, it's a limited hearing. We're only
15 going to be, now, talking about the new stuff that gets
16 filed. Okay? All right. Thank you all very much.

17 MR. TEASS: Thank you for your consideration.

18 (Whereupon, the above-entitled matter went off the
19 record at 6:20 p.m. and resumed at 6:29 p.m.)

20 MR. MOY: This is case Application Number 19811
21 of Columbia Heights Partners, LLC. This is captioned for
22 variance relief from the density requirements of Subtitle E,
23 Section 201.4, to permit an existing 17-unit apartment house
24 in an RF-1 zone. This is at 4526 13th Street NW, Square
25 2817, Lot 36.

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1 BZA CHAIR HILL: Okay. Could you please
2 introduce yourselves from my right to left?

3 MR. N. FINLAND: Nick Finland.

4 MR. M. FINLAND: Max Finland.

5 MS. MOLDENHAUER: Good evening, Meridith
6 Moldenhauer from the law firm of Cozen O'Connor representing
7 the Applicant.

8 MR. VARGA: Stephen Varga, Director of Planning
9 Services, Cozen O'Connor, on behalf of the Applicant.

10 BZA CHAIR HILL: Okay, Mr. and Mr. Finland, who
11 are you guys?

12 MR. N. FINLAND: Represent MED Developers who
13 is the parent company of Columbia Heights Partners.

14 BZA CHAIR HILL: Okay. So you as well?

15 MR. M. FINLAND: Yes. He does the development and
16 I do the property management.

17 BZA CHAIR HILL: Okay, are you brothers?

18 MR. M. FINLAND: Cousins.

19 MR. N. FINLAND: Cousins.

20 BZA CHAIR HILL: Okay, all right. Just, you want
21 me guess, it's like Mr. Finland. Mr. Finland. Mr. Bob. Mr.
22 Joe. Okay, sorry. It's getting to the end of the night.

23 All right. We're going to go ahead, and it is a
24 little bit, unfortunately, of a complex issue in that it's
25 a variance. And so you're going to have to kind of walk us

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1 through the variance test in terms of what you're trying to
2 propose. I mean, we do understand what's in the record in
3 terms of, again, the 17-unit apartment building that you have
4 and the situation that you find yourselves in, okay.

5 But I suppose, Ms. Moldenhauer, you're going to
6 present. Is that correct?

7 MS. MOLDENHAUER: Correct. We'll go through a
8 brief presentation. Then I'll focus a lot on the legal
9 standards.

10 BZA CHAIR HILL: Okay. I'm going to go ahead and
11 let you start whenever you like. And you can begin.

12 MS. MOLDENHAUER: Sure. First I'll turn it over
13 to Nick Finland, Director of Development.

14 MR. N. FINLAND: Good evening. I just wanted to
15 introduce MED Developers. We're a District-based developer,
16 have been operating in the District since 2006, currently own
17 and manage about 1,000 units spread across 100 buildings,
18 primarily affordable type housing in the District. Thank
19 you.

20 All right, I'm going to speak about the property.
21 It's a large corner lot located at the intersection of 13th
22 Street and Buchanan NW. It's located in an RF-1 zone. The
23 property is located in the Petworth neighborhood, and it's
24 a purpose-built apartment house constructed in 1919, land
25 area, 7,400 square foot. All the units are currently

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1 prioritized for existing and new low-income tenants at the
2 30 percent AMI level.

3 MS. MOLDENHAUER: As noted in the application, the
4 property is a purpose-built apartment building that houses
5 17 units currently. When the Applicant acquired the
6 property, there were 17 residential units on the rent roll.
7 And one of those units is located in the cellar. The C of
8 O currently is for 16 units. All of the units, including the
9 unit in the cellar, are at a 30 percent AMI and are provided
10 via the Voucher Program. The proposal here is not proposing
11 to increase or change at all the existing massing on the
12 building.

13 The Applicant coordinated with the single-member
14 district representative, Mr. Rod Campbell, throughout the BZA
15 process. The Applicant presented to the full ANC and
16 obtained their full support, unanimous support on September
17 12th which is in the record at Exhibit Number 36, which would
18 receive great weight and satisfies the standard. The Office
19 of Department of Transportation also supports the Application
20 at Exhibit 31. And the Office of Planning supports the
21 application at Exhibit 34.

22 The variance standard here is a variance standard
23 under the density requirements and under the 900 square foot
24 requirement for the RF zone. The property's unique condition
25 is that the property is the largest lot on the square. The

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1 property is also uniquely located on a corner lot. The
2 property has a unique condition where the structure is raised
3 and on a berm, allowing for a unique condition where the
4 seller actually has a seven-foot tall ceiling clearance
5 height in the cellar.

6 There is a significant amount of public space
7 surrounding the property allowing for the appearance as
8 though the lot may be larger, given that there's a very large
9 public space surrounding the area. And the only lot directly
10 abutting the property is an unimproved lot that could not be
11 acquired or incorporated.

12 The exceptional conditions created here are that
13 the 17th unit located in the cellar is a habitable space that
14 would otherwise not be able to be productively used due to
15 the topography of the lot and the building restriction line
16 set forth in the structure.

17 There's a significant amount of public space left
18 over that would obviously create a reduced visual appearance
19 of the degree of relief requested and that the relief granted
20 would allow for an existing unit that's been part of the
21 housing stock for the last ten years to come into compliance.

22 We believe there is no substantial detriment to
23 the public good. The Applicant does not propose to expand
24 the footprint of the building. He does not propose to change
25 the facade, no changes to any exterior doors or windows. To

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1 that effect, no tenants would be displaced by this proposed
2 relief.

3 Granting of the requested variance relief would
4 not be predicated by a change in the use, as it is a purpose-
5 build apartment building, and thus the existing use as an
6 apartment building is not a non-conforming use, but rather
7 deemed to be a conforming use. And it is also consistent
8 with many elements of the comprehensive plan framework
9 elements and land use elements of the comp plan that
10 encourage additional housing stock.

11 And most importantly here, it's preservation of
12 existing housing stock. This is a unit that's been on the
13 rent rolls for over ten years. And so that being said, I
14 would just simply rest on what we have filed, our community
15 outreach, and answer any questions from the Board.

16 BZA CHAIR HILL: All right, does the Board have
17 any questions of the Applicant?

18 MEMBER WHITE: Just one quick one. Are you
19 required to provide the affordability units or this is just
20 --

21 MS. MOLDENHAUER: No.

22 MEMBER WHITE: -- something that the developers
23 took on personally to ---

24 MS. MOLDENHAUER: They took this on. It's not a
25 requirement. There's no IZ here, these are existing units.

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1 But the developer can talk a little bit more about the
2 affordability program that they have.

3 MR. N. FINLAND: Yes. So it's not, like, IZ or
4 any kind of requirement. We took a certain type of funding
5 through the Low Income Investment Fund, LIIF. And that loan
6 comes with a requirement that we -- for the 30 percent AMI.

7 MEMBER WHITE: Got it.

8 MR. N. FINLAND: And just to clarify, it's not
9 just voucher units. It's just anybody that comes in has to
10 be at that level. So existing people are at that level, new
11 people coming in could be voucher or other low income.

12 MS. MOLDENHAUER: But you chose to move forward
13 with that type of product. There was no other requirement
14 on the building ---

15 MR. M. FINLAND: Correct. There's no other
16 requirement. That is our business. That's what we do. And,
17 I mean, most of our properties are that way.

18 MEMBER WHITE: Okay, thank you.

19 MR. N. FINLAND: We don't plan to change.

20 BZA VICE CHAIR HART: But if you sold it, then
21 anybody could have any of the units, and they could do
22 anything they want to with it.

23 MR. N. FINLAND: Currently, exactly.

24 MS. MOLDENHAUER: Well, the property would be
25 controlled by other DC laws that are in place in regards to

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1 rent control.

2 MR. N. FINLAND: Which is already in place. Like,
3 the rent control is already in place on that unit.

4 BZA VICE CHAIR HART: On the 17th unit?

5 MR. N. FINLAND: Yes. So we took it over. The
6 previous people had been renting it, I think, since like '94.
7 So the CFO says 16 units, the rent roll we were provided had
8 the 17th unit. We went down to the ---

9 BZA VICE CHAIR HART: Well, no. I guess the part
10 I'm trying to get to is how could something be required on
11 something that was not actually part of the C of O.

12 MS. MOLDENHAUER: I'll just ---

13 (Simultaneous speaking)

14 BZA VICE CHAIR HART: You see what I'm saying --
15 I'm asking?

16 MS. MOLDENHAUER: So the Department of Housing has
17 a different notification process and rent roll process. And
18 we went down to their office, and we obtained copies of
19 documentation. And their agency has, on their rent roll,
20 this Unit A, which is the 17th unit. Even though there is
21 not legally a C of O for it, it has been part of their rent
22 roll.

23 So even if this unit came into the market now, it
24 would go back in time to having to be maintained under the
25 rent control provision which is a completely separate legal

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1 requirement and act. Because it had been identified as a
2 existing unit at that time previously, and thus you could not
3 increase the rent as permitted under rent control from a
4 year-to-year provision.

5 I see Ms. John shaking her head that she might
6 agree. But in the --- I could answer any other questions.

7 MEMBER JOHN: No, no. I understand perfectly the
8 whole, you know, rent control process. My only question was,
9 so you had notice when you purchased the building, this is
10 to the Applicant, that there was no C of O for that 17th
11 unit. Because your C of O said 16 units.

12 MR. N. FINLAND: That's correct. I wasn't part
13 of the acquisition. I took the rent roll, that's what I went
14 off.

15 MS. MOLDENHAUER: And I agree professionally, yes,
16 that they had notice. But under an area variance
17 requirement, there is no bar against -- no self-created
18 hardship in that regard. And, you know, we believe that,
19 obviously, at the end of the day, you know, it is a positive
20 that obviously this property owner is trying to come into
21 full compliance with the zoning regulations.

22 MEMBER JOHN: Absolutely, I agree.

23 BZA CHAIR HILL: All right, anybody else? Okay.

24 MEMBER TURNBULL: Ms. Moldenhauer, there was an
25 Exhibit 3A through F from Matt LeGrant to Ms. Mazo. And I'm

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1 just curious. The paragraph -- the fourth paragraph says,
2 the property has a certificate of occupancy for a 17-unit
3 apartment building. I'm just curious as to -- is this going
4 back to a different --- I think it's Exhibit E?

5 MS. MOLDENHAUER: So just to clarify, thank you,
6 Commissioner Turnbull. This is not related to this property.

7 MEMBER TURNBULL: Oh, it's not.

8 MS. MOLDENHAUER: What it is, it was in the record
9 simply to go to the legal issue of the fact that a purpose-
10 built apartment building ---

11 MEMBER TURNBULL: Oh, okay.

12 MS. MOLDENHAUER: -- is not a non-conforming
13 structure, but it is rather deemed to be a conforming
14 structure.

15 And the specific kind of --- when the Zoning
16 Commission put into terms some of the language, there was a
17 lot of back and forth on whether or not a purpose --- whether
18 it was a purpose-built apartment building or whether it was
19 a pre-1958 conversion, whether it was a conversion under the
20 regulations. And so this was just put into place to kind of
21 clarify that point.

22 MEMBER TURNBULL: Okay, thank you.

23 MS. MOLDENHAUER: No problem.

24 BZA VICE CHAIR HART: Also out of curiosity,
25 because I was just looking at the plans again. What's

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1 Exhibit 4, I think it's just four, the architectural plans?
2 What's happening at the front of the building? There's one
3 unit that's down there. Well, there's one other door that's
4 down there. This is page -- this is the cellar floor plan
5 we're looking at, Exhibit 4.

6 MR. N. FINLAND: These are two storage rooms.
7 We've got the gas --- all right, so as I'm looking at it, the
8 left-hand square is the gas room, the right-hand square is
9 the trash room. So those are --- one's essentially an empty
10 space, and the one on the left is the gas meters.

11 MS. MOLDENHAUER: And we have existing pictures
12 of that, if you'd like to see it.

13 BZA VICE CHAIR HART: I think I'm good. I just
14 was curious as to what that was, since it wasn't labeled.
15 And the unit is, so I just didn't know what it was. Thanks.

16 BZA CHAIR HILL: Okay. Could I turn to the Office
17 of Planning?

18 MS. BROWN-ROBERTS: Good evening, Mr. Chairman,
19 and members of the Board. Maxine Brown-Roberts from the
20 Office of Planning. The Office of Planning recommends
21 approval of the special exception from Subtitle E to a 1.4
22 density for an apartment house in an RF-1 zone where 900
23 square feet of land area per unit is required. The proposal
24 is to have 438.3 square feet of land area per unit.

25 Regarding the variance, the Applicant is presented

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1 with an exceptional situation in that the structure is
2 purpose-built within the RF-1 zone with 17 units. The DHCD
3 certificate demonstrates that the unit in the cellar has
4 existed for an extended period of time prior to the
5 building's purchase by the Applicant and has completed build-
6 out and meets the requirement for habitable space.

7 If the cellar unit were not allowed, it would be
8 a practical difficulty on the Applicant as it would be a loss
9 of a deeply affordable unit and some housing. In addition
10 to that, the unit would have to be dismantled to accommodate
11 other use which could result in significant cost to the
12 Applicant.

13 In addition, the cellar, the area, already has
14 storage and other uses which serve residents of the building.
15 The vacant space or unit would present potential maintenance
16 or security difficulties if the space was not being used.

17 The property cannot be expanded to meet the 900
18 square feet of land area per unit, because it is bounded on
19 the north and east by streets, and to the west by an alley,
20 and then to the south by a vacant property. Included in this
21 property, the land area could not be met, the 900 square feet
22 of land area per unit requirement.

23 The proposed cellar unit would not pose any
24 substantial detriment to the public good. As no exterior
25 modifications to the building are proposed, the unit is fully

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1 contained within the existing cellar area. Neighbors
2 abutting the building would not be impacted. Further, the
3 unit will continue to house the low income residents.

4 The existing unit in this building would not cause
5 any substantial harm to the zoning regulations, as the relief
6 would allow the Applicant to continue an affordable unit in
7 an otherwise unusable space in this building.

8 Again, there are no exterior modifications
9 proposed for the building, so the height and massing of the
10 structure would continue to be appropriate for the
11 neighborhood in which it is located.

12 Thank you, Mr. Chairman. And I'm available for
13 questions.

14 BZA CHAIR HILL: All right. Does anyone have any
15 questions for the Office of Planning?

16 (No audible response)

17 BZA CHAIR HILL: Okay. Does the Applicant have
18 any questions for the Office of Planning?

19 MS. MOLDENHAUER: No questions, thank you.

20 BZA CHAIR HILL: All right. Is there anyone here
21 wishing to speak in support of the application?

22 (No audible response)

23 BZA CHAIR HILL: Is there anyone here wishing to
24 speak in opposition to the application?

25 (No audible response)

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1 BZA CHAIR HILL: Ms. Moldenhauer, is there
2 anything else you'd like to add in conclusion?

3 MS. MOLDENHAUER: No. We believe that we've
4 satisfied the standard, and we look forward to the Board
5 deliberating. Thank you.

6 BZA CHAIR HILL: Okay. And I'm going to close the
7 hearing. Is the Board ready to deliberate? Does someone
8 else want to talk?

9 BZA VICE CHAIR HART: Yes. Mr. Chair, I think we
10 have quite a bit of information in the record on the case.
11 I also appreciate the Applicant's testimony and information
12 that they've provided as part of the hearing.

13 I kind of, looking through this, I think the kind
14 of issue that we've been grappling with, or that I've been
15 grappling with, is on this --- if there is sufficient
16 information for us to be able to be okay with the 17th unit
17 and the variance request that's been set forth or been
18 requested.

19 I think that the Office of Planning has provided
20 us with some information regarding the variance request. And
21 I think that I could support the application.

22 I will say that it is somewhat troubling that this
23 has already been in a unit. And I'm not exactly sure what
24 happened with the C of O and not including the 17th unit.
25 But the Department of Housing would actually have it as a

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1 unit, because you would have thought that at some point that
2 that department would have actually tried to figure out if
3 this was an actual unit that needed to be in the zoning ---
4 excuse me, that had a C of O.

5 And I understand where we are now, so I'll just
6 say that I would be supportive of the application and citing
7 the Office of Planning report and the information that the
8 Applicant has provided. And I will just leave it there.

9 MEMBER JOHN: Mr. Chairman, I will support this
10 application, and I believe that the Applicant has met the
11 test for a variance based on the analysis provided by the
12 Office of Planning. I don't find that there is a confluence
13 of factors, but I'm persuaded by the fact that, if the space
14 could not be used even though it is a habitable unit, that
15 it would -- there would be -- the only other use would be
16 storage. And there's already storage. And so there would
17 be that loss of an affordable unit.

18 And although the Applicant did not provide
19 information on the economic cost, I expect that there would
20 be some loss of income from having that space vacant. And
21 so based on that information, and the other findings in OP's
22 report, I am able to support the variance and the
23 application.

24 MEMBER TURNBULL: I would concur with my
25 colleagues. And ANC 4C is in support, so I would be in

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1 support of approving this.

2 MEMBER WHITE: I concur too, Mr. Chair. I think
3 they met the variance test. It's kind of a unique situation.
4 And again, I think it makes sense to incorporate that 17th
5 unit into the overall property. And again, it's an
6 affordable housing unit. And ANC and OP support it, so I'm
7 comfortable that they've met the criteria here.

8 BZA CHAIR HILL: Okay, great. Then I have nothing
9 else to add. I'll go ahead and make a motion to approve
10 Application Number 19811 as captioned and read by the
11 Secretary and ask for a second.

12 BZA VICE CHAIR HART: Second.

13 BZA CHAIR HILL: Motion made and seconded. All
14 those in favor say aye?

15 (Chorus of ayes)

16 BZA CHAIR HILL: Aye. All those opposed?

17 (No audible response)

18 BZA CHAIR HILL: The motion passes, Mr. Moy.

19 MR. MOY: Staff would record the vote as five to
20 zero to zero based on the motion of Chairman Hill to approve
21 the application for the relief requested. Seconding the
22 motion, Vice Chair Hart, also in support, Mr. Michael
23 Turnbull, Ms. White, and Ms. John. The motion carries.

24 BZA CHAIR HILL: Okay. Thank you, guys, very
25 much. All right, Mr. Moy, you can call this whenever you

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1 like, please.

2 MR. MOY: Thank you, Mr. Chairman. The next and
3 last case application for the hearing session today is Case
4 Application Number 19817 of Judith Lavallo, close? This is
5 captioned and advertised for a special exception under
6 Subtitle E, Section 205.5 and 5201 from the rear addition
7 requirements of Subtitle E, Section 205.4, which would
8 construct a two-story rear addition to an existing principal
9 dwelling unit, RF-1 zone at 1515 E Street, SE, Square 1076,
10 Lot 17.

11 BZA CHAIR HILL: All right, great. Thank you, Mr.
12 Moy. Could you please introduce yourself?

13 MR. GOINS: Yes. My name is Jeff Goins. I'm a
14 principal at PGN Architects. And I'm representing the owner,
15 my wife.

16 BZA CHAIR HILL: Okay.

17 (Laughter)

18 BZA CHAIR HILL: All right, Mr. Goins. Thanks for
19 staying here so long. I think the record is pretty full.
20 And you've given us this presentation that we're able to kind
21 of flip through at will.

22 And since we've been here already for seven or
23 eight hours, and we still have some decisions to go through,
24 I'm not going to ask any specifics right now other than a
25 little bit. Can you tell us about what has happened with

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1 your ANC, why there's no report filed, and how your outreach
2 went with them?

3 MR. GOINS: It went great. We uploaded 18 letters
4 with signatures of support. And those signatures are along
5 E Street, 16th, and 15th. So they're direct abutting
6 neighbors.

7 The ANC voted 9-0 in full support. And I saw an
8 email two days ago to Cliff, I do believe, that went through
9 where they voted. We also presented to Capital Restoration
10 Society, but I checked the log of the record. I did not see
11 their ---

12 BZA CHAIR HILL: So you're testifying. Did you
13 get sworn in today?

14 MR. GOINS: I did.

15 BZA CHAIR HILL: Okay. So you're testifying that
16 you presented at the ANC and they voted 9-0 in support?

17 MR. GOINS: Yes, sir.

18 BZA CHAIR HILL: To this project. And the email
19 that you're speaking to, to the Secretary, is that in the
20 record? You don't know?

21 MR. GOINS: I don't know.

22 BZA CHAIR HILL: Okay. All right.

23 MR. GOINS: I saw it two days ago, though.

24 BZA CHAIR HILL: Okay. All right. I don't have
25 any particular --- oh, sorry.

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1 BZA VICE CHAIR HART: Just one question. In the
2 ANC, they just voted in support. They didn't have any other
3 comments on it after?

4 MR. GOINS: No.

5 BZA CHAIR HILL: Full support?

6 MR. GOINS: Yes.

7 MEMBER TURNBULL: The neighbors on either side are
8 in support?

9 MR. GOINS: We have direct letters from both
10 adjacent neighbors that are specific to the area or the
11 Section 205 that we are requesting relief, Eric and Sean
12 Lash.

13 MEMBER TURNBULL: You've heard all the other
14 comments we have.

15 (Laughter)

16 BZA CHAIR HILL: But you're not going back farther
17 than ten feet, correct?

18 MR. GOINS: Yes, we are. We're going back 19 feet
19 on the first and second floor. One of the things, just to
20 give you a 30-second summary, we approached this from a kind
21 of, I guess, some of the pop-up standards, the character of
22 the neighborhood. We're on the south side of E Street. And
23 there's four Victorians in the middle of the block surrounded
24 by either an apartment building or Federal style flat fronts.

25 So there're kind of unique characteristics on the

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1 south side. On the north side, it's primarily Victorians.
2 So we set the third floor back 17 feet. We really wanted to
3 maintain that character. And so the first and second floor
4 we're asking for that relief to go back 19 feet.

5 BZA CHAIR HILL: Yes. I'm sorry, I just didn't
6 see the waiver request.

7 BZA VICE CHAIR HART: Now, the house on the one
8 side, they're adding on?

9 MR. GOINS: They have a built-in porch right now
10 that goes back 15 feet.

11 BZA CHAIR HILL: Okay.

12 MR. GOINS: But that doesn't count. We're going
13 from their brick.

14 BZA CHAIR HILL: From their brick, right.

15 MR. GOINS: Yes, sir.

16 BZA CHAIR HILL: Okay. All right. I'm going to
17 turn to the Office of Planning.

18 MS. VITALE: Good evening, Mr. Chair, members of
19 the Board. Elise Vitale with the Office of Planning. And
20 we are happy to rest on the record in support of the
21 requested relief. And I'm happy to answer any questions.
22 Thank you.

23 BZA CHAIR HILL: So, Ms. Vitale, again, just so
24 we continue to get more and more acquainted to why the Office
25 of Planning is in agreement with things going past the ten

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1 feet, can you explain that a little bit to us?

2 MS. VITALE: Sure. In this instance, we looked
3 at the location of the property in the square. We looked at
4 the proposed addition and the potential impacts to the
5 adjoining properties, as was discussed briefly. The
6 adjoining properties have additions, albeit not fully
7 enclosed additions. So that 19-foot total measurement really
8 is going from the full --- the rear facade of the adjoining
9 properties.

10 We didn't believe this would result in an undue
11 impact on the adjoining properties with respect to light and
12 air, or privacy. We obviously took into consideration the
13 appearance of the proposed addition as it might be seen from
14 the alley network in the square.

15 And again, based on the proposed materials, the
16 design of the proposed addition, you know, again, we thought
17 it was not out of character or scale with other properties,
18 you know, on this block of E Street.

19 I'm trying to flip through the presentation from
20 today. As the Applicant indicated, the addition is set back
21 significantly, 17 feet from the front facade which is, you
22 know, again, helpful in minimizing the scale and impact of
23 that proposed third floor addition.

24 And on the rear facade of the property, again, the
25 relief request is really relating to the first and second

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1 floor. Again, that third floor addition has been pushed back
2 from the rear facade and from the front facade. So that
3 again minimizes the impact of that addition on the adjoining
4 properties.

5 BZA CHAIR HILL: Okay. So my question really is
6 more just to the property to the east in the rear. So as far
7 as, like, light and air, like, what was kind of the Office
8 of Planning's thoughts concerning light and air to that
9 property to the east? And I'm, again, just asking for future
10 understandings of this topic.

11 MS. VITALE: I think you have to look at each case
12 individually. And so I think each property is unique. And
13 in looking at the application that was before us for this
14 particular property, and looking at the Applicant provided
15 shadow studies, you know, renderings, photographs, a good
16 deal of information, and analyzing all the information that
17 was provided by the Applicant, we were --

18 BZA CHAIR HILL: Okay, I'm sorry. I didn't see
19 the shadow studies. Okay, okay. I'm going to cut you off,
20 sorry.

21 BZA VICE CHAIR HART: I actually do have a
22 question. So this also kind of gets me a little bit confused
23 by just measurement. I thought that it was the distance from
24 the wall that was kind of the farthest, the adjacent property
25 that had the wall that was the farthest.

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1 And there's kind of, like, a dogleg that's in
2 here. And what's being proposed will take --- I'm looking
3 at the floor plans that the Applicant just provided to us,
4 A-08, A-08. And so what I'm looking at is the extension is
5 19 feet, two inches. But it's measured from the building
6 that is to the west. But there's a dogleg on the building
7 to the east. And I don't know why that's not being measured
8 from that dogleg. And it's measured from the --- do you see
9 what I'm asking?

10 MS. VITALE: I see ---

11 BZA VICE CHAIR HART: And I thought it was --- in
12 other cases, I thought it was measured from the dogleg. So
13 that's why I'm trying to make sure that I have that correct.

14 MS. VITALE: And I would defer to OAG or DCRA on
15 how that, you know, on the policy for how that measurement
16 is made. I do know that it's the fully enclosed rear facade.
17 But I can't speak to the issue ---

18 BZA VICE CHAIR HART: No. And I understand that.
19 I just wanted to --- if I can make sure that I have that
20 clear as well.

21 MR. GOINS: If I may interject, excuse me. I did
22 pose that question, because I wasn't sure myself. So we
23 decided to take it from the measurement where we did. But
24 I was confused. And I do believe I got a couple of emails
25 back from DCRA and OP on -- that I had to take it from that

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1 position. So that's what we did.

2 BZA VICE CHAIR HART: I was going to ask OAG if
3 I could get a little bit more --

4 MR. GOINS: Sure, that's fine.

5 BZA VICE CHAIR HART: -- more clarity on that.

6 MS. NAGELHOUT: Section 205.5 in Subtitle E refers
7 to extending farther than ten feet beyond that farthest rear
8 wall of any principal residential building on an adjoining
9 property.

10 BZA VICE CHAIR HART: So is that different? Yes,
11 I understand what that means. Is that different than what
12 we get in other --- when they're looking at the waiver for,
13 you know, the ten-foot --- because I thought that they
14 measured from that, I don't know, maybe I'm just ---

15 MS. NAGELHOUT: I believe it's the same, but I'll
16 look.

17 BZA VICE CHAIR HART: Because let's say you had
18 a building that was --- because currently the kind of
19 buildings are almost the same location in the back, or
20 they're flat in the back.

21 If one of the buildings was farther out, then you
22 could go ten feet past which one? And let's say they're all
23 --- there are three flat, you know, the backs of the
24 buildings are all flat. And they're all at the same
25 location. I'm sorry. Let's say that one of the buildings

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1 is farther back five feet. And the two buildings on either
2 side of it -- I'm getting this confused. But what I'm trying
3 to understand is do we always measure it from the nearest,
4 the, I don't know ---

5 MS. NAGELHOUT: This one right here.

6 BZA VICE CHAIR HART: Do you see what I'm
7 asking?

8 MR. TONDRO: Yes, I think so. I think that the
9 key is that is the farthest rear wall on any property. So
10 that's how you get rid of the dogleg. You don't worry about
11 the shorter wall on that particular property. So the
12 farthest rear wall on either property, that's the farthest.

13 But then, because it's on any adjoining
14 property, let's say the property to the east is at ten feet,
15 and the property at the west is at 20 feet. It has to be no
16 more than ten feet beyond each of those. So therefore, it
17 would be limited more by the shorter in that case. Does that
18 make sense? So it's --

19 BZA VICE CHAIR HART: Yes, I know, it just ---
20 that has always been an issue for me. And I've been, you
21 know, trying to figure out how to deal with that dogleg
22 issue.

23 MS. NAGELHOUT: You don't count the dogleg.

24 BZA VICE CHAIR HART: Yes. And that's what I'm
25 understanding, is you don't count the dogleg.

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1 BZA CHAIR HILL: Okay, okay, okay. All right,
2 do we have any questions for the Office of Planning, Mr. --

3 MR. GOINS: No.

4 BZA CHAIR HILL: I have a quick one. On the
5 second to last page, there's, like, a wire fence looking
6 thing. And then there's a real fence. Like, what's the wire
7 diagram? What does that mean?

8 MR. GOINS: That's actually an existing fence.
9 We just wanted to make sure ---

10 BZA CHAIR HILL: What?

11 (Simultaneous speaking)

12 MR. GOINS: It's an existing fence. But we
13 actually wanted ---

14 BZA CHAIR HILL: That's okay. I was just
15 curious.

16 MR. GOINS: -- we wanted to show the neighbors
17 what it was.

18 BZA CHAIR HILL: I thought it was a dog run.
19 Okay.

20 BZA VICE CHAIR HART: And I will say, Mr. Goins,
21 I do appreciate how you kind of stepped the rear back. I
22 think that that's a good thing. And I wasn't trying to knock
23 it. I was just trying to understand it. But I do appreciate
24 that. Because I think that, even though it is 19 feet, it
25 actually kind of feels less than that, because it doesn't go

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1 to 19 on the third floor.

2 BZA CHAIR HILL: Mr. Goins, I appreciate the
3 lovely sunset in the background of your photograph and how
4 pretty the pictures are this late at night.

5 (Laughter)

6 BZA CHAIR HILL: I really do. It really is a
7 lovely way to finish. Okay.

8 MEMBER TURNBULL: I've got one question.

9 BZA CHAIR HILL: Sure, please, go ahead.

10 MEMBER TURNBULL: Mr. Goins, on the property to
11 the west that has the interior courtyard there, is there a
12 window back there, or is that --- what does he have?

13 MR. GOINS: Yes, there is a window.

14 MEMBER TURNBULL: There is a window?

15 MR. GOINS: Yes.

16 MEMBER TURNBULL: Okay.

17 MR. GOINS: Yes. I mean, we've discussed with
18 both of our neighbors, our yards are very deep.

19 MEMBER TURNBULL: Yes.

20 MR. GOINS: We get lots of sunlight. And
21 actually, I think he's probably going to do the same thing.

22 MEMBER TURNBULL: Well, we can look forward to
23 that.

24 MEMBER WHITE: Just so I'm clear, both of your
25 adjacent neighbors are in full support?

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1 MR. GOINS: Yes. They've sent specific letters.
2 They're on the record.

3 MEMBER WHITE: Okay, thank you.

4 BZA CHAIR HILL: Okay. Do you have any
5 questions for the Office of Planning?

6 MR. GOINS: No.

7 BZA CHAIR HILL: All right. Does anyone here
8 want to speak in support?

9 (No audible response)

10 BZA CHAIR HILL: Is there anyone here wishing
11 to speak in opposition?

12 (No audible response)

13 BZA CHAIR HILL: Is there anyone here from the
14 ANC?

15 (No audible response)

16 BZA CHAIR HILL: Mr. Goins, do you have anything
17 else you'd like to add?

18 MR. GOINS: No. I'm going to rest on the
19 record.

20 BZA CHAIR HILL: Okay, I'm going to go ahead and
21 close the hearing. Is the Board ready to deliberate?

22 Okay, I can just go ahead and start. I thought
23 that Office of Planning's analysis is thorough. I thought
24 that the testimony given by the Applicant concerning the vote
25 from ANC 6B as well is how I am taking the ANC's vote,

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1 although that's obviously not something that we can give
2 great weight towards in this particular situation, the way
3 it's been presented.

4 DDOT didn't have any objections. And I'm
5 satisfied that the meeting of the special exception and the
6 other criteria to grant this. Does anyone have anything else
7 they'd like to add?

8 (No audible response)

9 BZA CHAIR HILL: I'm going to make a motion to
10 approve Application Number 19817 as captioned and read by the
11 Secretary and ask for a second.

12 BZA VICE CHAIR HART: Second.

13 BZA CHAIR HILL: Motion made and seconded. All
14 those in favor say aye?

15 (Chorus of ayes)

16 BZA CHAIR HILL: Aye. All those opposed?

17 (No audible response)

18 BZA CHAIR HILL: The motion passes, Mr. Moy.

19 MR. MOY: Staff would record the vote as five
20 to zero to zero based on the motion of Chairman Hill to
21 approve the Application for the relief requested. Seconding
22 the motion, Vice Chair Hart. Also in support, Mr. Turnbull,
23 Ms. White, and Ms. John. Motion carries, sir.

24 BZA CHAIR HILL: All right, great. Thank you,
25 Mr. Moy. So that's the end of our hearing docket, correct?

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1 MR. MOY: Yes, sir.

2 BZA CHAIR HILL: All right. So now give us one
3 minute and we'll go into deliberations.

4 (Whereupon, the above-entitled matter went off
5 the record at 7:43 p.m.)

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C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DCZC

Date: 09-19-18

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