

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 26, 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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Zoning Commission Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.
JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Public Hearing held on September 26, 2018.

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Adjourn 109

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9:39 a.m.

CHAIRPERSON HILL: All right, good morning, everybody. The hearing will please come to order.

We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest.

This is September 26, 2018 Public Hearing of the Board of Zoning Adjustment of District of Columbia.

My name is Fred Hill, Chairperson. Joining me today are Carlton Hart, Vice Chair, Lesyllee Whiter and Lorna John, Board Member.

And, representing the Zoning Commission is Anthony Hood.

Please forgive me, my voice is still a little bad, still not getting over a cold.

Copies of today's hearing agenda are available to you and are located in the wall bin near the door.

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

When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address. When you are finished speaking, please turn your microphone off that your microphone is no

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1 longer picking up sound and background noise.

2 All persons planning to testify either in favor
3 or in opposition must have raised their hand and been sworn
4 in by the Secretary.

5 Also, each witness must fill out two witness
6 cards. These cards are located on the table near the door
7 and on the witness table.

8 Upon coming forward to speak to the Board, please
9 give both cards to the reporting sitting to the table to my
10 right.

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

18 The order of procedures for special exceptions of
19 variances and appeals are also listed as you come into the
20 door.

21 The record shall be closed at the conclusion of
22 each case except for any material specifically requested by
23 the Board. The Board and the staff will specify at the end
24 of the hearing exactly what is expected and the date when the
25 persons must submit the evidence to the Office of Zoning.

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1 After the record is closed, no other information
2 shall be accepted by the Board.

3 The Board's agenda including case -- includes
4 cases sets for decision. After the Board adjourns, the
5 Office of Zoning, in consultation with myself, will determine
6 whether a full or summary order may be issued.

7 A full order is required when the decision
8 contains -- is adverse to a party including an affected ANC.
9 A full order may also be needed if the Board's decision
10 differs from the Office of Planning's recommendation.

11 Although the Board favors the use of summary
12 orders whenever possible, an applicant may not request the
13 Board to issue such an order.

14 The District of Columbia Administrative Procedures
15 Act requires that the public hearing on each case be held in
16 the open before the public pursuant to Section 405(b) and 406
17 of that Act.

18 The Board may, consistent with its rules and
19 procedures and the Act enter into a closed meeting on a case
20 for purpose of seeking legal counsel on a case pursuant to
21 D.C. Office Code Section 2-575(b)(4) and/or deliberating on
22 a case pursuant to D.C. Official Code Section 2-575(b)(13),
23 but only after providing the necessary public notice.

24 And, in the case of an emergency closed meeting,
25 after taking a roll call vote.

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1 The decision of the Board in these in cases must
2 be based exclusively on the public record. So, to avoid any
3 appearance of the contrary, the Board requests that persons
4 present not engage the members of the Board in conversation.

5 Please turn off all beepers and cell phones at
6 this time so as to not disrupt the proceedings.

7 Preliminary matters are those which relate to
8 whether a case will or should be heard today. Sanctions
9 request for postponement , continuance or withdrawal or
10 whether proper and adequate notice of the hearing has been
11 given.

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

15 Mr. Secretary, do we have preliminary matters?

16 MR. MOY: Good morning, Mr. Chairman, members of
17 the Board.

18 Very quickly, as to the list of case applications
19 on today's docket, I would like to report for the transcript
20 that Appeal Number 19777of Hilary Dove and Ranieri Cavaceppi
21 has been postponed to November 14, 2018.

22 Case application 19731 of 1766 Lanier Northwest,
23 LLC was withdrawn by the Applicant.

24 And, also, Application Number 19770 of 3554 10th
25 Street, LLC was also withdrawn by that applicant.

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1 We also have before the Board a series of
2 preliminary matters on a number of cases. And, staff would
3 suggest that the because of the number of preliminary matters
4 that the Board address those when I call each case
5 separately, Mr. Chair.

6 CHAIRPERSON HILL: Okay, thank you, Mr. Moy.

7 All right, let's see then, so, if anybody's here
8 planning to present testimony in favor or opposition, if
9 you'll please stand and take the oath administered by the
10 Secretary to my left?

11 MR. MOY: Good morning.

12 Do you solemnly swear or affirm that the testimony
13 you're about to present in this proceeding is the truth, the
14 whole truth and nothing but the truth?

15 (NO AUDIBLE RESPONSE)

16 MR. MOY: Okay, ladies and gentleman, you may
17 consider yourselves under oath.

18 CHAIRPERSON HILL: So, we're not doing this first,
19 we're going to do the -- we're going to wait and do this for
20 the preliminary matters or are we going to do this first
21 thing?

22 (Whereupon, the above entitled matter went off the
23 record at 9:45 a.m. and resumed at 10:04 a.m.)

24 MR. MOY: All right, Mr. Chairman, I'll need your
25 direction here, as I said earlier at the opening of this

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1 hearing, we have a number of preliminary matters and they are
2 primarily directed at Case Application Number 19751 of MED
3 Developers, LLC and the appeal of 19818 of Stephen Cobb.

4 So, I would lead with the Board either to address
5 each of those preliminary matters first before proceeding or
6 to go as listed on the docket which would begin with Newton
7 Place Apartments, Case 19712.

8 CHAIRPERSON HILL: All right, well, you know,
9 since we do have these preliminary matters, I guess what I
10 would suggest to the Board is we go ahead and hear the
11 preliminary matter for the 19751 first in terms of the party
12 status request.

13 So, are the members for Case Number 19751 here as
14 well as the party status request people? Okay, so if you
15 guys could all come forward?

16 MR. MOY: Okay, let me just call this case for the
17 transcript, Mr. Chair.

18 So, this is Case Application Number 19751 of MED
19 Developers, LLC. This is for a special exception, it's under
20 the use provisions of Subtitle U, Section 203.1(f) and under
21 Subtitle C, Section 703.2 from the minimum parking
22 requirements of Subtitle C, Section 701.5.

23 This would construct a new continuing care
24 retirement community R-1-B Zone. This is at 2619 through
25 2623 Wisconsin Avenue, Northwest, Square 1935, Lots 44 and

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1 812.

2 Let's see, and the -- I'm done.

3 CHAIRPERSON HILL: That's it? That's all the prep
4 I get, okay.

5 All right, so, okay, if you could please introduce
6 yourselves from my right to left??

7 MS. CRABTREE: Hi, my name is --

8 CHAIRPERSON HILL: That's all right, you need --

9 MS. CRABTREE: Sorry, my name is Anita Crabtree
10 and --

11 CHAIRPERSON HILL: Okay, one second, I'm sorry.
12 So, I'm sorry?

13 MS. CRABTREE: My name is Anita Crabtree and I am
14 the MAHCA Zoning Coordinator. I just want to clarify that
15 we're here pro se. We haven't really had time to engage with
16 our counsel, so we're the neighborhood.

17 CHAIRPERSON HILL: Okay, okay, we'll work through
18 all of this together.

19 MS. CRABTREE: Okay.

20 CHAIRPERSON HILL: Sir?

21 MR. SIPES: Yes, my name is Christopher Sipes. I'm
22 at 2600-36 Place, Northwest. So I'm within the 200 feet, I'm
23 a 200 footer, I guess.

24 CHAIRPERSON HILL: Could you spell you last name
25 for me?

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1 MR. SIPES: Yes, I can. It's S as in Sam, I-P as
2 in Paul, E-S. I'm here, I guess, with MAHCA as well.

3 CHAIRPERSON HILL: Okay. So, all right. Did you
4 get sworn in earlier?

5 MR. SIPES: I did.

6 CHAIRPERSON HILL: Okay, so everybody got sworn
7 in? Okay.

8 If you could just introduce yourself? And, if you
9 could turn off your microphones also because they kind of
10 feed back, thanks.

11 MR. FINLAND: Nick Finland with MED Developers.
12 I'm the Director of Development and the contract holder for
13 the parcels located here.

14 MS. MOLDENHAUER: Good morning, Meridith
15 Moldenhauer, attorney for the Applicant from Cozen O'Connor.

16 CHAIRPERSON HILL: Okay. So, there's a couple of
17 motions that are in front of us. One of them, I guess, was,
18 and, I'll -- either the Secretary or OAG, if I'm missing
19 something, but there was whether public notice was sufficient
20 for Lot 812. And, I don't know who put that forward, I guess
21 it was one of you guys, I would assume, correct?

22 MR. SIPES: Yes, it was --

23 CHAIRPERSON HILL: You could lean into your
24 microphone just a little bit more, Mr. Sipes.

25 MR. SIPES: I'm sorry.

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1 CHAIRPERSON HILL: That's all right.

2 MR. SIPES: Yes, it was MAHCA --

3 CHAIRPERSON HILL: Okay.

4 MR. SIPES: -- that put that forward.

5 CHAIRPERSON HILL: Okay.

6 MR. SIPES: And, I should say, since the motion
7 has went in, we, as MAHCA, have received authorization for
8 one of the non-noticed 200 footers, we believe, to represent
9 them as well to assert their lack of notice. And, I believe
10 there's been a joinder of the motion by someone else who
11 thinks they should have gotten notice, but didn't.

12 CHAIRPERSON HILL: Okay, all right. We'll work
13 through these.

14 So, Ms. Moldenhauer, do you have any comments
15 concerning the notice for Lot 812?

16 MS. MOLDENHAUER: Just preliminarily, a motion
17 can't be considered unless it's a motion from a party. I
18 don't know if we've addressed their party status. We have
19 not opposed MAHCA's party status. I don't know if that --
20 some of that should first be addressed as a preliminary
21 matter, the party status for us.

22 CHAIRPERSON HILL: Okay, give me a second here.
23 I don't know why your microphone's feeding back. Thank you.

24 MS. LOVICK: Well, the public notice issue was
25 raised and the Board can address whether or not they believe

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1 that public notice was adequate.

2 That issue was raised and OAG would advise to just
3 determine whether or not the Board finds the notice to have
4 been adequate.

5 Then, you can determine whether or not you're
6 going to grant or deny the party status request.

7 CHAIRPERSON HILL: Okay. I'm going to move on to
8 the party status request. And actually, just because I can
9 kind of figure it. But, thank you.

10 So, what I understand is you're request for party
11 status and it's untimely. Can you -- wasn't it untimely?
12 Yes, it was untimely.

13 MS. CRABTREE: No, it wasn't untimely.

14 CHAIRPERSON HILL: All right.

15 MS. CRABTREE: It was filed on time.

16 CHAIRPERSON HILL: No, it's okay. I was told from
17 OAG it filed untimely because it needs to be filed within the
18 first posting, correct?

19 MS. LOVICK: This hearing has been postponed three
20 times, so initially, the hearing date for this was May 23rd.
21 So, party status requests have to be filed 14 days prior to
22 the public hearing.

23 CHAIRPERSON HILL: Okay, that's okay, Ms.
24 Crabtree. It's all right.

25 So, let's go ahead and do this. Can you explain

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1 to us the Board, why you should be given party status?

2 MS. CRABTREE: So, MAHCA is our neighborhood
3 association and MAHCA is only appearing -- proposing to
4 appear as a party on behalf of people directly impacted by
5 this proposed facility who are within 200 feet.

6 So, it's, in addition to the lack of notice, there
7 is a deficiency in the application which led to the lack of
8 notice. And there are two lots included in the subject
9 property, Lot 44 in Square 1935 and Lot 812 in Square 1935.

10 And the BZA application only includes Lot 44 as
11 the subject property.

12 CHAIRPERSON HILL: Okay, that's fine. I'm just
13 trying -- we're just trying to figure out --

14 MS. CRABTREE: Yes, I'm sorry.

15 CHAIRPERSON HILL: -- party status right now.
16 That's all right.

17 MS. CRABTREE: I just want to clarify that.

18 CHAIRPERSON HILL: Your mic went off.

19 MS. CRABTREE: I just wanted to clarify that MAHCA
20 is only here on behalf of those 200 footers who are within
21 Lot 44 and were actually included on the application,
22 although we now also have a Letter of Authorization from a
23 200 footer within Lot 812 solely for the purpose of bringing
24 this motion to dismiss or postpone once we get party status.

25 CHAIRPERSON HILL: Okay. But, these two lots are

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1 adjoining lots, correct?

2 MS. CRABTREE: They are adjoining lots.

3 CHAIRPERSON HILL: Yes, okay.

4 MS. CRABTREE: But, Lot 44 is only one-third of
5 the property roughly.

6 CHAIRPERSON HILL: Okay, that's okay.

7 So, you don't have any opposition, meaning the
8 Applicant, to having MAHCA receiving party status, as I
9 understand that, correct? That's what you just said, I
10 thought.

11 MS. MOLDENHAUER: We believe that they would
12 satisfy the standards in regards to having individuals that
13 are within the proximity of the property and raising specific
14 concerns.

15 CHAIRPERSON HILL: Okay. So, then, after that,
16 unless the Board has any thoughts, I would go ahead and be
17 in agreement with the Applicant requesting party status that
18 they meet the requirements and I grant them party status,
19 even though it is untimely.

20 And, I don't know if we have to waive that
21 requirement or not.

22 MS. LOVICK: You're effectively doing so, so I
23 don't think you have to formally do it.

24 CHAIRPERSON HILL: Okay, great.

25 All right, so, unless anybody has any objection

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1 to that, we'll go ahead and grant party status to MAHCA.

2 (NO AUDIBLE RESPONSE)

3 CHAIRPERSON HILL: Okay. So, Ms. Crabtree, you
4 have party status.

5 And so, now --

6 MS. CRABTREE: Thank you.

7 CHAIRPERSON HILL: You're welcome.

8 And so, now, as I understand it, there has been
9 a request to postpone, correct? And, that again, is so that
10 you can -- I thought that you had an attorney but the
11 attorney wasn't present today or --

12 MS. CRABTREE: So, we only hired counsel the day
13 that we filed party status because this case has been dormant
14 for quite some time and, I'll get into it to the extent that
15 you need me to.

16 So, we hired counsel, but she isn't in town today
17 and hasn't been able to turn to this case yet.

18 And, we also are in the process of securing
19 experts and they all have like six-week lead times to prepare
20 reports. So, we're ramping up.

21 And so, we've secured counsel, but have only
22 consulted with her twice.

23 CHAIRPERSON HILL: Okay. So, in order to -- in
24 order for you to have the time that you think necessary, how
25 much time do you think necessary?

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1 MS. CRABTREE: Based on the feedback I've received
2 from the experts we've spoken with, they -- their lead times
3 vary between four and six weeks.

4 So, I think that we would need six weeks to get
5 all of reports from all of our experts, make sure that they
6 can clear their calendar to be at the BZA hearing because
7 they all have other clients and have backlogs. So --

8 CHAIRPERSON HILL: Okay, I understand, I
9 understand.

10 MS. CRABTREE: -- I think -- so, that would be our
11 request.

12 CHAIRPERSON HILL: I understand.

13 And then, there is a lot of opposition to this.

14 MS. CRABTREE: There is.

15 CHAIRPERSON HILL: And so, are a lot of the people
16 that are in opposition, are they going to be asking you to
17 represent them?

18 MS. CRABTREE: A lot of people -- no, I think the
19 -- we have to discuss this with our counsel, but the thinking
20 was to keep it to 200 footers.

21 So, if the opposition --

22 CHAIRPERSON HILL: Okay, that's fine. I was just
23 trying to make it as efficient as possible for the Board.

24 MS. CRABTREE: Right, right.

25 CHAIRPERSON HILL: So, as many people that sign

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1 on for you, that would make it more efficient for the Board.

2 MS. CRABTREE: Understood, okay.

3 CHAIRPERSON HILL: And so, you know, if you could
4 just kind of work and see how that goes.

5 So, in terms of the time delay, Ms. Moldenhauer,
6 what do you think about the time delay?

7 MS. MOLDENHAUER: So, we would object to delaying.
8 One, we have all of our individuals here in the audience.
9 I do notice from all the ANC meetings and committee meetings
10 that, currently, there are a lot of individuals here in the
11 audience from the opposition groups and from the
12 neighborhood.

13 So, we would ask the Board to move forward with
14 the hearing today. In our Exhibit 158, we reference that the
15 Board has the authority, if they, one, deem the notice to be
16 deficient, which we do not believe it is. But, if they deem
17 it to be deficient, they have the ability to waive that
18 requirement.

19 It's clear that they've had actual notice. One,
20 people are present today. There's a large group of
21 individuals in the audience here today.

22 Two, we've had extensive communication as outlined
23 on page 7 of our 159 exhibit.

24 This discussion has been going on since September
25 of 2017. The applicant, MED Development, has been in

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1 communication even at Ms. Crabtree's house, having
2 conversations about this, you know, assisted living facility.

3 They have always had concerns and if they knew
4 that, then they should have always been prepared to, one,
5 having timely filed their party status from the beginning,
6 which they did not do.

7 And, then, be prepared for today's hearing.

8 I think that, you know, you can go through and
9 look at all of the different communications we've had from
10 March then April back and forth, communications on March 7th
11 at the Subcommittee where Ms. Crabtree was present at that
12 meeting and we discussed postponing.

13 This application has already been postponed twice.
14 I know that it is typically the Board's desire to not see a
15 third postponement and I would think that it would be
16 beneficial to at least move forward today with the hearing.

17 We know that sometimes in these cases, Chairman
18 Hill, that cases sometimes may take a second hearing. So,
19 there may be an opportunity to file other information, if
20 absolutely necessary.

21 But, we do think that it would be important to
22 move forward today.

23 CHAIRPERSON HILL: Okay.

24 MR. SIPES: Mr. Chairman, I wonder if I could
25 respond to that?

1 CHAIRPERSON HILL: Mr. Sipes, it's okay. Just
2 give me one second. Okay?

3 So, I don't know what the Board thinks or feels.
4 I mean, I think that, you know, we've gone through that --
5 the -- that this has gone on since I think the application
6 came in in May, was it in May that it came in? I forget
7 whether -- when was it first applied?

8 MS. MOLDENHAUER: March.

9 CHAIRPERSON HILL: March?

10 MS. MOLDENHAUER: Sorry, March.

11 CHAIRPERSON HILL: And, the two postponements are
12 your request, correct?

13 MS. MOLDENHAUER: They were, one, a communication
14 with the ANC and the opposition individuals. And, our
15 request to postpone in order for us to finalize and obtain
16 an operator and then to get some additional information.

17 So, it was both, one, was at our request and then
18 one was at the ANC's request.

19 So, it has been a dialogue.

20 CHAIRPERSON HILL: Okay, that's fine, that's okay.
21 I was just curious.

22 So, the -- since we have granted party status, you
23 know, I think that it would be better to let the party in
24 opposition have an opportunity to get their counsel together
25 and get kind of their ducks in a row.

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1 If we weren't going to grant party status, then
2 I could understand, you know, moving forward today. But, you
3 know, even though people are here and everything, this is
4 kind of the process.

5 And so, what do y'all think?

6 MEMBER HART: Mr. Chairman, I kind of look at it
7 like this, if -- since the Applicant is here and they are
8 able to present their case, and the attorney for the -- for
9 MAHCA, for the party in opposition is not here, then I'm not
10 exactly sure what happens when there's a cross examination
11 because the attorney may have things -- the attorney for
12 MAHCA may have questions that rise -- that arise and they
13 would not be able to ask them at that point.

14 So, then, we would have to have a second hearing
15 and then have them cross at the second hearing.

16 And, that just seems like it's a lot of confusion,
17 or at least a longer process to be able to do that.

18 So, I would not be in favor of continuing the
19 hearing today only because I just think that it's easier to
20 have everybody at the same table at the same time to have
21 that discussion. So --

22 MS. MOLDENHAUER: Can I ask a point of
23 clarification? I'm sorry.

24 CHAIRPERSON HILL: Just one second, just me just
25 work through the Board members first real quick.

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1 So, go ahead.

2 MEMBER WHITE: Mr. Chair, I agree with the fact
3 that we granted MAHCA party status. But, I also see that,
4 you know, the record is pretty full here and it's been
5 postponed twice.

6 I'm a little hesitant in doing a six-week
7 postponement. I don't know why it would take that long.
8 And, I guess my major question is whether or not that type
9 of postponement would have any kind of potential negative
10 impact on the project.

11 But, I am very sensitive to the fact that there
12 is a heck of a lot of community opposition involved with this
13 case.

14 I understand the importance of neighborhood
15 associations, especially this one because they are voicing
16 concerns with residents that are within 200 feet of this
17 proposed retirement community.

18 So, my thought is that give them time, but six
19 weeks, to me, is very lengthy.

20 CHAIRPERSON HILL: Okay, okay. Anyone else?

21 MEMBER JOHN: Mr. Chairman, I also agree that
22 there is a high level of opposition to this project. And,
23 it would be in everyone's interest to give an extension of
24 time to allow MAHCA to, you know, communicate with their
25 attorney.

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1 And, but I also think that six weeks is way too
2 long.

3 CHAIRPERSON HILL: Okay.

4 ZC CHAIR HOOD: Mr. Chairman, I'm going to say
5 this not knowing who the Zoning Commissioner will be on this
6 case, and depending upon when you have it, I'm not really
7 concerned about the time, I'm just -- I would go along with
8 the Vice Chair making sure that we started the starting line
9 at the same time.

10 Do a piecemeal, hear the Applicant today, et the
11 part that we just gave -- granted party status come another
12 time, I can tell you, I've -- it doesn't work that way.

13 CHAIRPERSON HILL: Okay.

14 ZC CHAIR HOOD: We need to all start at the
15 starting line at the same time.

16 CHAIRPERSON HILL: Okay.

17 ZC CHAIR HOOD: That's where I'm at.

18 CHAIRPERSON HILL: Ms. Moldenhauer?

19 MS. MOLDENHAUER: It just seems that the Applicant
20 and the Board's deliberation is based on whether or not the
21 party status has requested a counsel.

22 But, on Exhibit156, they revised their party
23 status application indicating will you appear through counsel
24 and the answer is no.

25 Ms. Crabtree is an attorney, a lot of the

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1 individuals in the opposition group are legally counsel and
2 have, you know, are attorneys themselves and they have, in
3 Exhibit 156, indicated that they wouldn't be appearing
4 without counsel.

5 So, it doesn't seem to be --

6 CHAIRPERSON HILL: Okay, I understand.

7 MS. MOLDENHAUER: -- clear on that.

8 CHAIRPERSON HILL: I don't think you're going to
9 convince everybody on this Board to, you know, to go against
10 what was just said.

11 But, I mean, I might be the only non-attorney in
12 this room. There's a lot of attorneys in this town.

13 MR. SIPES: Mr. Chairman --

14 CHAIRPERSON HILL: Sure.

15 MR. SIPES: Just to ask one question of Ms.
16 Crabtree. Were you meaning that you were not going to be
17 appearing through legal counsel for today's hearing or in
18 general?

19 MS. CRABTREE: For today's hearing.

20 MR. SIPES: So if this --

21 MS. CRABTREE: It wasn't --

22 MR. SIPES: -- were October whatever, you would --
23 you may have changed that --

24 MS. CRABTREE: Absolutely, we're certainly hopeful
25 of that.

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1 MR. SIPES: Okay, that's fine, I just -- I was
2 making sure that I understood clearly.

3 MS. CRABTREE: That our counsel will be available,
4 yes.

5 CHAIRPERSON HILL: Okay.

6 All right, so Mr. Moy, if we postpone this to
7 allow MAHCA time to get kind of their ducks in a row, and I
8 don't, I mean, I guess like I think six weeks is also a long
9 time.

10 So, you know, I guess, I don't know what experts
11 you're trying to get together and trying to see what you can
12 do, but I'll let you talk in one second, Mr. Sipes.

13 I know that -- I know we have a really full docket
14 on the 31st, well actually, yes, the 31st, I think. So, I
15 don't know, I don't like the 31st. But, you can tell me what
16 you see, Mr. Moy.

17 MR. MOY: Mr. Chairman, the -- I would suggest,
18 all things being equal, you know, with reference to the size
19 and the type of cases before the Board at these -- at the
20 hearing dates that's to come, I'm looking at October 24th
21 only because there's no appeal on that day, although this
22 case would be the 9th case on that day, October 24th.

23 After that, on October 31, November 7th and
24 November 14th, we have an appeal application along with the
25 regular case applications. But, it's the Board's call.

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1 CHAIRPERSON HILL: Give me one second, Mr. Sipes.

2 MR. MOY: It's the Board's call.

3 CHAIRPERSON HILL: Well, Ms. John -- Board Member
4 John and I are not here on the 24th. Oh, I'm sorry, Ms.
5 White. And so, yes.

6 So, Mr. Sipes, you had something to say?

7 MR. SIPES: Yes, that may also bear on timing if
8 I could beg the Chairman's indulgence.

9 There's been a dispute, if you look in the papers
10 between who are the 200 footers, even if we include the full
11 subject property which has not been noticed.

12 Given that we will be putting up notice, I would
13 ask that the proper notice be sent so that we can get the
14 list of those names because I'm sensitive to your concern
15 that we bring all of the neighbors under the one umbrella of
16 MAHCA.

17 We're having some trouble identifying all of them
18 because they haven't noticed the full boundaries of the
19 property. And so, that might, given this delay, what I would
20 suggest is, for the Applicant to submit a revised Exhibit 8
21 which is the notice, identify the list of names and we'll do
22 our best to include those in.

23 That does -- the requisite notice is 40 days. So,
24 I think if we do this in early November, that will give them
25 time to correct the deficiency in the application, give us

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1 time to make sure that we can --

2 CHAIRPERSON HILL: Okay, that's all right. We're
3 just trying to figure this out.

4 So, just to let you know, you guys are untimely
5 in your application in terms of, even though you didn't know
6 it, you were, in terms of your request for party status.

7 And then, we can address the whether or not the
8 200 footers have been noticed.

9 So, I am going to go back to this, this is taking
10 longer as a hearing.

11 So, in terms of the notice for Lot 812, why did
12 you guys not notice the 200 footers here? I can even turn
13 to OAG as to what the proper noticing is going on.

14 Do you dispute that you didn't give proper notice
15 to Lot 812's 200 footers?

16 MS. MOLDENHAUER: We filed a response and we
17 believe that it was adequate and we believe the Board could
18 waive it. We also had requested and -- I'm sorry, thank you.

19 The Office of Tax and Revenue prepares these
20 documents and it takes about a week or two to get a copy of
21 them. And so, during the delay -- during any postponement
22 period, we could update the 200 footer notice including the
23 second lot.

24 CHAIRPERSON HILL: Okay, so Ms. Moldenhauer --

25 MS. MOLDENHAUER: But I don't believe that the

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1 timing was necessary because --

2 CHAIRPERSON HILL: I understand. So, Ms.
3 Moldenhauer --

4 MS. MOLDENHAUER: -- the Board can reduce that
5 time --

6 CHAIRPERSON HILL: -- go ahead and --

7 MS. MOLDENHAUER: -- legally.

8 CHAIRPERSON HILL: Go ahead and update to include
9 the thing, I'm sorry, to include the 200 footers for Lot 812.
10 Depending upon how else the Board feels, Mr. Sipes
11 and Ms. Crabtree, I think that the public's been noticed
12 pretty heavily as to this property and to this project.

13 I mean, I think the lots -- it's not like one
14 lot's here and one lot's over there. They're both the same
15 lot. I mean, they're adjoining lots.

16 And so, I think that they've been noticed
17 adequately. And, again, I think that, you know, we are in
18 agreement that we want to do our best so that you guys have
19 enough opportunity to put together a case.

20 It's really that, again, when this should have
21 come before us was 14 days before the first initial filing.
22 And, even though this has been postponed a couple of times,
23 you know, it sounds as though the ANC knew about it quite a
24 bit, it sounds like you knew about it quite a bit in terms
25 of like you could have possibly come forward with the party

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1 status application earlier.

2 So, we're just trying to find a date that might
3 work for us because, really, honestly, it's a really packed
4 agenda here all the time and this is not something that I
5 think should be done lightly or quickly.

6 And, therefore, we're trying to find a day that
7 works for you guys. So, once -- give me one second again.

8 So, Mr. Moy, again, the dates that you had for us
9 were October 24th which Ms. White nor myself will be here and
10 that means it'll only be three members of the Board which
11 probably, even though I would to think would be adequate, we
12 might want more members here for that.

13 So, then, if you put it into the November dates,
14 what were the November dates again, please?

15 MR. MOY: Okay, yes, that's where I would be
16 heading as well because of the appeal that we have on that
17 last hearing and October is going to be very heavy for the
18 Board.

19 So then, we're looking at November. So, that
20 would be the first opportunity would be November 7th,
21 November 14th or -- yes, those two.

22 CHAIRPERSON HILL: So, November 7th and 14th, they
23 both have appeals on those days?

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

25 CHAIRPERSON HILL: Well, the Vice Chair is telling

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1 me that we should put it on one of those days. Which day
2 would you like to really such?

3 (LAUGHTER)

4 MEMBER HART: Do you have a coin?

5 CHAIRPERSON HILL: Yes, no, exactly.

6 So, of the two days that are here in November, the
7 two days, please, Mr. Moy, again, were which ones?

8 MR. MOY: November 7th and the other November --
9 that's Valentine's Day, isn't it?

10 CHAIRPERSON HILL: Oh great.

11 MR. MOY: Oh, February, I'm sorry.

12 CHAIRPERSON HILL: Oh wait.

13 MR. MOY: I'm really out of it today.

14 CHAIRPERSON HILL: Right, wow.

15 MR. MOY: So, I'm going to just --

16 CHAIRPERSON HILL: I was like, this is --

17 (SIMULTANEOUS SPEAKING)

18 MR. MOY: -- the Board today.

19 CHAIRPERSON HILL: Okay.

20 So, the 7th and the 14th --

21 MS. CRABTREE: Would it --

22 CHAIRPERSON HILL: Hold on, hold it, give us one
23 second.

24 So, the 7th and the 14th are what are on the
25 table. And, you had something?

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1 MS. CRABTREE: I was just going to request a
2 preference for the 14th because of something that's going on
3 personally.

4 CHAIRPERSON HILL: Okay.

5 MS. CRABTREE: And then, I also have a few things
6 that I just wanted to point out with regard to what Applicant
7 has said.

8 CHAIRPERSON HILL: No, that's okay.

9 MS. CRABTREE: Okay.

10 CHAIRPERSON HILL: We don't do any of that stuff.

11 MS. CRABTREE: All right.

12 CHAIRPERSON HILL: We're just trying to figure out
13 what day's going to be long.

14 So, the 7th or the 14th, so can you guys do the
15 14th?

16 MS. MOLDENHAUER: We can, we'd prefer the 7th.

17 CHAIRPERSON HILL: It's just one more week. And
18 so, right, and so --

19 MS. MOLDENHAUER: We --

20 MR. SIPES: It's been months.

21 CHAIRPERSON HILL: I know, well, you guys -- well,
22 I mean, with you all, anyway, anyway, okay.

23 MS. CRABTREE: I'm sorry, I just -- the reason --
24 I just one point --

25 CHAIRPERSON HILL: Let's just -- that's okay,

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1 wait, wait, wait, wait, wait, wait, wait, wait, let -- one
2 person at a time.

3 Go ahead, Ms. Moldenhauer.

4 MS. MOLDENHAUER: If we did the 14th we would
5 still then request that the party in opposition file any
6 expert information in the record that that the Applicant has
7 adequate time to review by at least October 17th.

8 CHAIRPERSON HILL: Mr. Moy, is that more or less
9 the proper amount of time?

10 MS. MOLDENHAUER: Experts are supposed to be
11 identified, actually, when you file party status. And, we
12 already have, I noted, that it's way later than that. And
13 so --

14 CHAIRPERSON HILL: Oh no, I --

15 MS. MOLDENHAUER: -- we just hope to get --

16 CHAIRPERSON HILL: Ms. Moldenhauer, I'm smiling
17 because I know you guys have been here before and you haven't
18 given me your full list before you guys have come. And so,
19 like, you know, they're just like amateurs. They're just,
20 you know, they're not even professionals.

21 And so, but you -- I appreciate the clarification.

22 So, the date that Mr. Moy, we're trying to get
23 filings from is when?

24 MR. MOY: If the Board is scheduling --
25 rescheduling this to November 14th, and if I hear correctly,

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1 the Applicant's asking that the opposition make their
2 filings, what, a month ahead of time? A month and a half was
3 it?

4 MS. MOLDENHAUER: Yes, in order to then create the
5 requisite seven days for us to respond and then, obviously,
6 having time frames between those final filings and then the
7 hearing. Since parties have seven days to respond to each
8 other, I just I didn't want 4:30 in the morning a.m. filings
9 like was -- like occurred this morning. You know, find
10 enough time file.

11 CHAIRPERSON HILL: Okay, give me a second, give
12 me a second.

13 MR. MOY: Okay, let's work backwards a little bit,
14 Mr. Chair. And, also, this is a hearing, it's not a decision
15 meeting. So, let's say working back from November 14th,
16 let's say two weeks if there's going to be any response, that
17 puts us -- that puts the Board at October 31st.

18 It seems reasonable to me if the opposition can
19 make their pre-hearing statements in the middle of October,
20 you know, which could be either October 10th or October 17th.

21 MR. SIPES: Mr. Moy, I confess that we've never
22 been through this before --

23 CHAIRPERSON HILL: That's fine, I mean --

24 MR. SIPES: -- and --

25 CHAIRPERSON HILL: -- we're going to give October

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1 17th to you. Okay?

2 MR. SIPES: Thank you, sir.

3 CHAIRPERSON HILL: So, October 17th, Mr. Moy?

4 MR. MOY: Good.

5 CHAIRPERSON HILL: Once again, can you tell what
6 the dates are that everybody needs to get stuff to you by?

7 MR. MOY: October 17th from the party in
8 opposition and the Applicant, if they wish to respond to
9 those filings, two weeks I think would be sufficient, right,
10 it would be October 31st.

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: And then --

13 (OFF MICROPHONE COMMENTS)

14 MR. MOY: So, October 17, October 24th and the
15 hearing scheduled for October the -- November the 14th.
16 Okay?

17 CHAIRPERSON HILL: Okay, does everybody understand
18 all the dates? Okay. All right.

19 MR. MOY: I'd also like to, Mr. Chair, that maybe
20 I shouldn't say this, but with regards to the notice of
21 filing, the Board's well aware that there are the two forms
22 of public notice which is the posting of the sign on the
23 subject property as well as we announce the hearing at the
24 D.C. Register as well, so there's three ways for public
25 notice.

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1 CHAIRPERSON HILL: Okay.

2 MR. MOY: I just wanted that on the record.

3 CHAIRPERSON HILL: Okay, I appreciate that.

4 Ms. Moldenhauer, will you still do what we asked
5 you to do?

6 MS. MOLDENHAUER: Yes.

7 CHAIRPERSON HILL: Okay, all right. Okay, thanks.

8 All right, okay, then we'll --

9 MS. MOLDENHAUER: Before you adjourn?

10 CHAIRPERSON HILL: Sure.

11 MS. MOLDENHAUER: I just want -- there was the
12 motion to dismiss the case and I would just want to make sure
13 that the Board denies that motion to dismiss.

14 MEMBER HART: I was going to bring it up before
15 we ended.

16 MS. MOLDENHAUER: Thank you very much, sorry.

17 MEMBER HART: Well, yes, there was the motion to
18 dismiss and that was really based on this issue of kind of
19 notice and everything.

20 And I'm -- I just kind of look at it like, we have
21 100 letters in opposition, thereabouts. We never have -- or
22 it's very -- I hate to say never, we very seldom have that
23 much -- that many folks that are signing up or sending in
24 letters for things.

25 I would -- while I understand that there is an

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1 issue about the -- whether it's from Lot 200 or, sorry, from
2 one lot or the other lot, from the 200 feet or from one lot
3 or the other lot, I think that this has been very much
4 noticed by the community, by the ANC, by the neighbors that
5 were in proximity to it and I would make a motion to dismiss
6 the motion -- I'm sorry, to deny the motion to dismiss.

7 CHAIRPERSON HILL: Okay. second.

8 ZC CHAIR HOOD: Second.

9 CHAIRPERSON HILL: I'm sorry.

10 ZC CHAIR HOOD: No, that's okay.

11 CHAIRPERSON HILL: Chairman Hood second.

12 The motion has been made and seconded, all those
13 in favor say aye.

14 (CHORUS OF AYES)

15 CHAIRPERSON HILL: All those opposed?

16 (NO RESPONSE)

17 CHAIRPERSON HILL: The motion passes, Mr. Moy.

18 MR. MOY: Staff would record the vote as 5-0-0,
19 this on the motion of Vice Chair Hart to deny the motion to
20 dismiss, seconding the motion, Mr. Hood. Also in support,
21 Ms. White, Ms. John and Chairman Hill. Motion carries.

22 CHAIRPERSON HILL: Okay, great.

23 All right, we'll see guys in November.

24 MS. CRABTREE: Thanks.

25 CHAIRPERSON HILL: Okay.

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1 We're going to take a quick break actually.

2 Thank you.

3 (Whereupon, the above-entitled matter went off the
4 record at 10:36 a.m. and resumed at 10:50 a.m.)

5 CHAIRPERSON HILL: All right, Mr. Moy, we still
6 have one more preliminary matter, correct?

7 MR. MOY: Yes, we do, sir.

8 Yes, as I said earlier, there's also preliminary
9 matters to Appeal Number 19818 of Stephen Cobb. Let me call
10 the case first.

11 It's -- this is the appeal from the decision made
12 on May 18, 2018 by the Zoning Administrator, Department of
13 Consumer Regulatory Affairs to issue building permit number
14 B1804093 to construct a third-floor and a three-story rear
15 addition and convert the existing principle dwelling unit to
16 a flat in an RF-1 Zone.

17 This is at 1267 Penn Street, Northeast, Square
18 4606, Lot 233.

19 The -- let's see, where am I -- the Appellant has
20 requested to accept an untimely filed pre-hearing statement
21 under Exhibit 29.

22 There was a request for intervener status.. This
23 is the adjacent neighbors under the name of Shelby and Adam
24 Telle, T-E-L-L-E, that was filed untimely.

25 This is -- the filing was on September 19th under

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1 Exhibit 32.

2 CHAIRPERSON HILL: Okay, great.

3 The person who's requesting intervener status, are
4 they here? Would you kindly -- actually, whoever is the
5 Appellant here as well, so the Appellant and the intervener
6 status person, please come up. We've got DCRA up here so go
7 ahead and have a seat.

8 And, did everybody get sworn in?

9 (OFF MICROPHONE COMMENTS)

10 CHAIRPERSON HILL: Okay, well, you just sit down
11 first, we'll swear you in then. Well now, you're going to
12 stand up. If you could stand up.

13 If anybody plans on testifying and hasn't been
14 sworn in, yet if you'd just stand and take the oath
15 administered to the Secretary to my left?

16 MR. MOY: Do you solemnly swear or affirm that the
17 testimony you are about to present at this proceeding is the
18 truth, the whole truth and nothing but the truth?

19 (NO AUDIBLE RESPONSE)

20 MR. MOY: Thank you, you may be seated.

21 CHAIRPERSON HILL: Okay.

22 Okay, so, first, just to let y'all know, we're
23 doing -- we're having -- there's some preliminary issues that
24 we're going through right now. We're not hearing the appeal,
25 we're just trying to figure out some things.

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1 But, I'm going to go ahead and going to go through
2 this.

3 So, could you please introduce yourselves from my
4 right to left?

5 MS. LORD-SORENSEN: Good morning, Chairman Hill and
6 members of the Board, Adrian Lord-Sorensen, Assistant General
7 Counsel with the D.C. Department of Consumer and Regulatory
8 Affairs.

9 MS. SKOVAJSOVA: Good morning, my name is Zuzana
10 Skovajsova. I am the owner of 1267, LLC, Northeast, Penn
11 Street, I'm sorry.

12 CHAIRPERSON HILL: Okay.

13 MS. SKOVAJSOVA: Okay.

14 CHAIRPERSON HILL: Next please?

15 MR. M. PULLIAM: Michael Pulliam, I'm the Project
16 Manager for Protector Construction dealing with this process
17 - this project.

18 CHAIRPERSON HILL: Okay.

19 MS. C. PULLIAM: And, I'm Chaliss Pulliam, I'm the
20 General Contractor for Protector Construction.

21 MR. COBB: Stephen Cobb, I'm the Appellant.

22 MR. TELLE: I'm Adam Telle, resident at 1265 Penn
23 Street, Northeast.

24 CHAIRPERSON HILL: Could you spell your last name,
25 again, sir?

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1 MR. TELLE: T-E-L-L-E.

2 CHAIRPERSON HILL: Okay, great.

3 All right, so, Mr. Telle, so, you know that your
4 -- first of all, your intervener status request is untimely,
5 so you are aware of that, correct?

6 MR. TELLE: Yes.

7 CHAIRPERSON HILL: So, outside of that, if we were
8 to waive the untimeliness, can you clarify with us as to why?
9 Because I have my own opinion after reading the record and
10 what you're testimony is. But, can you tell us a little bit
11 about why you should be granted intervener status?

12 And, are you aware of what intervener status is?

13 MR. TELLE: I'm only aware that when we contacted
14 DCRA to file for party status, we were advised to file for
15 intervener status and we did and my wife. And, when I say
16 we, I mean my wife and I.

17 CHAIRPERSON HILL: Okay, right. Because it's Mr.
18 Cobb's appeal.

19 MR. TELLE: Correct, correct.

20 CHAIRPERSON HILL: So, right, so, right, okay.
21 All right.

22 So, why should you be granted intervener status?

23 MR. TELLE: I'm in the -- Mr. Cobb has owned the
24 property on one side of this -- of the property in question
25 and I'm on -- my wife and I are on the other side. We -- our

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1 side yard is adjacent to the side yard of the property in
2 question.

3 And, there is some question about the five-foot
4 side yard and whether the permit effectively is allowing the
5 new -- the property reconstruction encroach on that five-foot
6 side yard. And so, it directly affects --

7 CHAIRPERSON HILL: Okay. I don't know, so anyway,
8 so in terms of the granting the intervener status, well,
9 first of all, there's the untimeliness and so I don't know
10 what I feel about that.

11 I know I'll DCRA obviously make some points to it.

12 And then, there's the requirements under Y502.3
13 pursuant to Y101.9 in terms of the prejudice to untimely
14 filings as well as in the criteria and others to -- and also
15 the criteria to grant the intervener status.

16 So, before I kind of talk to some of those things,
17 Ms. Lord-Sorensen, you had a comment about the intervener
18 status?

19 MS. LORD-SORENSEN: No, Chairman.

20 CHAIRPERSON HILL: Okay, I thought you were going
21 to say something.

22 MS. LORD-SORENSEN: I just have a preliminary
23 matter once you're done with that particular motion.

24 CHAIRPERSON HILL: Okay, sure.

25 Does the Board have any thoughts about the

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1 intervener status?

2 MEMBER HART: Could you just describe why you're
3 -- why it's untimely? Why it's -- why is it -- why was it
4 sent in or submitted late?

5 MR. TELLE: Sure. We received notice from Helpful
6 Investing and the property owner in March. And, about this
7 property.

8 We contacted DCRA and the property owner about
9 concerns we had with its encroachment on the five-foot side
10 yard.

11 We never received a response, to my knowledge, to
12 that. And so, I mean, honestly, we're just citizens of the
13 District of Columbia and don't, you know, we don't closely
14 follow the rules and regulations and how to become -- didn't
15 even know this Zoning Board existed.

16 So, we're -- it became very real when we talked
17 to our -- the neighbor on the other side of the property and
18 he was involved in an appeal. And, the foundation for the
19 structure that we believe is not within zoning regulations
20 of D.C.

21 That was happening all at the same time you
22 mentioned September 19th. In addition, around that time, our
23 side yard collapsed into the hole that was dug in the
24 property in question. And so, our attention to this project
25 became much more in focus and because we have been, you know,

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1 our property --

2 CHAIRPERSON HILL: Okay, let me interrupt you --

3 MR. TELLE: -- is damaged.

4 CHAIRPERSON HILL: -- for one second, Mr. Telle.

5 MR. TELLE: Sure.

6 CHAIRPERSON HILL: Mr. Cobb, do you have any
7 objection to this gentleman being involved and an intervener
8 in your appeal?

9 MR. COBB: No objection. And, I would just like
10 to say something very quick, if I may.

11 CHAIRPERSON HILL: Sure.

12 MR. COBB: According to the plans, it looks like
13 that we're going to adhere to the five-foot side yard. But,
14 since then, now that they've been building, it seems to
15 indicate that they are not going to adhere to the five-foot
16 side yard.

17 So, just looking at the plans, there was no way
18 that the Telle's could have known about that until building
19 actually began on July 30th.

20 CHAIRPERSON HILL: Okay, all right.

21 All right, so then, I don't know. So, I mean,
22 I've changed my mind, so now, do y'all have -- what do y'all
23 think?

24 MEMBER WHITE: I mean, it seems as though you are
25 kind of in a unique position as compared to the general

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1 public, correct?

2 I mean, because how does this uniquely impact you?

3 MR. TELLE: Well, I mean, I don't mean to get too
4 personal, but on a Sunday morning about a month ago, my wife
5 went out back to our back yard to let our dog out and our dog
6 ran and almost fell into a crater that was caused in our
7 yard.

8 And so, we've been -- my fence was destroyed to
9 the credit of the contractors. They've agreed to repair
10 everything. But, I'm still -- we're still in denial of use
11 of our own back yard property. We can't let our dog out and
12 we continue to be in denial of use of that.

13 So, it's very -- it impacts us very directly.
14 It's not a general public type situation.

15 MEMBER WHITE: Okay.

16 CHAIRPERSON HILL: Okay, anyone else have any
17 questions? Thoughts?

18 (NO RESPONSE)

19 CHAIRPERSON HILL: Okay, so does any -- okay, so
20 we're just going to have a discussion here. Okay? And,
21 we're not asking any questions.

22 So, does anyone have any thoughts about granting
23 intervener status?

24 MEMBER HART: Yes, I -- just to kind of start off,
25 the -- this is an adjacent neighbor that's being affected by

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1 this so I think that this is something that they would be --
2 have an interest in.

3 I understand that, you know, it's hard to kind of
4 do life stuff that, you know, with your family and then also
5 have things that are a little foreign to you like the BZA or,
6 you know, Zoning Commission processes that not a lot of
7 people are aware of.

8 And, I would be sympathetic to the intervener.
9 I also think that they are -- submit a case for being given
10 intervener status and Mr. Cobb is also supportive of this.
11 So, I would be in support of it as well.

12 CHAIRPERSON HILL: Okay.

13 MEMBER JOHN: Mr. Chairman?

14 CHAIRPERSON HILL: Sure.

15 MEMBER JOHN: I'm in support of waiving the time
16 requirement based on the explanation given by the intervener.
17 And, also the applicant's explanation that he might not
18 reasonably have known of the potential problem until his side
19 yard collapsed. So --

20 MEMBER HART: Appellant.

21 MEMBER JOHN: Pardon?

22 MEMBER HART: Appellant.

23 MEMBER JOHN: No, the intervener.

24 MEMBER HART: No, no, you said the applicant.

25 MEMBER JOHN: Oh, Appellant, thank you.

1 MEMBER WHITE: I concur with my colleagues
2 comments with respect to the time. And, also with respect
3 to the requirements under Subtitle Y502.3.

4 I think the gentleman is uniquely impacted by the
5 project and the Appellant doesn't have any objections.

6 CHAIRPERSON HILL: Okay. Chairman Hood, are you
7 okay?

8 ZC CHAIR HOOD: Yes, I can, especially not even
9 knowing about a Zoning Board, so I understand that, too.

10 CHAIRPERSON HILL: Okay.

11 All right, so, Mr. Telle, we're going to grant you
12 intervener status. Okay? But, I think there's some other
13 things we're going to kind of work through, too, today.

14 So, well, Vice Chair Hart's telling me to let you
15 know what that means. Do you know what that means?

16 MR. TELLE: In that we're going to work through
17 some other stuff today?

18 CHAIRPERSON HILL: No, no, sorry. I'm sorry,
19 that's okay.

20 What it means is that you will have an -- so the
21 Appellant will have an opportunity to present his case,
22 right. Then I'm going to have to go back to the order again,
23 I always can't remember whether the intervener comes next or
24 not.

25 But, anyway, the Appellant will have an

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1 opportunity to present their case. DCRA will then have an
2 opportunity to cross examine that case. Okay?

3 You also, as an intervener, will be able to cross
4 examine that case.

5 Then -- I can't recall the order right now off the
6 top of my head, but I'll be able to look at it, either you
7 will then present next or DCRA presents next their case.
8 Then you, then they will also have an opportunity to cross
9 examine you and then that's how, you know, you have to be
10 prepared for that.

11 The only reason why I'm kind of -- I don't know
12 if we're going to get to that today now because there's some
13 other things that have kind of been brought to my attention
14 concerning who is here and who is not here.

15 So, but so, you can read more about that. There's
16 -- you can check with the Office of Planning across the hall.
17 They can tell you a little bit more about the process for
18 intervener status during your presentation. Okay?

19 Ms. Lord-Sorensen?

20 MS. LORD-SORENSEN: Yes, thank you, Chairman Hill.

21 DCRA would like to request a continuance. I
22 learned this morning that the ZA, the Zoning Administrator,
23 has fallen ill and he would like an opportunity to defend his
24 decision in this case.

25 CHAIRPERSON HILL: Sure, I understand.

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1 So, Mr. Cobb, thank you. Mr. Cobb, unfortunately,
2 the Zoning Administrator is not as tough as I am. And so,
3 you know, if he's sick, he's apparently home.

4 And so, we're going to have to continue this. You
5 understand that, correct?

6 (NO AUDIBLE RESPONSE)

7 CHAIRPERSON HILL: Okay. Could you just say I do
8 into the microphone?

9 MR. COBB: I do.

10 CHAIRPERSON HILL: Okay, thank you.

11 Now, was there any other preliminary matters?

12 MR. COBB: No, but --

13 MS. LOVICK: Yes, there was another preliminary
14 matter because Mr. Cobb had requested for you to consider an
15 untimely supplemental filing to the record.

16 CHAIRPERSON HILL: Yes, I thought there was an
17 untimely supplemental filing and I think DCRA opposed that
18 untimely supplement filing.

19 MS. LOVICK: Not as of my last review of the
20 record, but there could have been a new submission to the
21 record.

22 CHAIRPERSON HILL: Well, maybe I'm mistaken.

23 MS. LORD-SORENSEN: DCRA has not filed anything.

24 MS. LOVICK: Okay, I didn't think so.

25 MR. COBB: They did file an opposition to the

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1 original pre-hearing statement, but then, I moved to file a
2 supplemental pre-hearing statement.

3 CHAIRPERSON HILL: Well, considering we're going
4 to continue this, I would just go ahead and take the
5 supplemental hearing.

6 So, we're going to go ahead and let you have the
7 -- we're going to allow you to file your supplemental pre-
8 hearing statement.

9 And, I guess, Mr. Moy, can we do this next week?
10 I mean, I'm just trying to figure out, again, now we're going
11 to double up another appeal on somewhere, but I don't know
12 when.

13 MS. LOVICK: No, excuse me.

14 CHAIRPERSON HILL: Sure.

15 MS. LOVICK: So, there's a supplemental filing
16 that you have -- I think you should decide on whether or not
17 you're accepting it. It's a separate issue of allowing him
18 to file another pre-hearing statement.

19 CHAIRPERSON HILL: No, no, I'm sorry, I thought
20 we were allowing now the supplemental filing into the record.

21 MS. LOVICK: Oh, so that's what you're intending
22 to do?

23 CHAIRPERSON HILL: That's what I was intending.

24 MS. LOVICK: Okay, I just -- it wasn't clear to
25 me.

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1 CHAIRPERSON HILL: No, that's okay.

2 MS. LOVICK: Okay.

3 CHAIRPERSON HILL: I'm sorry if I wasn't clear.

4 So, we're allowing the supplemental filing into
5 the record, correct? Okay, the Board's all nodding in
6 agreement, so okay.

7 So now, that being the case, Mr. Moy, when can we
8 -- and, by the way, actually, did the property owner, did
9 they -- did you guys submit anything into the record? You
10 have to speak into the microphone.

11 MS. SKOVAJSOVA: No, we did not.

12 CHAIRPERSON HILL: Okay. So, you're going to be
13 here during the appeal to then also present? Okay, no, I'm
14 saying -- I'm asking.

15 MS. SKOVAJSOVA: Yes.

16 CHAIRPERSON HILL: You're saying yes?

17 MS. SKOVAJSOVA: Yes.

18 CHAIRPERSON HILL: So, Mr. Moy, don't have to put
19 something into the record or no?

20 MR. MOY: Typically, on an appeal case, the
21 property owner would make a -- would file a pre-hearing
22 statement. I mean, that's totally up to them.

23 CHAIRPERSON HILL: Okay. So, it's not required?
24 That's all right, then you don't have to file a pre-hearing
25 statement, I guess.

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1 So, then, we'll go ahead and be able to hear this
2 next week.

3 However, I guess if you want to file a pre-hearing
4 statement, that allows the Board then an opportunity to
5 understand what it is you're going to be speaking about and
6 it also give the Appellant an opportunity to understand what
7 it is they're going to be speaking about.

8 And then, it does provide for a more expeditious
9 hearing. So, but that's up to you.

10 MS. LORD-SORENSEN: Excuse me, Chairman Hill, is
11 it possible to move it to either October 10th or the 17th
12 because I have a conflict on the afternoon of October 3rd.

13 CHAIRPERSON HILL: Okay. Mr. Moy, you were about
14 to say something first about the property owner's filing?

15 MR. MOY: No, no.

16 CHAIRPERSON HILL: No? Okay.

17 MR. MOY: We're good.

18 CHAIRPERSON HILL: So, the -- I wasn't really a
19 big fan of putting it on for next week anyway. But, that
20 then next week was not -- next week, there wasn't an appeal.

21 And then, the two dates that DCRA just mentioned,
22 there were appeals already on those dates, correct? And so,
23 when would the next date where there isn't an appeal be
24 available?

25 MR. MOY: Okay, so that would be -- well, I don't

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1 think you want October 24th because you were not going to be
2 here.

3 CHAIRPERSON HILL: I like October 24th.

4 MR. MOY: There was another Board member I think
5 that wasn't going to be present.

6 MEMBER WHITE: I'm not going to be present.

7 MR. MOY: So, that would only leave a quorum of
8 three. We could still do that.

9 CHAIRPERSON HILL: Yes, you can still do it.
10 Regulations say three is enough.

11 MR. MOY: Yes, so, if we do that, we could still
12 hold this appeal on October 24th. Because, otherwise,
13 October 31 and November -- and the hearing after that, then
14 after that there were appeals, so there you go.

15 CHAIRPERSON HILL: So, Vice Chair are -- like I'm
16 -- no, I'm just saying so then -- so if we did do it, and I
17 do -- and I know I'm joking about it because, you know,
18 appeals take a lot of time. And so, it's always, it always
19 seems like a gift if you miss one.

20 But, there is, both of us -- two of us will be out
21 on that day, right, October 24th. And then, you said if we
22 didn't do it on the 24th, the next day without an appeal
23 would be when again?

24 MR. MOY: It would be November the 28th.

25 CHAIRPERSON HILL: November the 28th? And so,

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1 that then hold everybody up until the 28th because then, you
2 guys are on a stop work order? No, no, that's right, you can
3 do whatever you want to do and then see what happens.

4 Let's see, well, that's just how it is, you know.

5 So, let's see, okay, I really, I mean, I was kind
6 of joking about it, I don't want you guys to do one without
7 us. I mean, but you'll be able -- you'll be okay? Yes?

8 MEMBER JOHN: Mr. Chairman, I'm okay with
9 November.

10 CHAIRPERSON HILL: November? No, November would
11 be -- it would be -- I think it'll be -- okay, well, let's
12 ask --

13 So, in terms of the property owner or the
14 Appellant or DCRA, what do you have to think about on
15 November date?

16 MS. LORD-SORENSEN: I'm fine with November 28th.

17 CHAIRPERSON HILL: Okay. Is that after
18 Thanksgiving or before Thanksgiving?

19 MS. LORD-SORENSEN: Before, the Wednesday before.

20 CHAIRPERSON HILL: Oh.

21 MS. LORD-SORENSEN: No, no, I'm sorry, the
22 Wednesday after.

23 CHAIRPERSON HILL: The Wednesday after, okay.

24 So, November 28th, will that work for you, Mr.
25 Cobb?

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1 MR. COBB: That'll work for me.

2 CHAIRPERSON HILL: Okay, oh, I'm sorry, Mr. Cobb.
3 All right, so let's go ahead and move it to November 28th
4 then.

5 So, OAG, again, so the intervener can also give
6 a pre-hearing statement, correct? OAG? Okay, she's looking
7 at the regs.

8 MR. MOY: While she's doing that, Mr. Chairman,
9 unless you moved so quickly and it went over my head, but did
10 the Board vote or take a consensus on the intervener status?

11 CHAIRPERSON HILL: We did, we took a consensus to
12 grant the intervener status and waive the untimely filing.

13 MR. MOY: Okay, okay.

14 CHAIRPERSON HILL: And then --

15 MS. LOVICK: Yes, they can, they can file a pre-
16 hearing statement.

17 CHAIRPERSON HILL: They can? Okay.

18 So, Mr. Telle, if you could file a pre-hearing
19 statement as well. That'll also give everybody an
20 opportunity to hear what your arguments are, again, to create
21 a more efficient case.

22 I do have a question for you, is it Ms.
23 Skovajsova? Could you lean into the microphone again?

24 MS. SKOVAJSOVA: Skovajsova.

25 CHAIRPERSON HILL: So, Ms. Skovajsova, are you the

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1 property owner?

2 MS. SKOVAJSOVA: Yes.

3 CHAIRPERSON HILL: Okay, so what is happening
4 right now to the property?

5 MS. SKOVAJSOVA: It's under construction.

6 CHAIRPERSON HILL: It's under construction?

7 MS. SKOVAJSOVA: Mm-hmm.

8 CHAIRPERSON HILL: So, it will continue -- so, it
9 is continuing to be under construction, it's going to
10 continue to be under construction, correct?

11 MS. SKOVAJSOVA: That's the plan.

12 CHAIRPERSON HILL: Okay, all right. Okay.
13 Okay, all right, thank you.

14 I was just trying to figure out about what
15 November -- I'm trying to -- you can see that we have a lot
16 of stuff going on here today. And so, if I could figure out
17 how to do it earlier, I would have. But, I don't know if it
18 necessarily harms or benefits you guys. I mean, it's always
19 good to at least know where you stand as early as possible
20 in everybody's case.

21 But, I think that November 28th would also work
22 for you to a certain extent?

23 MS. SKOVAJSOVA: Yes, it will.

24 CHAIRPERSON HILL: Okay, great. Thank you, that
25 makes my day easier.

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1 All right, so, Mr. Moy, we're going to move this
2 to November 28th.

3 So, just for the record Mr. Moy, again, we have
4 an appeal every week until November 28th?

5 MR. MOY: Yes.

6 CHAIRPERSON HILL: Wow, okay. Except the 24th?
7 Okay.

8 And, just so you all know, just appeals take a
9 long time just because there's a lot of information and
10 everybody, you know, and they are pretty involved hearings.

11 So, we do hear them at the end of the day usually,
12 so just to let you all know. Okay?

13 All right, so we'll see you the day after
14 Thanksgiving. Hope you have a nice Thanksgiving.

15 If you wouldn't mind, you can just go ahead and
16 talk outside in the hallway, thank you. We've still got --
17 we've got another case coming up.

18 All right, Mr. Moy.

19 MR. MOY: Thank you, sir.

20 So, I'll ask the parties to the table.

21 This is to Case Application Number 19712 of Newton
22 Park Apartments Condominium Unit Owners as amended for
23 special exceptions under the residential conversion
24 regulations, Subtitle U, Section 320.2 and pursuant to
25 Subtitle X, Chapter 10 for a variance from the residential

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1 conversion requirements, Subtitle U, Section 320.2(d).

2 This would allow a three-unit apartment house, RF-
3 1 Zone, at 425 Newton Place, Northwest, Square 3036, Lot 89.

4 CHAIRPERSON HILL: Okay, if you could please
5 introduce yourselves from my right to left?

6 MR. SULLIVAN: Thank you, Mr. Chair and members
7 of the Board. My name is Martin Sullivan of the law firm of
8 Sullivan and Barros on behalf of the Applicant.

9 MS. WILSON: Alex Wilson from Sullivan and Barros
10 on behalf of the Applicant.

11 MR. MANNING: Bryan Manning, Kane Development,
12 owner of 452 Newton.

13 MR. AKIN: Thank you, Chairman. My name is Serhat
14 Akin, I'm the Applicant as well.

15 CHAIRPERSON HILL: Could you spell the last name,
16 again, for me, sir? You have to push the light.

17 MR. AKIN: Yes, Serhat Akin.

18 CHAIRPERSON HILL: Serhat Akin?

19 MR. AKIN: Yes, sir.

20 CHAIRPERSON HILL: Okay. Mr. Sullivan, are you
21 going to be presenting to us?

22 MR. SULLIVAN: Yes.

23 CHAIRPERSON HILL: Okay. So, as I recall, again,
24 we had asked for a continued hearing so that there could be
25 some information that got put into the record. And, I know

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1 that you did submit that information.

2 I guess what I'd like to just kind of start and
3 this actually is kind of, you know, I mean for me at least,
4 it's a little complicated.

5 And so, you know, I understand the argument that
6 your client is making. However, if you could, I guess, start
7 with what we had asked you to do between the last hearing and
8 now.

9 And then, maybe kind of point us through some of
10 the exhibits in terms of what you've submitted between then
11 and now. And then, we'll kind of move from there.

12 MR. SULLIVAN: Okay, thank you. And, I'll be
13 presenting along with Ms. Wilson because she's the one that
14 has even more intimate knowledge of the deep details here.

15 And then, I'd like to just close with sort of a
16 high level view of our view of the case.

17 CHAIRPERSON HILL: Okay, that's fine. I mean, I
18 think we're going to go back to the Office of Planning again
19 as well. And, at the end, if you want a conclusion, that's
20 fine.

21 MR. SULLIVAN: Okay, thank you.

22 So, the general time line here is that in February
23 of 2015, the Applicant did receive a permit. It was a
24 renovation permit. And the permit listed staid it was for
25 a single family dwelling.

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1 And, Mr. Manning here, and Mr. Akin can answer any
2 questions on the specifics of that.

3 In April, they received a minor flex approval from
4 the Zoning Administrator and an email. And, what that did
5 was it granted them the ability -- they fell within the two
6 percent deviation limit to be able to have a three unit
7 building because the property was just short of 2700 square
8 feet which, at that time, would have allowed a three unit
9 conversion as a matter of right if it was 2700 feet.

10 But, it was 13 feet short of the 900 feet for each
11 lot which was within the two percent tolerance that allowed
12 the Zoning Administrator to grant minor flex for that. So,
13 they had a decision on that.

14 Throughout 2015, they're renovating it. And,
15 they're renovating it under a single family permit. But, all
16 the while pursuing a three unit conversion permit which was
17 then issued in October.

18 And, at that point, then they could pivot to
19 finish it as a three unit building. Having continued along
20 that path expecting that approval because they had the minor
21 flex approval in April and they had a zoning approval listed
22 in PIVS in August and then, eventually, they got their
23 permit.

24 So, the -- and then, the permit was pulled two
25 months later. So, they did do two months of work,

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1 technically, in reliance on that permit, but they also had
2 been doing some work in expectation of getting that three
3 unit permit, if you will.

4 So, you have a bunch of numbers. You have a bunch
5 of documents in support. But, the bottom line is, they got
6 a three unit permit and acted on that and spent significant
7 amounts on that.

8 But, also, it's not just what they spent, it's
9 that it changes the whole plan. And, if they had known from
10 the beginning that it was only two units and had been denied
11 the three unit permit, it would have a completely different
12 configuration that they have now. The most obvious thing
13 being they have -- they sold the top unit when it had to go
14 back to two units. So, the top unit's gone.

15 If they had known it was two units from the
16 beginning, they would have done a different configuration
17 where the basement unit was on unit and the first and second
18 floor was the primary unit.

19 So, what they have now, too, is they have a four
20 unit building that's two stories on the two lower levels with
21 two kitchens, four bathrooms and requires a reconfiguration
22 just on that level because the top unit is already sold.

23 So, we submitted information that discusses the
24 financial costs to them as a result of the permit issuance
25 and revocation, changes that they've had to make and the

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1 difficulty that they've had in selling the remaining unit
2 now.

3 And, if -- so if you have any questions about that
4 on the specifics of those, the Applicant is here to answer
5 those or any specifics on the process throughout 2015.

6 CHAIRPERSON HILL: Okay. Just, okay, you can keep
7 going, but, Mr. Sullivan, so as far as the time line goes,
8 so again, I just wanted to be clear on one thing.

9 So, in February of 2015, they got a permit to
10 renovate for a single family dwelling, right? And then,
11 there was the email that you got from the Zoning
12 Administrator for the two percent minor flex.

13 And then, they never filed again to switch from
14 a single family dwelling to the three units until when?

15 MR. SULLIVAN: So, if you can tell them, when did
16 you file the permit application for the three unit conversion
17 to address the insufficiency of the February permit.

18 So, the February permit, although the plans behind
19 that were for three units, it wasn't a correct permit. So --

20 CHAIRPERSON HILL: When you say the plans behind
21 it were for three units, but it wasn't a correct permit, what
22 do you mean?

23 MR. SULLIVAN: The permit itself was noted as
24 a single family dwelling.

25 CHAIRPERSON HILL: Right, but the plans showed for

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1 three units?

2 MR. SULLIVAN: That's --

3 CHAIRPERSON HILL: That's what you're saying
4 that's part of the argument?

5 MR. SULLIVAN: Yes.

6 CHAIRPERSON HILL: Okay. And so, what I'm just
7 trying to get to, Mr. Manning or whoever wants to answer
8 again, it's like, you know, you got an email from the Zoning
9 Administrator for a two percent minor flex, right? And, at
10 that point, then you should have gone and applied for a permit
11 for, if you had a single family -- this is at least part of
12 the argument that the Office of Planning is giving, right?

13 Is that, you know, you then now knew, or not then
14 now knew, you then had -- you should have then filed for a
15 three unit permit as opposed to the single family dwelling.
16 Did you know that you should have done that or why didn't you
17 do that?

18 And, then when did you do that?

19 MR. MANNING: I can answer that.

20 We have a third business partner that's no longer
21 with us and he was in charge of all the permitting process.

22 When we got a stop work order for exceeding the
23 scope of work, it was a single family dwelling with plan sets
24 for three units. So, we had an emergency hearing with the
25 DCRA with Garrett Whitescarver and his staff.

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1 And, we paid the fine and he couldn't figure out
2 why we had plan sets for three units with a single dwelling
3 building permit.

4 So, he immediately put -- we paid the fine and he
5 lifted the stop work order and told us to -- we can continue
6 working on our plan sets, however, he would like to take our
7 plan sets and walk it through the process.

8 It never made it into ProjectDox. It actually --
9 he lifted the stop work order. We continued working based
10 off our plan sets in that meeting, which was for three units.
11 And, that process took, what was it, October, so we got a
12 stop work order in June. So --

13 MEMBER HART: During June 2015?

14 MR. MANNING: Yes. So, in June when we got our
15 stop work order and he lifted it after we paid the fines, as
16 our plan sets were going through the walk through process and
17 had passed all the checks and balances, we finally got our
18 three unit building permit from the DCRA.

19 CHAIRPERSON HILL: In June?

20 MR. MANNING: We didn't get the building permit
21 until October, obviously. But, we were told to continue
22 building based off our plan sets in June.

23 CHAIRPERSON HILL: Okay.

24 MEMBER HART: Okay. And so, you're also saying
25 that in December, you got this -- the three unit conversion.

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1 And, then in December of 2015, DCRA, they revoked that permit
2 for the three unit conversion?

3 MR. MANNING: That's correct.

4 MEMBER HART: Okay. And so, at that point, you
5 then thought about filing an appeal to that?

6 MR. MANNING: Yes, when we were 90, like 99
7 percent completed at that time. I mean, we've -- really the
8 question is, how can you do construction so quickly?

9 Well --

10 MEMBER HART: I'm not asking you that, I'm trying
11 to figure out what was the process after December?

12 MR. AKIN: I'm sorry, what was the question?

13 MEMBER HART: You have -- my thinking is that, in
14 December, after December 2015 when you had a revoked --
15 revocation of the permit, then you must appeal this or were
16 you still working with the ZA or the DCRA?

17 MR. AKIN: I think at that time, it was a big
18 disappointment and after all we spent all that money for the
19 construction and then we had some monetary issues that we
20 didn't have enough money to pursue for that way and to hire
21 a lawyer.

22 Because we were granted for all that time and, you
23 know, they gave us the green light and, like at the end, they
24 yanked it from us. And, I was so --

25 MEMBER HART: And so, then you made a decision and

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1 that decision was you were --

2 MR. AKIN: Because we did not have any money
3 believed off the --

4 MEMBER HART: I understand that. But, what I'm
5 trying to get to is, you then went from because you didn't
6 have a -- because you couldn't do a three unit building, you
7 were only allowed under zoning to do a two unit building.

8 You then decided to just make it into a two unit
9 building?

10 MR. AKIN: Yes, because I thought -- we decided
11 we didn't have any choice because we don't have the money and
12 we couldn't fight at that time. And --

13 CHAIRPERSON HILL: But, how you made it -- I'm
14 sorry, but how you made into a two unit building and what
15 you're saying is that you were 99 percent complete at that
16 time and you made it into a two unit building, but I forget,
17 I can't remember the diagram, but just like stuck a door
18 somewhere or took a door away or something, right?

19 I mean --

20 MR. AKIN: No, not necessarily. The burden for
21 like we consulted a couple lawyers and the amount of the
22 money that it was going to be is more than that what we have
23 in order to finish the building. I mean, there was not too
24 much going on to finish the 99 percent.

25 MEMBER JOHN: Mr. Chairman, I have a question.

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1 So, walk me through your process from April when you got the
2 two percent variation from April 2015 to August 2015.

3 During that time, you had a single family permit
4 and you were working off of plans for a three unit
5 configuration. Tell me what kinds of inspections did you
6 have during that time? What was your interaction with DCRA
7 during that time?

8 MR. MANNING: We had -- our business partner
9 spearheaded this from day one. And, Serhat and I were silent
10 partners in the beginning, so it's very gauge of the -- our
11 third business partner was our project manager.

12 He was the one that can answer all these
13 questions, but he's no longer with us.

14 Serhat and I personally got involved in this
15 project when we got the stop work order. So, I do know that
16 the DCRA inspection cards, everything was done by the DCRA.
17 We didn't have a third-party inspector after June.

18 It's been quite some together. I -- my job was
19 to pick up the pieces, do everything by the books, follow the
20 plan sets, have my contractors do business as usual and we
21 didn't use a third-party, ,we used DCRA.

22 And, yes, we had some notations and we did
23 everything, you know, by code, by the book.

24 MEMBER JOHN: So, DCRA did inspect the property --

25 MR. MANNING: That is --

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1 MEMBER JOHN: -- between April 2015 and August
2 2015?

3 MR. MANNING: That's correctly, DCRA inspections
4 were involved a 100 percent.

5 MEMBER JOHN: So, when the second stop work order
6 was issued, what reason did DCRA give you -- was issued, not
7 lifted? That was in December?

8 MR. MANNING: It was, from my understanding was
9 we were no longer allowed by rights to build three units
10 because it was a different zoning code. And, we received a
11 letter that if we don't personally turn in our building
12 permit that they would revoke it, no matter what. So, we
13 were left with no choice.

14 There was no really clear explanation, I mean,
15 there was a clear explanation why they took it away from us,
16 it was either, you know, they issued it to us wrong but it
17 was never clearly stated that way. It was just Kane
18 Development had to submit our building permit for three units
19 or we would -- it would be revoked from us.

20 MEMBER JOHN: So, did you -- let me see if I can
21 phrase this question. Okay, I'll think about it.

22 CHAIRPERSON HILL: Okay, Mr. --

23 ZC CHAIR HOOD: Question.

24 CHAIRPERSON HILL: Oh sure.

25 ZC CHAIR HOOD: I'm trying -- I might not have all

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1 the time line because of this in that. But, at some point
2 in time, and I think Mr. Sullivan, you might have mentioned
3 it, at some point in time, you said you got an email from the
4 Zoning Administrator.

5 And, I guess you considered that approval to
6 continue to move forward. Is that how he operated? I mean,
7 is that how DCRA operates? You get an email?

8 MR. SULLIVAN: No, and I wouldn't argue that
9 technically as part of the estoppel argument. I would just
10 say that's an explanation why they believed that the three
11 unit thing was forthcoming.

12 ZC CHAIR HOOD: And, that's what I gathered. So,
13 you figured that -- you still operated because you relied on
14 the email?

15 MR. SULLIVAN: They did, my understanding is, yes,
16 they relied on the email.

17 ZC CHAIR HOOD: But, as we all know, is that a
18 normal practice, an email?

19 MR. SULLIVAN: Well --

20 ZC CHAIR HOOD: I mean, it's a record, but is that
21 a normal approval?

22 MR. SULLIVAN: Well, I guess I would -- what I
23 would say, to be more accurate is, they were relying on a
24 building, on a renovation building permit that said single
25 family while they --

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1 And, but, when they got that three unit, and I
2 don't know specifically, you know, who was looking at it and
3 what they thought about it, but --

4 ZC CHAIR HOOD: So, let me just stop you because
5 I'm trying to understand. So, because of the email, okay,
6 the had the permit, single family. But, because of the
7 email, they, I don't even like to use the word assumed, but
8 they anticipated that the approval would come forward for the
9 -- what they really probably wanted to do, is that a correct
10 assumption to say?

11 MR. SULLIVAN: Perhaps, but I'm not even certain
12 that they didn't think they had the three units all along,
13 because they had that plan set and were working from the same
14 plan set.

15 ZC CHAIR HOOD: So, they had the plan set, they
16 got approval for single family, but they had the plan set at
17 all the time to do the three units?

18 MR. SULLIVAN: Yes, yes, that's my understanding,
19 yes. And, it's not unusual -- and a lot of times in this
20 situation, a builder may, because time is money and it's
21 significant money, a lot of times, if they waiting for a BZA
22 order, perhaps, say they're waiting for a full order,
23 sometimes they'll go get a building permit for a two unit
24 building and they'll being construction with an eye towards
25 being able to convert it once they can revise the permit.

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1 I don't know if they did that --

2 ZC CHAIR HOOD: So, they initiate the build up --

3 MR. SULLIVAN: -- there.

4 ZC CHAIR HOOD: -- to begin with knowing that they
5 really want three units, even though they have a permit for
6 two units?

7 MR. SULLIVAN: They must make progress.

8 ZC CHAIR HOOD: So, they proceed at their own
9 risk?

10 MR. SULLIVAN: Yes.

11 ZC CHAIR HOOD: Okay.

12 MR. SULLIVAN: Yes.

13 ZC CHAIR HOOD: All right.

14 MR. SULLIVAN: At that point until they got a
15 permit and then they had their approval.

16 ZC CHAIR HOOD: Okay, so you proceed at your own
17 risk? Okay.

18 MR. SULLIVAN: Right.

19 ZC CHAIR HOOD: Thank you.

20 CHAIRPERSON HILL: Just along the proceed at your
21 own risk lines, so you guys got a permit, just some I'm clear
22 again, you got a permit for a single family dwelling, right,
23 but you had -- but your plan set was for three units, right?

24 So, you assumed you were approved for three units
25 because that plan set was moved through as a single family

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1 dwelling? And, since your partner was the one that was
2 responsible for all this, you guys didn't find out about any
3 of this stuff until the stop work order came in?

4 MR. MANNING: That's correct.

5 CHAIRPERSON HILL: Okay.

6 MR. MANNING: I didn't -- we didn't -- we, me and
7 Serhat, did not get involved into the Newton -- 452 Newton
8 process until that stop work order. Once the stop work order
9 came --

10 CHAIRPERSON HILL: Okay.

11 MR. MANNING: -- we had to do our homework.

12 CHAIRPERSON HILL: Okay.

13 MR. MANNING: We had to --

14 CHAIRPERSON HILL: Okay, that's all right.

15 MR. MANNING: -- figure out where we're at.

16 CHAIRPERSON HILL: So, Mr. -- that's all right.

17 So, Mr. Sullivan, Ms. Wilson, I'm just trying to
18 understand, you guys got a PowerPoint presentation here? It
19 looks like in Exhibit 70.

20 And, I don't know if you guys were going to go
21 through that or trying to go through that at one point and
22 I stopped you.

23 MR. SULLIVAN: I don't know that -- we don't need
24 to --

25 CHAIRPERSON HILL: Or 72 I should say.

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1 MR. SULLIVAN: -- prolong the hearing. I think
2 if whatever most effectively --

3 (SIMULTANEOUS SPEAKING)

4 CHAIRPERSON HILL: Yes, I was just on the second
5 slide --

6 MR. SULLIVAN: -- the point that we need to be.

7 CHAIRPERSON HILL: -- it had kind of like a more
8 detailed --

9 MR. SULLIVAN: Yes.

10 CHAIRPERSON HILL: -- breakdown as to the time
11 line.

12 MR. SULLIVAN: We can pull that up.

13 CHAIRPERSON HILL: And so, that's why I was only
14 mentioning that. Because the time line had --

15 So, but I'll let -- Ms. White, you had a question?

16 MEMBER WHITE: I'm just trying to think through
17 the analysis here. So, I mean, essentially, you're trying
18 to get a special exception for a residential conversion and
19 a variance for area requirement for residential conversion.

20 So, I'm thinking through the time line as well.
21 So, basically, your argument is that DCRA issued a permit to
22 you, that you relied on that permit to your detriment on the
23 fact that they -- that you thought you had a valid permit and
24 that when that permit was revoked in December of 2015, you
25 didn't convert back to the two units and you tried to sell.

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1 So, your argument is that it's undue hardship, you
2 know, from a financial perspective to try to sell a four bed,
3 four bath unit in this particular market and you provided
4 some feedback with respect to that.

5 And then, you're also arguing, if I'm
6 understanding correctly, that variance relief it's really a
7 nominal amount of 40 square feet and that you would need to
8 meet the minimum 900 square feet in this particular area per
9 dwelling unit for which the Applicant seeks the area variance
10 relief.

11 So, you're making a detrimental reliance argument
12 coupled with the fact that, you know, you can't sell the --
13 your argument is that you can't sell the property as a four
14 bed, four bath type of configuration and that this relief is
15 not substantial.

16 So, I just wanted you to maybe to kind of argument
17 for me how you feel like you meet the variance standard with
18 regards to this?

19 Did correctly communicate that? I'm just trying
20 to see, you know, because the variance standard is so high,
21 I'm just trying to see what type of argument your clients are
22 putting forth that would require us to consider the relief
23 for variance?

24 MR. SULLIVAN: Okay, yes, yes, that's -- that was
25 great. That sounded like where we're coming from as well.

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1 And, I just want to note one point about the email
2 from the Zoning Administrator. It was included on the plan
3 set and had a stamped approval from the Zoning Administrator
4 on August 3rd. So, as of August 3rd, they stamped approval
5 of the plans and they cited -- and this is in the record --
6 they cited the email itself as justifying this.

7 So, and yes, everybody always proceeds at their
8 own risk. But, that's not really a factor in the estoppel
9 decision or the estoppel rationale or in the variance
10 argument for this case.

11 So, the 100-foot view here, the bird's eye view,
12 is that the Applicant, in good faith, received a permit for
13 a three unit conversion and they acted on that.

14 And, if we take -- if we don't talk about anything
15 that happened before issuance of the permit in October, they
16 spent a good two months going forward.

17 Now, this Board recently approved a case where a
18 permit was in effect for six days and the Office of Planning
19 supported that case just in July.

20 So, this -- I think the two months is substantial
21 and there was obviously a lot of money spent. But, it's not
22 just that, it was just that that changes the whole plan. Now
23 it would change the configuration and how we market this and
24 how we layout the building.

25 If there was no reliance argument, and we came

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1 before you for a special exception, I don't think that would
2 be a difficult argument because there really wasn't an
3 addition put on this.

4 So, and that -- the criteria for that, as you
5 know, is related on to the addition.

6 And that would just leave us with okay, we're 13
7 feet short of the 900-foot rule for each lot. And, I
8 wouldn't make that argument because I don't think close gets
9 there.

10 But the way -- the reason close gets you there,
11 in this case is because we have this reliance argument. We
12 did get a permit or they did get permit. They acted on that
13 permit. They spent a significant amount of money on permit
14 and then it was pulled out from under them.

15 There's no -- nobody has put forth the proposition
16 that anybody acted in bad faith, not before, you know, this
17 analysis goes up to December. Now, what the applicant did
18 after that as a reaction is a different matter.

19 MEMBER WHITE: But --

20 MR. SULLIVAN: And I think that's why we lost the
21 ANC.

22 MEMBER WHITE: Quick question, can you use the
23 detrimental reliance argument in a situation where, you know,
24 we're talking about the same property owner?

25 Usually, when you use like an estoppel detrimental

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1 reliance argument, it's when a property owner purchases from
2 another owner and he kind of inherits the problem and then
3 they're making the argument?

4 But, I don't know if there are any cases or
5 precedent that allow one to make a detrimental reliance
6 argument in these types of cases.

7 MR. SULLIVAN: So, the three cases that I would
8 talk about, actually, were all the same owner, the same --
9 the owner that owned the house for some time and then applied
10 for a permit, got the permit and then acted on it. And then
11 had the permit revoked. It was all the same owner.

12 There are estoppel cases that are somewhat
13 different than this where a property owner buys an existing
14 three unit building that has three meters and it's been
15 around for a long time. And, you know, you walk into it and
16 you think, yes, this is three units.

17 And then, they discover later, hey, I'm not legal.
18 I think that's a slightly different case. And, in that case,
19 yes, different owners.

20 But, for instance, the case that was just done
21 last summer which is 19521A -- 1951A. And, this was a
22 property in Burleith. It was an accessory building.

23 And, the Applicant thought they could do a 20-foot
24 high accessory building because that's what's permitted
25 everywhere except for this zone, R-20. It was R-19 or R-20.

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1 It's the only zone that has a 15-foot height still.

2 So, they did that and they got their permit and
3 it was revoked six days later. And, based on -- no the
4 order's not written yet, I don't think -- but, the argument
5 that the Applicant made was that we have deposits down on
6 contracts. We spent money on architectural plans.

7 And, that's all -- I mean, that's fair, I might
8 argue the same thing, but it was six days compared to two
9 months here. And, the Office of Planning supported that
10 saying, specifically, they stated that the exceptional
11 situation resulting in a practical difficulty in this case
12 is that the Applicant applied for a special exception relief
13 and was issued a permit for the construction of the structure
14 before DCRA cancelled the permit, but it was just six days.

15 Now, the special exception, I don't think has
16 anything to do with the variance argument in that case or an
17 estoppel argument because they just applied for the wrong
18 relief and they hadn't started any construction.

19 So, those are all just soft costs, lawyer costs.
20 I never bring legal fees to this Board as justification for
21 money spent by an Applicant.

22 So, another case, specifically from 2013, 18570,
23 and this case, which is arguably more on point than any other
24 case, because it applied to a three unit conversion which was
25 done as a result of an incorrectly issued permit.

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1 So, they got a building permit for three units,
2 they completely renovated it as three units. And then, when
3 it came time to apply for C of O, DCRA said, you can't do
4 three units here.

5 And so, we came to the Board and the Board
6 approved and the Office of Planning supported that as well.

7 And, I think we talked about that at the first
8 hearing and the Office of Planning stated, well, that was a
9 different case because the permit was out there for a couple
10 years. And, I don't -- it couldn't have been that long. I
11 think it was a little less than a year in that case.

12 But, I don't know how you compare that to the six
13 day permit that got approved last summer.

14 ZC CHAIR HOOD: Mr. Sullivan?

15 MR. SULLIVAN: Yes?

16 ZC CHAIR HOOD: Let me just, because I'm back to
17 the email, just bear with me, the email I'm looking at,
18 unless I'm looking at -- is it the one email you just
19 referenced, is that Monday, April the 6th, '15?

20 MR. SULLIVAN: Yes, I believe so, yes.

21 ZC CHAIR HOOD: So, how are we talking, and we're
22 talking about the whole circumference of the whole total area
23 of the whole house, how are we getting the 13 feet? Help me
24 get there. Because, you're talking about one unit. This
25 email here is talking about the whole house being divided up

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1 into three units.

2 MR. SULLIVAN: Yes, so the total amount of the lot
3 size --

4 ZC CHAIR HOOD: Because it says 2700 square feet
5 which would -- when we did the 900 square foot rule.

6 MR. SULLIVAN: We were 2660, so we were --

7 ZC CHAIR HOOD: Forty square feet less.

8 MR. SULLIVAN: Yes.

9 ZC CHAIR HOOD: Right.

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

11 ZC CHAIR HOOD: But in your, at least what I
12 heard, and I may have misheard your testimony just now, said
13 you were talking about you were 13 feet.

14 MR. SULLIVAN: Well, for each unit.

15 ZC CHAIR HOOD: So, but you're only plan to
16 minimize one unit, right, or all three units?

17 MR. SULLIVAN: Well, typically, when the Office
18 of Planning reviews cases like this for minimum lot area --
19 sorry -- they look at it per unit. How much land area do you
20 have per unit when they're evaluating the 900 foot rule or
21 relief from the 900 foot rule.

22 So, a lot of times, you'll see a case where the
23 Office of Planning or the Board says, well, you're having ten
24 units, therefore, that's only 260 feet of land per unit.

25 So, they do look at it as lot -- unit by unit

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1 basis. But, however you want to look at it, it's less than
2 the two percent overall, whether it's 13 or 40, it's 13 for
3 each unit, it's 40 collectively.

4 ZC CHAIR HOOD: But I -- the reason I said the 13
5 because you were citing the email that you basically reading
6 from the email. And, the email I read is different from the
7 email.

8 So, anyway, your partner was K.C. Price? Is that
9 who was your partner once?

10 MR. MANNING: He was our architect.

11 ZC CHAIR HOOD: Your architect? Okay.

12 All right, thank you.

13 MR. SULLIVAN: Thank you.

14 I would just mention one more case then, there was
15 a case on S Street, and I believe Chairman Hood was on this
16 Board. It was in 2014 where the Applicant asked for a 100
17 percent lot occupancy in order to complete a deck which had
18 been there previously.

19 And, he got an approval for the deck and a
20 neighbor appealed it and the Zoning Administrator revoked a
21 couple months after when he looked at the appeal and said,
22 I think the appeal's correct. And so, then, we applied for
23 variance relief.

24 And, in that case, our practical difficulty was
25 a sum of money that was paid for materials that were pre-

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1 ordered. And, construction really hadn't even begun in that
2 case.

3 So, and then the Office of Planning supported that
4 as well. They didn't support the case overall, because they
5 didn't want a 100 percent lot occupancy. They said we get
6 the reliance argument, but we think you can do something less
7 than a 100 percent deck.

8 ZC CHAIR HOOD: And, what was that case number
9 again?

10 MR. SULLIVAN: That was 18725.

11 ZC CHAIR HOOD: And, your rationale for bringing
12 up these cases previously, and I'm sure there's much more to
13 what's being exposed to us here, because I take each case by
14 case.

15 MR. SULLIVAN: Right.

16 ZC CHAIR HOOD: But your rationale is to show us
17 that we approve something similar, is that what you're trying
18 --

19 MR. SULLIVAN: Well, I think more so than that,
20 too, it's just that the Board has been really consistent.
21 These -- there's not a ton of these cases. They come up once
22 a year or so and not every DCRA mistake justifies variance
23 relief, in my opinion. All these other factors need to be
24 there.

25 But, I think the line, the thread in these BZA

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1 cases has been really consistent.

2 ZC CHAIR HOOD: So, would you agree with my
3 recommendation that we take away the two percent relief that
4 the Zoning Administrator is able to give? Would you sign on
5 --

6 MR. SULLIVAN: Oh, yes, I'm --

7 ZC CHAIR HOOD: Would you sign on to that?

8 MR. SULLIVAN: Yes, sure. I'm not arguing that
9 we're entitled to that relief. That relief was gone. That
10 was taken out in June of 2015 along with the three unit
11 conversion.

12 When the -- with the R-4 changes, the minor flex
13 went away for minimum lot area, in that sense.

14 ZC CHAIR HOOD: So, I'm talking about in general.
15 So, you agree with me that we should take away the Zone
16 Administrator's two percent flexibility, that he gave the two
17 percent flexibility?

18 MR. SULLIVAN: Well, that's a policy decision, I
19 don't think that --

20 ZC CHAIR HOOD: Oh no, I'm just asking --

21 MR. SULLIVAN: -- exactly --

22 ZC CHAIR HOOD: -- because it sounded like you're
23 agreeing with me.

24 MR. SULLIVAN: No, no, no, no, no, I'm sorry.

25 ZC CHAIR HOOD: Anyway --

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1 MR. SULLIVAN: No, I don't have an opinion on that
2 one way or the other.

3 ZC CHAIR HOOD: Oh, okay.

4 MR. SULLIVAN: But I --

5 ZC CHAIR HOOD: So, I didn't get the one person
6 to sign on. Okay, thank you.

7 CHAIRPERSON HILL: Was that controversial? Was
8 that controversial?

9 All right, so, I'm going to turn to the Office of
10 Planning. But, before we turn to the Office of Planning, I
11 do have to take a quick break.

12 But, before we turn to the Office of Planning, I
13 think, Ms. John, you had a question for the Applicant?

14 MEMBER JOHN: Just a quick question. I remember
15 my question now. So, did the plans change in any way between
16 the time you got permission from the Zoning Administrator in
17 April of 2015 to the time of the walk through and the
18 approval of the plans and up until when the permit was
19 finally issued in October?

20 Were there any major changes to those plans? Are
21 these the same plans you were working on during all of that
22 time?

23 MR. MANNING: They were the same plans.

24 MEMBER JOHN: Okay.

25 MR. MANNING: They weren't deviated whatsoever.

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1 MEMBER JOHN: And, during that time, is it your
2 testimony that DCRA inspected the work?

3 MR. MANNING: Yes.

4 MEMBER JOHN: Okay, thank you.

5 CHAIRPERSON HILL: I just had a quick question
6 before I take my own break.

7 Mr. Sullivan, you kind of -- I heard you mention
8 something about something is when you thought you lost the
9 ANC. And, I don't know whether I heard that correctly or
10 not. And, because you don't have ANC support, so I'm just
11 kind of curious as to where? How? Why you lost the ANC, you
12 think?

13 MR. SULLIVAN: Yes, so my characterization which
14 wouldn't be testimony, so I'll have Brain follow up because
15 he was there with me as well.

16 But, it was like, yes, we get it, but there's no
17 way we could support it because of what you did, everything
18 that took place after you got the stop work order.

19 When you converted to two units and then you tried
20 to go back to three and it was just too messy. So, I -- if
21 you want to --

22 CHAIRPERSON HILL: Yes, please clarify, I just --
23 please clarify.

24 MR. MANNING: Yes, that was correct.

25 CHAIRPERSON HILL: It was correct what?

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1 MR. MANNING: I mean, I guess the case, it was so
2 old, and they were just trying to revert back to 2015 and
3 it's 2018, they just couldn't grasp their head around it.

4 They didn't even seem interested in the case.

5 MR. SULLIVAN: Well, they didn't want to be seen
6 as --

7 CHAIRPERSON HILL: Approving something --

8 MR. SULLIVAN: -- approving something --

9 CHAIRPERSON HILL: -- that already --

10 MR. SULLIVAN: -- that should be -- for a bad
11 actor.

12 CHAIRPERSON HILL: Right.

13 MR. SULLIVAN: So, after 2015, after the permit
14 was yanked, there were things done that they did not want to
15 be seen as supporting, they just could not support.

16 CHAIRPERSON HILL: The ANC?

17 MR. SULLIVAN: Yes.

18 CHAIRPERSON HILL: And, those things were such as?

19 MR. SULLIVAN: Converting -- trying to convert to
20 three units in 2017 --

21 CHAIRPERSON HILL: Oh after the fact? After the
22 fact?

23 MR. SULLIVAN: Yes.

24 CHAIRPERSON HILL: Okay.

25 MR. SULLIVAN: Yes.

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1 CHAIRPERSON HILL: All right.

2 Okay, was the ANC thing pretty controversial or
3 do you think they just kind of -- you just kind of went
4 through the motions and they just kind of, it was a little
5 bit too much to -- I mean, I can't speak for the ANC and I
6 don't want you to speak for the ANC, I just would like to
7 know kind of how you perceived the hearing, I suppose.

8 MR. SULLIVAN: I --

9 CHAIRPERSON HILL: Don't speak for the ANC because
10 I don't want to get involved in any of that, just kind of,
11 how did you perceive the hearing?

12 MR. SULLIVAN: I perceived it, it was -- there
13 weren't any -- there was no opposition from the neighborhood.
14 And, it was -- it went about as well as I thought it could
15 go for a unanimous vote against.

16 CHAIRPERSON HILL: Okay.

17 MR. SULLIVAN: But, it was, I'm sorry, but we're
18 -- there's just no way --

19 CHAIRPERSON HILL: Okay, that's your perception,
20 okay.

21 MR. SULLIVAN: -- we can support this.

22 CHAIRPERSON HILL: Okay, all right. Okay, thanks.
23 Anybody else before we take a quick break?

24 MEMBER HART: Yes, there were a couple of
25 questions that we had asked , I guess, back in June, and one

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1 of them was that proof of the conversion to three units was
2 99 percent complete as of December 2015?

3 I know you have stated that, but is there anything
4 else that you have that --

5 MR. MANNING: Yes, with -- we took plenty of
6 photos. I took plenty of photos. Obviously, switching them
7 from file to file, none of them had time stamps.

8 We can show you --

9 MEMBER HART: Well, the photographs have time
10 stamps in terms of when they were created. I mean, you make
11 a -- when you take a photograph --

12 MR. MANNING: I did that, I went into the
13 properties on the backside of, you know, you take a picture,
14 you go into properties.

15 MEMBER HART: No, no, I'm -- yes, I'm just saying
16 that you -- they don't necessarily have to have a time stamp
17 on top of them, it just has to have when you created them as
18 a photograph.

19 MR. MANNING: That's what I'm saying.

20 MEMBER HART: As an electronic file.

21 MR. MANNING: Correct.

22 MEMBER HART: Yes.

23 MR. MANNING: So, I took a photo -- I took the
24 photo on my computer, I went into the properties to see when
25 it was originated. But, because I've transferred from a

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1 Newton File to a Newton File to a Newton File --

2 MEMBER HART: I understand.

3 MR. MANNING: -- it just overwrote it.

4 MEMBER HART: Yes.

5 MR. MANNING: Does that make sense?

6 MEMBER HART: Yes, and sometimes, it will actually
7 say when it was originally created --

8 MR. MANNING: I have --

9 MEMBER HART: -- versus when it was -- but I do
10 get the point.

11 MR. MANNING: I do have some framing photos that
12 were time stamped at the correct time stamp because those
13 weren't moved.

14 MEMBER HART: And, do you have anything else that
15 would have -- and I don't even know what the -- anything from
16 DCRA that said that they had reviewed something at whatever
17 level? At whatever stage it was in?

18 MR. MANNING: I'm sorry, repeat that one more
19 time? Sorry.

20 MEMBER HART: Did you have anything from DCRA?
21 I mean, they revoked the permit at some point, but at some
22 point between, when was that, like April and December, there
23 should have been something that you got from DCRA saying
24 that, oh yes, you've done framing. Oh yes, you've done
25 whatever.

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1 I mean, I just, you know --

2 MR. MANNING: That's what inspection cards are
3 for. I mean --

4 MEMBER HART: Yes, but --

5 MR. MANNING: The inspection cards are signed off
6 the DCRA inspectors going through the phases of framing,
7 closing, gas, electric and so forth.

8 MEMBER HART: Yes, yes, what I'm saying is that,
9 we just ask that we have proof in the file and you're telling
10 me that it's already in the file? In our file?

11 MR. SULLIVAN: I believe there's an affidavit at
12 the base of that, Exhibit B.

13 MS. WILSON: Yes, it's in the exhibits filed with
14 our supplemental statement and it's our Exhibit B. I can
15 pull it up here. It's number eight.

16 MEMBER JOHN: So, I looked at that affidavit but
17 I didn't see any inspection cards. There really is nothing
18 in the file that traces the construction.

19 MR. MANNING: I honestly don't have them
20 physically with me, I'd have to find them, the inspection
21 cards. But I know we have, you know, quite a few inspection
22 cards from our inspections, I just don't have them with me.

23 MEMBER JOHN: That would be helpful.

24 CHAIRPERSON HILL: Okay, if anybody doesn't have
25 anything else for the Applicant at this time, I just want to

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1 take a quick break before we go to the Office of Planning.

2 And, we'll just take as quick as possible a break.

3 (Whereupon, the above-entitled matter went off the
4 record at 11:56 a.m. and resumed at 12:00 p.m.)

5 CHAIRPERSON HILL: All right, we're going to go
6 ahead and get started. Mr. Moy's on his way back.

7 So, I guess if we could turn to the Office of
8 Planning. And, I guess what I would ask of the Office of
9 Planning, I know we did give your -- or you did give your
10 supplemental report, if I suppose you could kind of just
11 review a little bit your supplemental report, that would be
12 helpful.

13 Thank you.

14 MS. VITALE: Certainly.

15 Good morning, Mr. Chair, members of the Board,
16 Elisa Vitale with the Office of Planning.

17 And, as we stated in our supplemental report, we
18 didn't find that the additional information provided by the
19 Applicant was sufficient to meet the burden of proof for the
20 variance test.

21 In reviewing the additional application materials,
22 and I will reiterate that we do review each case on its own
23 merits, so we were looking, you know, just at the information
24 before us in this particular application.

25 I think we found that there were multiple points

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1 in the process at which the Applicant could correct or could
2 appeal the situation rather than proceeding, you know,
3 proceeding initially under a single family permit.

4 And then, the -- after the permit was revoked in
5 December, the Applicant, in fact, applied for and obtained
6 a permit to proceed for a two unit flat in December of 2015
7 and went down that path.

8 So, to come before the Board now with a
9 detrimental reliance argument, we just didn't find that,
10 based on all, you know, the -- all the information provided
11 by the Applicant that this -- that the reliance on the DCRA
12 permits created an exceptional situation resulting in a
13 practical difficulty for the Applicant.

14 I believe if that was the case, the Applicant
15 could have appealed either, you know, the initial building
16 permit for the single family back in 2015.

17 The Applicant could have appealed the DCRA
18 revocation and I believe that happened in December of 2015,
19 or actually in October. No, I guess the revocation was, in
20 fact, in December of 2015.

21 And, rather than appealing that, they obtained a
22 unit -- or a permit for a flat for a two unit flat.

23 So, again, just to reiterate, we don't believe
24 that the information provided was sufficient to demonstrate
25 the burden of proof for the variance.

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1 I'm certainly happy to answer any questions, but
2 that concludes my report.

3 Thank you.

4 CHAIRPERSON HILL: Okay. Does the Board have
5 questions for the Office of Planning?

6 MEMBER HART: Just one question and it's with
7 regard to, are you familiar with the case that the Applicant
8 has raised, the 19521A at all?

9 MS. VITALE: That was not my case. So, I really
10 am not comfortable speaking to that off the cuff.

11 MEMBER HART: Okay, that's fine. I just didn't
12 know if you were aware. They've raised it in their response
13 to the OP report. So, I just was -- I didn't know if they
14 had brought it up to you or had -- or if you had seen the
15 case -- this before they had submitted it to us or spoke
16 about it today.

17 Thank you. It's okay, thanks.

18 MEMBER WHITE: So, basically, your opinion is that
19 the Applicant did not meet the variance test, that, just
20 based on the time line, if, you know, when they -- when the
21 permit was revoked in December of 2015, you know, from your
22 perspective, they could have challenged the permit.

23 But, instead, they kind of moved quickly to
24 convert to two units. And, because of that, you know, you
25 didn't find that they met the variance test.

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1 Correct me if I'm wrong, I'm just trying to
2 understand why you believe that they did not -- it wasn't an
3 exception situation or a practical difficulty.

4 MS. VITALE: Correct. I don't believe that the
5 reliance on the DCRA permits was an exceptional situation
6 that resulted in a practical difficulty because, after the
7 three unit permit was revoked, the Applicant obtained a
8 permit for a two unit flat and proceeded under that permit.

9 CHAIRPERSON HILL: Well, I've got a couple
10 questions. I guess nobody else got questions for the Office
11 of Planning?

12 So, Ms. Vitale, so you just said there's multiple
13 points where they could have like changed the direction of
14 the application.

15 Can you point out the multiple points you're
16 speaking about?

17 MR. VITALE: Sure, I would say the first would be
18 the issuance of the initial building permit. If a building
19 -- if you're proceeding to do a conversion and you're looking
20 to do a three unit building, the building permit, and this
21 is the Applicant provide the building permit, the initial one
22 at Exhibit A.

23 And, it lists the proposed use, the existing use
24 and -- or the existing of dwelling units and the proposed
25 number of dwelling units.

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1 I think that was the kind of the first notice for
2 the Applicant or the first opportunity for the Applicant to
3 pro-actively ensure that the permit was reflecting the work
4 that was proposed.

5 So, I would say that that first building permit
6 in February was the first opportunity.

7 And then, I think in, you know, the Applicant's
8 noted that there was the Zoning Administrator email about the
9 minor flex. And, during that kind of intervening time was
10 when the Zoning Commission was considering Case 1411 and was
11 considering this whole issue of conversions and whether or
12 not Zoning Administrator, you know, flexibility was
13 appropriate for relief from the minimum lot area
14 requirements.

15 So, that was, you know, another opportunity, I
16 think, for notice and opportunity for the Applicant to, you
17 know, recognize that perhaps what they were hoping to do or
18 how they were proceeding was not going to be a matter of
19 right situation.

20 I know we heard from a number of developers and
21 there were -- there was a lot of testimony in the record when
22 Case 1411 was brought forward about, you know, just hearing
23 from developers, concerns about vesting, concerns about, you
24 know, what impact those potential changes to the zoning
25 regulations might have to them.

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1 So, I think that was kind of another opportunity
2 for notice and correction.

3 And, then, obviously --

4 CHAIRPERSON HILL: Can I interrupt you just one
5 second?

6 MS. VITALE: Sure.

7 CHAIRPERSON HILL: When you say the notice and
8 correction could have happened then, does that mean that when
9 the ZC was taking up 1411 at that time, so that could have
10 been a possible time where they could have vested?

11 MS. VITALE: Vesting was discussed then. I think
12 the -- I think the timing didn't work out in that case and
13 that's part of the issue with the later revocation of the
14 permit.

15 Because the, you know, as the Applicant stated,
16 the -- let's see -- I think their first -- the first stop
17 work order was issued right around that June time frame and
18 1411 went into effect on June 26th.

19 So, I think the question of whether or not -- if
20 this Applicant was working under a valid permit for a
21 conversion, you know, I think, understanding first that this
22 was listed as a single family on the building permit.

23 So, I think that's the first issue. If this had
24 been listed correctly as a three unit conversion on the
25 building permit, I think in reviewing the building permits,

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1 and in reviewing the vesting for 1411, I think this case, you
2 know, may not have vested under 1411.

3 But, I'm not -- I'd have to look at the time line
4 very carefully because there were a lot of moving parts there
5 with 1411 with the vesting and then what permits were able
6 to proceed.

7 CHAIRPERSON HILL: Because I was just trying to
8 understand, again, had they -- even their first opportunity
9 when they were given the single family permit but they had
10 plans for three units, had they tried to rectify the
11 situation then, you don't know whether or not they would have
12 been able to do it as a matter of right.

13 Had they tried to rectify the situation then, with
14 the ZA's flexibility?

15 MS. VITALE: They could have initially. If they
16 had tried to rectify it as the initial building permit
17 application back in February of 2015, that -- at that point
18 in time, the Zoning Administrator did have --

19 CHAIRPERSON HILL: The minor flexibility?

20 MS. VITALE: -- the ability to do the minor
21 flexibility.

22 CHAIRPERSON HILL: Right.

23 MS. VITALE: So, this would have been a matter of
24 right conversion in February of 2015.

25 CHAIRPERSON HILL: And so, when you're -- when I'm

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1 -- when you're saying that you'd have to look at the vesting,
2 you're saying that you don't know if when the email came from
3 the Zoning Administrator for the two percent flexibility, you
4 don't know if they would have vested then?

5 MS. VITALE: In April, they still were within,
6 because, like I said, 1411 didn't go into effect until June
7 26th. So, if, you know, the Zoning Administrator's email
8 that was issued in April, he still had the authority to grant
9 the flexibility -- the minor flexibility for lot area then.

10 However, the -- at that point in time, the
11 Applicant was still working under a single family dwelling
12 permit.

13 CHAIRPERSON HILL: But, I'm saying they could have
14 -- that's when, again, there was another opportunity for them
15 to have fixed the permit?

16 MS. VITALE: Correct. But, and I think at that
17 point, or at least based on what the Applicant has said today
18 in its testimony is that they were working toward the three
19 unit.

20 However, they didn't -- that three unit permit
21 wasn't issued until October of 2015, at which point, the
22 Zoning Administrator's flexibility had been removed --

23 CHAIRPERSON HILL: Got it.

24 MS. VITALE: -- under the 1411 --

25 CHAIRPERSON HILL: Okay, okay.

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1 MS. VITALE: -- amendments.

2 CHAIRPERSON HILL: Okay, thanks.

3 Anybody else for the Office of Planning?

4 MEMBER JOHN: Just one question, so, you don't
5 think that whatever defect there was would have been cured
6 when the plans were re-approved in August 2015 and when the
7 permit was issued in October 2015? Regardless of what went
8 on before?

9 They cured whatever issues were outstanding. The
10 minor flexibility was already granted. Is it your statement
11 that the ZA should have revoked that email because he no
12 longer had authority?

13 I'm trying to get to the argument.

14 MS. VITALE: Sure, and I don't -- in August, the
15 Zoning Administrator didn't have that flexibility. There was
16 no permit issued in August.

17 I know the Applicant has submitted stamped plans
18 that have the email attached in August, but that's not a
19 building permit so it's hard to say at that point whether the
20 -- whether DCRA erred in stamping those plans on that date
21 or I can't speak to the DCRA process to know what that August
22 3rd, 2015 stamped plans that constituted. It's not an
23 approved building permit, though.

24 And, they received an approved building permit in
25 October. And, that showed the use change from a two family

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1 flat to a three unit condo.

2 But then, you know, as we've gone through, it was
3 in December, two months later, DCRA did, in fact, revoke that
4 building permit. The Applicant didn't appeal that
5 revocation. They said, okay, this is revoked, we can only
6 do two units now. We're going to do two units and they
7 proceeded as a flat.

8 I think if they were truly harmed by the
9 revocation of the permit and felt that it was being revoked
10 in error based on, you know, all the proceedings that
11 happened earlier in 2015, that was their opportunity to
12 appeal that revocation.

13 Instead, they accepted the revocation and
14 proceeded with two units.

15 MEMBER JOHN: So, you don't find it significant
16 that, from April of 2005 until -- 2015, thank you, until
17 October 22nd, 2015, the Applicant was working under the same
18 set of plans that were never changed and that, in April, the
19 Zoning Administrator approved the 1.5 percent deviation in
20 the 900 square foot requirement?

21 The plans never changed during all of that time.
22 They were stamped and --

23 MS. VITALE: I understand that the Applicant had
24 worked under the same set of plans. I'm more troubled by the
25 fact that it was applied for as a single family dwelling and

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1 that it was never indicated that this was a conversion to
2 three units.

3 CHAIRPERSON HILL: Okay, is that it?

4 (NO RESPONSE)

5 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you
6 have any questions for the Office of Planning?

7 MR. SULLIVAN: Yes, thank you.

8 I'm still trying to get a handle on why, in this
9 case, the Office of Planning wouldn't say that, having an
10 incorrect issuance of a permit and then a revocation, why
11 that couldn't be an extraordinary condition.

12 You seem to be relying on the fact that the
13 Applicant, after the permit was revoked, took certain actions
14 and didn't take the actions that you would recommend.

15 So, are you saying that, because they didn't
16 appeal it then or didn't apply for special exception then or
17 variance, that they then can't show harm, financial harm from
18 the two months from between October and December?

19 MS. VITALE: I'm not saying that they can't show
20 financial harm, I'm saying that they were operating under a
21 single family dwelling permit and that, if they were not, in
22 fact --

23 MR. SULLIVAN: Until October, I'm talking about
24 October. From the time they got the conversion permit until
25 December. Would you acknowledge --

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1 MS. VITALE: I think if --

2 MR. SULLIVAN: -- would you imagine that they
3 would have spent money in reliance on that October permit
4 towards a three unit --

5 MS. VITALE: Certainly that --

6 MR. SULLIVAN: -- configuration?

7 MS. VITALE: -- evidence isn't in the record. I
8 -- they were operating under a permit for two months, yes I
9 understand that. But, if they were operating under a permit
10 for two months and it was revoked and they believed that they
11 were financially harmed or that the permit should not have
12 been revoked, what I'm saying is, I'm not certain why they
13 didn't appeal at that point.

14 MR. SULLIVAN: So, my question would be, what
15 would that have to do with their harm? The fact that you're
16 saying because they didn't assert their right then, that
17 they, therefore, couldn't possibly be harmed?

18 MS. VITALE: I'm not saying that they couldn't
19 possibly be harmed, I'm saying they didn't assert that right
20 then, they then proceeded to go with the two units.

21 They got a C of O for a two unit configuration and
22 then proceeded to rent out three units.

23 I just -- I think that, if they -- if their intent
24 was always to do three units and the desire was to do three
25 units, that they should have appealed the revocation of the

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1 permit when it occurred in December.

2 CHAIRPERSON HILL: Okay.

3 MR. SULLIVAN: So, yes, well --

4 CHAIRPERSON HILL: I'm fine, I'm just listening.

5 MR. SULLIVAN: I tend to agree with you, but I
6 don't think that has anything to do with our argument because
7 what -- so, you are aware that the harm that we're alleging
8 is originated in that time period between October and
9 December.

10 And the time period before that, we got a zoning
11 approval, stamped plans in August as well.

12 And then, that we're not alleging that anything
13 done after the revocation in December of 2015 is necessarily
14 included. Money spent after that, it may be a result of the
15 harm of the issuance and the revocation, but we're not
16 claiming that, well, we continued spending money after that,
17 and that's part of our practical difficulty argument.

18 So, I mean, it's -- that's the -- that's after
19 December. Your argument seems to be starting in February and
20 then after December.

21 The February argument, I think what you're saying
22 is, we could have rectified the permit issues then. But, we
23 did rectify them in October, right? So --

24 CHAIRPERSON HILL: Well, you never got a permit
25 for the three units.

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1 MR. SULLIVAN: In October, yes, we did.

2 CHAIRPERSON HILL: All right, okay.

3 MR. SULLIVAN: Yes, but not --

4 So, you're saying that we didn't rectify it, but
5 yet, then we did rectify it in October. So, did they not
6 rectify it in time? I mean, I'm not sure what you're
7 argument is.

8 This is based on a mistake of DCRA. They got a
9 permit they thought was legitimate. Nobody's claiming that
10 DCRA was wrong.

11 CHAIRPERSON HILL: Mr. Sullivan, I'm sorry, what's
12 your question?

13 MR. SULLIVAN: I guess I'm wondering --

14 CHAIRPERSON HILL: I mean, you're doing all --
15 you're trying to convince OP right here on the dais and I'm
16 like --

17 MR. SULLIVAN: No --

18 CHAIRPERSON HILL: -- I've never seen you do it
19 before.

20 MR. SULLIVAN: No, I'm trying to --

21 CHAIRPERSON HILL: And, I'm trying to follow along
22 with you.

23 MR. SULLIVAN: Right.

24 CHAIRPERSON HILL: I'm just trying to get to
25 whatever your question is so they can answer it.

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1 MR. SULLIVAN: Understood, understood.

2 So, you said, one of the reasons why you can't
3 support this relief, why we don't have an exceptional
4 condition, is that the Applicant had the change to rectify
5 this in February of 2015, can you explain that?

6 MS. VITALE: As I stated previously, the Applicant
7 received a permit for a single family dwelling. They were
8 operating under a permit that said the proposed use was
9 single family, that the existing number of dwelling units was
10 one and the proposed number of dwelling units was one.

11 And so, if that was not the intent of the
12 Applicant, if the Applicant's plans were to do otherwise that
13 at that point that they received that building permit in
14 February of 2016, they should have gone to DCRA and said,
15 this is an error. We have a proposed single family with one
16 dwelling unit. We want to convert this to an apartment with
17 three units.

18 MR. SULLIVAN: And, if they had done that and then
19 eventually, over time, eventually this all got rectified by
20 the issuance of a three unit permit in October, you're saying
21 nothing the Applicant did after that or nothing that happened
22 after that issuance of the October permit, could lead to a
23 special exception or could lead to an estoppel decision here
24 because of what happened in February?

25 So, you're saying they didn't correct it soon

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1 enough for your --

2 MS. VITALE: I guess I'm not entirely sure what
3 your question is for me here.

4 MR. SULLIVAN: Okay.

5 CHAIRPERSON HILL: And, Mr. Sullivan --

6 MR. SULLIVAN: So --

7 CHAIRPERSON HILL: -- I mean, hold on, let me say,
8 we're trying really hard to follow --

9 MR. SULLIVAN: Maybe I can do this right in
10 closing --

11 CHAIRPERSON HILL: -- along, you're really like
12 just completely re-arguing the things to some extent.

13 MR. SULLIVAN: Yes.

14 CHAIRPERSON HILL: And so, okay.

15 MR. SULLIVAN: Okay. So --

16 CHAIRPERSON HILL: So, I --

17 MR. SULLIVAN: I can hear you're --

18 CHAIRPERSON HILL: You're not going to --

19 MR. SULLIVAN: I have no further questions.

20 CHAIRPERSON HILL: If anything else, OP is now
21 really clarified again what their situation is. And so, now,
22 okay.

23 So, does anybody have any more questions for OP?

24 (NO RESPONSE)

25 CHAIRPERSON HILL: No?

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1 So, wanted a conclusion? And I don't remember
2 whether we -- on continuance, nobody's here, but does anybody
3 here wishing to speak in support?

4 (NO RESPONSE)

5 CHAIRPERSON HILL: Is there anybody here from the
6 ANC?

7 (NO RESPONSE)

8 CHAIRPERSON HILL: Is there anyone here wishing
9 to speak in opposition?

10 (NO RESPONSE)

11 CHAIRPERSON HILL: Okay, so, Mr. Sullivan, I'm
12 coming back around to you. You had wanted to do a
13 conclusion?

14 MR. SULLIVAN: Very short.

15 CHAIRPERSON HILL: Sure.

16 MR. SULLIVAN: Thank you.

17 CHAIRPERSON HILL: You're the only one here now.

18 MR. SULLIVAN: I know.

19 So, I think this case sounds way more complicated
20 than it is. I think the essential elements of a reliance
21 rationale sufficient warranting a variance approval in this
22 case are present.

23 And so, I'll go over those generally. Regardless
24 of what happened in February and regardless of what happened
25 over the summer, in August of 2015, they got a zoning

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1 approval for a three unit conversion.

2 Now, this is a time you remember when there was
3 much confusion about vesting and of going from two units to
4 three units and the three unit conversion going away.

5 Our four changes were adopted in June 26, 2015.
6 I knew at that time that if you did not have a building
7 permit, you were not vested unless you had applied a year
8 before.

9 But, apparently, DCRA didn't know that completely.
10 There was confusion at DCRA. And, certainly, most of my
11 clients didn't know that unless they came and talked to me
12 about a specific project.

13 So, this isn't a case where, I don't want to keep
14 bringing up other cases, but in the case approved last July,
15 it was in black and white, it was in the regs, there were no
16 changes. So, just, there was a lot of confusion around this.

17 So, it's understandable that they would think when
18 they got a permit in October that it had to be legit and they
19 would proceed based on that.

20 And, it's apparent, and we've submitted evidence
21 that they then did act on that permit approval in October.
22 And, if you want to take nothing else before that, they went
23 and spent money for two full months before it was revoked and
24 that led to serious consequences, financial consequences.

25 So, nobody has mentioned anything about bad faith.

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1 So, there was justifiable, good faith reliance on the
2 issuance of this permit.

3 Now, the last element of the estoppel argument is
4 the equity argument. Is there harm -- more harm to the city
5 versus the harm to the applicant?

6 We've shown there's significant harm, financial
7 harm to the Applicant. So, what's the harm to the city in
8 granting this variance request?

9 And, even the Office of Planning, on that point,
10 has said that there's no substantial detriment to granting
11 variance relief here.

12 The building size isn't going to change. The
13 density inside isn't going to change. We've talked about the
14 small nature of the relief if you go according to the lot
15 size, it's 2700 square feet, they were 40 feet short of that.

16 So, I think, in cases like this, where the Board
17 has found that an Applicant acted in good faith, experienced
18 harm as a result of an approval, and nobody's harmed by
19 granting relief to make -- to help them mitigate the damages
20 that they've undergone, that they've seen that, the Board has
21 seen that as justifying variance relief.

22 And, we would respectfully request the Board find
23 so in this case.

24 Thank you.

25 CHAIRPERSON HILL: Okay, thanks, Mr. Sullivan.

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1 Give me one second.

2 Okay, I don't know about the Board, but I'm going
3 to have to think about this a little bit more in terms of
4 like making a decision.

5 I didn't know if anybody wanted anything from the
6 Applicant. I think Ms. John had asked about inspection cards
7 of some kind. I don't know that's still something you're
8 interested in or not.

9 I don't think I need anything. I just kind of
10 have to spend a little bit more time thinking about all this.
11 I mean, again, for me, you know, I mean, you know, it's just
12 too bad you didn't do what you should have done as soon as
13 they told you that you're not a single family home. Right?

14 And so, I see the time line, I understand, you
15 know, the argument that you're making and so, just have to
16 kind of sit with it a little bit more for me.

17 I don't know if there's anybody else on the Board
18 that requires anything from the Applicant other than just I
19 want some more time to think about it.

20 So, what do y'all need?

21 MEMBER WHITE: I just need more time to think
22 about it.

23 CHAIRPERSON HILL: Okay. Does anybody need
24 anything for the record?

25 (NO RESPONSE)

1 CHAIRPERSON HILL: No? All right.

2 So, do you want to set it for decision next week?

3 Oh, yes, I mean, Chairman Hood, you're coming back. We can
4 deliberate --

5 ZC CHAIR HOOD: I'm coming back next week.

6 CHAIRPERSON HILL: We can deliberate on this as
7 well.

8 ZC CHAIR HOOD: Sounds good.

9 CHAIRPERSON HILL: Okay, great, perfect.

10 All right, then we'll go ahead and set this on for
11 a decision next week. Okay, Mr. Moy?

12 MR. MOY: Yes, sir. And, for the record, that
13 would be October the 3rd.

14 CHAIRPERSON HILL: October the 3rd. Okay.

15 Well, thank you all very much. Thank you.

16 Mr. Moy, do we have anything else before the
17 Board?

18 MR. MOY: No, think the Board can adjourn.

19 CHAIRPERSON HILL: Okay, then we stand adjourned.

20 Thank you.

21 (Whereupon, the above-entitled matter went off the
22 record at 12:29 p.m.)

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 09-26-18

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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