

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

OCTOBER 3, 2018

+ + + + +

The Regular Public Meeting 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 E. HART, Board Member (NCPC)
- LORNA L. JOHN, Board Member
- ANTHONY J. HOOD, Board Member
- ROB MILLER, Board Member

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- BEVERLEY BAILEY, Sr. Zoning Specialist
- TRACEY W. ROSE, Sr. Zoning Specialist
- ESTHER BUSHMAN, General Counsel
- JOHN NYARKU, Zoning Specialist
- STEPHEN RICE, Zoning Specialist
- STEPHEN VARGA, Zoning Specialist
- PAUL YOUNG, Zoning Data Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
KAREN THOMAS
MAXINE BROWN-ROBERTS
MATT JESICK

The transcript constitutes the minutes from the
Public Meeting held on October 3, 2018.

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

(9:43 a.m.)

1
2
3 CHAIRPERSON HILL: The hearing will please come
4 of order. We're located in the Jerrily R. Kress Memorial
5 Hearing Room, 4414 Fourth Street, N.W. This is the October
6 3rd Public Hearing of the Board of Zoning Adjustment of the
7 District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me
9 today are Carlton Hart, Vice Chair, Lesyllee White and Lorna
10 John, Board Members. And representing the Zoning Commission
11 is going to be Rob Miller and Anthony Hood on some decisions
12 and on a case. And then, also Rob Miller again will be with
13 us for the rest of the day.

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

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

25 All persons planning to testify either in favor

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1 or in opposition must have raised their hand and been sworn
2 in by Secretary. Also, each witness must fill out two
3 witness cards. These cards are located on the table near the
4 door and on the witness tables. Upon coming forward to speak
5 to the Board, please give both cards to the reporter sitting
6 to the table to my right.

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

14 The order of procedures for special exceptions,
15 variances, and appeals is also listed as you come walking
16 into the door. The record will be closed at the conclusion
17 of each case except for any materials specifically requested
18 by the Board. The Board and the staff will specify at the
19 end of the hearing exactly what is expected and the date when
20 the persons must submit the office, the Office of Zoning.

21 After the record is closed, no other information
22 shall be accepted by the Board. The Board's agenda includes
23 cases set for decision. After the Board adjourns, the Office
24 of Zoning in consultation with myself will determine whether
25 a full or summary order may be issued.

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

8 The District of Columbia's Administrative
9 Procedures Act requires that the public hearing on each case
10 be held in the open before the public pursuant to Section
11 405b and 406 of that Act.

12 The Board may, consistent with its rules of
13 procedure and the Act, enter into a closed meeting on a case
14 for purposes of seeking legal counsel on a case pursuant to
15 D.C. Official Code Section 2 - 575 B4 and/or deliberating on
16 a case pursuant to D.C. Official Code section 2-5 75B13, but
17 only after providing the necessary public notice and then the
18 case for an emergency closed meeting after taking a roll call
19 vote.

20 The decision of the Board in cases must be based
21 exclusively on public record. To avoid any appearance of the
22 contrary, the Board requests that persons present not engaged
23 the members of the Board in conversation.

24 Please turn off all beepers and cell phones at
25 this time so as to not disrupt the proceedings. Preliminary

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

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

9 SECRETARY MOY: Good morning Mr. Chairman,
10 members of the Board. For the transcript, for today's docket
11 the only change is that Application Number 19815 of MMC
12 Properties LLC has been postponed and rescheduled to
13 December 19, 2018. There are other preliminary matters, but
14 staff would suggest that the Board address those matters when
15 I call a case.

16 CHAIRPERSON HILL: Okay, great. Thank you Mr.
17 Moy. If anyone is here planning to present testimony, would
18 you please stand and take the oath which will be ministered
19 by the Secretary to my left.

20 SECRETARY MOY: If you are anticipating you may
21 speak, take the oath. It's not going to hurt. Good morning.
22 Do you solemnly swear, or affirm that the testimony you are
23 about to present in this proceeding is the truth, whole truth
24 and nothing but the truth? Ladies and gentlemen you may
25 consider yourselves under oath.

1 CHAIRPERSON HILL: Okay, thanks Mr. Moy. We're
2 going to -- for the audience here -- just the agenda's being
3 moved around just a little bit. We're going to the last two
4 cases first and then we'll follow up the next two cases in
5 terms of our decision-making process.

6 And then we will follow the agenda into our
7 hearing docket. So, Mr. Moy, you can call our first decision
8 case whenever you get a chance.

9 SECRETARY MOY: Thank you, Mr. Chairman. So, on
10 the public meeting session, the first decision-making case
11 is Appeal Number 19766 of ANC 1A.

12 This is the appeal from the decision made on
13 February 15, 2018 by the Zoning Administrator, Department of
14 Consumer and Regulatory Affairs to issue building permit
15 number B1712178 to permit the conversion of an existing
16 principal dwelling unit to a 4-unit apartment house in RA 2
17 zone at premises 1477 Durant Street, N.W. square 2669, lot
18 8 through 24.

19 The hearing dates were July 25th and September 12,
20 2018. And, scheduled today for decision-making and Mr.
21 Miller is sitting with the BZA Board.

22 CHAIRPERSON HILL: Thank you Mr. Moy. Is the
23 Board ready to deliberate? Okay, I can start. So, it was
24 a really long hearing in terms of very full and we took a lot
25 of testimony. And I thought that it was pretty interesting

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1 in terms of the topics that were being discussed particularly
2 the -- you know, the issues concerning attics and how those
3 spaces could be used.

4 But after the appellant argued that the approved
5 lot occupancy had exceeded the 60 percent maximum, that the
6 Zoning Administrator incorrectly calculated the BHMP height
7 grade measurements and FAR. The 4th story, non-habitable
8 storage level should have counted towards GFA. And,
9 therefore the project was going to exceed the GFA. And, that
10 their proved green area ratio requirements exceeded the
11 limits.

12 After all of the testimony that we took, including
13 all of the testimony from the Zoning Administrator, to each
14 one of the issues that the appellant was bringing up, I
15 didn't particularly think that he erred in the way that he
16 had gone about approving the project.

17 The envelope of the building is all being done,
18 as a matter of right. I thought that the ZA had not made any
19 different analysis concerning this project as to any other.

20 I do think this is something that possibly -- I
21 don't know if the Zoning Commission might want to look into
22 in terms of attics. But, the I -- you know, the habitable,
23 non-habitable argument I did not find to sway my opinion.

24 The -- I don't think the Zoning Administrator
25 miscalculated the lot occupancy. I think he did not do

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1 anything different concerning his analysis from that as to
2 any other way. And also any other way that he took the
3 measurements concerning either the cellar or the attic is the
4 same way that he's always gone about providing those
5 analysis.

6 So again, I thought that -- I do appreciate that
7 the ANC commissioner had been here and that the testimony
8 that was provided by everyone. But, I didn't think that the
9 appellant made the case is that the ZA had erred. And, I
10 don't think the ZA had erred. So, I'd be voting to deny the
11 appeal. Does anyone else have anything that they'd like to
12 add?

13 MEMBER JOHN: Mr. Chairman I would also vote to
14 deny the appeal. This appeal challenges the issuance of a
15 permit to convert an existing principal dwelling unit to a
16 4-unit apartment in the RA 2 zone. And the appellant argued
17 that the lot occupancy exceeds the 60 percent minimum and
18 that the Zoning Administrator incorrectly measured the
19 building height measuring point and other issues related to
20 height, grade measurements and the 4A area ratio.

21 The appellant also argued that the 4th story is
22 intended to be habitable space and should be included in the
23 GFA and that the approved green area ratio exceeds the limit.
24 After the appeal the owner obtained a revised permit and DCRA
25 asserted that the revised permit canceled any deficiencies.

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1 There was extensive testimony and a very full
2 record as you noted, Mr. Chairman. And based on my review
3 of the testimony and the documents in the record, I do not
4 find there is any basis on which the Zoning Administrator's
5 conclusions were not rational and are in error.

6 The -- as to building height, the ZA determined
7 that that the height was 46 feet 29 inches, which is within
8 the envelope. The -- I agreed that the uppermost level
9 should have been excluded from the calculation based on the
10 fact that it met the definition of storage, regardless of how
11 it was depicted of whether it had windows or not.

12 The issue as the ZA explained on more than one
13 occasion was that the height was below 6.6 inches and it was
14 6.5 inches. There was also testimony that the homeowner
15 received permission to use the 6.5 ceiling height.

16 As to lot occupancy in the RA 2 zone, the
17 appropriate level is 60 percent. And so DCRA asserts that
18 there were some discussion about whether or not the DCRA had
19 made a proper calculation. But, in his explanation the ZA
20 stated that the pre-existing lot occupancy was in fact 60 --
21 66 percent. And, calculated the proposed lot occupancy at
22 65 percent.

23 And so, the permit is compliant because it doesn't
24 increase or extend any existing non-conforming aspect of the
25 structure in addition and it is consistent with Subtitle

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1 11 C202.2 -- Section 11 C 202.2.

2 And as to the green area ratio, the ZA concluded
3 that because there was no change in any landscaping, that it
4 was reasonable to conclude that the 0.407 score was compliant
5 in that zone. So for all of those reasons, I would deny the
6 appeal.

7 CHAIRPERSON HILL: Thank you. Miss White?

8 MEMBER WHITE: I could add some comments.
9 Hopefully I'm not being repetitive, but I think I am a little
10 bit. So this is ANC 1A's appeal that had issues with
11 conversion of a one-family dwelling to 4-unit apartment house
12 from building permit B1712178 made by the ZA on February 15,
13 2018.

14 The issues here involve building height, how they
15 measured it, whether the top level was an attic, or floor,
16 or mezzanine. And whether or not it should have been
17 included in the first floor area of the property.

18 The appellant -- after taking a lot of testimony
19 -- I walked away, you know with understanding their argument.
20 That you know, they're claiming that the FAR violations from
21 the way that the attic was treated and the way that the
22 cellar was treated.

23 So, they're claiming FAR violations and they're
24 disputing whether those spaces are attics or cellars. On
25 April 14th the appellant is questioning the issuance of the

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1 permit arguing that the ZA erred in issuing that particular
2 permit.

3 We took a lot of testimony. It was a long hearing
4 regarding the attics and whether it was habitable space. The
5 definition of gross floor area includes attic space provided
6 that the head room is not -- is at least 6 feet 6 inches.
7 The habitable rooms don't include attics and if it's less
8 than 6 feet 6 inches, it's an attic. In this case, the top
9 level was 6 feet 5 inches.

10 The issues on appeal include whether or not the
11 approved lot exceeds the 60 percent maximum. Appellant was
12 arguing that the project is listed at 64 percent lot
13 occupancy. The maximum lot occupancy in the RA 2 zone is 60
14 percent.

15 The appellant was also arguing that the ZA
16 incorrectly calculated the building height measurement plan.
17 There's lack of support I think for this argument to include
18 the basement or basement stairs in that the building height
19 measurement plan calculation begins in the -- with the
20 existing grade, not at the bottom of the basement stairs.
21 Also, the basement is excluded from GFA.

22 Looking at the revised architectural plan on Page
23 A0032 it shows that the vertical height is 4 feet 7 inches
24 in Exhibit 2. And because of the distance is less than 6
25 feet, the lower level is deemed a cellar and not included in

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1 the GFA under 11 -- D.C. Municipal Regulation 304.5 section
2 D.

3 The FAR limits -- the appellant was also arguing
4 that the FAR limits were exceeded. I wasn't convinced that
5 from the information in the record that this was the case.
6 The floor area ratio is calculated by dividing GFA by the
7 area of the lot. Max FAR in RA 2 zone is 1.8.

8 The ZA calculated GFA for the first, second, and
9 third floor is determined that the FAR at 1.8. ZA only
10 looked at areas with the maximum height of 6 feet 6 inches
11 are included in the FAR calculation, which includes the
12 storage area that didn't meet definition of a mezzanine.

13 With respect to the green area ratio requirement
14 with regards to the appellant's argument that the plans are
15 non-compliant with the green area ratio. I didn't see a
16 violation because there were no solar panels that were at
17 issue with respect to this particular case, under -- or use
18 of conventional power. So, I found that it was with the RA 1
19 and the RA 2 zone.

20 So, I would concur with my colleague's comments
21 that this particular appeal and this particular case should
22 be denied.

23 VICE CHAIRPERSON HART: Thank you, Mr. Chairman
24 and my fellow Board members. I think that I'm not going to
25 repeat a lot of the stuff that my fellow Board members have

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1 stated.

2 I agree that the DCRA had -- was correct in the
3 interpretation of many of the issues. The one that gave me
4 some pause was around the appellant's allegation around the
5 attic height.

6 And, that was because the appellant was saying
7 that the ZA incorrectly determined the attic height because
8 it wasn't actually using the structural head room. The
9 height that was determined was 6 -- 6 feet 5 inches and in
10 the zoning regs, if something is greater-- 6 feet 6 inches
11 or greater, it has to be included in the gross floor area
12 calculation or GFA.

13 The ZA noted that in the drawings, the distance
14 from the floor to ceiling height was 6 foot 5 inches. The
15 level measured from the floor to the -- what the appellant
16 was saying was the bottom of the structure was greater than
17 that. And that was their -- that was what they were
18 alleging.

19 I think that the issue that I kind of ran into was
20 -- I don't think that it was a 100 percent clear that the
21 structural head room was actually at -- was greater than the
22 6 foot 6 inch mark.

23 And, I think that maybe if there were drawings
24 that the -- the appellant had provided -- and they did
25 provide some that were redacted -- not redacted, they were

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1 edited drawings of the appellant -- of the property owner.

2 I think that if there were actual drawings that
3 kind of showed where all of the pieces were, that may have
4 swayed me to have said that there was the structural head
5 room. But the drawings that the ZA, the Zoning Administrator
6 used were what the applicant for the project had put forward
7 showing that it was less than 6 feet 6 inches. So, as I
8 said, that was the part that kind of gave me some pause.

9 But, where I came down on it was, I don't think
10 that the appellant sufficiently showed how that was --how the
11 ZA erred in that. And I would be -- will be voting to
12 support the -- sorry to deny the application -- the appeal
13 for this case.

14 MEMBER MILLER: Thank you Mr. Chairman. The
15 upper-level -- the argument by the appellant on the upper
16 level being -- should have been included as -- should have
17 been included in the gross floor area also gave me pause.

18 There was a lot of -- shouldn't use the word
19 manipulation because it has a negative connotation. But,
20 there was a lot of jumping through unusual hoops to --
21 including a building code modification to permit to 6 foot
22 5 inch height up there.

23 And it just -- I didn't find it credible that a
24 property owner or an occupant would use most attractive upper
25 level of residential space that has a finished floor, a

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1 window, and a balcony and stairs leading up to it -- up to
2 that level. Would not use it for a habitability. But, I
3 think that the -- and the -- and I don't -- I didn't buy the
4 argument that it's an attic because they have a ceiling
5 that's below the immediate roof that will be --

6 The attic isn't defined in the zoning regulations.
7 Again, there's -- this is an area as the Chairman pointed
8 out, as he is fond to do that the Zoning Commission, they
9 need to clarify when there's ambiguity or lack of clarity in
10 the zoning regulations. In this attic definition maybe one
11 of them.

12 But I agree with all of my colleagues' arguments
13 on the other -- that the cellar, the ground floor space and
14 the building height -- that they are all compliant with the
15 zoning regulations.

16 I just would have preferred if property owner had
17 come in for a variance to that upper level area to allow for
18 it to be habitable because there's no difference in the
19 outward appearance of this home. And I think this board
20 would -- might have been receptive to that as we have been
21 in many cases so --

22 But I doubt -- I think with all the modifications
23 were -- that were made to try to stretch this into a
24 definition or interpretation of the zoning regulations so
25 that it wouldn't be counted as gross floor area, I think it

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1 was reasonable. So, I will also agree with my colleagues
2 that the Zoning Commission didn't -- the Zoning Administrator
3 did not err in this case.

4 But there's a lot of publicity about this now.
5 And the neighborhood's going to be watching and there might
6 be zoning enforcement action if there's going to be people
7 living up there. And so, if you want people to live up
8 there, you ought to come in before this Board ask for the
9 proper zoning relief. And that's what I would recommend.

10 But if you are going to use it as storage area,
11 I'd be interested in seeing all those you know, boxes and
12 luggage racks with the window and balcony there. And so --
13 maybe when I'm not on this Board and commissioned, I'll come
14 by and see what's happening up there sometime. Thank you Mr.
15 Chairman.

16 CHAIRPERSON HILL: Okay, Well thanks everybody.
17 I mean that was very -- as I started to say, I thought it was
18 a very interesting case. And right, if the Zoning Commission
19 were to clarify some issues concerning the regulation. But
20 I again, I thought that -- well, we've gone through it all
21 so --

22 Okay, I'll go ahead and make a motion to deny the
23 Appeal Number 19766 and ask for -- sorry -- deny the Appeal
24 Number 19766 as captioned and advertised. And, ask for a
25 second?

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1 VICE CHAIRPERSON HART: Second.

2 CHAIRPERSON HILL: Motion made and seconded. All
3 those in favor say aye.

4 BOARD MEMBERS: Aye.

5 CHAIRPERSON HILL: All those opposed? Motion
6 passes. Mr. Moy.

7 SECRETARY MOY: Staff would record the vote as 5
8 to 0 to 0. This is on the motion of Chairman Hill to deny
9 the Appeal of 19766. Second the motion by Vice-Chair Hart.
10 Also in support Ms. White, Ms. John, and Mr. Robert Miller.
11 The motion carries.

12 The next action before the Board, Mr. Chair is a
13 preliminary matter to Appeal Number 19839 of ANC 8A which is
14 on the docket scheduled for a hearing on October 17th.

15 There before the Board is a joint motion of the
16 property owner and the appellee DCRA -- Joint Motion to
17 Dismiss the appeal which is in your case of records under
18 Exhibit 22. And there is a response from ANC 8A to the --
19 which is their opposition to the Motion to Dismiss, of
20 course. And that's under Exhibit 25.

21 CHAIRPERSON HILL: Okay. Is the Board ready to
22 deliberate? Okay. I can start. I didn't know where I was
23 going to be on this actually, originally because often times
24 we'll hear this before the -- often times we talk when we
25 hear these things before the appeal itself. Or, before the

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1 case is heard.

2 In this case, you know there was something that
3 was put before us in terms of the joint motion to dismiss
4 with both the -- from both property owner, as well as DCRA.
5 There was a response from the appellant in the record. And
6 I thought that the response was actually full enough that I
7 could at least form an opinion as to what I thought about at
8 the timeliness.

9 The administrative decision complained about is
10 whether to approve the construction storage facility in light
11 of the buffering requirements of Subtitle J, Section 207.
12 ANC 8A alleges that the facility violates that rule because
13 there's a gap in the evergreen screening between the PDR Zone
14 lots and the adjacent residential zone that's required by the
15 rule.

16 Out timeliness rule states that the appeal must
17 be filed within 60 days of the first writing that reflects
18 the administrative decision complained about. So the -- it's
19 really again whether that administrative decision was back
20 in October.

21 The Applicant and DCRA claim that the first
22 writing was the building permit that showed the driveway
23 break in the evergreen buffering which was issued October 24,
24 2017, which is more than eight months before the appeal was
25 filed.

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1 ANC 8A claims that this was not the first writing
2 because the Applicant modified the landscaping on sides of
3 the driveway in a subsequent building permit application.
4 And that decision was reflected in the DCRA letter.

5 However, in my opinion the driveway itself that
6 is the break in the buffering that they are complaining about
7 was shown in the October 24, 2017 permit application. And
8 therefore, that was the first writing. And so therefore my
9 opinion is this appeal is untimely. Or I'm sorry, yes, the
10 Appeal is untimely.

11 Well subsequent permit applications did modify
12 October 24, 2017 permit, it did not modify the decision to
13 allow the driveway break in the evergreen buffering that was
14 the decision complained of. So in fact I think the appellant
15 seems to even affirm the fact that the driveway was there.

16 So I'll be voting to grant the Motion to Dismiss
17 as untimely. Does anyone else something they'd like to add?

18 VICE CHAIRPERSON HART: Only Mr. Chairman that I
19 would agree with your reasoning and rationale for this. I
20 also thought that the application -- the appeal was untimely
21 -- untimely filed because it was filed so late after the
22 permit was first issued and that the information for the
23 driveway -- the buffer for the driveway was kind of included
24 in the original drawings so -- that's it.

25 MEMBER JOHN: Mr. Chairman, I would also agree

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1 that the Motion to Dismiss should be granted. And I don't
2 have a lot to add to what's been said. Except to note that
3 the June 13, 2018 letter from DCRA supports the fact that it
4 is in fact not a new decision. It was basically reaffirming
5 the decision that was already made.

6 MEMBER WHITE: Mr. Chair, I would also concur with
7 your comments and Ms. John's comments as well. I mean the
8 regulation is clear with respect to the time restrictions for
9 filing an Appeal.

10 And if you look at Y 302.2 and Y 302.5, it clearly
11 indicates that the regulations require appeal to be 60 days
12 before the first writing that reflects the administrative
13 decision. I interpreted that to mean that the clock started
14 when the building permit was issued October 24, 2017.

15 And the subsequent communications were not
16 substantial changes or major modifications that would change
17 the timing of when the appeal clock should begin. So, I
18 would also be in favor of granting the Motion to Dismiss
19 Appeal 19839 for ANC 8A.

20 MEMBER MILLER: Thank you Mr. chairman. I concur
21 with my colleagues, all of their arguments. The Appeal was
22 filed eight months after the permit was issued and the major
23 issue of the appeal did not change in terms of the driveway
24 access. So, and there is a 60-day requirement.

25 And I'll just note, even though -- that this is

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1 somewhat of an unfortunate case of a self-storage facility
2 being able to get a vested building permit before the Zoning
3 Commission changed the zoning regulations from the PDR Zone
4 to the RA2 zone, which happened. But, happened after the
5 fact here.

6 So, at the time that we took that action at the
7 Zoning Commission there was some discussion that the property
8 owner might be looking for a way to find a mutually
9 acceptable use that the community could live with. And I
10 hope, that -- those discussions are going forward and
11 something can -- because it is, this site is surrounded by
12 residential and park land. And so --

13 But, on the legal issues before us, I think it's
14 pretty clear that this appeal was filed way too late.

15 CHAIRPERSON HILL: Okay, thank you. I'll make a
16 motion then to approve the Motion to Dismiss as untimely.
17 And then dismiss the Appeal Number 19839 and ask for a
18 second.

19 MEMBER WHITE: Second.

20 CHAIRPERSON HILL: Motion made and seconded. All
21 those in favor say aye.

22 MEMBERS: Aye.

23 CHAIRPERSON HILL: All those opposed. The motion
24 the passes. Mr. Moy.

25 SECRETARY MOY: The staff would record the vote

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1 as 5 to 0 to 0. This is on the motion of Chairman Hill to
2 grant the Motion to Dismiss as being untimely. Second the
3 motion, Ms. White. Also in support of the motion, Ms. John,
4 Vice-Chair Hart, and Mr. Miller. With the Board's action
5 then this appeal case is removed the October 17th hearing
6 docket.

7 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
8 Thank you, Mr. Miller. I guess we're going to have Chairman
9 Hood back. Excuse me, ma'am. Excuse me, you can't -- you
10 can't speak to us at this point. We're just having decisions
11 made.

12 (Whereupon, the above-entitled matter went off the
13 record at 10:19 a.m. and resumed at 10:19 a.m.)

14 SECRETARY MOY: I'm sorry for that outburst Mr.
15 Chairman. The -- let's see where are we. The -- let's go
16 with --

17 All right. There are two remaining cases for
18 decision-making, Mr. Chairman. The next is Case Application
19 Number 19712 of Newton Park Apartment Condominium Unit
20 Owners.

21 As amended for special exception under the
22 residential conversion regulations of Subtitle U,
23 Section 320.2 and pursuant to Subtitle X, Chapter 10 for
24 variance from the residential conversion requirements
25 subtitle U, Subsection -- Subtitle U, Section 320.D to allow

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1 a three-unit apartment house in the RF1 zone at 452 Newton
2 Place, N.W., square 3036 lot 89.

3 CHAIRPERSON HILL: Okay. Is the Board ready to
4 deliberate? Okay. Alright. Does anybody else want to start
5 for a second? I need a minute.

6 MEMBER WHITE: I can give you some comments on
7 this particular application. This is application for Newton
8 Park Apartments Condominium. We had a continued hearing on
9 this application last week. The application is for relief
10 for conversion from a two-unit flat to a three-unit apartment
11 house in RF1 zone at 452 Newton Place N.W.

12 In addition to the conversion to an apartment
13 house, the applicant is requesting a variance because they
14 do not meet the 900 square foot minimum per unit lot
15 requirement.

16 During the case the applicant raised a number of
17 cases where the Office of Planning was persuaded by the
18 detrimental reliance argument in terms of the timing. A
19 number of those cases were stated in the record. And, you
20 know, I won't go into them.

21 But, there were some cases that supported the
22 detrimental reliance argument. One of the cases was a six
23 day period that they allowed the case -- they allowed the
24 detrimental reliance argument to prevail in one of those
25 cases.

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1 Here the permit was revoked on December 2015
2 stating that the permit must be obtained by contacting the
3 zoning and building department. In the current case, the
4 applicant was issued the permit in October of 2015. And they
5 said they relied to their detriment through December 2015 for
6 a full two months.

7 After two months, DCRA revoked the permit and the
8 applicant argues detrimental reliance citing case 1951A where
9 they had a shorter period of reliance and were granted
10 relief.

11 I saw that the -- here the case was raised by --
12 I relied on a couple of cases that were raised by OAG. One
13 case involved, you know, the Court of Appeals where they
14 reversed the BZA, where they allowed the variance relief,
15 where the applicant relied to its detriment on the building
16 permit.

17 Other comments, for this particular case, I
18 believe that the facts for the case are different than the
19 facts that were cited and in some of the other cases by the
20 applicant.

21 And, based upon the facts of the case that are in
22 the record, from my perspective I did not feel that the
23 applicant acted in good faith on the part of the arguments
24 that were made on the record from October through December
25 2015.

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1 So, for some of those reasons and others at this
2 point, unless my colleagues can you give me some supporting
3 information, I'm not inclined to support the application.

4 CHAIRPERSON HILL: Sure. Oh, well okay, I'll
5 start. I'll do this one. Or at least I'll give it the
6 counter point. So again I thought that this was a long
7 hearing. You know and it was not -- I shouldn't say
8 confusing. I mean there was a continued hearing.

9 And I needed to take a little more time to kind
10 of think about it. I mean, I haven't yet kind of -- just
11 because it hasn't come up yet. I haven't voted against both
12 the ANC and the Office of Planning in terms of what I thought
13 the case was before us.

14 It did for me, kind of just go around the first
15 prong of the variance test, you know. And there was an
16 argument made for detrimental reliance as to why and how that
17 project moved forward.

18 The Applicant did produce a timeline of the events
19 that got them to the point that they're at. They say they
20 got it a permit single-family home. But, the plans did show
21 three units. And so I understand that -- how one could kind
22 of move forward even though they had a single-family permit
23 for the homes.

24 I think that the Applicant did mention that they
25 had a different partner that was focusing on the permitting

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1 process. I don't necessarily know that that is reason for
2 us to accept the argument that --for detrimental reliance.
3 However, I do think that they -- you know, that's how they
4 got to this point.

5 They continued to rely what was before them. They
6 did get a permit for the three unit conversion in October,
7 but then it was taken away in December -- or revoked in
8 December.

9 And the Applicant was stating that they were
10 99 percent complete with the project. And there was a lot of
11 discussions -- well how could you have been complete with the
12 project by that time? And then it was again, clarified from
13 the applicant that that's the way they were moving forward.
14 And then they got the permit.

15 So, you know they did -- and they did have --
16 there was an email from the Zoning Administrator that further
17 would clarify that they should -- you know would get the
18 three units and moving forward.

19 I -- so again, was kind of getting the first prong
20 of that variance test as to, you know how they were meeting
21 that prong. And so I didn't think -- I didn't have any
22 issues with the second or third prong of the variance test.

23 And then for me, I guess again it was -- just I
24 think that the applicant did make a good argument on, you
25 know, how they got to the three units and that they relied

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1 on the Zoning Administrator and the permit that they had for
2 those few months.

3 I again don't take lightly disagreeing with the
4 Office of Planning. And I think that it -- this was very
5 unique for me in terms of understanding how this applicant
6 got to this point. And I thought that they made a good
7 argument as to how they're meeting the first prong of the
8 variance test. So, I will be in support of this application.

9 MEMBER JOHN: Mr. Chairman, I found this case very
10 difficult because of the unusual, I would say fact pattern.
11 And at the risk of repeating some of what you said, I will
12 sort of go through how I got to my decision.

13 CHAIRPERSON HILL: Ms. John, I think you're doing
14 a great job going through. You take all the time you need
15 going through your decision. It's great and I need a break
16 anyway here, so please.

17 MEMBER JOHN: So, as was noted the applicant is
18 seeking a variance -- variance relief or area variance relief
19 because the property did not meet the 900 square foot of land
20 area per unit. And the requested deviation is 40 square feet
21 because it did not meet the 2700 square foot requirement,
22 which meant it would be not a huge deviation. It would only
23 be a 2 percent change -- 2 percent difference.

24 So, the Applicant first applied for this permit
25 in February of 2015 using plans that depicted a three-unit

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1 configuration. And later in April -- and those plans were
2 approved for a single family dwelling.

3 The applicant testified that that the applicant
4 did not change the -- not seek to correct the problem partly
5 because as I understand it, they had made their intention
6 known by submitting plans for a three-unit configuration.

7 And after they received the zoning approval for
8 -- the ZA's approval for a 2 percent deviation request for
9 the three-unit configuration, they continued working in good
10 faith, going through all the processes of construction in
11 anticipation that the permit would be corrected.

12 So in June 2015 there was a stop work order, which
13 was reinstated. And the applicant paid a fine and continued
14 to work on the three-unit configuration while going through
15 the process of the application process. And so, in expecting
16 to receive this formal conversion.

17 And in August 2015, the record shows that the
18 three-unit configuration was approved and the building permit
19 was issued in October '15 to allow a three-unit
20 configuration. So, the applicant continued to complete the
21 renovation.

22 But then, in December DCRA revoked the permit.
23 And the applicant at this point should have, but did not,
24 pursue an appeal but testified that he used his remaining
25 funds to comply and convert the unit to a two-unit building.

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1 He obtained a C of O for that configuration. He
2 sold the top unit. He couldn't sell the configuration of the
3 bottom unit because it had two bedrooms and two kitchens.
4 And so he rented out the two levels. So when the DCRA
5 threatened to revoke the C of O for the basement, for the
6 second unit, the Applicant then sought approval for the
7 three-unit configuration.

8 The applicant provided extensive testimony
9 concerning its efforts to sell the four-unit configuration.
10 There was a letter from his real estate agent explaining the
11 difficulty of selling that configuration and the cost of
12 converting to the two-unit -- reconverting to the two-unit
13 configuration.

14 As well as noting that because of the
15 configuration it would really be difficult to sell the unit.
16 And this is a recent letter. It would be difficult to sell
17 the unit at a reasonable price based on the existing
18 conditions.

19 For me this was difficult because it -- the
20 applicant -- there's no showing that there was bad faith in
21 working to secure the permit. And that at all times, DCRA
22 was aware of or should have been aware that this Applicant
23 was working in good faith to finalize the permit. And so in
24 the absence of any testimony that there was bad faith on
25 behalf of the Applicant, he might have just been purely

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1 negligent, but so was DCRA.

2 And so in this case I have to disagree with the
3 OP because OP says the applicant should have had the
4 opportunity to make the corrections at several times during
5 the process. However, there are two sides of that coin.

6 And so, in the absence of any showing of bad faith
7 in this very difficult case and with these particular sets
8 of circumstances, I feel that the applicant has met the
9 burden of proof for variance. And, that there is no
10 detriment to the regulations for the zoning plan in this
11 case.

12 And, I believe that that criteria is also met.
13 And, so I would support the application. There's also no
14 neighborhood opposition. So, I would support the
15 application.

16 CHAIRPERSON HILL: Chairman Hood, Vice Chair Hart.
17 Who wants to go?

18 VICE CHAIRPERSON HART: I'll go. Yes, I
19 appreciate the thought so far from for my fellow Board
20 members. Just to kind of get to the chase. I would be in
21 support of the application. I do believe that they've
22 actually met the criteria of the -- excuse me -- the prongs,
23 especially the first prong.

24 While I did have some reservations around some of
25 the timing of the -- in the-- along the timeline for this

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1 case, I do not support the OP's report recommendation for
2 denial because I think that while the applicant may have
3 pursued an appeal for the revocation of the building permit
4 in -- when was that? 2017, I guess it would have been?
5 Early 2017? They are before us now. And it is still an
6 issue that they have to deal with.

7 Their issue -- the concern -- the reason that they
8 had their building -- their certificate of occupancy revoked
9 was that they had one C of O for two units, the two bottom
10 units. As the top unit had already been sold.

11 So, they are trying to deal with the situation
12 where they have no -- one certificate of occupancy for two
13 units. And they've found through their efforts and they've
14 shown that they tried to sell the two units -- this as one
15 unit at one point and that was -- actually, at two different
16 points and that was -- they were not able to do that. And
17 so, I think that while it is somewhat unusual -- of an
18 unusual timeline, I am -- I think that they have met the
19 prongs for the variance test.

20 With regard to the other relief that they sought,
21 I didn't think for under U 320.2, I thought that was actually
22 fine. I didn't have any issues with any of the -- I thought
23 they met all the criteria under U 320.2. So, that was not
24 an issue at all.

25 The big kind of question was whether or not they

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1 actually met the first prong of the variance test. And I
2 believe that they've shown -- they proved, provided
3 information showing how they did meet that. So again I'd be
4 voting in support of the application.

5 ZC CHAIR HOOD: Mr. Chairman, I'll end it up. I
6 am not in support of this application. I think that the --
7 at least the conversations and the testimony was received in
8 the appeal that was presented -- I think that the applicant
9 knowingly went in there, knowing exactly, even when they got
10 the single family permits and everything -- they not only
11 knew what the end result what they wanted to do.

12 But you know, I'm not going to get into that.
13 But, I can tell you that it seems to be a trend in this city.
14 That in D.C. you can come down and do it first, and come down
15 and ask for forgiveness later.

16 And that's the way I look at this. And knowingly
17 -- I'm not sure. I noticed that they had another partner who
18 was not doing something. But, if you stake into something,
19 you should follow what's going on as first.

20 But no, you can go down to the BZA. Go ahead and
21 do it. And we'll down and make it -- we'll come up with a
22 timeline -- and we'll go -- go back and forth. But I think
23 the Office of Planning is exactly on cue.

24 But for me, the Exhibit Number 66, which ANC 1A
25 is what derived me to my decision of not supporting this

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1 application. And I think we need to be cognizant of these
2 timelines and trying to confuse this Board so people can get
3 exactly what they want.

4 They had time as the Office of Planning mentioned.
5 Even the ANC, they had time to go down and correct it. And,
6 get things straight with DCRA. DCRA has a lot on their
7 plate. I know they don't have a lot of inspectors. But,
8 they have a lot on their plate.

9 But, no you can go to the BZA. Don't worry about
10 it. They'll --yes -- they'll say, let's put a timeline and
11 we can go to the BZA. And not just to BZA, it comes on the
12 Commission, the same stuff as well. So, I will not be in
13 support of this application. I will focus my attention on
14 Exhibit Number 66. Thank you.

15 CHAIRPERSON HILL: Chairman Hood, thank you so
16 much for being here today.

17 ZC CHAIR HOOD: You asked me to come.

18 CHAIRPERSON HILL: And thank you so much for also
19 including the Zoning Commission in your comments as to coming
20 down to whatever it is. Because you know, it's just not --
21 people don't just come down to the Board of Zoning Adjustment
22 and get things straightened out after the fact.

23 ZC CHAIR HOOD: Mr. Chairman just let me say
24 something. I'm not personalizing this. I am just telling
25 you some my experience. I served on the BZA.

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1 CHAIRPERSON HILL: Because I've already had a
2 morning. Is what I'm -- just you know --

3 ZC CHAIR HOOD: Well , I obviously heard about it.

4 CHAIRPERSON HILL: Right, right.

5 ZC CHAIR HOOD: I don't know if I agree with her
6 or not. But wait a minute, let me just say this. I sit on
7 the BZA as well. So that's why. I'm not exempting myself
8 --

9 CHAIRPERSON HILL: Okay.

10 ZC CHAIR HOOD: -- for my actions. That's just
11 my position.

12 CHAIRPERSON HILL: Okay. Did the Chairman's
13 debate change anyone's mind?

14 MEMBER JOHN: I respect and value Commissioner
15 Hood's views and he's been in the city long enough to have,
16 you know, to provide background on some of these things.

17 The problem for me, I thought of that too. But,
18 if you look at the recent Court of Appeals' decisions that
19 have looked at detrimental reliance, the Court has, you know
20 basically said if there is proof that there is detrimental
21 reliance even if it is a short period of time, and there is
22 no other violation of the variance test. Then, you know the
23 law does not --

24 The law allows us to, you know find that there is
25 detrimental reliance. It's not the-- as far as I can see,

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1 it's not the time of the detrimental reliance. But whether
2 they can show that there was some activity during that time.

3 In this case, the property owner continued to work
4 on the building for two or three months. So it's unfortunate
5 and -- . So that's my two cents.

6 VICE CHAIRMAN HART: Mr. Chairman, just kind of
7 to respond to the -- your question. And again I guess I'm
8 looking at variance tests, first prong and the aspect says,
9 by reason of exceptional -- well it says -- by reason of
10 exceptional, narrowness, shallowness, or shape of the piece
11 of property at the time of the original adoption of the
12 regulations, or by reason of exceptional topographical
13 conditions, or other extraordinary or exceptional situations
14 or conditions of a specific piece of property.

15 And to me, that last piece which is other
16 extraordinary or exceptional situations or conditions have
17 a specific piece of property is the aspect that I'd be
18 relying on.

19 And I understand that this is not a -- you know,
20 it's kind of an regular rectangular lot. But I guess, the
21 -- the applicant is seeking a variance and a special
22 exception from us. They did have -- again they did have the
23 opportunity to file an appeal of the revocation of the
24 building permit back in the early 2017. But, they did not
25 do that. They are -- I think it was 2017 -- maybe it was

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1 2016 -- I'm -- think it is 2016, sorry.

2 I guess the point that I'm just making is that
3 they are coming before us and saying that there was a part
4 of -- period of time that they relied on having a building
5 permit. I can't change the timeline that DCRA issued the
6 building permit and then several months later revoked the
7 building permit. That happened.

8 Now that was several years ago. But, it was
9 something that did occurred and the applicant, you know says
10 that they've tried to -- they've tried to deal with that.
11 They tried to sell the unit. That was, you know, not
12 possible. And provided some information in the record to
13 describe why that -- the sale of that very large unit -- I
14 said very large -- 4 bedroom unit wouldn't -- was not
15 feasible.

16 And while I understand that the ANC and OP I have
17 a different perspective on that, I just -- I don't know what
18 it is that we could -- that we could say to be able to be --
19 to vote against that. So, as I said, I still will be voting
20 in support of the application.

21 MEMBER WHITE: Mr. Chair, my vote has not changed.
22 I still found the arguments of the Office of Planning and the
23 ANC compelling enough and I did not think that the variance
24 test was met in this particular case. So, I will still be
25 voting do not support the application.

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1 CHAIRPERSON HILL: Okay. All right. I'm going
2 to make motion to approve Application Number 19712 as
3 captioned and read by the Secretary. And ask for a second.

4 VICE CHAIRPERSON HART: Second.

5 CHAIRPERSON HILL: Motion made and seconded. All
6 those in favor say aye.

7 MEMBERS: Aye.

8 CHAIRPERSON HILL: All those opposed.

9 ZC CHAIR HOOD: Opposed.

10 MEMBER WHITE: I oppose.

11 CHAIRPERSON HILL: All right. Mr. Moy, the motion
12 passes.

13 SECRETARY MOY: Thank you, Mr. Chairman. Staff
14 would record the vote is 3 to 2 to 0. This is on the motion
15 of Chairman Hill to approve the application for the relief
16 being requested. Second the motion Vice-Chair Hart. Also
17 in support Ms. John. Opposed to the motion is Mr. Anthony
18 Hood and Ms. White. The motion carries.

19 CHAIRPERSON HILL: All right. The motion passes
20 Mr. Moy. Did I already say that? All right, we have
21 Chairman Hood for one more case. I believe so.

22 ZC CHAIR HOOD: One more. The decision and one
23 more hearing.

24 CHAIRPERSON HILL: One more decision.

25 ZC CHAIR HOOD: One more decision and one more

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1 hearing.

2 CHAIRPERSON HILL: Okay. This is a long decision
3 day. This is a long decision day. Okay. All right. That's
4 right. I forgot. Okay.

5 SECRETARY MOY: The final decision case --
6 decision-making case is Appeal Number 19773 of John Stokes
7 and ANC 4C. This is the appeal from the decision made on
8 February 21, 2018 by the Zoning Administrator, Department of
9 Consumer and Regulatory Affairs to issue building permit
10 number B1611940 to construct a three -- to construct a new
11 three-story flat in RF1 zone, which was previously in R4 zone
12 at premises 1523 Varnum Street, N.W., square 2698, lot 46.

13 The hearing was held on July 18, 2018. Scheduled
14 for a decision September 26, 2018 and that was moved by the
15 Board to today's decision, October 3rd.

16 CHAIRPERSON HILL: Okay, before -- is the Board
17 ready to deliberate? Before we deliberate again, we're here
18 to deliberate. We're not taking testimony from anyone.
19 We're not having conversations with anyone. We're here to
20 deliberate on the merits of this case. Would someone like
21 to begin?

22 VICE CHAIRPERSON HART: Sure. This case was
23 brought by John Stokes and ANC 4C for a decision made on
24 February 21st of the year by the ZA to issue a building
25 permit to construct a three-story flat in a RF1 zone at 1523

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1 Varnum Street.

2 The case made a little bit -- well, was made more
3 complex because the owner of the property for the building
4 permit -- where the building permit was issued is also the
5 same owner as the adjacent property or lot.

6 And that lot -- these two lots were actually,
7 originally a single lot at one point, they were subdivided.
8 The adjacent property -- so this property that we have was
9 -- that this building permit is pertaining to -- was
10 subdivided and a new lot was created.

11 The new lot had a smaller street frontage at 16
12 feet than the other houses along Varnum street. And this was
13 an issue because it means -- it meant that the building had
14 to be pushed back from the perceived building frontage along
15 Varnum Street.

16 The appellant has raised several zoning
17 regulations -- related, excuse me. The appellant has raised
18 several zoning regulation related issues where they believe
19 that the ZA erred -- the Zoning Administrator erred in
20 issuing the building permit.

21 And they were regarding rear setback requirements,
22 regarding minimum lot area and minimum lot width, side yard
23 requirement, pervious surface areas, general provisions of
24 the zoning regulations. As well as the green area ratio.
25 And then a special exception requirement under Subtitle 22.3,

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1 excuse me, 22 3 -- wow, I have a hard time with this --
2 Subtitle 223.2.

3 And so after reviewing the case record including
4 the appellant's and DCRA's pre-hearing statements and
5 listening to the testimony that each of them gave, I do
6 believe that the appellant has failed to demonstrate where
7 the ZA has erred.

8 And so I'll kind of step through this. The rear
9 setback requirements under Subtitle 44.1, there is 20 feet
10 proposed, 20 feet is required. Under the minimum lot
11 requirements, under Subtitle 41 specifically for the minimum
12 lot area which is 41.3 there is 1800 square feet required,
13 3,300 square feet -- a little over 3,300 square feet is
14 proposed.

15 For the minimum lot width under subtitle 41.3, 18
16 feet is required, and 20.7 feet is proposed. And this is
17 actually an average lot width. The ZA, Zoning Administrator
18 did describe how they calculated the average lot width to
19 come up with this 20.7 square -- excuse me 24.75 feet for the
20 width.

21 For the side yard requirement under Subtitle 405.3
22 it is zero feet is required, if none is proposed. And for
23 this particular project, none was proposed. For the pervious
24 surface area requirement under Subtitle 412.3 there is 30
25 percent required, 39 percent is proposed according to the

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1 plaque in the record.

2 Under The General Provisions under 101.1 and
3 101.2, I'll discuss this in a minute. But for the general
4 area -- excuse me, for the green area ratio under Subtitle
5 3401.2, this is not applicable in R1, in any of the lots --
6 in any of the zones that are either R1, R2, R3 or R4
7 residential zones. This is in a R4 residential zone.

8 The only part that gave me some pause in the
9 appellant's case was the General Provisions argument. And
10 that was under Subtitle 101.1 and 101.2. The ZA noted that
11 in his testimony that the zoning regulations subtitles set
12 up the specific guidelines or criteria for compliance.

13 And further stated that the property owner met the
14 criteria for the various areas as I have just mentioned of
15 the zoning regulations. And so, it met the General
16 Provisions by meeting the specific guidelines set forth in
17 the zoning regs.

18 And I understand that the -- what the Zoning
19 Administrator is saying about that. I do believe that the
20 reason that it gave me some pause was just to understand if
21 all of these general issues were -- general ideas were met
22 what part of the General Provisions.

23 But after kind of actually looking at the tape
24 again, which I ended up having to do to really understand
25 where the ZA coming from, I thought that I was -- I found

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1 that I was comfortable with the ZA's explanation on it.

2 That the specific guidelines for criteria for
3 compliance under the zoning regs were what they used for
4 making sure that the project was -- complied with the zoning
5 regs. And so with that, I think I would be in favor of
6 denying the appeal. And that's it.

7 MEMBER JOHN: Mr. Chairman, I thought that my
8 colleague just made a very thorough explanation for finding
9 that there was no error in granting the permit. And
10 essentially he stepped through all of the areas that I would
11 have addressed. And so, I don't have anything really to add
12 to what's been said. So, I would agree.

13 MEMBER WHITE: Mr. Chair, I concur with Vice-Chair
14 Hart's discussion regarding why this particular appeal should
15 be denied. He was very thorough in going through each of the
16 sections, the issues that were raised during the appeal.

17 But I also think it's important to note that the
18 -- in this particular application, we reviewed it under the
19 1958 regulations because it was the appropriate regulations
20 in this particular application and appeal.

21 ZC CHAIR HOOD: Mr. Chairman, what I want to say
22 is not necessary relevant to this case. I say this first.
23 We're getting a lot of appeals here on the BZA. And once
24 before --

25 And first let me thank Board Member John for her

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1 comments. Even though she on that other case -- even though
2 she didn't agree with me. But that's fine. That's why
3 there's five of us up here.

4 Some years ago, the -- we were getting a lot of
5 appeals. And it took the Office of Zoning, OAG, Zoning
6 Administrator's office to figure out why we were getting all
7 of those.

8 And, to me, we're right back to where we are. And
9 I guess -- and I was mentioning this the other day.
10 Something that we did to correct it. Because at one time
11 this Board was not getting any appeals. Prior to that we
12 were getting a lot.

13 Now we're back to where we were. I don't know,
14 I don't know what the issue are. I know that our city is now
15 built -- is pretty very much getting built up and things a
16 little more contentious.

17 But for the most part, in this case, I -- you
18 know, I think everyone knew what I wanted to do with the
19 other property when they did the splitting of the properties.
20 But, I will tell you, I disagree with a number of comments
21 that I've heard.

22 Especially when it comes to the general purpose.
23 I looked at that -- the ZA stated that the general purpose
24 requirements are general objectives which are -- and I looked
25 up the word objectives. I said to me, look up and see what

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1 objectives are so -- because I've actually disagreed with the
2 guidance that I've been given over the years on this whole
3 general provisions.

4 And the guidance says -- the objectives -- it's
5 a goal. So, I interpret that to the development standards,
6 but also look at it generically. And we look at 101.1 as the
7 vice-chair mentioned and 101.2. Character of respect of
8 districts. Yes, I understand that the development standards
9 are met.

10 But you know, we're starting to approve
11 developments that are out of character of neighborhoods.
12 Suitability of each district for the uses permitted, in each
13 district under this title. Jim, I've heard the argument
14 general. But, for me, it wouldn't be in the Title in ZR 58,
15 in the Title if it wasn't applicable.

16 So for me, those are key arguments. We are
17 changing the character. I've even done research looking at
18 what's going on in Virginia. Some of the stuff we're doing
19 in the District, we're not -- and I know they have much more
20 land in Virginia. It's not allowable.

21 So at the end of the day, like the kids call me
22 at the University of Maryland. You all are messing up the
23 housing stock in the District of Columbia. So when you --
24 you know go and talk to young folks who are coming behind --
25 who's going to come behind us -- and I hear that.

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1 To me this is a prime example. I think this
2 appellant is exactly on target when he goes to 101.1 and
3 101.2. Here's to even furthermore. Yes, I understand the
4 numbers game and the jargon of the setback and how much to
5 ask for. I understand all of that.

6 But I've asked and I wondered -- want to reiterate
7 again at the Zoning Commission -- I've asked that the BZA be
8 given some type of design because I haven't seen one. You
9 don't really know what's --

10 All you know is a numbers game. You don't know
11 how intrusive this up going to be and the character -- how
12 it's going to change the character in that community. I'm
13 not here giving out of lashing. But these are things that
14 we need to do to try to improve it.

15 And you will see this much more than I do because
16 you're here every week and I'm not. But I just know these
17 are things that needs to be tightened up. If somebody can
18 point me to show me how intrusive this is going to be in that
19 neighborhood. I will be willing to look at it.

20 But right now we're basically zoning -- what I
21 call zoning in the blind. That's what we're doing, zoning
22 in the blind. We're changing the character of that
23 neighborhood. And I don't think the residents of this city,
24 a lot of them don't expect that. So that's where I am on
25 that. Again, 101.1 and 101.2, I think are applicable.

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1 CHAIRPERSON HILL: Okay. Well Chairman Hood,
2 thank you so much for your comments and I guess, you know
3 this property has not been something that -- well it's gone,
4 it's undergone a lot of changes. Right?

5 I mean this was something, you know it was -- they
6 split the lots. It was one lot and it had -- I think it --
7 I can't -- seven years. It was a large property that they
8 were going to build. And then that got, you know, was going
9 to possibly get sua sponte.

10 And then, I think it's in now the Court of Appeals
11 for that particular project. And now -- I guess what I'm
12 trying get to at -- I'm just having a discussion also, is
13 that I don't like it. Right?

14 I don't like the fact that --I mean I'm going to
15 vote to deny the appeal. But, I don't like the project. And
16 what happens to us here at the BZA is that, you know, there
17 are criteria that we're looking at as to whether or not we
18 -- I mean, again it's not whether we like it or not -- like
19 we just look at the zoning regulations and think what we
20 think of the zoning regulations.

21 And I do think that the developer has, you know
22 manipulated the lot and done what they needed to do to get
23 this project in this way. And we -- the previous project
24 that was before us, the one that was right next door. You
25 know, all I remember that we were trying -- the best --

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1 because I knew that this was coming up and what was happening
2 and whether or not this appeal got approved or not.

3 The only thing that I thought that we as a Board
4 had an opportunity to do was there was like some fencing and
5 some trees that we can maybe try to make sure, you know, went
6 as far back as possible to try to help the community.

7 And so you know, whatever worked if there was some
8 way that I thought that we could approve -- you know, again
9 the fact that the Zoning Administrator -- and I'm just giving
10 my opinion again. That the Zoning Administrator had erred,
11 you know, I'd be happy to say that he had erred. But I --
12 for the --

13 I won't walk through the deliberations that
14 Vice-Chair Hart had mentioned, as well as Ms. John. But it's
15 just disappointing. I mean I don't know what to say other
16 than, you know, it's --

17 I just can't see where the Zoning Administrator
18 erred. I mean, I think that the developer, you know divided
19 up properly. It was a matter of right, the way the lot was
20 measured, the way everything was done. And so, but I'm not
21 disagreeing with you Chairman Hood and the overall concept.
22 I just can't approve the appeal.

23 ZC CHAIR HOOD: So, I think in another case, I
24 made myself perfectly known that I was going to sua sponte.
25 And that would have given the Zoning Commission the time to

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1 use a live case to be able to go back and revisit some of the
2 things we promulgated.

3 But that was circumvented. So, basically now you
4 come back. And then what bothered me even more when I look
5 through the record of this case, there's an agreement. If
6 this doesn't happen and that goes on. If that doesn't happen
7 then this goes on. Where else do they do that at? Where
8 else is that going on at?

9 I mean the-- to me, if the first case would have
10 went forward, and let us -- They would have found sua sponte.
11 And let us -- let the Commission come back and say, okay how
12 do we tweak this? What do we do to make this right? How can
13 we make sure that we improve and save the character of the
14 neighborhood?

15 That's what people in the city are saying. We're
16 messing up the character of their neighborhoods. How do you
17 balance that? That would have been a prime case. But no,
18 what was done, was this.

19 But then I see an agreement in here. Well if this
20 is done, if that's done. If you move over here. And I'm not
21 citing it for verbatim because I can't remember all of that.
22 After I started reading it, I said well wait a minute. If
23 I get this in court, if I don't get that, I can come back and
24 do the seven unit.

25 And I'm thinking, okay. Well basically, what are

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1 their intentions as we move forward? And I hear what you're
2 saying, but I still disagree with the ZA this. And I'm going
3 to make it known to him as well.

4 This 101.1 and 101.2 are very applicable. You
5 cannot minimize that. That's in the zoning code and it
6 should be part of the objectives. And the objectives are the
7 goals. They tie into the development standards as well.

8 So, that's where I am. We just, you know, we just
9 have to try to fix it. You know and I understand what the
10 BZA saying. It's not the first time I've heard that. It's
11 actually the third time I've heard the same thing. So, it
12 needs to be fixed as far as I'm concerned. I will be
13 upholding the appellant's argument.

14 CHAIRPERSON HILL: Okay. And I guess if the
15 Zoning Commissioner -- I don't know how this works also.
16 But, if the Zoning Administrator, you know that even for a
17 matter of right permits that they should look more closely
18 at 101.1 and 101.2.

19 ZC CHAIR HOOD: Well that's been -- that's
20 actually -- that argument for me has not just started here
21 recently. That's been probably been a 15 year argument.
22 Okay. So it's not just with this Zoning Administrator. No,
23 I think this Zoning Administrator because the other ones, I
24 don't think I had that argument with. Okay. All right.

25 CHAIRPERSON HILL: Okay. All right. Did anyone's

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1 opinion change? Okay.

2 ZC CHAIR HOOD: Mr. Chairman, I don't expect to
3 -- that's why I went last. I'm pretty sure that when we come
4 -- I'm sure that -- and I appreciate, see if anyone's opinion
5 changed. Did it? Okay.

6 I don't know if I'm going to -- I can tell you,
7 I'm putting this out again. I don't know what I'm going to
8 do with this one. I know what happened the last time I say
9 I was going to sua sponte. I'm not sure what's going to
10 happen with this one.

11 CHAIRPERSON HILL: Okay. I'll go ahead and make
12 a motion to deny Appeal Number 19773, as captioned and as
13 read by the Secretary and captioned. And ask for a second.

14 VICE CHAIRMAN HART: Second.

15 CHAIRPERSON HILL: Motion made and seconded. All
16 those in favor say aye.

17 MEMBERS: Aye.

18 CHAIRPERSON HILL: All those opposed.

19 ZC CHAIR HOOD: Opposed.

20 CHAIRPERSON HILL: Mr. Moy, the motion passes.

21 SECRETARY MOY: Staff would record the vote as
22 4 to 1 to 0. This is on the motion the Chairman Hart -- I
23 mean, yes, Chairman Hill to deny the appeal. Seconded the
24 motion Vice-Chair Hart. Also in support, Ms. John, Ms.
25 White. Opposed to the motion is Mr. Hood. The motion

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1 carries.

2 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

3 (Whereupon, the above-entitled matter went off the
4 record at 11:05 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 10-03-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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