

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 19, 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 HART, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.  
JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Public Meeting held on December 19, 2018.

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

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9:39 a.m.

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CHAIRPERSON HILL: Okay, if there's anybody here wishing to speak, sorry, if there's anybody here wishing to testify, if you wouldn't mind standing and taking the oath administered by the Secretary, to my left.

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

11

(Witnesses Sworn.)

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MR. MOY: Ladies and gentlemen, you may consider yourselves under oath.

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CHAIRPERSON HILL: All right, great. Well, welcome, everybody. We have a kind of full house today, glad you can all join us on our last meeting of the year. We will not be here next week, nor the week after that. And yeah, I guess we're all coming back in January.

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Let's see, we're all going to follow the, we are going to follow the agenda and everything that has been put forth, and so concerning the decisions as well as the cases. So that is something that we're going to do.

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Since I have the mic, I just want to kind of take the opportunity. Esther Bushman, who's the General Counsel for the Office of Zoning, is retiring. And I just wanted to,

1 you know, thank Ms. Bushman for her service.

2 And also personally for me, she is the person who  
3 kind of helped me get oriented into this role, and really  
4 appreciated all of the time that she spent helping me through  
5 that. And then also all of the advice that she's given over  
6 the years. And she's been serving here at the Office of  
7 Zoning for, I think, over ten years now. And we definitely  
8 wish her the best on her next chapter.

9 Was anyone wanting to add anything else?

10 MEMBER WHITE: I'll just add that, yeah, Esther  
11 has been tremendous in terms of helping me to orient myself  
12 in this role that I've been in over a year, I guess going  
13 into the second year.

14 And sometimes it can be very challenging when you  
15 also have full-time jobs as well, so she was very helpful in  
16 terms of helping me present information promptly, and I wish  
17 her the best. She's a tremendous lawyer, and she will be  
18 missed.

19 COMMISSIONER TURNBULL: I would just add what we,  
20 Chairman Hood of the Zoning Commission had spoken about  
21 Esther on Monday night at our meeting. But yeah, I've known  
22 Esther all the time that she's been here. She does,  
23 interacts a lot with the Zoning Commission. She has, does  
24 a lot of things for us.

25 And one of the things, such as ethics and telling

1 us to keep straight and narrow. But she's wonderful to work  
2 with, and I just saw her a little while ago in the hallway  
3 and I wished her enjoy now that she, and relax while she's  
4 retired. But I'm sure she'll busy doing something.

5 CHAIRPERSON HILL: Okay, great, thank you. All  
6 right, so Mr. Moy, we can go ahead and on that pleasant note,  
7 move into our meeting case.

8 MR. MOY: Thank you, Mr. Chairman. As the Board's  
9 aware, there are two cases for decision this morning, and  
10 it's a public meeting session. The first is Appeal No.  
11 19550.

12 This is ANC 6C, which is captioned and advertised  
13 as amended from the, this is the appeal of the decision made  
14 on March 31, 2017 by the Zoning Administrator, Department of  
15 Consumer and Regulatory Affairs, to issue Building Permit No.  
16 B17006219.

17 And as revised by Building Permit No. B1805207 and  
18 B1811245, which would permit the renovation of a one-family  
19 dwelling to a two separate one-family dwelling units, RF-1  
20 zone, at premises 1125 7th St., NE, Square 886, Lot 35.

21 CHAIRPERSON HILL: Okay, great, thank you, Mr.  
22 Moy. Is the Board ready to deliberate?

23 VICE CHAIRPERSON HART: Sure.

24 CHAIRPERSON HILL: Okay. Mr. Hart, you are  
25 welcome to take the lead there. Thank you very much for

1 doing so.

2 VICE CHAIRPERSON HART: It's no problem. So after  
3 reviewing the case and the fairly lengthy discussion or the  
4 testimony that we've heard, I'd like to thank the appellant,  
5 DCRA, and the owner for providing testimony and responding  
6 to the questions that we had throughout this hearing.

7 I understand that it was, while there was some  
8 complexity to it in terms of the timing and some of the kind  
9 of moving pieces, it is fairly straightforward. And there  
10 were kind of four issues that were kind of brought forward  
11 to us.

12 So and I think it was also very helpful having the  
13 guidance, as always, from OAG on this as well. So kind of  
14 where do I stand on all of this? There was one permit that  
15 the owner and DCRA stated was amended twice. This is one  
16 point of contention, because the appellant states that the  
17 amendments actually resulted in substantial changes and  
18 should have been reviewed as completely new permits.

19 So I think this really boils down to what is a  
20 substantial change and that should require a new permit. The  
21 Oxford Dictionary define substantial as concerning the  
22 essentials of something. So I kind of think about it like  
23 this: only if the requested design changes result in an  
24 essential alteration of the building, then it should be  
25 considered a substantial change.

1           So it would be something like you're changing the  
2 overall mass in your building, you're changing, adding a no  
3 connection where no connection had existed. And though there  
4 were a number of changes in the project, I did not see them  
5 as substantial as defined by the Oxford Dictionary.

6           So this kind of gets us to the merits of the case.  
7 And the appellant states that there are four overall errors.  
8 One, that the, a railing on the rooftop was not set back  
9 correctly. The removal of a rooftop architectural element  
10 that was part of the project. Improper authorization of a  
11 second principal building on a single-record lot. This goes  
12 to the connection issue.

13           And that the permit allowed construction of an  
14 illegally deep rear addition. So it was going back farther  
15 than it should be allowed to have gone.

16           So the appellant, for the first issue, the  
17 appellant raised this issue regarding whether the permit  
18 improperly failed to require a one-to-one setback for a  
19 rooftop guardrail. I actually think this is more of a  
20 timeliness issue. Since the original permit was dated March  
21 24, and was -- I'm sorry, the permit was dated March 31,  
22 including them in the appeal should have included. Excuse  
23 me, let me say that again.

24           Since the original permit was dated March 31, this  
25 should have been raised after that original permit was dated.

1 And I stated that all of the revisions after this were part  
2 of the original permit. So the original permit would have  
3 vested in March of 2017.

4 So the issue itself wasn't raised until June 25  
5 of 2018, which is more than a year later. Under Subtitle Y  
6 302.5, a zoning appeal may only be taken from the first  
7 writing that reflects the administrative decision. And I  
8 believe that this untimely because that first action was in  
9 March of 2017, again, a year earlier. So I think the  
10 timeliness issue is the appropriate concern for that one.

11 The appellant raised the issue regarding whether  
12 the permit improperly authorized the removal of a protected  
13 rooftop architectural element. And there is a timeliness  
14 issue here as well, since this wasn't an issue until November  
15 2000 excuse me, November 24, 2017. The ANC appealed the  
16 revised permit issue, which was issued in April of 2018.

17 I thought that this, while I thought that the  
18 timeliness issue was important, I did think that the ANC  
19 brought this at a timely fashion. The issue relies on the  
20 ANC's assertion that the cornice was a protected element  
21 following the November 24 zoning regulation change that  
22 required these to be protected.

23 But unfortunately since the ZA stated the original  
24 permit, which was dated in March, allowed the removal of the  
25 entire front facade, including the cornice, and this was not

1 protected under the zoning rates at the time, I did not think  
2 that this should be required, since there were not  
3 substantial changes to the project. So again, the vesting  
4 issue is that the project was vested in March of 2017. And  
5 so that's kind of where I fell on it.

6 So I didn't believe that the ZA erred. This was  
7 an original issue, this was an original design, part of the  
8 design. And while I understand that there were some things  
9 that kind of happened afterwards, the permit vested in March  
10 of 2017. And the rules that were in place were the ones that  
11 should be, should have prevailed for that one.

12 The third issue was whether the, the appellant  
13 stated that the ZA improperly authorized a second principal  
14 dwelling on the record lot. This issue really boils down to  
15 the whether the project meets several criteria within  
16 Subtitle, this, I don't know if it's C or not, 309.1. And  
17 those, there are kind of five different criteria that are  
18 there.

19 Is it above grade? I thought that it was above  
20 grade. Is it enclosed? I thought it was enclosed. And is  
21 it heated and artificially lit? And I kind of believed that  
22 those two things were also not an issue. And it seems as  
23 though the appellant and the owner and the DCRA are kind of  
24 on the same page with all of those.

25 The last part of it, of this criteria was there

1 was kind of a two-parter, and this is where the disagreement  
2 was. Whether it was, the zoning regs say that it has to be  
3 a common space shared by all users of all portions of the  
4 building, or that the space is designed and used to provide  
5 free and unrestricted passage between the separate portions  
6 of the building.

7           The appellant states that the only point of  
8 contention, excuse me, that this is the only point of  
9 contention. While I agree that the 309.1(d)(2) is somewhat  
10 of a stretch, I do think that it is a, quote unquote, common  
11 space used by all portions, all users of all portions of the  
12 building. Both units would have access to the space and use  
13 it to access the courtyard as well as their units.

14           So I understand, I do not think that the Zoning  
15 Administrator erred in that case.

16           And then lastly, the appellant also stated that  
17 the permit allows construction of an illegally deep rear  
18 addition. The ZA testified that it accepted the application  
19 as complete on March 24, 2017. That was testimony that the  
20 ZA provided here.

21           While the appellant disagrees and states that the  
22 date is actually March 29, as the acceptance of completion,  
23 it seems that the, to me it seems that the DCRA Zoning  
24 Administrator has a specific procedure. They described that.  
25 And while I understand that there may be some confusion about

1 it, this was cleared up by the Zoning Administrator during  
2 the hearing.

3 And I would, because this date is March 24, the  
4 date, the reason the date is important is because March 27  
5 is the kind of cut-off date when the new zoning regulations  
6 that pertain to the ten-foot setback issue were vest, where  
7 they were in effect. I felt that this kind of came before  
8 that, and I did not think that the ZA erred in that case as  
9 well.

10 So I think that kind of lays out where I see all  
11 of this, and I'd like to also hear my fellow Board members.

12 MEMBER JOHN: So as Vice-Chair just said, this is  
13 an appeal from a decision by the Zoning Administrator to  
14 permit the renovation of a one-story dwelling into two  
15 separate one-family dwellings in the RF-1 zone.

16 The appellant alleges that Permit No. B17006219,  
17 as revised by B1805207 and B1811245, was improperly granted  
18 and not in accordance with the regulation. This is a very  
19 full record, including testimony at three hearings and  
20 multiple filings by the applicant, the intervenor, the DCRA  
21 property owner.

22 The preliminary issue for me is the issuance date  
23 of the original permit. The property owner first applied for  
24 a permit on October 5, 2016. From that time until March  
25 2017, there were several revisions. And on March 23, the

1 property owner -- reviews, I'm sorry, there were a series of  
2 reviews by DCRA.

3 And on March 23, 2017, the property owner uploaded  
4 the application and project docs, and it was logged in as  
5 complete on March 24 at 1:51 a.m.

6 DCRA accepted the application as complete on that  
7 date, and issued the permit based on an expedited process on  
8 March 29. So the dispute is whether or not the decision to  
9 issue the permit was properly done and in accordance with the  
10 regulations. I accept the filing and project docs as meeting  
11 the terms of the regulation, which state that the application  
12 must be accepted as complete in order to vest by, I believe  
13 that was March 27.

14 And further, they should not be substantially  
15 changed after filing. And we will discuss, I will discuss  
16 that at a later date. And so I find that the issue, the  
17 permit was properly issued.

18 In its proposed findings of fact and conclusions  
19 of law, the appellant states or cites four main issues. The  
20 rooftop guardrail requires a one-to-one setback under Section  
21 C 1502.1. The permit improperly authorizes the removal of  
22 a protected architectural element. Three, the permit  
23 improperly authorizes two principal buildings on a single  
24 lot. And four, the illegally deep rear addition should not  
25 have been authorized.

1           With respect to the guardrail, DCRA asserts that  
2 the guardrail in this instance is required for safety  
3 purposes to comply with the construction code citing  
4 Subsection C 1500.4. And that guardrails meeting the one-to-  
5 one setback requirements are only necessary if the guardrail  
6 in on the edge of the roof, parallel or running along the  
7 edge of the roof.

8           The applicant and the intervenor disagree with  
9 this interpretation based on a literal reading of Section  
10 1502.1. The Zoning Administrator testified without  
11 contradiction that his interpretation of 1500.4 is consistent  
12 with prior custom. And I find that this interpretation is  
13 not unreasonable.

14           Even if it could be interpreted that, let me see  
15 where I am. So, even if it could be interpreted, so this is  
16 why you shouldn't mix up your notes. So the next issue then  
17 is whether not the issue of the guardrail should have been  
18 raised within 60 days after the issuance of the first permit  
19 in March 2017. And in my view, the requirement under the  
20 regulation is that the appeal must be raised after the first  
21 writing.

22           The guardrail was never changed in either of the  
23 second or third revised permits. And these subsequent  
24 revisions did not modify or reverse the original decision or  
25 reflect a new decision regarding the guardrail, as required

1 by the relevant regulations. So, in my view, I would  
2 conclude that the issue of the guardrail was not timely.

3 The next issue is whether or not the removal of  
4 the facade trim was proper. There is disagreement between  
5 the parties as to whether the band running one foot below the  
6 rooftop is decorative trim or a cornice. However, even if  
7 it is a cornice, under the regulations existing at the time  
8 the permit was approved in March of 2017, the cornice was not  
9 a protected architectural element under Subsection E 206.18.

10 Cornices were added on April 18, 2017. And under  
11 Subsection A 301.4, the permit holder may carry out the  
12 permitted work under the original permit, even if the  
13 regulations change.

14 Appellant's challenge to the facade trim is also  
15 untimely because it was not raised within 60 days of the  
16 original permit issuance, and the removal of the facade trim  
17 remained in all three revisions.

18 The third issue is the construction of two  
19 principal buildings. And there, the question is whether the  
20 connection allowed under Section B 309.1 is a single  
21 building, creates a single building with two dwelling units.  
22 The appellant alleges that the breezeway is too narrow. It  
23 would have a locked door and would not unify the properties.

24 However, the property owner provided detailed  
25 testimony in a video describing how the breezeway would be

1 used by the residents of both dwellings, and that would  
2 include access to the rear and front portions of the row  
3 house dwelling for parking and trash removal and use of the  
4 interior courtyard.

5           Therefore, I agree with DCRA that the connection  
6 satisfies the criteria in Subsections B 309.1 (a)-(c), and  
7 both sections of 301(d). Because this criteria is met, there  
8 is no need to consider whether the rear building is an  
9 accessory structure.

10           The fourth issue raised by the appellant is that  
11 the addition violates the ten-foot rule of E2055.4. Because  
12 I concluded that the application, that the permit was -- I'm  
13 sorry, because the application was filed before March 27,  
14 2017, as stated earlier, the ten-foot rule does not apply.

15           And so the appellant makes the same claim here  
16 that the permit was substantially changed after filing. And  
17 I agree with DCRA and the property owner that the changes to  
18 the permit were not substantial. There was no change to the  
19 building envelope, for example. The property owner did not  
20 seek any change in the rear addition that was previously  
21 authorized.

22           The changes to move portions of the breezeway  
23 above ground, in my view, were not substantial. And neither  
24 were other minor changes to the interior configuration of the  
25 building as described in Exhibit 68. I have not Intervenor's

1 allegation separately because Intervenor adopted ANC's  
2 filings, as noted in Exhibit 65, and provides no new relevant  
3 information.

4 The only other issue raised by the intervenor  
5 that's worth mentioning is that the intervenor claimed that  
6 the property owner obtained several revised permits during  
7 the process. But that is not prohibited by the regulations.

8 And so, for all of these reasons, I conclude that  
9 the approval of Building Permit B17006219 was not erroneous,  
10 and I would support denial of the appeal.

11 MEMBER WHITE: Going last? Okay. Well, let me  
12 just add some comments. Some of it, hopefully it's not too,  
13 I'm not being too repetitive. But this is my thought  
14 process.

15 So the decision on appeal involves building  
16 permits issued for the conversion of a two-story attached  
17 principal dwelling to a flat through the construction of a  
18 third-floor addition connected to a third-story rear addition  
19 through a common area.

20 Some of the dates that I looked at with respect  
21 to analyzing the appeal, as we stated before, on March 23 of  
22 2017, the property owner applied for a permit. The original  
23 permit, DCRA said the application for the original permit was  
24 accepted.

25 On March 24, DCRA accepted the application as

1 complete. The property owner indicated that on this date,  
2 the original permit was vested. However, the ANC argued that  
3 the application was not accepted on that date. And it was  
4 not complete until after March 29 of that year.

5 On March 21, DCRA issued the original permit. The  
6 property owner argues that the subsequent provisions to the  
7 plans were not substantial, and therefore did not change the  
8 vesting date. On April 28, which is another day I looked at,  
9 2017, the ZC order 14-118 became effective, amending Subtitle  
10 E 206.1(a) by adding the cornice to the list of protected  
11 features.

12 And on March 30, 2017, the appeal was filed. On  
13 September 20 of 2017, a request for intervenor status, as my  
14 colleague mentioned, was filed by a Mr. Kevin Cummins,  
15 alleging a number of violations that are in the record. One  
16 November 24 of 2017, the Zoning Commission order 14-11(d)  
17 became effective. In February 16 of 2018, the property owner  
18 filed application to revise the original permit.

19 ANC argues that the appellant made substantial  
20 changes, including making material modifications to the  
21 breezeway connecting the front and rear structures and  
22 eliminating the below-grade portion height of the projecting  
23 area and eliminating the front and rear cellars.

24 Fast-forward into April 2018, DCRA issued a first  
25 revised permit. The property owner argued no changes to the

1 previously approved vested rear addition, above-grade  
2 connection footprint, no changes to the front facade and the  
3 rooftop guardrail.

4 On April 28 of that year, the ZC order became  
5 effective, 14-11(b), changing the zoning regulations  
6 regarding the rear additions and including the prohibition  
7 and removal of the cornices.

8 On May 9 of 2018, the first revised permit was  
9 included in the appeal. And in June of that year, the ANC  
10 filed a pre-hearing statement regarding the first revised  
11 permit, alleging additional violations regarding the roof  
12 hatch, the one-to-one setback requirements, the cornice  
13 removal, the connector between the two structures, and the  
14 rear addition.

15 However, in July, the property owner applied for  
16 another revision, and DCRA, on the 11th of July, argued that  
17 the original and the revised permits were valid under the  
18 previous regulations in effect when the original permit was  
19 issued. And in August, they issued a revised permit.

20 The property owner argued that the permits were  
21 not subject to the order, the ZC order, since the revisions  
22 did not include any substantial changes, as was mentioned  
23 earlier, or deviations from what was originally approved.  
24 And in September, the second revised permit was included in  
25 the appeal.

1           So there are four issues, and I kind of ran  
2 through those dates just to kind of get a sense of how I came  
3 down on the various four issues that we were asked to  
4 consider. The first one was whether the permit improperly  
5 failed to require a one-to-one setback of the rooftop  
6 guardrail.

7           The property owner says it's not, that it was not  
8 timely. And DCRA explains why no setback is needed, and the  
9 appellant does not agree. In this case, the guardrail is not  
10 on the edge of the roof parallel or running along the edge  
11 of the roof. The guardrail appears to be there for life  
12 safety purposes and not subject to the one-to-one setback  
13 rule. So I agree that the one-to-one setback does not apply  
14 in this particular appeal.

15           The second issue is whether the permit improperly  
16 authorizes the removal of the protected rooftop architectural  
17 element. Subtitle A 301.4 provides that any construction  
18 authorized by a permit may be carried to completion pursuant  
19 to the zoning regs in effect on the date that the permit is  
20 issued.

21           In this case, the original permit allowed the  
22 removal of the facade cornice at the time when E206.1(a) did  
23 not mention cornices. And that E206.1 should not be applied  
24 retroactively.

25           With respect to the third issue, whether the

1 permit improperly authorized construction of two principal  
2 buildings on a single record lot, under Subtitle B 309.1,  
3 structures that are separated from the ground up by common  
4 division walls or contain multiple section separate  
5 horizontally, such as wings or additions, are separate  
6 buildings. Structures are a single building if they are  
7 joined by a connection.

8           So the criteria that you have to look at is  
9 whether it was fully above-grade, whether it was enclosed,  
10 heated, or artificially lit. And under the fourth part of  
11 that criteria, I also found that it met the criteria of it  
12 being a common space shared by users of all portions of a  
13 building such as a lobby, recreation room, loading dock, or  
14 service bay.

15           The fourth criteria, its common space should be  
16 shared by users of all portions of the building by  
17 functioning as a corridor and a doorway leading to the  
18 interior courtyard. So with respect to the third issue, I  
19 found that the permit was properly authorized under that  
20 section.

21           And then finally, the question about whether the  
22 permit allows construction of a illegally deep rear addition.  
23 As you know, Subtitle E 205.4 states that a rear wall of a  
24 attached building shall not be constructed to extend farther  
25 than ten feet beyond the farthest rear wall of any adjoining

1 principal residential building on an adjoining property. A  
2 special exception must approve. As you know, you have to  
3 obtain a special exception in order to get approval for an  
4 extension farther than ten feet.

5 But the exception is that if the building permit  
6 application for such construction was filed and accepted as  
7 complete by DCRA on or before March 27, 2017, and not  
8 substantially changed after the filing, then it would be in  
9 compliance. Because at that point in time, the rule had not  
10 taken effect.

11 So with respect to the fourth issue, and I would  
12 agree with DCR's position, and they testified that, to this  
13 point that the project was accepted as complete on March 24,  
14 2017, and therefore vested. And that the revised permit did  
15 not have material changes.

16 So that is to say that with respect to the facts  
17 in the record and the testimony, I'm at this point coming  
18 down with the opinion that the permit was properly issued.

19 COMMISSIONER TURNBULL: Thank you, Mr. Chair. I'm  
20 not going to go through this whole analysis. I think a  
21 fourth time would be a little bit too much for everybody  
22 here. I would agree with the members who have spoken so far.

23 I mean, a lot of their positions in this case, a  
24 lot of it hinges on timeliness and the interpretation of when  
25 things were filed. And I agree with all of the comments made

1 so far, and I appreciate OAG's help and analysis in going  
2 through all of this.

3 And I think the whole issue of substantial  
4 changes, again, is up for interpretation. But I would agree  
5 with all of the comments that have been made so far. And  
6 based upon the, mainly a lot of it on the timeliness issues,  
7 I would deny the appeal.

8 But I have a new couple of comments. I would hope  
9 that DCRA would go back and fine-tune their filing system,  
10 and make it absolutely clear when something is entered into  
11 the system and when it is accepted, when it is changed. And  
12 somehow noting that there's no substantial changes. That it  
13 becomes a clear document for us later on to go through this.  
14 So I just wish that they would fine-tune all of that.

15 The only other issue that I have, and it's by the  
16 strict definition that Ms. White has gone through and going  
17 back, and you've all gone through it, regarding the  
18 connection, the link. I think strictly following the  
19 definition that's there, the building is fine. My only wish  
20 is that the definition was a little bit different and more  
21 to the point of what it should really be.

22 And maybe the ZA and the Office of Planning can  
23 work on a better definition. Because if the link wasn't  
24 there, those two buildings would still operate. And so the  
25 question is the being integral into the structure totally.

1 So that was the issue I struggled with. But go back to the  
2 definition and you see, no, it is what it is.

3 My only feeling is I wish you'd said, the  
4 definition had said more as to the operation of the two  
5 parts, that it was more, it was a tighter definition. That  
6 although what we're looking at is technically correct, I just  
7 feel that if some other language had been in there, it would  
8 have been more difficult for this building to have been  
9 built.

10 But I don't think we're going to run into that in  
11 the future as we go forward with the new regulations in  
12 place, but I wish this definition of the common space in the  
13 link. I mean, it meets all the conditions, but there's  
14 something to do about the integration that I thought was  
15 lacking in there, which I hope the ZA will meet with the  
16 Office of Planning and go through.

17 But I would agree with my colleagues' comments.

18 CHAIRPERSON HILL: Okay, all right, thank you all  
19 very much. I don't really have any additional to add, I  
20 suppose. I appreciate all of the time that we've taken for  
21 this to provide the analysis. I also appreciate all the time  
22 that the appellant, the intervenor, and the applicant have  
23 had to go through.

24 I guess, I mean, I don't, again, have -- I will  
25 agree with all of the comments that were made in terms of the

1 timeliness, in terms of, you know, how everyone has gotten  
2 to their decision. Also, you know, concerning substantial  
3 change, and I echo Commissioner Turnbull's comments about the  
4 DCRA in terms of the filing system and how it might be a  
5 little bit more clear.

6 I don't think that, you know, the ZA in the terms  
7 of the timeliness, he described the procedures in terms of  
8 why it was complete on March 24, and I don't think that he  
9 is doing anything different than he has done in the past.  
10 So you know in the regard, you know, the burden is upon the  
11 applicant to, or I'm sorry, the appellant to show error.

12 The one thing that I did find really, and again,  
13 I just kind of go back to mentioning this in terms of the  
14 B309.1 with the connection, I mean, that's really where I was  
15 kind of struggling the most. I mean, I completely empathize  
16 with, you know, the neighbor in that, you know, I'd be like,  
17 how can this thing get built next to my house, and so.

18 And then you're stuck, we are stuck up here to,  
19 we're not stuck, we are going through the regulations and  
20 trying to determine what the regulations allow. In terms of  
21 a what I would want next to my house, you know, I mean,  
22 personally, I would not want this right next to my house.  
23 But that's now how this works, right.

24 And that's not to say that, I don't mean anything  
25 against the building property, the developer, and what

1 they're doing. I mean, that's, you know, this is fully  
2 within the regulations. And now this has been changed, I  
3 guess.

4           You know, the thing that I kind of thought was  
5 interesting in going through this analysis for myself was  
6 that, you know, had this met the, you know, or if we thought  
7 that due to timeliness this should have been before us again  
8 for an exception to the ten-foot, rule, you know, we went  
9 back to that, I went back and looked at the other case where  
10 we approved something similar for the ten-foot rule.

11           And I again though that it, I thought that we came  
12 to the correct decision. Even though they're completely  
13 different cases and we look at each thing on an individual  
14 basis, what I continue to caution myself against is whether  
15 or not we're getting opposition. You know, there was no  
16 opposition to that particular case, and so it made it all so  
17 I guess, there was just no opposition.

18           And so, you know, it made kind of the analysis  
19 possibly a little easier for us to go through. But I do  
20 think we went through the analysis correctly in that case.

21           So I guess my point in that was that I struggled  
22 with the connection issue, you know, I mean, I was like what  
23 is the point of this connection. Why is this regulation in  
24 there, what was this supposed to have done for the city, for  
25 the community. And I still was kind of like stuck.

1 I didn't really understand historically how this  
2 had been there, you know, or what was the point, you know.  
3 And I so but as far as the, I did think that, you know, it's  
4 fully above grade, it's enclosed, it's heated and  
5 artificially lit. And as far as, you know, meeting common  
6 space shared by users of all portions of the building, such  
7 as a lobby or recreation room, I mean, I think that that is  
8 true.

9 And then the or part, I mean, you know, the  
10 unrestricted passage, I mean, you had to meet, you know, one  
11 or the other, one or two. And I think they met one. And  
12 whether I think it's a great regulation or not is not up to  
13 me. So I'm agreeing with my colleagues.

14 So in that case, I'm going to go ahead and make  
15 a motion to deny Appeal No. 19550 of ANC 6C, as read and  
16 captioned by the Secretary, and ask for a second.

17 VICE CHAIRPERSON HART: Second.

18 CHAIRPERSON HILL: Motion made and seconded, all  
19 those in favor say aye.

20 (Chorus of ayes.)

21 CHAIRPERSON HILL: All those opposed? Motion  
22 passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as 5-0-0.  
24 This is on the motion of Chairman Hill to deny the appeal.  
25 Second of the motion, Vice-Chair Hart. Also in support Ms.

1 White, Ms. John, and Mr. Michael Turnbull. The motion  
2 carries.

3 All right, Mr. Chairman, the second and last case  
4 application for a decision is Application No. 19862 of  
5 Heights Holding, LLC.

6 This application was captioned and advertised for  
7 a special exceptions under Subtitle C, Section 703.2, from  
8 the minimum parking requirements of Subtitle C, Section 701.5  
9 and under Subtitle G, Sections 409 and 1201 from the rear  
10 yard requirements of Subtitle G, Section 405.2, which would  
11 construct a new 26-unit apartment house, MU-4 zone, at  
12 premises 3331 and 3333 11th St., NW, and 1032 and 1034 Park  
13 Rd., NW, Square 2841, lots 95 and 96, 98 and 99. This was  
14 last heard at its hearing on December 5, 2018.

15 CHAIRPERSON HILL: Okay, thank you, Mr. Moy. Is  
16 the Board ready to deliberate? Okay, I can start.

17 I guess, so we heard, we had a full hearing and  
18 took all the testimony from the applicant and the Office of  
19 Planning and members of the public. And I thought that, well  
20 basically what, so I thought that the Office of Planning,  
21 their analysis was accurate. I mean, I thought that what  
22 they have shown in terms of the way that they've kind of come  
23 to their decision I would agree with.

24 So what it kind of came down to for me was kind  
25 of the conditions that, and the TDM plan, in terms of whether

1 or not I thought that the conditions in the TDM plan were  
2 helping with any kind of adverse impact that the project  
3 might have. I know that the Board requested that the  
4 applicant go and have further discussions with the ANC about  
5 how to best help the adverse impact from the request to  
6 relieve.

7           Although they don't seem to have a formal approval  
8 form from the ANC, I think that there was a good faith effort  
9 that was put forth from the applicant showing that they've  
10 met with the ANC. And I would be in agreement to the  
11 additional changes to be made to the TDM plan, with the  
12 additional conditions to help mitigate again adverse impact,  
13 which in their Exhibit 57.

14           I did have one change to one of the TDM plans,  
15 clarifications that I will mention again in a moment. They  
16 also had revised conditions, or proposed conditions I should  
17 say, in Exhibit B that I do think that the TDM plan and the  
18 conditions match what DDOT had been requesting, as well as  
19 what the applicant was looking for.

20           We had also some, I guess we had requested that  
21 the applicant go and see if they could find ways to kind of  
22 strengthen the monetary values or how to make it so that the  
23 new tenants might come in and actually have, you know, get  
24 to the point where they're encouraged to use different forms  
25 of transportation as opposed to parking. And I think that

1 those conditions do do that.

2           If the Board agrees that the, yeah, so I agree,  
3 as I was saying, that the TDM plans takes in the DDOT's and  
4 also OP's concerns, as well as the ANC. And I'm satisfied  
5 in terms of those adverse impacts, or I'm sorry, that those  
6 are addressing the adverse impact.

7           With concerns of the TDM plan, the only real issue  
8 or question I had was that in their item number five in their  
9 TDM plan, it says the applicant and ANC. I was uncomfortable  
10 like saying that the ANC should actually do something. So  
11 I don't see how we could ask the ANC to do something in a  
12 condition.

13           So I would say, you know, that the applicant shall  
14 make a good faith effort to coordinate with the ANC and DDOT  
15 regarding adding a pickup/dropoff space on either Park Rd.,  
16 NW or 11th St., NW, provided that such space will not result  
17 in the removal of any current legal parking spaces. So that  
18 was the only kind of comment I had in terms of that.

19           They did, the applicant had requested, again, when  
20 they were talking about kind of conditions, that we would  
21 include something that would allow for some proposed changes.  
22 We continue to kind of have discussions with the Office of  
23 the Attorney General in terms of how some of those conditions  
24 aren't necessary -- oh, I shouldn't say aren't necessary.  
25 Aren't necessarily something that we should be putting in as

1 a condition.

2           However, you know, this has kind of been somewhat  
3 of a, just kind of a moving target for me as to what I  
4 necessarily feel about, you know, changes and things and  
5 whether or not I think they should come back to us if there  
6 are changes.

7           I think those, in this particular instance, I  
8 would say that, you know, that when we were talking about the  
9 interior location size of units and stairs or preliminary and  
10 shown for illustration purposes, so they could adjust the  
11 final layouts, design, and interior plans may vary to the  
12 extent that such gradations do not require additional relief  
13 from the zoning regulations, and such that the variations do  
14 not change the external configuration or appearance of the  
15 building.

16           As we kind of indicated during the last hearing,  
17 I guess we were leaning towards agreeing with that being a  
18 condition. And so at this state, I would be, again, continue  
19 to be in agreement in doing that, but I don't know if I would  
20 start, I mean, might change my opinion of this moving  
21 forward.

22           So I would be, before we get to whatever you guys  
23 want to say, I would be in favor of this application, with  
24 the TDM plan as a condition in Exhibit 57A, 57A, as well as  
25 the conditions that were in Exhibit B of their Exhibit 57,

1 with the changes that I mentioned in number five. And if we  
2 get to approval vote, I'll reiterate that again, so. Would  
3 my fellow Board members have anything they'd like to add?

4 MEMBER JOHN: Mr. Chairman, I believe you did a  
5 very good analysis of the application. And I also support  
6 your comment that the Office of Planning did a very good  
7 analysis of the applicant's request for relief from the  
8 parking requirement. And that I would support the  
9 application based on OP's analysis.

10 And in particular, this is, there is no alley  
11 behind this project, so it would be difficult for them to  
12 meet the parking requirement. No, I want to say usable  
13 alley. This is the one, I believe, with the very narrow  
14 alley. So getting parking, you know, access from the rear  
15 would have been difficult anyway. So I support all of that.

16 With respect to the conditions, I agree with the  
17 ones that have been proposed. Perhaps we should maybe read  
18 through them or just sort of clarify which ones. I don't  
19 have in front of my the exhibit number. I have the  
20 conditions, and I believe I'm looking at the right one.

21 So if it's the document that has the request for  
22 flexibility at the end, then I would say I agree with those  
23 conditions, except for the request for flexibility. I think  
24 we get these requests from time to time, and to the extent  
25 that these are minor changes that can approved through the

1 permitting process, I don't believe we should start granting  
2 flexibility.

3           It's just kind of, for me it's a slippery slope  
4 when, you know, where does it end. So that's just my two  
5 cents, Mr. Chairman.

6           CHAIRPERSON HILL: Well, you get a vote, so.

7           MEMBER WHITE: So I just want to clarify  
8 something. So there's Exhibit 57 and Exhibit 58. Exhibit  
9 58 is, 57 says Applicant's Post-Hearing Submission.

10           And then Exhibit 58 is the updated TDM plan, which  
11 I think you were referencing, with the fifth one having to  
12 do with the modification that you made moving, just kind of  
13 adjusting the ANC's responsibilities, where you said the  
14 applicant shall make a good-faith effort to coordinate with  
15 DDOT and the ANC regarding adding a pickup and dropoff space  
16 on either Park Road or 11th Street, provided that such space  
17 will not result in the removal of any current legal parking  
18 spaces.

19           I just wanted to make sure that that was, this was  
20 the right one that I'm, the most recent TDM plan that we're  
21 referencing. But assuming that it is, I think these  
22 conditions will mitigate adverse impacts in that area.

23           This neighborhood, obviously it's a urban  
24 neighborhood, but I'm very familiar with it. Parking is a  
25 major issue in that area. So I think with these conditions

1 and the monetary incentives that the applicant is providing  
2 will be helpful in mitigating those parking impacts, negative  
3 parking impacts that were testified to during the hearing.

4 CHAIRPERSON HILL: Okay, now, I'm just trying to  
5 look at -- so what are your thoughts on the condition for  
6 flexibility?

7 MEMBER WHITE: Which number is that?

8 CHAIRPERSON HILL: It says you recall we were  
9 having a hearing. And during the hearing, there were three  
10 proposed conditions for different types of flexibility, and  
11 two of which the Board wasn't interested in entertaining.

12 And the discussion on this particular connection,  
13 I'm sorry, condition, again, was that, as Ms. John has now  
14 voted, that are things that can be done in permitting and do  
15 not need to come back before us, and that this could start  
16 to become a slippery slope, which we have been on before.  
17 But apparently the slide is ending today if we go with Ms.  
18 John.

19 MEMBER WHITE: Right. I would agree with Ms. John  
20 on that, just to sort of avoid having recurrence of these  
21 issues popping up before us. I would agree with her with  
22 respect to that.

23 CHAIRPERSON HILL: Okay, so then, okay. So then  
24 I'll agree with you guys. And so there we go with that.

25 So then in that case, there is no difference

1 between the conditions and the TDM plan, as far as I can  
2 tell, so that the TDM plan itself will be the conditions.  
3 And I'm just making sure of this.

4           Okay, so I'm going to go ahead then and make a  
5 motion to approve Application No. 19862, as captioned and  
6 read by the Secretary, including the TDM plan as conditions  
7 in Exhibit 58, with the change to condition number five,  
8 which will say, The applicant shall make a good-faith effort  
9 to coordinate with the ANC and DDOT regarding adding a  
10 pickup/dropoff space on either Park Rd., NW or 11th St., NW,  
11 provided that such space will not result in the removal of  
12 any current legal parking spaces, and ask for a second.

13           MEMBER WHITE: Second

14           CHAIRPERSON HILL: The motion made and seconded.  
15 All those in favor say aye.

16           (Chorus of ayes.)

17           CHAIRPERSON HILL: All those opposed? The motion  
18 passes, Mr. Moy.

19           MR. MOY: Mr. Chairman, before I read the vote  
20 count, we do have an absentee ballot from another  
21 participant, who is Mr. Anthony Hood. And his absentee  
22 ballot vote is to approve the application, with such  
23 conditions as the Board may impose.

24           So that would give a final vote of 4-0-1. This  
25 is on the motion of Chairman Hill to approve and with the

1 conditions and you just cited. Second the motion Ms. White,  
2 also support Ms. John. And Vice-Chair Hart not participating  
3 on this applicant. So the motion carries.

4 CHAIRPERSON HILL: Okay, great, thank you, Mr.  
5 Moy. I guess we'll just, okay, we'll do a quick, five-minute  
6 break to get everybody back here. Thank you.

7 (Whereupon, the above-entitled matter went off the  
8 record at 10:42 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: DCBZA

Date: 12-19-18

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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