

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 8, 2019

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA JOHN, Board Member  
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS  
KAREN THOMAS  
JONATHAN KIRSCHENBAUM  
MAXINE BROWN-ROBERTS  
BRANDICE ELLIOTT

The transcript constitutes the minutes from the  
Public Hearing held on May 8, 2019.

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

(9:57 a.m.)

1  
2  
3 CHAIRPERSON HILL: Mr. Moy, we can go ahead and  
4 start with our hearing cases -- or the one preliminary  
5 matter, I think; correct?

6 MR. MOY: Yes, sir. That's -- that's this case I'm  
7 going to call. This is case Application number 220006 of T-  
8 Mobile Northeast LLC. This is a request for a special  
9 exception under the use permissions of Subtitle C, Section  
10 1313.2, to erect a monopole in the RA-1 zone; this is at 3675  
11 Ely Place, Southeast, Square 5438, Lot 801.

12 Mr. Chairman, this is a request from the Applicant  
13 to -- for postponement to future date. And I believe they  
14 were requesting a date of June the 5th. And this is under  
15 Exhibit 33.

16 CHAIRPERSON HILL: Okay, is the Applicant here?

17 Okay, the Applicant's not here. So I guess I'm  
18 going to look to the -- oh, no, no. I'm going to look to the  
19 Board a little bit. I know that in the past they have -- the  
20 Applicant -- they've made their filing late, so therefore  
21 they have to be here in order to -- well, anyway, is there  
22 any -- is there anybody here for this case at all, in  
23 support, opposition?

24 (No audible response.)

25 CHAIRPERSON HILL: No? Okay. Then I guess we

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1 could postpone on our own, but part of me doesn't want to do  
2 that, because I think they should be here. And so if we  
3 postpone this decision to postpone until next week when they  
4 come and be here, that would be one way to do it.

5 Or we can -- you know, whatever the Board -- I mean --

6 VICE CHAIRPERSON HART: They're looking for a June  
7 -- a June 5th --

8 MR. DAVIS: I mean, we could also understand where  
9 we are with our calendar and see if that's -- if some time  
10 after the June 5th might work.

11 CHAIRPERSON HILL: Yeah, my -- I mean --

12 MR. DAVIS: Push them -- push them off for two --

13 CHAIRPERSON HILL: No, sure, I understand. I got  
14 you. I mean, my whole thing about it is that, you know, if  
15 we did this now, then why would any attorney show up if they  
16 had -- you know, if they were short?

17 COMMISSIONER MAY: Maybe we should just postpone  
18 the decision until later in this  
19 hearing and try to --

20 CHAIRPERSON HILL: See if the attorneys can show  
21 up?

22 COMMISSIONER MAY: -- get a hold of the attorney  
23 and get them to come here.

24 CHAIRPERSON HILL: Okay. Great. Okay. If you're  
25 watching, come on down to 441 4th Street.

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1 COMMISSIONER MAY: I'm sure they're watching.

2 CHAIRPERSON HILL: Yeah, well, I hope they are.  
3 At least, you know they're getting paid for that, right?

4 COMMISSIONER MAY: We get huge numbers.

5 CHAIRPERSON HILL: So -- okay. All right, Mr.  
6 Moy, another thing? We're moving on?

7 MR. MOY: All right, thank you, Mr. Chairman. So  
8 we'll come back to this later in the hearing today. So,  
9 moving on to the next case Application. If we can have  
10 parties to the table, to case Application number 19872,  
11 Rupsha, R-U-P-S-H-A, 2011 LLC, as amended for special  
12 exception under the new-residential-development requirement,  
13 Subtitle U, Section 421.1, to construct a new eight-unit  
14 apartment house in the RA-1 zone. This is at 1735 28th  
15 Street SE, Square 5635, Lot 44.

16 CHAIRPERSON HILL: Okay, good morning, gentlemen.  
17 If you please -- if you could please introduce yourselves for  
18 the record.

19 MR. SECK: Yes. Good morning, Chairman Hill and  
20 the Board members. My name is Oumar, O-U-M-A-R. Last name,  
21 Seck, S-E-C-K. Representing Rupsha.

22 MR. DAVIS: Adam Davis, representing Rupsha  
23 Properties.

24 CHAIRPERSON HILL: Okay, so, Mr. Seck, are you  
25 going to be presenting to us?

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1 MR. SECK: Yes.

2 CHAIRPERSON HILL: Or both of you -- the  
3 combination? So what -- if you could just -- you could start  
4 by telling us what happened since the last hearing, okay, and  
5 where you are with the Application. And then I guess you can  
6 go ahead and walk us through what you're trying to accomplish  
7 and also how you're meeting the burden of proof for us to  
8 grant this Application.

9 So again, just start with what happened since the  
10 last time, and then you can go on into your presentation to,  
11 again, explain the burden of proof.

12 And I'm going to put 15 minutes on the clock, Mr.  
13 Moy, just so I know where we are.

14 And you can begin whenever you like.

15 MR. SECK: Thank you, Chairman Hill. Last time --  
16 this project is the construction of an eight-unit build --  
17 apartment building on 1735 28th Street Southeast. Last time,  
18 we had a hearing that couldn't continue because of affidavit-  
19 of-posting issues and affidavit-of-maintenance issues. So  
20 we -- rectified that and updated in the database the  
21 affidavit of posting as well as the maintenance, every five  
22 days. And I believe that shouldn't be a problem.  
23 It should be in the system. We had for the maintenance, on  
24 April 12, April 26, et cetera, and May 3rd.

25 That was where we left off and postponed the case,

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1 because we weren't meeting that --

2 CHAIRPERSON HILL: Okay. I got it. Okay, Mr.  
3 Seck. So, thank you for those.

4 MR. SECK: Okay.

5 CHAIRPERSON HILL: And so if you want to go ahead  
6 now and make your argument in terms of how you're meeting the  
7 standard for us to grant the Application, and tell us about  
8 the project.

9 MR. SECK: Yes. This project basically consists  
10 of construction of an eight-unit apartment building with a  
11 lot area of 6,400 square feet in a RA-1 zoning. Each  
12 apartment will be about three bedroom, two bathrooms, a  
13 living room, dining room, kitchen space. And we are  
14 providing also four off-street parking spaces.

15 I want to go back a little bit. Last time, the  
16 parking-space issue also -- when we had been granted the ANC  
17 approval, they wanted us to consider adding two parking  
18 spaces. I should have said that earlier. And Commissioner  
19 May did suggest to review and revise it and -- and come up  
20 with a plan, which we did, and we added four--two additional  
21 parking spaces, to provide a total of four spaces for the  
22 building.

23 This building -- basically, it's a four-story  
24 building. We are looking for a special exception. It's a  
25 cellar with two -- three-level. We are below the zoning

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1 requirement of lot occupancy, which is, in this area, 40  
2 percent. We are 34 percent. The FAR  
3 requirement -- also we're within that criteria.

4 The rear-yard is -- the requirement is 20 feet;  
5 we're providing 42-and-a-half. The side-yard's eight feet  
6 on -- due to the configuration of the building, we are  
7 meeting the side yard and additional -- the building height  
8 is below the 40-foot max.

9 So the proposed construction of this project,  
10 again, is eight-unit building. However, in RA-1, all  
11 residential development except those compromise (sic) all  
12 one-family detached, semi-detached family dwellings shall be  
13 reviewed by the Board. And that's why we're here for a  
14 special exception.

15 I would like to have the Board consider the ANC  
16 approval of the case, which we presented to them, and  
17 satisfying also their condition of additional parking spaces.  
18 Those are the only criteria they -- they ask us to -- to  
19 meet. And they had already said that they were not opposed  
20 to (sic) the project. We tried to reach the ANC for the  
21 official approval letter, but we did not get a -- a response  
22 this morning.

23 I'm open to questions.

24 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
25 Seck.

1 Does the Board have any questions for the  
2 Applicant?

3 VICE CHAIRPERSON HART: What did you say the --  
4 did the vote -- did the ANC vote unanimously?

5 MR. SECK: They voted when I present it to them,  
6 and approved the case and said that -- two things they want  
7 to add, which initially we thought, because of mistake of  
8 calculation, that there was a variance needed. But it's not.  
9 And they said, find ways -- if you need the variance, find  
10 ways to not request a variance. Well, that case is out.

11 The second one was two parking spaces. Initially  
12 we provided two and -- excuse me -- and we made ways with the  
13 suggestion of Commissioner May also and provided those  
14 additional parking spaces.

15 VICE CHAIRPERSON HART: Yeah, so the ANC did --  
16 did --

17 MR. SECK: Support.

18 VICE CHAIRPERSON HART: Yeah, they supported but  
19 they also submitted their report?

20 MR. SECK: Yes. I have a copy of that report  
21 here. But I do know, at the --

22 VICE CHAIRPERSON HART: It's Exhibit 63.

23 MR. SECK: Right.

24 VICE CHAIRPERSON HART: Okay.

25 MR. SECK: I --

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1 VICE CHAIRPERSON HART: I thought you said that  
2 they hadn't submitted a report. That's what I was a little  
3 bit confused by. So --

4 MR. SECK: Oh, okay.

5 VICE CHAIRPERSON HART: I'm fine.

6 MR. SECK: Yeah.

7 VICE CHAIRPERSON HART: I -- I -- I understand  
8 now.

9 CHAIRPERSON HILL: Okay. I'm going -- do you have  
10 a question?

11 COMMISSIONER MAY: No, I have no questions. I'm  
12 ready to --

13 CHAIRPERSON HILL: Okay, I'm going to turn to the  
14 Office of Planning.

15 MS. MYERS: Good morning. Crystal Myers for the  
16 Office of Planning. The Office of Planning's recommending  
17 approval of this case and stands on the record of the staff  
18 report.

19 CHAIRPERSON HILL: Okay. Does anybody have any  
20 questions for the Office of Planning?

21 (No audible response.)

22 CHAIRPERSON HILL: Does the Applicant have any  
23 questions for the Office of Planning?

24 MR. SECK: No, Chairman.

25 CHAIRPERSON HILL: Is there anyone here wishing

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1 to speak in support?

2 (No audible response.)

3 CHAIRPERSON HILL: Is there anyone here wishing  
4 to speak in opposition?

5 (No audible response.)

6 CHAIRPERSON HILL: Okay. Mr. Seck, is there  
7 anything you'd like to add at the end?

8 MR. SECK: No, thank you, Chairman.

9 CHAIRPERSON HILL: Okay. All right, Mr. Seck.

10 All right, I'm going to go ahead and close the  
11 hearing. Is the Board ready to deliberate? Would someone  
12 else like to start?

13 COMMISSIONER MAY: I think this is pretty  
14 straightforward now. And I appreciate the fact that you  
15 added a couple parking spaces to -- to address the concerns  
16 of the ANC. So I don't have any problem with it. I'm ready  
17 to vote in favor.

18 CHAIRPERSON HILL: Okay. Anyone else?

19 VICE CHAIRPERSON HART: Just that I appreciate the  
20 Applicant for taking the, you know, affidavits of posting and  
21 maintenance -- seriously and adding that information.  
22 And I know that we were fairly hard on you about this issue,  
23 but the reason that we do that is so that we understand what  
24 the -- that the information has been out there and that the  
25 public has had that opportunity to be able to -- to come

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1 before us and be able to provide their testimony if they so  
2 desire. If we don't know if it's up there, then it becomes  
3 a question mark and we're left to kind of wonder. And so it  
4 makes it a little bit harder for us to, kind of, gauge what  
5 the community may be thinking about that particular project.

6 So I do appreciate it. I would agree with  
7 Commissioner May in that I would be in support of the  
8 Application. I felt that you've met the -- the burden for  
9 the special exception in the -- the criteria and the -- the  
10 zoning reg, Subtitle U421.1, and I would be in support as  
11 well.

12 CHAIRPERSON HILL: Okay. Thank you.

13 I would agree with the analysis that was provided  
14 by the Office of Planning, as well as the fact that -- and  
15 thank you very much -- they did add two additional spaces to  
16 mitigate some impact that the ANC thought would be involved.  
17 So I'm also in support.

18 The -- Ms. John, do you have anything you'd like  
19 to add?

20 MEMBER JOHN: Not very much to what's been said.  
21 I agree that the Applicant meets the criteria for special  
22 exception under 4 -- U421.1.

23 I read the Office of Planning's report and I thought it was  
24 very thorough. And so based on the record, I'm able to  
25 support this Application.

1 CHAIRPERSON HILL: Okay, great. Thank you.

2 Then I'm going to go ahead and make a motion to  
3 approve Application number 19872 as captioned and read by the  
4 secretary, and ask for a second.

5 VICE CHAIRPERSON HART: Second.

6 CHAIRPERSON HILL: Motion been made and seconded.  
7 All those in favor, say "aye".

8 (Chorus of ayes.)

9 CHAIRPERSON HILL: All those opposed?

10 (No audible response.)

11 CHAIRPERSON HILL: Motion passes, Mr. Moy.

12 MR. MOY: Staff would record the vote as 4-0-1.  
13 This on the motion, Chairman Hill, to approve the application  
14 for the relief requested.

15 Seconding the motion, Vice Chair Hart. Also in support, Ms.  
16 John and Mr. Peter May. We have no other Board members with  
17 us today. Motion carries.

18 CHAIRPERSON HILL: Thank you, Mr. May (sic).

19 Thank you, gentlemen.

20 MR. SECK: Thank you.

21 (Pause.)

22 MR. MOY: Sorry, Mr. Chairman. I was trying to  
23 find the right page. Here we go. Okay, and I see the  
24 parties are at the table. This is case Application number  
25 19963, of DistrictProperties.com. This is captioned and

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1 advertised -- and -- and please correct me if I'm wrong.  
2 This is a request for area variances. Let's see. Yeah, this  
3 is area variance from the side-yard requirements of Subtitle  
4 D, Section 206.2, to construct a new detached principal  
5 dwelling unit, R-2 zone, at 5705 Eads, E-A-D-S, Street  
6 Northeast, Square 5228, Lot 19.

7 CHAIRPERSON HILL: Okay, great. Thank you.

8 Could you please introduce yourselves for the  
9 record?

10 MR. SECK: Yes. Yes, Oumar Seck -- O-U-M-A-R;  
11 last name, S-E-C-K -- representing DistrictProperties.

12 MR. DAVIS: Adam Davis representing  
13 DistrictProperties.com.

14 CHAIRPERSON HILL: Okay, great. Thank you.

15 Mr. Seck, are you going to be presenting to us  
16 again?

17 MR. SECK: Yes, Chairman Hill.

18 CHAIRPERSON HILL: Okay. I guess maybe this is  
19 the one you're thinking about that we got a email from the  
20 ANC, but not the report. But I'm going to go ahead and let  
21 you start again as you similarly did for the last time. If  
22 you'd kind of tell us what happened since the last time you  
23 were here, and then if you can go ahead and go through how  
24 you think you're meeting the criteria for us to grant the  
25 application. And speak to the ANC outreach that you've done.

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1

2 And I'm going to again put 15 minutes on the  
3 clock, Mr. Moy, just so I know where we are.

4 And you can begin whenever you like.

5 MR. SECK: Thank you, Chairman Hill. Thank you,  
6 Board members. This Application is regarding 5705 Eads  
7 Street Northeast. It's an existing lot, a record lot, which  
8 is 25 feet  
9 of -- in width and 108 feet in length.

10 We're proposing to build a house there that will  
11 require us to seek for the side-yard variance. In order to  
12 build a habitable house, the minimum would be 19 feet in  
13 width, which leaves out six feet to be split in two three-  
14 feet side yards. That will bring us to require the side-yard  
15 variance from eight feet to three feet.  
16 There're existing properties on both sides of the lot, and  
17 we cannot increase this lot either way, to be able to meet  
18 the eight-foot criterias.

19 It -- the proposed building will be a two-story  
20 building. The -- basically having three bedrooms and two-  
21 and-a-half baths, living room, dining room, kitchen. This  
22 lot does not back into a alley, so it will be on-street  
23 parking.

24 The zoning requirements -- basically the lot area,  
25 even though it's 4,000 -- this (sic) a record lot, so the

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1 side yard is the only relief we're seeking. We're meeting  
2 all the other criterias of building heights, side-yard -- I  
3 mean front-yard and backyard setbacks.

4 So due to the narrowness of the lot, and the  
5 impossibility of increasing it, and the feasibility study we  
6 did to come up with a 19-foot-wide property in order to  
7 accommodate everything someone would need to have a house,  
8 we definitely cannot meet the eight-foot requirement and  
9 would -- it makes this lot exceptional because of its  
10 shallowness and narrowness. I would like to have -- we're  
11 seeking the approval of the Board.

12 We did go to BZA. I, myself, represented the  
13 company in three different occasions. Went to the single-  
14 member meeting, where the members of that -- the constituents  
15 of that area did approve the project. And did go also to the  
16 ANC meeting and recently to the executive meeting. And I  
17 heard Chairman Hill said that there's an email from the ANC.

18 We did get the approval and basically -- recently  
19 on the ANC executive meeting, when we went there for another  
20 project, which is upcoming. They did say if we could make  
21 it a three-level, but I know the ANC; sometime (sic) we make  
22 the changes for this particular single member and still don't  
23 get the approval. So we want to stick with the two-story  
24 that we did and that they approved already.

25 I'm open to questions.

1 VICE CHAIRPERSON HART: So, Mr. Seck, thank you.  
2 So you're asserting that you're -- the building is -- that  
3 the lot, which is 25 feet in width -- if you were to add --  
4 you need to have two side yards?

5 MR. SECK: Yes. Yes.

6 VICE CHAIRPERSON HART: So that would -- if you  
7 have to have two side yards and you have a 25-foot -- two --  
8 two eight -- eight-foot side yards, which is 16 feet, 25 feet  
9 is the width of the building -- the width of the lot, then  
10 you have the remainder for the actual building, which would  
11 have been a nine -- is -- am I -- am I doing it right?

12 MR. SECK: Yeah.

13 VICE CHAIRPERSON HART: Nine feet?

14 MR. SECK: Nine. Correct.

15 VICE CHAIRPERSON HART: So you're saying that's  
16 the issue is that --

17 MR. SECK: Yes.

18 VICE CHAIRPERSON HART: -- you're not able to do  
19 that and you can't move the building on either side -- you  
20 can't move it -- you can't buy the properties on either side,  
21 because there's already an existing --

22 MR. SECK: Exist --

23 VICE CHAIRPERSON HART: -- building there?

24 MR. SECK: Correct.

25 VICE CHAIRPERSON HART: Okay. And this is a --

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1 this -- this is a single-family  
2 residence --

3 MR. SECK: Yes, sir.

4 VICE CHAIRPERSON HART: -- two-story that you're  
5 building?

6 MR. SECK: Yes.

7 VICE CHAIRPERSON HART: And what are the other  
8 buildings on the -- on either side?

9 MR. SECK: On the left side, they're semi-  
10 detached.

11 PARTICIPANT: If you're facing the building --

12 MR. SECK: Yeah, if you're facing the building,  
13 on the left side there's semi-detached townhomes, basically  
14 -- style. But they have one side only, side yard. And on  
15 the right side, also as you're facing the building, it's two  
16 semi-detached buildings.

17 VICE CHAIRPERSON HART: And -- and across the  
18 street, I'm assuming it's also single-family houses as well?

19 MR. SECK: There's a single-family and also I  
20 believe there was some kind of --

21 MR. DAVIS: Garage.

22 MR. SECK: Yeah. There's a --

23 Go ahead; you want to say some --

24 I'm sorry; I want to introduce --

25 MR. DAVIS: Good morning. There's a garage across

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1 the street on -- across Eads Street, and then on the other  
2 side there's a funeral home and the elementary school.

3 VICE CHAIRPERSON HART: Okay. Thank you.

4 CHAIRPERSON HILL: Mr. Seck, in terms of the ANC,  
5 I got a little confused when you're saying -- so did you guys  
6 present to the full ANC?

7 MR. SECK: Yes.

8 CHAIRPERSON HILL: Okay, and they took a vote?

9 MR. SECK: Yes.

10 CHAIRPERSON HILL: And what did they -- what was  
11 the vote?

12 MR. SECK: In that ANC, the vote was zero,  
13 negative, basically rejecting the project.

14 And then when I -- the day that I was coming here, the day  
15 before, the single-member commissioner, who initially agreed  
16 to approve the case in her single-member meeting, called me  
17 and said that, I decided to approve it because I checked with  
18 my constituents again. And they did approve it then.

19 So she said that, we're going to go ahead and  
20 approve this case. I said, well, my meeting is the next day,  
21 which I came.

22 CHAIRPERSON HILL: Okay, I'm sorry, I just want  
23 to be clear again. So you presented before the full ANC --

24 MR. SECK: Yes.

25 CHAIRPERSON HILL: -- and they took a

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1 vote --

2 MR. SECK: Yes.

3 CHAIRPERSON HILL: -- and they denied the project?

4 MR. SECK: Yes.

5 CHAIRPERSON HILL: And then you're saying you  
6 spoke to the SMD --

7 MR. SECK: Yes.

8 CHAIRPERSON HILL: -- and the SMD said that she  
9 or he was now in support of the project?

10 Just the SMD? And so you haven't gone back to the full ANC  
11 again for a vote?

12 MR. SECK: Well, no. For another ANC, not yet.  
13 But we had a executive meeting where the commissioners were  
14 there, and --

15 CHAIRPERSON HILL: All the commissioners?

16 MR. SECK: Well, sometime (sic) this executive --  
17 all of them don't show up --

18 CHAIRPERSON HILL: Okay.

19 MR. SECK: -- from what I've noticed.

20 CHAIRPERSON HILL: Did -- how -- how many showed  
21 up?

22 MR. SECK: That day, was Commissioner Green, Dr.  
23 Gaffney, Commissioner Holmes.

24 You were there. Was three commissioners, I  
25 believe.

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1 PARTICIPANT: Three commissioners.

2 MR. SECK: Right.

3 CHAIRPERSON HILL: How many  
4 commissioners -- I'm just trying to see --

5 MR. SECK: Three.

6 CHAIRPERSON HILL: -- if you had a majority of  
7 commissioners. So how many commissioners are on that ANC?

8 MR. SECK: Three. On that executive meeting.

9 CHAIRPERSON HILL: No, no, I --

10 MR. SECK: Oh, I'm sorry. The ANC, it was full.  
11 It was at least six or seven.

12 CHAIRPERSON HILL: Okay, so you had three out of  
13 seven people at the meeting --

14 MR. SECK: Right.

15 CHAIRPERSON HILL: -- that was -- for the  
16 executive committee.

17 MR. SECK: Right.

18 CHAIRPERSON HILL: And they were in agreement on  
19 the project. After -- prior, when you -- it was the same --  
20 it's the exact same project, right? So --

21 MR. SECK: Yes.

22 CHAIRPERSON HILL: -- you didn't change -- and  
23 prior, you got a rejection from the ANC, the full ANC, and  
24 that vote was 7 to -- you know, 0-7, in denial; is that  
25 correct?

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1 MR. SECK: Yes.

2 CHAIRPERSON HILL: Okay.

3 MR. SECK: If I may explain?

4 CHAIRPERSON HILL: No, that's okay. I --

5 MR. SECK: Oh. Okay.

6 CHAIRPERSON HILL: No, you can explain. I mean --

7 MR. SECK: Well, what I was going to say is that  
8 Dr. Gaffney is the single-member commissioner, and they  
9 support whatever he says.

10 And that day, basically she was, like, okay, well, something  
11 that -- I --

12 CHAIRPERSON HILL: No, I understand, Mr. Seck.  
13 I'm just saying, like, I can't -- that doesn't necessarily  
14 work for me --

15 MR. SECK: Okay.

16 CHAIRPERSON HILL: -- right, in that --

17 MR. SECK: Understood.

18 CHAIRPERSON HILL: -- in that just I don't know  
19 who that commissioner is. And you're saying that  
20 commissioner is -- basically has a lot of influence over the  
21 -- the ANC, I suppose, for their SMD.

22 But -- so we'll see where we get to.

23 MR. SECK: Okay.

24 CHAIRPERSON HILL: So does anybody else have more  
25 questions?

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1 (No audible response.)

2 CHAIRPERSON HILL: No? Okay. Can I turn to the  
3 Office of Planning, please?

4 MS. THOMAS: Good morning, Mr. Chair, members of  
5 the Board. Karen Thomas for the Office of Planning.

6 We would basically (sic) stand on the record of  
7 our report. We do concur that the exceptional situation is  
8 with the lot's width and the Applicant's inability to acquire  
9 lots on either side to create a conforming lot. And we don't  
10 see any detriment to the public good or harm to the zoning  
11 regs, as the Applicant will  
12 be -- be providing some side yard on the property.

13 So with that, I'll rest on the record. Thank you.

14 CHAIRPERSON HILL: Okay, does anybody have any  
15 questions for the Office of Planning?

16 (No audible response.)

17 CHAIRPERSON HILL: Ms. Thomas, I just -- do -- I  
18 mean, again, I think it's a really narrow lot and I think  
19 it's -- you know, I don't know how they could do anything  
20 else. Right? I mean, you can't -- the Office of Planning  
21 couldn't figure out any other way to get this done, other  
22 than this variance?

23 MS. THOMAS: No.

24 CHAIRPERSON HILL: Okay.

25 MS. THOMAS: Um-hum.

1 CHAIRPERSON HILL: Okay, so I'm just stuck on the  
2 whole AN -- ANC circle, I suppose. But I think -- I mean,  
3 I think that they're meeting the criteria, so I don't know  
4 what to say.

5 Okay, does anybody have any questions for the  
6 Office of Planning?

7 (No audible response.)

8 CHAIRPERSON HILL: No. Okay. Does the Applicant  
9 have any questions for the Office of Planning?

10 MR. SECK: No, Chair --

11 CHAIRPERSON HILL: Okay. Does -- is there anyone  
12 here who wishing speak in support?

13 (No audible response.)

14 CHAIRPERSON HILL: Is there anyone here wishing  
15 to speak in opposition?

16 (No audible response.)

17 CHAIRPERSON HILL: Okay, so before I close this --  
18 you have anything else you'd like to add, Mr. Seck?

19 MR. SECK: No, Chairman.

20 CHAIRPERSON HILL: Okay. So before I close this,  
21 I just want to kind of figure this out with the Board, as to  
22 where you guys kind of are in terms of if we're going to keep  
23 this record open again. They're going to go back to the ANC  
24 and fully present and get a vote.

25 I mean, that's the only reason why I'm having kind

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1 of this discussion before I close the record. I think I'm  
2 kind of there anyway but, because it's just kind of a little  
3 -- it's not exactly the -- the cleanest way. Does anybody  
4 have a thought?

5 COMMISSIONER MAY: I -- I actually have a follow-  
6 up question.

7 CHAIRPERSON HILL: Sure. Please, go ahead, Mr.  
8 May.

9 COMMISSIONER MAY: So, sorry, how long ago did you  
10 start talking to the ANC about this project?

11 MR. SECK: It's been a while. The SMD took place  
12 a while back. I would have to --  
13 at -- at least it's been more than two, three months. When  
14 I went to the SMD meeting --

15 COMMISSIONER MAY: Um-hum.

16 MR. SECK: -- and I went to an executive meeting  
17 --

18 COMMISSIONER MAY: Right.

19 MR. SECK: -- then an ANC meeting --

20 COMMISSIONER MAY: Right, and when  
21 was --

22 MR. SECK: -- and we --

23 COMMISSIONER MAY: -- and when was the ANC meeting  
24 when they took a vote?

25 MR. SECK: Do you have the record?

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1           ANC --

2           COMMISSIONER MAY:   Approximate.

3           MR. SECK:   It's about a month ago.

4           COMMISSIONER MAY:   About a month ago.

5           MR. SECK:   Right.

6           COMMISSIONER MAY:   Okay.   So, I mean, we don't --  
7 we only know what you report about that.

8 We don't have an actual report in the record.

9 So --

10           Mr. Chairman, you know, ordinarily I'm inclined  
11 to leave the record open for an ANC to report, but I'm -- you  
12 know, I'm getting the sense here that -- that we haven't  
13 really gotten very substantive feedback from the -- from the  
14 ANC as a whole.   I mean, maybe -- if they voted against it,  
15 why didn't they give us that report?

16           And, you know, we have a report from the ANC, from  
17 late March, wanting to move the case further out, and we  
18 still haven't -- didn't hear anything.   And then we -- you  
19 know, the only thing we got was the -- the SMD  
20 representative, which seems to be an indication of support.

21

22 If -- but, you know, even so, the -- you know, we look to the  
23 ANC to raise issues of concern so that we can address those,  
24 and we haven't gotten any indication of -- of concerns from  
25 the ANC.

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1           So the fact that we don't have a fully valid ANC  
2 report, you know, means that we would not be able to give  
3 great weight to the concerns that they raise. But if there's  
4 --

5           MR. SECK: Okay; I'm just -- I'm just --

6           COMMISSIONER MAY: -- no concern, there's no --

7           CHAIRPERSON HILL: I'm taking the Board's  
8 temperature a little bit. I mean, I --

9           COMMISSIONER MAY: Yeah.

10          CHAIRPERSON HILL: -- I also --

11          COMMISSIONER MAY: But I'm -- I'm --

12          CHAIRPERSON HILL: -- find, I this particular  
13 case, because I think it's -- I'm more comfortable with the  
14 variance and what they're trying to propose. I mean, I --  
15 I -- I --

16          COMMISSIONER MAY: Yeah.

17          CHAIRPERSON HILL: It's such a small, narrow lot.  
18 Right? And so, you know -- and --

19          COMMISSIONER MAY: I agree.

20          CHAIRPERSON HILL: -- and I agree with all the  
21 thing -- I mean, I'm just a little -- I was just kind of  
22 feeling it out a little bit, which is that we walked through  
23 the discussion with the Applicant. And so -- okay, so you're  
24 over --

25          COMMISSIONER MAY: Yeah, I mean --

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1 CHAIRPERSON HILL: -- I got your  
2 thought --

3 COMMISSIONER MAY: -- ordinarily I -- I would want  
4 to hear from the ANC, but I'm okay with --

5 VICE CHAIRPERSON HART: I --

6 COMMISSIONER MAY: -- going --

7 VICE CHAIRPERSON HART: I think that since -- as  
8 Commissioner May just said, since the ANC actually asked for  
9 -- requested this -- kind of a postponement back in March --  
10 they wanted a postponement until April -- we've now gotten  
11 to May and still haven't gotten a -- any report or  
12 information that we can give great weight to. I think we've  
13 given sufficient time to be able  
14 to -- to get that.

15 So while I understand that, you know, something  
16 may be forthcoming, I just don't think that that's something  
17 that we necessarily need  
18 to -- to wait for.

19 MEMBER JOHN: I agree, Mr. Chairman.

20 CHAIRPERSON HILL: Okay. Yeah, I mean, I wasn't  
21 necessarily -- and that's why I just want to talk it through,  
22 because I'm not -- I wouldn't be interested in keeping the  
23 record open, unless we got something, which would mean they  
24 would have to go back for a full vote. You know, that's the  
25 only thing that I was trying to -- to get to.

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1 PARTICIPANT: Right.

2 CHAIRPERSON HILL: But okay. All right, so, Mr.  
3 Seck, you've heard all that, so you don't have anything else  
4 you'd like to add?

5 MR. SECK: No, Chairman.

6 CHAIRPERSON HILL: Okay. All right, I'm going to  
7 go ahead and close the record. Is the board ready to  
8 deliberate?

9 BOARD MEMBER: Yes.

10 CHAIRPERSON HILL: Okay, I can start. I mean, I  
11 think that, as I was agreeing with -- or as I was speaking  
12 to earlier, I think that they meet the prongs of the variance  
13 test, due to the narrowness of the lot, and that they can't,  
14 you know, get any more land on either side of the lot. It  
15 really is kind of -- they really are kind of stuck.

16 And so I would agree with the Applicant's argument  
17 as to how they're meeting the tests, and also the analysis  
18 that was provided by the Office of Planning. And I'll be  
19 voting in favor. Anyone else like to add anything?

20 COMMISSIONER MAY: Mr. Chairman, I -- I would  
21 agree with everything you said. I would just make the  
22 observation to Mr. Seck that, you know, look -- the front  
23 elevation of this house is perfectly fine, but the side  
24 elevations -- you're -- I mean, and -- and I think I've  
25 mentioned this to you before on other projects, that they're

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1 not, sort of, paying attention to what it looks like from the  
2 side or from -- necessarily from the back.

3           And, you know, where you put windows says  
4 something about the -- you know, the -- the quality of what  
5 you are doing. And I don't think you're trying to do it  
6 cheaply, but I think a little bit more concern about how you  
7 place windows and where they go and, you know, thinking about  
8 it, you know, having windows line up from one floor to  
9 another, and having some balance in those facades -- I mean,  
10 it's a good thing.

11           This has nothing to do with the zoning relief  
12 you're requesting, so this is just my architectural advice  
13 to you. And again, I don't think this is the first time I've  
14 said it but, you know, it'd be -- I think you'd wind up with  
15 a better product in the end. So --

16           MR. SECK: Appreciate it.

17           MEMBER JOHN: Mr. Chairman, I can support this  
18 variance, based on the statements of the Applicant and OP's  
19 report. The -- the lot is fairly narrow and it is clear that  
20 -- in order to build a functional house, that the Applicant  
21 could not meet that side-yard requirement.

22           So I'm in support. I'm sorry we don't have a  
23 report from the ANC but, because this is such a straight --  
24 to me, this is such a straightforward request for variance,  
25 I am able to support the Applicant.

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1 CHAIRPERSON HILL: Okay. I'm going to make a  
2 motion, then, to approve Application number 19963 as  
3 captioned and read by the secretary, and ask for a second.

4 BOARD MEMBER: Second.

5 MEMBER JOHN: Second.

6 CHAIRPERSON HILL: Motion been made and seconded.  
7 All those in favor, say "aye".

8 (Chorus of ayes.)

9 CHAIRPERSON HILL: All those opposed?

10 (No audible response.)

11 CHAIRPERSON HILL: Motion passes, Mr. Moy.

12 MR. RITTING: Can -- can I interrupt for a second?

13 CHAIRPERSON HILL: Sure.

14 MR. RITTING: The caption states that the relief  
15 is from Subtitle D, Section 307.1, and that was later  
16 modified to D206.2. So I just offer that as a potential  
17 amendment to the motion, that the approval is a variance from  
18 the revised relief, which is D206.2.

19 CHAIRPERSON HILL: I appreciate that. So I'm  
20 going to again make a motion to approve Application Number  
21 19963, as the OAG has helped us clarify, from D206.2, and ask  
22 for a second.

23 MEMBER JOHN: Second.

24 CHAIRPERSON HILL: Motion made and seconded. All  
25 those in favor, say "aye".

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1 (Chorus of ayes.)

2 CHAIRPERSON HILL: All those opposed?

3 (No audible response.)

4 CHAIRPERSON HILL: The motion passed, Mr. Moy.

5 MR. MOY: Staff would record the vote as 4-0-1.

6 This on the motion of Chairman Hill to approve the amended  
7 relief as requested. Second the motion, Ms. John. Also in  
8 support, Vice Chair Hart, Mr. Peter May. No other Board  
9 member present today. Motion carries.

10 CHAIRPERSON HILL: Thank you, Mr. Moy.

11 Thank you, gentlemen.

12 MR. SECK: Thank you, Chairman Hill. It was a  
13 very good day. I was looking for a pat on the back for the  
14 affidavit of support -- I mean posting amendment, from you,  
15 but I got it from Mr. Hart. Thank you.

16 MR. MOY: All right, if we can have parties to the  
17 table. This is to case Application number 19998 of Jay M.  
18 Eisenberg, Trustee, care of -- is it pronounced [mussels]?  
19 M-U-S-E-L-E-S. If they can come to the table.

20 I'm going to read two captions here: relief --  
21 taking my queue from the -- from the last case. This was  
22 captioned and advertised for relief, under Subtitle X,  
23 Chapter 9, for a special exception under Subtitle C, Section  
24 1504, from the penthouse setback requirements of Subtitle C,  
25 Section 1502, and pursuant to Subtitle X, Chapter 10, for

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1 area variance for the nonconforming-structure requirements  
2 of Subtitle C, Section 202.1, to increase the nonconforming  
3 lot occupancy to construct a roof deck on an existing  
4 accessory structure in a R-1-B zone. This is at 1814 24th  
5 Street Northwest, Square 2506, Lot 38.

6 The -- there's -- there's a advisement on (sic)  
7 the OAG that the relief should read as relief for special  
8 exception under Subtitle C, Section 1504, from the penthouse  
9 setback requirements, Subtitle C, Section 1502.1(a) through  
10 (c), and area variance from Subtitle D, Section 304.1, lot  
11 occupancy.

12 CHAIRPERSON HILL: Okay. Okay, if you'll please  
13 introduce yourself for the rec --

14 Do I need to swear her --

15 Oh, I'm sorry. Have you been sworn in yet?

16 MS. LE: (No audible response.)

17 CHAIRPERSON HILL: No. Okay, so if you can please  
18 stand and get sworn in by the secretary. If anybody else has  
19 also missed taking the oath, if you could please stand and  
20 get sworn in. Thank you.

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

24 MS. LE: I do.

25 MR. MOY: Thank you.

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1 CHAIRPERSON HILL: Okay, great. If you could  
2 please introduce yourself for the record.

3 MS. LE: Good morning.

4 CHAIRPERSON HILL: You need to push the button  
5 just once there and speak into the microphone. Just once.

6 MS. LE: Just once?

7 CHAIRPERSON HILL: Yep. There you go.

8 MS. LE: Good morning, Chairman and Board. My  
9 name is Thuy Le, spelled L-E. I'm presenting for the  
10 Eisenberg (sic), at 1824 -- 1814 24th Street Northwest. We  
11 are requesting for a minor variance (sic) to build a stair  
12 (sic) up to an existing rooftop garage that we want to  
13 convert into a rooftop deck.

14 The special exception is for the railing setback.  
15 Railing setback require five-foot setback. If we comply, we  
16 don't have anything left. From 150 square foot of the  
17 rooftop deck, it'll become 40 if we comply with the railing.  
18 For the variance, we request to have an approval to build a  
19 stair to go up to that rooftop.

20 CHAIRPERSON HILL: Okay. So the --  
21 you're -- you're aware of the -- what Mr. Moy had read into  
22 the record, or should have at the beginning, in terms of you  
23 have a revised ZA referral; correct?

24 MS. LE: Yes.

25 CHAIRPERSON HILL: Okay, and you're aware of what

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1 that means?

2 MS. LE: Yes.

3 CHAIRPERSON HILL: Okay. Okay. Does the  
4 Applicant have -- I'm sorry. Does the Board have any  
5 questions for the Applicant?

6 (Off-mic comments.)

7 CHAIRPERSON HILL: Okay, I'm going to turn to the  
8 Office of Planning.

9 MS. MYERS: Hello. Crystal Myers for the Office  
10 of Planning. The Office of Planning is recommending approval  
11 of this case and stands on the record of the staff report.

12 CHAIRPERSON HILL: Okay, great. Sorry.

13 Does the Applicant have any questions for the  
14 Office of Planning?

15 MS. LE: No.

16 CHAIRPERSON HILL: Okay. Ms. Le, so could you  
17 tell me about the ANC meeting and how that went?

18 MS. LE: We have full support from the ANC.

19 CHAIRPERSON HILL: Okay, and when did you present  
20 to them? It says March 18th here. I'm sorry; I'm looking  
21 at the -- at the letter right now.

22 Okay. All right, is there anyone -- does anybody  
23 have any questions for the Office of Planning?

24 (No audible response.)

25 CHAIRPERSON HILL: Did I do that already?

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1 BOARD MEMBER: No.

2 CHAIRPERSON HILL: Okay. Do you have any  
3 questions for the Office of Planning?

4 COMMISSIONER MAY: Yes. I have a question for the  
5 Office of Planning regardless of whether we --

6 PARTICIPANT: You --

7 COMMISSIONER MAY: Okay. All right, so this is  
8 very weird, this whole case. It --  
9 it's -- I mean, on -- on the one hand, it's hard to  
10 understand why a garage that's, you know, at a lower grade,  
11 to begin with, winds up causing lot occupancy. I assume that  
12 means that it's at least four feet above the -- the -- the  
13 grade at the building-height measuring point, or something  
14 like -- or maybe at the rear yard; I'm not sure how it's  
15 measured. But it seems like it's a very strange thing, to  
16 begin with.

17 And then to have a stairway up to it trigger a  
18 variance, when you can have a stairway up to the back door  
19 of a house or you can have a stairway, you know, off of a  
20 back deck, like a spiral stair, to go to the roof, that  
21 doesn't affect lot occupancy. Right? Isn't that correct?

22 MS. MYERS: I believe so. I mean, I also had  
23 asked originally why is lot occupancy triggered.

24 COMMISSIONER MAY: Yeah.

25 MS. MYERS: And my understanding was, you know,

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1 talking with DCRA and the Applicant and then examining the  
2 plans further -- was because it was going to the roof of the  
3 garage, the  
4 stair -- the stairway itself. Otherwise  
5 there's -- there's nothing that I could tell that would  
6 increase the lot occupancy. It seems to be just simply  
7 because of the -- the -- I guess the height of the stairwell,  
8 going to the -- the roof. But perhaps you have a -- another  
9 take on that.

10 COMMISSIONER MAY: No, no, I mean, I -- even if  
11 it would -- even -- I don't think it should be a factor of  
12 the height. I mean, to some extent the height of it is what  
13 causes the lot-occupancy issue and -- to begin with. I mean,  
14 it -- it just -- it seems like such a -- an awful lot of work  
15 and complication for something that should be pretty  
16 straightforward.

17 And so, you know, on a certain level -- I mean,  
18 you know, the -- I feel like doing something like this  
19 shouldn't be subject to that much effort. So I would suggest  
20 that maybe the Office of Planning can take a look at this  
21 with the Zoning Administrator and see if there actually are  
22 some tweaks of the rules that the Zoning Commission should  
23 consider to make it easier to do something like this, because  
24 it feels like it's something that doesn't have a huge impact.  
25 It's not a -- you know, the overall structure height is not

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1 more than the 20 feet that's allowed for a garage. So, you  
2 know, why are we fussing about it?

3 So, I mean, it's almost like it'll be easier to  
4 put an addition on the second floor of the garage to go to,  
5 you know, 20 feet, than it would be to do this. And it  
6 shouldn't be that way. So it's just a suggestion to take  
7 back to the Office, I think.

8 CHAIRPERSON HILL: Okay. Is there anyone here  
9 wishing to speak in support?

10 (No audible response.)

11 CHAIRPERSON HILL: Is there anyone here wishing  
12 to speak in opposition?

13 (No audible response.)

14 CHAIRPERSON HILL: Ms. Le, is there anything else  
15 you'd like to add at the end?

16 MS. LE: No, sir.

17 CHAIRPERSON HILL: Okay. All right, I'm going to  
18 close the record. Is the Board ready to deliberate?

19 (No audible response.)

20 CHAIRPERSON HILL: Okay. I didn't have any -- I  
21 mean, I think that, you know, the expertise of Commissioner  
22 May and his questions for the Office of Planning was  
23 insightful and interesting. However, it -- I think that the  
24 analysis that the Office of Planning has provided is one that  
25 I'm going to be able to get behind and agree with in concern

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1 (sic) with the revised ZA referral for the requested relief  
2 for special exceptions and area variances.

3 And so I will agree that the Applicant has met the  
4 burden of proof and I will be voting in favor. Does anyone  
5 have anything of (sic) this they'd like to add?

6 MEMBER JOHN: Just briefly. I -- I agree with  
7 you, Mr. Chairman. And I thought that the Office of  
8 Planning's analysis was very helpful, and I can give great  
9 weight to it. And so I would be able to support the  
10 Application for special exceptional relief under C1504, and  
11 the variance relief of lot occupancy.

12 CHAIRPERSON HILL: Okay, great. Thank you.

13 So I'm going to go ahead and make a motion to  
14 approve Application number 19998 for a special exception,  
15 under C1504, from the penthouse setback requirements of  
16 C1502.1(a) through (c), as well as the area-variance relief  
17 from Subtitle D304.1, lot occupancy, and ask for a second.

18 COMMISSIONER MAY: Second.

19 CHAIRPERSON HILL: The motion made and seconded.  
20 All those in favor, say "aye".

21 (Chorus of ayes.)

22 CHAIRPERSON HILL: All those opposed?

23 (No audible response.)

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

25 MR. MOY: Staff would record the vote as 4-0-1.

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1 This is on the motion of Chairman Hill to approve the request  
2 for amended relief. Seconded the motion, Mr. Peter May.  
3 Also in support, Ms. John and Vice Chair Hart. I have a  
4 Board member not present, not participating. And the motion  
5 carries.

6 CHAIRPERSON HILL: Okay, great. Thank you.  
7 Thank you very much.

8 MS. LE: Thank you.

9 CHAIRPERSON HILL: And, you guys, we're going to  
10 take a quick break. Thank you.

11 (Whereupon, the above-entitled matter went off the  
12 record at 10:43 a.m. and resumed at 10:57 a.m.)

13 CHAIRPERSON HILL: Okay, so we're back. And so  
14 what the plan is, so everybody knows, we're going to try to  
15 get through everything except for the appeal, before lunch.  
16 And so that's the hope. So we'll see how that goes.

17 So, Mr. Moy, you can call our next case.

18 MR. MOY: Thank you, Mr. Chairman.

19 If we could have parties to the table to case  
20 Application number 20003 of Dorothy Morgan, captioned and  
21 advertised for special exception, under Subtitle E, Sections  
22 5007.1 and 5201, from the rear-yard requirements of Subtitle  
23 E, Section 5004.2(a) and (e); Subtitle E, Section 5004.2(b),  
24 to replace an existing one-story accessory-garage structure  
25 with a new accessory-garage structure in the rear yard of an

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1 existing attached principal dwelling unit, RF-1 zone. This  
2 is at 213 Randolph Place Northeast, Square 3573, Lot 77.

3 CHAIRPERSON HILL: Okay, great. Thank you.

4 Could you please introduce yourselves for the  
5 record?

6 MS. BENITEZ: I'm Michelina Benitez, representing  
7 the owner.

8 MS. MORGAN: I'm Pamela Morgan, the owner's  
9 daughter.

10 CHAIRPERSON HILL: Okay. Could you spell your  
11 last name for me?

12 MS. BENITEZ: B-E-N-I-T-E-Z.

13 CHAIRPERSON HILL: Okay, great.

14 Okay, well, welcome, both of you. Did you both  
15 get sworn in earlier?

16 (No audible response.)

17 CHAIRPERSON HILL: Okay, great. So, Ms. Benitez,  
18 Benitez? If you could go ahead and kind of walk us through  
19 what you're trying to do or what your client's trying to do,  
20 and how you're meeting the standard and the criteria for us  
21 to grant this relief requested.

22 I didn't see an ANC report, so maybe you can kind  
23 of clarify that as you're kind of going through your  
24 presentation. And you can -- I'm going to put 15 minutes on  
25 the clock just so I know where we are. And you can begin

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1 whenever you like.

2 MS. BENITEZ: Okay. We -- I showed a picture  
3 because I think it's helpful. This is the existing garage  
4 and we're looking to take down the existing garage and then  
5 expand it to a usable dimension, by six feet. And that  
6 requires us to get a special exception.

7 The special-exception requirements that we are  
8 meeting: the light, air available to the neighboring  
9 properties. The existing garage is ten-feet tall. The one  
10 we're proposing will be 11-feet tall. So it's only one more  
11 foot tall and -- and the light is actually more affected by  
12 the -- the row homes behind us than it is by -- than it would  
13 be by our garage.

14 The privacy and the enjoyment of the neighboring  
15 properties would not be affected. It's an uninhabited space.  
16 So that would not affect anybody. And the -- as viewed from  
17 the alley and the public way, should not be -- substantially  
18 visually intrude upon the character. And as you can see, the  
19 -- there's -- the alley is -- there -- there's a lot of --  
20 it's mostly for parking; very little, I would say, character  
21 as you would -- might define. So it would not visually  
22 intrude. It's already existing and actually will be more  
23 aesthetically pleasing than the existing structure.

24 We presented to the ANC the 23rd of April. The  
25 report is now there. I think with the short time, they

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1 weren't able to get it up. But it --

2 CHAIRPERSON HILL: Okay, yeah, I see it.

3 MS. BENITEZ: -- it is now there.

4 CHAIRPERSON HILL: And they voted in support. We  
5 also presented to the Eckington Civic Association and they  
6 were all in support as well.

7 CHAIRPERSON HILL: Okay, does the Board have any  
8 questions for the Applicant?

9 (No audible response.)

10 CHAIRPERSON HILL: All right. I'm going to turn  
11 to the Office of Planning.

12 MR. KIRSCHENBAUM: Good af -- good morning, Chair  
13 Hill and members of the Board. Jonathan Kirschenbaum for the  
14 Office of Planning.

15 We recommend approval of the special exception for rear-yard  
16 relief for the accessory garage, and we rest on the record.  
17 Please let me know if you have any questions.

18 CHAIRPERSON HILL: Okay. Does the Board have any  
19 questions for the Office of Planning?

20 COMMISSIONER MAY: No, I -- actually I don't have  
21 a question, so I'll just wait till we get to comments. Thank  
22 you.

23 CHAIRPERSON HILL: Okay. Does the Applicant have  
24 any questions for the Office of Planning?

25 (No audible response.)

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1 CHAIRPERSON HILL: All right. Is there anyone  
2 here wishing to speak in support?

3 (No audible response.)

4 CHAIRPERSON HILL: Is there anyone here wishing  
5 to speak in opposition?

6 (No audible response.)

7 CHAIRPERSON HILL: Okay. Do you have anything  
8 you'd like to add at the end?

9 (No audible response.)

10 CHAIRPERSON HILL: Oh, could you speak in the  
11 microphone? I'm sorry.

12 MS. BENITEZ: No.

13 CHAIRPERSON HILL: Okay. All right. Does the  
14 Board have any final questions they have of the Applicant,  
15 or anything, before I close the record?

16 VICE CHAIRPERSON HART: And I'm sorry if I may  
17 have -- I may have not have (sic) heard this. There was a  
18 letter in opposition from -- if I have the right case. Yes?

19 PARTICIPANT: Um-hum. Yes.

20 VICE CHAIRPERSON HART: Okay. -- from the  
21 neighbor at 215 Randolph Place, and they're unit number 1.  
22 So I guess it's the next-door neighbor, but I guess they have  
23 a condo. It's -- those are two units. And so one of them  
24 just said that they thought that the structure  
25 would -- I guess they were thinking about blocking sunlight,

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1 or --

2 MS. BENITEZ: I think he said that it shouldn't  
3 get any taller. He was in support unless it got taller. And  
4 -- and it's only a foot taller; actually, maybe eight inches.  
5 So I don't think that he -- he would be affected.  
6 He -- he's the one on this side here, on this gray building.

7 VICE CHAIRPERSON HART: Okay, and so I think our  
8 -- our issue was trying to figure out what the existing  
9 height was and then what the change in height -- because  
10 you're saying that it's a foot taller than --

11 MS. BENITEZ: Correct.

12 VICE CHAIRPERSON HART: -- than the existing --

13 MS. BENITEZ: Correct. The -- the existing is ten  
14 feet at peak, and so the proposed would be 11.

15 VICE CHAIRPERSON HART: Okay. All right. Thank  
16 you.

17 CHAIRPERSON HILL: Okay, great. All right, I'm  
18 going to go ahead and close the record. Is the Board ready  
19 to deliberate?

20 MEMBER JOHN: Um-hum.

21 CHAIRPERSON HILL: Okay, I can begin. I didn't  
22 have any issues or concerns with this project. I think that  
23 they're meeting the requirements and the standards for us to  
24 grant the special exception. I also would agree with the  
25 analysis that was provided by the Office of Planning, as well

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1 as now the feedback we've received from ANC 5E, and I will  
2 be voting to approve. Did anyone have anything they'd like  
3 to add?

4 COMMISSIONER MAY: So I have a couple  
5 observations. First of all, the -- the ten-foot rule and the  
6 100-square-foot rule were not intended to address situations  
7 with garages. And so, I mean, 100 square feet is not a  
8 garage space; right? It was intended to allow for people to  
9 put, like, a garden shed in a rear  
10 yard -- in a required rear yard.

11 However, we've seen several cases now, since then,  
12 where this special-exception process has been used to  
13 authorize something relating to a garage. I don't know if  
14 that's something that we need to correct in the Zoning  
15 Commission or -- or address in some form. But there is this  
16 mistaken impression that somehow we thought that, you know,  
17 you could do a garage that's 100 square feet. You know, we  
18 know you can't. But that's not what -- what it was intended  
19 to do.

20 And the other thing I -- that I find a little bit  
21 odd about this is that -- and I think there was a -- the  
22 Zoning Administrator did do a referral on this, I think, and  
23 they seemed to be measuring the height of this to the -- to  
24 the peak of the roof, which is inconsistent with what they  
25 have told us before about how you measure roof height.

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1 I mean, the Zoning Commission changed the rules  
2 of how you measure roof height for structures that are less  
3 than 40 feet, to take into consideration that you could have  
4 a sloped roof. And in that circumstance, the height is taken  
5 from the midpoint of the sloped roof as opposed to the very  
6 top.

7 Now, I think -- I mean, I did a calculation and  
8 you're, like, right at ten or maybe ten-foot-one or something  
9 like that, based on that. And I -- I -- I -- it's just  
10 something that I'm saying on the record right now because I  
11 think the Office of Planning should ask these questions of  
12 the Zoning Administrator, because I think they're being  
13 inconsistent. I mean, the clear statement we got from the  
14 Zoning Administrator was that a sloped roof is a roof where  
15 there is a gable end. And there's a gable end to this. And  
16 so therefore, they should be marry -- measuring from the  
17 midpoint.

18 Now, you know, you wound up with the right  
19 solution; you -- you dropped it down so that it would be as  
20 close to ten feet as -- as possible. So I think that that's  
21 okay.

22 And the special-exception criteria, again, this  
23 is designed to deal with -- with, you know, garden sheds, not  
24 garages. But it's -- that's not clear from the regulations,  
25 and it seems pretty clear to me that you meet the criteria

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1 for the special exception, given the nature of the -- of the  
2 rear yards and the -- the height and the impact overall.

3 So I don't have any problem voting in favor of it,  
4 but I'm making these observations for the benefit of the  
5 Office of Planning and maybe the Zoning Administrator as  
6 well.

7 CHAIRPERSON HILL: Okay, anyone else?

8 (No audible response.)

9 CHAIRPERSON HILL: Okay. I'm going to make a  
10 motion to approve Application number 1 -- 20003 and ask for  
11 a second.

12 VICE CHAIRPERSON HART: Second.

13 CHAIRPERSON HILL: Motion made and seconded. All  
14 those in favor, say "aye".

15 (Chorus of ayes.)

16 CHAIRPERSON HILL: Motion passes, Mr. Moy.

17 MR. MOY: Staff would record the vote as 4-0-1.  
18 This is the motion on -- of Chairman Hill to approve the  
19 application for the relief requested. Seconding the motion  
20 is Vice Chair Hart. Also support -- also in support, Ms.  
21 John, Mr. Peter May. And we have a board member not present  
22 today. Motion carries.

23 CHAIRPERSON HILL: Thank you.

24 Thank you very much.

25 MS. BENITEZ: Thank you.

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1 MR. MOY: All right, if I can have parties to the  
2 table. This is to case Application number 20010 of -- I  
3 believe it's pronounced Josae Pink; J-O-S-A-E. This is a  
4 request for a special exception under the use provisions of  
5 Subtitle U, Section 513.1(c). This would permit a fast-food  
6 use in the MU-4 zone. This is at 6208 Georgia Avenue  
7 Northwest, Square 2941, Lot 14.

8 CHAIRPERSON HILL: Okay, great. If you could  
9 please introduce yourself for the record.

10 MS. YAHYA: Yes. Good morning. My name is Dara  
11 Yahya, and I'm the authorized agent. Last name, Y-A-H-Y-A.

12 CHAIRPERSON HILL: Okay, great. Okay, all right,  
13 well, Ms. Yahya, thank you so much for coming down. Let's  
14 see. If you could go ahead and tell us about what you're  
15 trying to do and how you're meeting the criteria or the  
16 standards for us to grant this Application.

17 Just see if I have any specific -- no, I guess  
18 that's good enough for me.

19 I'm going to put 15 minutes on the clock, Mr. Moy,  
20 if you would not mind.

21 And then, Ms. Yahya, you can begin whenever you  
22 like.

23 MS. YAHYA: Thank you and good morning, Chairman  
24 Hill and members of the Board.

25 CHAIRPERSON HILL: Good morning.

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1 MS. YAHYA: So I am here to represent the  
2 Applicant, who seeks a special-exception relief to operate  
3 the fast-food-restaurant establishment within the MU-6 zone,  
4 at 6208 Georgia Avenue Northwest.

5 The modest property is located on the west side  
6 of the 6200 block of Georgia Avenue, between Rittenhouse and  
7 Sheridan Streets. It's on a thoroughfare used by workers,  
8 consumers, patients, and residents. It's a few steps away  
9 from the 70 bus route and has neighbors on either side, which  
10 includes a variety of business, the sale of retail store  
11 (sic), hair, nail salon, wine and spirits, grocery stores,  
12 and fast-service restaurants. Additionally, it stands across  
13 from a shop-and-park plaza that houses a drycleaner and  
14 laundromat. A dentist's office, a check-cashing and Family  
15 Dollar are also on the side of the street.

16 The property has a business -- has a history of  
17 business as far back as 1963 and in recent years has been  
18 under various certificate of occupancies, including a retail,  
19 grocery, and delicatessen, and then in 1990 a cater-and-  
20 carry-out in '95, a deli in '97. Most recently, the property  
21 was under a dry cleaner and a laundry certificate of  
22 occupancy in 2012.

23 In 2016 the lease was signed by Gkids Production  
24 for use as a fast-food establishment, with the intent to  
25 offer convenience and diversity and healthy meal options for

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1 the business community and neighboring residents.

2           So, on to how we meet the criteria. According to  
3 Subtitle U, Section 513.1(c), the zoning regulations state  
4 that as use -- states that use as a fast-food establishment  
5 shall be permitted according to these following conditions:  
6 that no part of the lot line, which is -- which the use is  
7 located shall be within 25 feet of a R, RF, or RFA (sic)  
8 zone, unless it's separated by a street. And this property  
9 is separated by a public alley, from Zone R-1-B.

10           Additionally, there'll be a 19-and-a-quarter-foot  
11 opaque gate separating the property from the alley, which  
12 will be installed. If you see Exhibit -- Exhibit 33, item  
13 4 shows the alley and also depicts a similar gate that will  
14 be installed.

15           Second requirement: if any lot line of the lot  
16 abuts an alley containing a zoned district boundary line for  
17 a residential zone or continues a brick wall of at least six  
18 feet high and 12 inches thick, shall be constrict --  
19 constructed and maintained in the lot. Along the length of  
20 that line, the brick wall should not be required, which is,  
21 in this case -- the building extends for the full width of  
22 the lot.

23           Three, any refuse dumpsters shall be housed in a  
24 three-sided brick enclosure in equal height to the dumpster,  
25 or six feet high, whichever is greater. The entrance to the

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1 enclosure should not -- should include an opaque gate. The  
2 entrance shall not face a residential zone.

3           The garbage bins will be housed in a seven-and-a-  
4 half-by-four-and-a-half-foot three-sided brick enclosure with  
5 a wooden gate that does not face the residence located at the  
6 rear of the building. Exhibit 33, item 3, shows the area  
7 where this enclosure will be constructed.

8           Four, the use shall not include a drive-through.  
9 This establishments -- establishment would not include a  
10 drive-through.

11           Five, the use shall be designed and operated so  
12 as to not become objectionable to the neighboring properties,  
13 such -- because of noise, sound, odors, lights, hours of  
14 operations, or other conditions. So we do not expect that  
15 it will generate any objectionable noise, sounds, odors,  
16 lights, and other conditions.

17           A settlement agreement has been signed between the  
18 Applicant and ANC 4A, for the operation and maintenance of  
19 this establishment in such a manner as to promote peace,  
20 order, and quiet of the neighborhood. Exhibit 37, you will  
21 see the resolution in support, as well as the attached  
22 agreement.

23           Located on the business corridor along Georgia  
24 Avenue Northwest, between Rittenhouse and Sheridan Streets,  
25 the operation of this establishment will not be objectionable

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1 to the neighbors and businesses and residents. The following  
2 measures will explain how the operations of the business will  
3 not affect the adjacent businesses.

4           Noise and sound: The hours of operations are  
5 Monday through Saturday, 7 a.m. to 10 p.m., and Sunday, 10  
6 a.m. to 7 p.m., ensuring that preparation, cooking, cleaning,  
7 and customer noises will happen between these hours, not too  
8 late in the night and not too early in the morning. There  
9 will not be any loud music. Recycling items and other debris  
10 will be placed in trash bags before being dumped and will be  
11 dumped before the 10 p.m. closing, so as to prevent noise  
12 from dis -- disrupting neighboring residents.

13           In terms of odor, all trash, recyclable materials,  
14 and grease stored outdoors at the establishment shall be in  
15 containers that are impervious to vermin, leaks, and odors.  
16 Outdoor containers shall be kept closed at all times, and no  
17 waste or other material shall be stored outdoors, except in  
18 containers. Trash and recycling collection will occur a  
19 minimum of two times per week.

20           In terms of light, the security light at the rear  
21 of the property will be down lit to prevent spill into the  
22 adjacent properties and residents. And the front signage  
23 will not be lit. Exhibited -- Exhibit 33, item 11, shows an  
24 image of the front of the building.

25           Litter: The Applicant will ensure that the

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1 immediate environs of its establishment are keep free of  
2 liver -- litter and debris, by cleaning its immediate  
3 environments by 10 a.m. daily and periodically as needed  
4 during the hours of operation.

5           Loitering: Applicant will take all reasonable  
6 measures to discourage loitering in its immediate  
7 environments.

8           In terms of rodents, the Applicant shall make  
9 reasonable effort to prevent rodents and other pests,  
10 including eliminating exterior sources of food, standing  
11 water, and shelter locations. Additionally, Applicant will  
12 contract with a licensed exterminator to inspect the  
13 establishment a minimum of three times per quarter.

14           CHAIRPERSON HILL: Ms. Yahya?

15           MS. YAHYA: Yes?

16           CHAIRPERSON HILL: I'm sorry. You're just reading  
17 through all the ones here in the ANC report, correct?

18           MS. YAHYA: Correct.

19           CHAIRPERSON HILL: That's fine. Yeah, you don't  
20 have to read through all of it.

21           MS. YAHYA: Okay. Great.

22           CHAIRPERSON HILL: Okay. Please continue.

23           MS. YAHYA: So I think the -- what came up, maybe  
24 parking, is something that I -- I hear that you guys are  
25 interested in knowing about. And so the Applicant will

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1 encourage customers to obey parking laws. There is short-  
2 term parking available; however, we do expect that most  
3 patrons will come from the neighboring businesses. And  
4 there's -- right on the 70 line is as well, so most people  
5 will be traveling by foot or delivery to the residents in the  
6 neighborhood. There is a parking space behind the building,  
7 exclusively for the use of the business, for delivery  
8 purposes.

9           So I'm -- for clarity; are you saying you do not  
10 want me to read through the --

11           CHAIRPERSON HILL: You -- you don't need to read  
12 through all those --

13           MS. YAHYA: Yeah.

14           CHAIRPERSON HILL: -- items there. So -- I mean,  
15 I --

16           MS. YAHYA: Okay.

17           CHAIRPERSON HILL: -- I think you're pretty much  
18 -- I understand what you're doing.

19           And so does the Board have any questions for the  
20 Applicant?

21           (No audible response.)

22           CHAIRPERSON HILL: Okay. I'm going to turn to the  
23 Office of Planning.

24           MS. BROWN-ROBERTS: Good morning, Mr. Chairman and  
25 members of the Board. Maxine Brown-Roberts, for the record.

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The Applicant is seeking special-exception relief from Subtitle U513.1(c), for fast-food establishment in the MU-4 zone. As outlined in the report, the Applicant meets all the requirements that are set out, and the Office of Planning recommends approval of the -- of the request. Thank you, Mr. Chairman.

8

9

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

10

(No audible response.)

11

12

CHAIRPERSON HILL: Does the Applicant have any questions of the Office of Planning?

13

MS. YAHYA: No.

14

15

CHAIRPERSON HILL: Okay. Is there anyone here wishing to speak in support?

16

(No audible response.)

17

18

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

19

(No audible response.)

20

21

22

CHAIRPERSON HILL: Okay. Ms. Yahya, what kind of a -- do they know what kind of fast food is going to be there?

23

MS. YAHYA: Jamaican food.

24

25

CHAIRPERSON HILL: Oh. Okay. Great. Are you an attorney?

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1 MS. YAHYA: No.

2 CHAIRPERSON HILL: Okay. You're just representing

3 --

4 MS. YAHYA: Yes.

5 CHAIRPERSON HILL: -- the owner --

6 MS. YAHYA: The -- the property owner, Ms. Josae  
7 Pink, as well as the business owner.

8 CHAIRPERSON HILL: I was just curious how you got  
9 this job. You know. Right.

10 So, okay. Does the Board have any final  
11 questions?

12 (No audible response.)

13 CHAIRPERSON HILL: Okay. I'm going to go ahead  
14 and close the hearing. Is the Board ready to deliberate?

15 (No audible response.)

16 CHAIRPERSON HILL: Okay. I can start. I think  
17 that, again, the Applicant is meeting the criteria for the  
18 special exception. I thought that the Office of Planning's  
19 analysis was succinct, and I agree with that analysis. Also,  
20 the ANC and the extensive work that the Applicant has done  
21 with the ANC, I'm glad to see all that is also in the record.  
22 And I will be voting to approve. Does anyone else have  
23 anything else they'd like to add?

24 (No audible response.)

25 CHAIRPERSON HILL: All right. Then I'm going to

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1 go ahead and making a motion to approve Application number  
2 20010 as captioned and advertised and read by the secretary,  
3 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 (Chorus of ayes.)

8 CHAIRPERSON HILL: All those opposed?

9 (No audible response.)

10 CHAIRPERSON HILL: Motion passes, Mr. Moy.

11 MR. MOY: Staff would record the vote as 4-0-1.

12 This is on the motion of Chairman Hill to approve the  
13 application for the relief requested.

14 Second (sic) the motion, I believe, was Vice Chair Hart.

15 Also in support, Ms. John and Mr. Peter May. We have a Board  
16 member not present today. The motion carries.

17 CHAIRPERSON HILL: Thank you.

18 Thank you very much.

19 MS. YAYHA: Thank you.

20 MR. MOY: The next case Application, if we can  
21 have parties to the table. This is to number 20011, of --  
22 I don't know if it's Mekela or Mekela, M-E-K-E-L-A, Whyte-  
23 Nesfield. This is a request for a special exception, under  
24 Subtitle E, Section 206.2, and 5203.3, from the rooftop;  
25 architectural-elements provisions of Subtitle E, Section

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1 206.1. This would allow alteration of an existing porch  
2 rooftop, architectural element, on an existing semi-detached  
3 principal dwelling unit; RF-1 zone.

4 This is at 1321 Childress, C-H-I-L-D-R-E-S-S, Street  
5 Northeast, Square 4076, West -- or rather, W, Lot 79.

6 CHAIRPERSON HILL: Okay, good morning. Have you  
7 guys been sworn in?

8 (No audible response.)

9 CHAIRPERSON HILL: Okay. If you can please  
10 introduce yourselves for the record.

11 MS. WHYTE-NESFIELD: Good morning, Mr. Chairman  
12 and members of the Board. My name is Mekela Whyte-Nesfield.

13 MR. LOREMIL: Good morning. My name is Roldy  
14 Loremil.

15 CHAIRPERSON HILL: Okay. And who's going to be  
16 presenting to us today?

17 (No audible response.)

18 CHAIRPERSON HILL: Okay, great. If you could just  
19 have one microphone on at a time; otherwise I get feedback  
20 up here. Thank you so much.

21 So if you could, go ahead and just again walk us  
22 through the application, what you're trying to do, and then  
23 also how you believe you're meeting the criteria for us to  
24 grant the application.

25 MS. WHYTE-NESFIELD: Um-hum.

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1 CHAIRPERSON HILL: I'm going to go ahead and put  
2 15 minutes on the clock, Mr. Moy, so I know where we are.

3 And you can begin whenever you like.

4 MS. WHYTE-NESFIELD: Okay. So we're requesting  
5 a special exemption to DCMR 11, Subtitle E206.1, pretty much  
6 to allow alterations to our porch roof, which have actually  
7 already been done. We purchased our home in October of 2018.  
8 At the time of purchase, one of our conditions was to ask our  
9 builder to obtain a C of O. And when he proceeded to do  
10 such, it came to -- to pass that he had not been -- either  
11 not been told or didn't come to you to receive the special  
12 exemption to create a deck on the roof porch. Since it was  
13 already built, we went through the procedures of coming to  
14 you today to request that special exemption.

15 We have informed all of our neighbors by letters  
16 that have been attached, including the letters that you guys  
17 sent to them. We have the support of our ANC, the Office of  
18 Planning, per their report, and DDOT, at this time.

19 CHAIRPERSON HILL: Okay. Does the Board have any  
20 questions of the Applicant?

21 (No audible response.)

22 CHAIRPERSON HILL: All right, I'm going to turn  
23 to the Office of Planning.

24 MS. ELLIOTT: Good morning, Mr. Chairman and  
25 members of the Board. I'm Brandice Elliott, representing the

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1 Office of Planning. The Office of Planning is recommending  
2 approval of the requested special exception to alter the  
3 porch by adding the metal guardrail.

4 So I'm happy to answer any questions you have.

5 CHAIRPERSON HILL: Okay. Does anyone have any  
6 questions for the Office of Planning?

7 COMMISSIONER MAY: Okay, so this is another one  
8 that puzzles me. I thought that the requirement to not alter  
9 a porch was tied to the addition of a third story. Is -- I  
10 mean, is -- am I missing something or is there some other  
11 requirement that you're not allowed to touch your porch? I  
12 -- I -- I should know this because, you know, we write those  
13 regulations, but I -- I -- I don't remember every single  
14 word.

15 MS. ELLIOTT: This was referred from DCRA.

16 COMMISSIONER MAY: Yeah.

17 MS. ELLIOTT: And they have actually been taking  
18 a very conservative approach in what constitutes an  
19 architectural roof embellishment.

20 And so we have seen some very minor changes come through,  
21 requesting special exceptions.

22 COMMISSIONER MAY: But it -- I mean, am I  
23 incorrect in thinking that it -- it's --  
24 it's -- normally it's only triggered when someone requests  
25 a permit for a third-floor addition?

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1 MS. ELLIOTT: I'm sorry, I don't have the  
2 regulations in front of me. I -- I --

3 COMMISSIONER MAY: Yeah.

4 MS. ELLIOTT: -- think that -- that  
5 it's -- it applies broadly in the RF-1 zone --

6 COMMISSIONER MAY: Yeah. Okay.

7 MS. ELLIOTT: -- to any structure.

8 COMMISSIONER MAY: Well, I mean, clearly that's  
9 the way the Zoning Administrator's thinking of it, but I --  
10 when I looked at the regulations, it seemed to me that it was  
11 -- it was triggered only in the case where there's a third-  
12 floor addition being contemplated. And I have to say again,  
13 that was the intention that it was something that would --  
14 you know, the -- it was not to stop people from, you know,  
15 doing something from the porch -- to the porch, in an RF-1  
16 neighborhood, but to -- I -- I mean, maybe we should be doing  
17 that; I don't know. That -- but that wasn't the question  
18 before us; it was that we didn't want to see RF-1 -- the  
19 character of RF-1 neighborhoods, where you have many of these  
20 continuous rows of houses that are very similar in design or  
21 consistent in design in some way, that they would -- we would  
22 lose important features. And some of those features were  
23 porches but some of them were also things like the -- you  
24 know, the -- the -- the mansard roof or a turret or something  
25 like that.

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1 I didn't figure it to be that broadly applied.  
2 I'm -- I'm going to look at it again. And I certainly don't  
3 have any objection to granting the relief that the Zoning  
4 Administrator says is needed here, and I'm sorry that you've  
5 had to go through this, because I don't think that was really  
6 the intention of the zoning regulations. But I don't want  
7 to drag it on any further and say, no, we're not going to  
8 approve this, because it's not necessary, because that just  
9 sort of messes you guys up.

10 I appreciate the diligence with which you are  
11 pursuing this, and the mere fact that you came back to deal  
12 with this now and that you went to get your C of O and you're  
13 doing all the things the right way. I think that's really  
14 admirable, and it's not always the -- the -- the case with  
15 the folks. So I really appreciate your doing it.

16 MS. WHYTE-NESFIELD: Thank you.

17 CHAIRPERSON HILL: Okay. So do you have any  
18 questions for the Office of Planning?

19 MS. WHYTE-NESFIELD: No.

20 CHAIRPERSON HILL: Okay. Is there anyone here  
21 wishing to speak in support?

22 (No audible response.)

23 CHAIRPERSON HILL: Is there anyone here wishing  
24 to speak in opposition?

25 (No audible response.)

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1 CHAIRPERSON HILL: Is there anything you'd like  
2 to add at the end?

3 MS. WHYTE-NESFIELD: No, thanks.

4 CHAIRPERSON HILL: Okay. All right, I'm going to  
5 go ahead and close the record. Is the Board ready to  
6 deliberate?

7 (No audible response.)

8 CHAIRPERSON HILL: Okay. I know you started to  
9 deliberate. I got confused. I was, like, are we in  
10 deliberations?

11 And so I would agree with my colleague and what  
12 he has already kind of said and -- Commissioner May here, and  
13 also with the analysis that was provided by the Office of  
14 Planning, as well as that of ANC 5D. I thought that it was  
15 quite straightforward and that it was a modest change to the  
16 building. And so I'm going to be voting in support of the  
17 application as I think that they meet the criteria.

18 Does anyone have anything that they'd like to add?

19 VICE CHAIRPERSON HART: I would be in support of  
20 the application as well. I also was trying to -- this was  
21 somewhat of a head-scratcher for me, because I was trying to  
22 figure out what are we looking at exactly that is the change.  
23 So it made it a little bit easier to hear the -- the  
24 explanation.

25 I mean, I read through the information, but it

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1 just seemed like -- I felt like I was missing something;  
2 like, what big thing is here that I'm -- you know, that was  
3 -- that we're supposed to be kind of grappling with. But --

4 So I appreciate the clarification that Mr. May --  
5 Commissioner May was asking about, because it -- it does seem  
6 like there should be something else that is triggering this.  
7 And I don't know, maybe it's a conversation that the Zoning  
8 Commission has to -- with OP to change the zoning regs to,  
9 I don't know, clarify them more.

10 I don't know. But I thought that it was fairly  
11 straightforward and that the Applicant had met the criteria  
12 to be able to support the Application. So I would be in  
13 support.

14 CHAIRPERSON HILL: Okay, great.

15 Anyone else?

16 MEMBER JOHN: Mr. Chairman, I am also in support.

17 And I agree with Commissioner May that there is need for  
18 clarification. And when I looked at this case, it was a  
19 little odd to me, and then I said, well, maybe it's -- it's  
20 not in a historic district, maybe that's what makes the  
21 difference. But anyway, I think it needs clarification. And  
22 I'm in support.

23 CHAIRPERSON HILL: Okay.

24 Commissioner?

25 COMMISSIONER MAY: I -- I think I already did my

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1 deliberating, so --

2 CHAIRPERSON HILL: Okay. Great. I think you did.

3 All right, I'm going to go ahead and make a motion  
4 to approve Application number 20011 as captioned and read by  
5 the secretary, and ask for a second.

6 VICE CHAIRPERSON HART: Second.

7 CHAIRPERSON HILL: Motion made and seconded. All  
8 those in favor, say "aye".

9 (Chorus of ayes.)

10 CHAIRPERSON HILL: All those opposed?

11 (No audible response.)

12 CHAIRPERSON HILL: Motion passes, Mr. Moy.

13 MR. MOY: Staff would record the vote as 4-0-1.

14 This is on the motion of Chairman Hill to approve the  
15 application for the relief requested.

16 Seconding the motion, Vice Chair Hart. Also in support of  
17 the motion, Ms. John and Mr. Peter. We have no other Board  
18 members with us today. Motion carries.

19 CHAIRPERSON HILL: Okay, great. Thank you.

20 Thank you very much.

21 MS. WHYTE-NESFIELD: Thank you.

22 MR. LOREMIL: Thank you.

23 CHAIRPERSON HILL: Mr. Moy, before we break for  
24 lunch, let's go ahead and call that postponement back again,  
25 if we could.

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1           And also, if the -- the parties are  
2 here -- or whoever is here for the appeal, at lunch if you  
3 want to just check with OAG. They had some comments perhaps  
4 that they might like to share with you. Thank you.

5           MR. MOY: Okay, for the record, then, I'll re-read  
6 the caption. This is case Application number 20006 of T-  
7 Mobile Northeast LLC. Request for a special exception under  
8 the use permissions of Subtitle C, Section 1313.2, to erect  
9 a monopole, RA-1 zone, at 3675 Ely, E-L-Y, Place Southeast,  
10 Square 5438, Lot 801, in the preliminary matter. Mr. Chair,  
11 it's a request from the Applicant to postpone.

12           CHAIRPERSON HILL: Okay, great. Thank you.

13           So my thought on this -- and then -- and then  
14 we'll just hear what the Board has to say; I mean, I didn't  
15 necessarily have an issue, again, with the postponement. The  
16 -- the issue was the timeliness of it; right? So, you know,  
17 what's supposed to happen is that we have people that might  
18 have been coming, and so, you know, there was -- we did ask  
19 whether anybody was here in support, whether anyone was here  
20 in opposition, and nobody was here at all.

21           And so my hesitancy to just go ahead and grant the  
22 postponement is that this is something that happened last  
23 week. I -- I just don't want this to become kind of like  
24 something that, you know, people don't show up and then, if,  
25 you know, the Applicant doesn't show up and then, you know,

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1 somebody shows up in support or opposition, then it turns  
2 into just kind of like what do we do; right?

3           And so, you know, my thought is that we'll go  
4 ahead and try to do this again next week and ask the  
5 Applicant to be here, although now what I don't get about  
6 that, then -- then they'd be the seven -- anyway, we'll ask  
7 the Applicant to be here next week to explain themselves for  
8 the postponement and the request for the postponement, and  
9 then we can determine or not -- whether or not we want to  
10 postpone.

11           And then also I think if we did postpone or  
12 determine that we wanted to do that, Commissioner May has  
13 expressed some interest in this case. And so I think we  
14 would probably put it on where -- the next time that he's  
15 here, which would be June 19th. However, I wanted to hear  
16 what my other fellow board members have to say.

17           VICE CHAIRPERSON HART: Only just to kind of add  
18 a couple of pieces. I mean, I kind of look at it as we've --  
19 we -- typically we'll have the Applicant -- and we reached  
20 out to the Applicant to actually have somebody here, and  
21 typically they do show up. I'm just thinking that -- why  
22 don't we just put it in July and just have it in -- because  
23 we have other cases, other things on our docket already for,  
24 you know, June; we've already set that up. So why don't we  
25 just put this -- push this into July and then we can, you

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1 know, hear it then.

2 I mean, to -- that's where I am. I  
3 just -- I just kind of am -- I feel like I'm tired of trying  
4 to get somebody to come in and then they don't show up and  
5 then we're just kind of sitting here now spending our time  
6 having to figure out how -- when to -- when to do this.

7 So I just say put them at July and  
8 we'll -- we'll deal with it, or we put them in later. But,  
9 you know, I just don't -- I'm  
10 just -- I'm just tired of all of it. So --

11 CHAIRPERSON HILL: I agree. I mean, I think that  
12 that's completely fair and accurate. And so, you know -- I  
13 don't know. So I'm stuck with -- I mean, even -- even next  
14 week if we are in agreement that we think that it's -- that  
15 we're too backed up already and we don't want  
16 to -- you know, this was supposed to be heard today; right?  
17 And so they're not ready, obviously. And so if we're going  
18 to back up our docket further, then we can decide next week  
19 if we want to put them in July.

20 Just out of curiosity, Mr. Moy, what are the --  
21 what's the latest date right now that you're scheduling for?

22 MR. MOY: Tomorrow I'll be releasing the public-  
23 hearing notice for cases for July 3rd.

24 CHAIRPERSON HILL: Okay. So it'll be -- all  
25 right, so -- so I'm sticking with the

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1 first -- unless anybody really has any opposi -- I'd like to  
2 hear -- I'd like to hear from somebody, you know.

3 COMMISSIONER MAY: Mr. Chairman, you know, if you  
4 -- if you decide to put it next week, if -- when you hear  
5 from the attorney in this case -- or the Applicant, if you  
6 would prefer to push it into July, I'll be back on July 31st.

7 CHAIRPERSON HILL: Oh. Very good. Okay.  
8 So we'll see how that goes, then.

9 All right, so, then, Mr. Moy, let's go ahead and  
10 have this discuss -- I mean, if the Applicant doesn't show  
11 up next week, then, you know, we might just dismiss this  
12 thing. So, you know, go ahead and just see what happens;  
13 right?

14 So you're going to put this on for discussion about  
15 postponement, for next week; correct?

16 MR. MOY: I understand, sir.

17 CHAIRPERSON HILL: Okay. So I think I did mention  
18 that OAG might have a comment for the parties that are here  
19 for the appeal. In the meantime, we're going to take a lunch  
20 break and hopefully come back at, like, 12:30?

21 (No audible response.)

22 CHAIRPERSON HILL: 12:30. Thank you.

23 (Whereupon, the above-entitled matter went off the  
24 record at 11:34 a.m. and resumed at 12:39 p.m.)

25 CHAIRPERSON HILL: All right, Mr. Moy, whenever

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1 you like.

2 MR. MOY: Okay. Okay, Mr. Chairman, Board. The  
3 Board is back in session -- the hearing's back in session and  
4 it's about 12:40 p.m. And this is the last case before the  
5 Board, for today, and it is Appeal number 19950 of ANC 1C,  
6 captioned, advertised as the appeal from the decision made  
7 on October 26, 2018 by the Zoning Administrator, Department  
8 of Consumer and Regulatory Affairs. The issue: building  
9 permit number B, as in "bravo", 1809516, to construct a rear  
10 addition to an existing principal dwelling unit and convert  
11 it to a flat RF-1 zone, at 2920 18th Street Northwest, Square  
12 2587, Lot 490.

13 You may come to the table.

14 (Pause.)

15 CHAIRPERSON HILL: Okay, actually, before  
16 everybody sits down, did everybody get sworn in?

17 (No audible response.)

18 CHAIRPERSON HILL: Okay. If you didn't get sworn,  
19 if you could please stand and get sworn in by the secretary  
20 here to the left.

21 MR. MOY: Do you solemnly swear or affirm that the  
22 testimony you're about to present in this proceeding is the  
23 whole -- is the truth, the whole truth -- is the truth, the  
24 whole  
25 truth -- I forgot the rest of my words.

1 PARTICIPANT: "And nothing but the truth".

2 MR. MOY: Thank you.

3 Okay, please be seated.

4 CHAIRPERSON HILL: Okay, let's see; first let's  
5 go ahead and introduce -- introduce ourselves for the record;  
6 from my right to left, please.

7 MS. LORD-SORENSEN: Good afternoon, Chairman Hill  
8 and members of the Board. My name is Adrienne Lord-Sorensen,  
9 assistant general counsel with the D.C. Department of  
10 Consumer and Regulatory Affairs.

11 MR. LEGRANT: Good afternoon. Matthew LeGrant,  
12 zoning administrator, DCRA.

13 MS. MAZO: Hi. Good afternoon. Samantha Mazo  
14 with the law firm of Cozen O'Connor, and I'm here on behalf  
15 of the property owner, Capitol Partners.

16 MR. RUEDA: Good afternoon. My name is Guillermo  
17 Rueda and I'm here on behalf of ANC 1C.

18 MR. GUTHRIE: Ted Guthrie. I'm also here on  
19 behalf of ANC 1C.

20 CHAIRPERSON HILL: Commissioner -- you're a  
21 commissioner, is that correct?

22 MR. GUTHRIE: Yes --

23 CHAIRPERSON HILL: Okay.

24 MR. GUTHRIE: -- I'm the chair.

25 CHAIRPERSON HILL: Your -- oh, okay, you're the

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1 chair-- okay, great. Hi, Commissioner. Thank you for coming  
2 down.

3 All right, so I'm going to kind of walk through  
4 a couple of things here first and then see where we get to.  
5 And then if -- and we might even take a quick break,  
6 depending upon how this whole thing kind of shakes out, a  
7 little bit, that people can clarify their -- their next steps  
8 and arguments.

9 We, you know, do have a meeting with  
10 the -- or have a conference call with OAG, that the Board  
11 gets some support from. And then  
12 also -- so I'm kind of -- my fellow board members, if you  
13 hear something that I'm kind of like missing or -- you know,  
14 feel free to, kind of like, let me know.

15 There are some preliminary matters that we kind  
16 of need to do first. There was a motion, from the property  
17 owner, to dismiss because of some issues with the ANC and  
18 their bylaws. And then the ANC 1C also had opposition to  
19 that motion. I think that, under the jurisdiction of the  
20 Board, which is DC Official Code Section 2 -- I'm sorry,  
21 Section 6-641.07(g)(1) that outlines kind of our roles and  
22 responsibilities -- that that area, meaning what happened at  
23 the ANCs and the bylaws, is beyond -- is outside of our  
24 purview.

25 So that's what my initial thought are. And you're

1 welcome to -- since it is your motion from the property  
2 owner, if you have anything to say. But I just don't think  
3 that that's something that's in our purview, so I was going  
4 to go ahead and dismiss it.

5 MS. MAZO: Just -- just very briefly. The -- the  
6 issue is that the -- in -- in our reading of the ANC's bylaws  
7 and in the ANC Act, that, due to their failure to contact the  
8 property owner, try to get the property owner to the meeting  
9 and to really proper -- properly notice the agenda on their  
10 website ten days in advance, that the ANC did not have the  
11 ability to ad hoc add this -- add -- add the request of Mr.  
12 Rueda -- to add the request for the ANC to become the  
13 appellant in this appeal and file this appeal and,  
14 accordingly, that the appeal itself was filed incorrectly and  
15 should therefore be dismissed.

16 CHAIRPERSON HILL: Okay. So as I mentioned, then,  
17 but I did want to get the opportunity, for the person who's  
18 putting the motion forward, to speak, I -- I would be in  
19 favor of denying that motion. And so does anyone else here  
20 on the Board have any other comments or issues on that?

21 (No audible response.)

22 CHAIRPERSON HILL: No? Okay. Then I  
23 go -- I will go ahead and make a motion to dismiss the motion  
24 to dismiss, and ask for a second.

25 VICE CHAIRPERSON HART: Second.

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1 MEMBER JOHN: Second.

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

4 (Chorus of ayes.)

5 CHAIRPERSON HILL: Okay. So then the next one is  
6 a motion by DCRA to incorporate the revised permit. And it  
7 wasn't clear to me in terms of whether the property is in  
8 support of that motion, and it wasn't clear to me whether the  
9 ANC was or wasn't in support of that motion. Could the ANC  
10 clarify if they are or not in support of that motion?

11 MR. GUTHRIE: I believe that we had indicated that  
12 we don't have objection to their filing the revised plans  
13 that show -- I believe that the substance of it is to show  
14 architectural detail that's consistent -- or more consistent  
15 with what was originally there. And we have no objection to  
16 that being filed and to that being considered by the Board.

17 CHAIRPERSON HILL: Okay. I'm just drilling down  
18 because that was kind of -- you know, if we -- if that gets  
19 incorporated, then it takes one of the issues that we're  
20 going to be discussing away, in terms of the appeal, because  
21 it's not -- the architectural element, then, will be -- will  
22 -- it doesn't matter anymore if we incorporate --

23 MR. GUTHRIE: Well --

24 CHAIRPERSON HILL: -- the revised permit.

25 MR. GUTHRIE: It doesn't if it accurately reflects

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1 the condition that existed before the architectural detail  
2 was taken out. We have some disagreement with some of the  
3 particulars of the architectural detail as shown in the  
4 revised plan.

5 CHAIRPERSON HILL: Okay, but you do --

6 MR. GUTHRIE: They made, like, 75 percent --

7 CHAIRPERSON HILL: Okay, that's --

8 MR. GUTHRIE: -- move toward --

9 CHAIRPERSON HILL: I'm trying -- I'm just trying  
10 to figure out -- so you are -- so then still you would then  
11 possibly be arguing the rooftop-architectural-element portion  
12 of your appeal; however, we would be arguing it based off the  
13 revised permit?

14 MR. GUTHRIE: Yes.

15 CHAIRPERSON HILL: Okay. So then unless anyone  
16 has any objections, we'll go ahead and revise the -- use the  
17 revised permit or  
18 include -- I'm sorry, I wasn't -- include the revised permit  
19 into the -- the record.

20 VICE CHAIRPERSON HART: And just out of curiosity,  
21 just making sure that I understand this -- and I guess this  
22 is a question for  
23 DCRA -- would this supersede the -- the existing permit?  
24 Would it -- How does this work with -- with regard to the  
25 existing permit?

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1 MS. LORD-SORENSEN: So with respect to the permit  
2 B1809516, this is just a revision to the permit with respect  
3 to the dormers. So when you look at the revised plans the  
4 DCRA requested for the Board to consider, instead of showing  
5 two dormers, it's just a single dormer, which is consistent  
6 with the concerns -- or addresses, excuse me, the concerns  
7 raised by the ANC in its initial filing.

8 VICE CHAIRPERSON HART: So it would --

9 MS. LORD-SORENSEN: It's a --

10 VICE CHAIRPERSON HART: -- supersede that  
11 particular aspect of the existing permit?

12 MS. LORD-SORENSEN: Yeah.

13 VICE CHAIRPERSON HART: So both permits would be  
14 the -- the -- I don't want to say "first", but the building  
15 permit B19 -- excuse  
16 me -- 1809516 would still be in effect, this would just add  
17 to it?

18 MS. LORD-SORENSEN: Yes.

19 VICE CHAIRPERSON HART: Or at least --

20 MS. LORD-SORENSEN: Yes.

21 VICE CHAIRPERSON HART: -- take the -- take the  
22 place of several of the pages that -- that are there?

23 MS. LORD-SORENSEN: Yes.

24 VICE CHAIRPERSON HART: Okay.

25 CHAIRPERSON HILL: Okay. And then was there

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1 anything concerning the new permit, with the BHMP?

2 MS. LORD-SORENSEN: Well, when you look at the  
3 revised plans, it clarifies the height of the cellar. So it  
4 reads three feet, two-and-a-half inches. So it just  
5 clarifies what the -- the height is of the lowest level, when  
6 you look at --

7 CHAIRPERSON HILL: Okay.

8 MS. LORD-SORENSEN: -- the revised plans.

9 CHAIRPERSON HILL: Okay. So then, that  
10 is -- I'm just trying to get to where we -- we start this  
11 thing; right? So that that, then, is the revised permit that  
12 we would then be arguing about. I still don't think it  
13 changes your argument, because your argument is that --  
14 anyway, I don't think it changes your argument. So I just  
15 want to make sure that we're arguing about the same thing.  
16 So we are now going to be arguing about the revised permit?

17 MR. GUTHRIE: That's correct, but they didn't  
18 change the information on the BHMP. But what your question,  
19 I thought, was meant to address was what Mr. Ritting had --

20 CHAIRPERSON HILL: We're not to that one yet, but  
21 that's okay. Right. So -- but we're going to that one.

22 Okay. So we're going to go ahead and grant the  
23 motion to incorporate the revised permit into the appeal.  
24 I'm going to ask for a second since I did it the first time.

25

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1 VICE CHAIRPERSON HART: Second.

2 CHAIRPERSON HILL: And -- and all those in favor,  
3 say "aye".

4 (Chorus of ayes.)

5 CHAIRPERSON HILL: All those opposed?

6 (No audible response.)

7 CHAIRPERSON HILL: Okay, so the motion passes  
8 again, Mr. Moy. So you're following along here?

9 MR. MOY: Yes. I have it on the record, sir.

10 CHAIRPERSON HILL: Okay. All right, then the next  
11 one was -- right, the -- the -- I think I understand that  
12 we're now going to be -- well, in the ANC argument --  
13 preliminary argument, it spoke about things that seem to be  
14 before Regulation 17-18 and after Regulation 17-18. So I  
15 just think what I understand was that the argument was all  
16 going to be based on things that happened before 17-18. Is  
17 that correct?

18 MR. RUEDA: Originally that was correct, but DCRA,  
19 in its pre-hearing statement, revised, I think properly, to  
20 the new post-17-18 language, because of the substantive  
21 change to the permit.  
22 So it just triggered language in 301.15.

23 CHAIRPERSON HILL: So what I'm unclear on is that  
24 -- that -- okay, so --

25 MR. RUEDA: DCRA's pre-hearing statement measures

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1 to the floor, not to the ceiling.

2 MS. LORD-SORENSEN: Chairman Hill, may I be heard  
3 on that point? Actually, during our case-in-chief when --  
4 after I've had opportunity to ask the zoning administrator  
5 some questions, DCRA was going to clarify that in the pre-  
6 hearing statement it notes four feet nine inches when it  
7 should have read three feet two-and-a-half inches. So there  
8 was an error in the pre-hearing statement, with respect to  
9 the measurement.

10 CHAIRPERSON HILL: So with respect to the  
11 measurement, again, however, the error is that -- the  
12 argument is going to be the pre-17-18?

13 MS. LORD-SORENSEN: That is correct. But just to  
14 let the Board know; regardless if it's pre-17-18 or post-17-  
15 18, it's still under five feet.

16 CHAIRPERSON HILL: Yeah, but I don't  
17 think --

18 MR. RUEDA: She keeps measuring --

19 CHAIRPERSON HILL: -- the --

20 MR. RUEDA: -- five feet --

21 CHAIRPERSON HILL: -- the --

22 MR. RUEDA: -- because she's measuring to the  
23 floor.

24 CHAIRPERSON HILL: That's -- I'm just trying to --  
25 Commissioner May, you had a comment?

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1 COMMISSIONER MAY: No. I mean, there's no -- five  
2 feet is not relevant until the new rules kicked in under 17-  
3 18. So -- that's all I was saying.

4 CHAIRPERSON HILL: Right, so then that, then,  
5 takes me back to whether we're arguing again the pre-17-18  
6 or the post- -- I don't want to argue both, is what I'm  
7 trying to understand.

8 MS. LORD-SORENSEN: It's pre-17-18.

9 CHAIRPERSON HILL: Right, so it's pre -- so what  
10 is it -- it's the three feet -- I -- and then we're going to  
11 get into the details of it again. But what is the height?

12 MS. LORD-SORENSEN: Four feet.

13 CHAIRPERSON HILL: The four feet from  
14 the -- the ceiling, right, right, as opposed to what ended  
15 up happening after, which was the five feet to the floor.  
16 Right? Okay. Wow, at least I got something right.

17 Okay, so -- okay, so we're in agreement now.  
18 We're not in agreement. So you can go ahead and tell me why  
19 you're not in agreement and how you'd like to argue it  
20 differently.

21 MR. RUEDA: Our argument doesn't really change  
22 based on pre or post, but the fact remains that the permit,  
23 as DCRA submitted in their pre-hearing statement, is properly  
24 reviewed under post-17-18 language, because of the change to  
25 the permit. The language in A301.15 specifically says that

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1 when you have a substantive change -- I'm not sure, I'm  
2 paraphrasing --- change to the permit, then you no longer get  
3 benefit of the grandfathered regulation.

4 CHAIRPERSON HILL: OAG, do you have any comments  
5 on this?

6 MR. RITTING: I think I'd have to consider this  
7 for a few minutes before I -- I gave you a response. I --  
8 I -- I was expecting that there was a consensus that the --  
9 the pre-17-18 rule apply, but now -- now it appears that  
10 that's not the case. I think we need to talk about this and  
11 -- and think about it.

12 What I'd request is that you ask each of the  
13 respective parties that are assembled here what -- to clarify  
14 what their position is about what rule applies to this case,  
15 with respect to the building-height measuring point, is it  
16 the pre-17-18 rule or is it the post-17-18 rule, so we can  
17 consider each one of their positions and ask them to explain  
18 why they have the position that they have.

19 So I'm asking that each party clarify pre or post,  
20 before we talk this over.

21 CHAIRPERSON HILL: Okay, I understand. And, you  
22 know, we can vote to have a closed emergency meeting if we  
23 want to talk to counsel or if counsel needs a little bit more  
24 time to kind of think through this.

25 But you did hear the questions -- or, I'm sorry,

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1 the question that OAG raised. I'm just going to start,  
2 because I'm going from right to left. Does -- DCRA, do you  
3 have a -- a comment? Or do you need a minute too?

4 MS. LORD-SORENSEN: Yes, please.

5 CHAIRPERSON HILL: Okay. Does everybody need a  
6 minute? Or does somebody have an answer?

7 MS. MAZO: I'm -- excuse me. On behalf of the  
8 property owner, I have a very clear answer, which is that the  
9 pre-17-18 language applies. And I'm going to pull it up.  
10 Sorry; just very clearly, I'm going to pull up the building-  
11 permit vesting requirement, which is Subtitle A301. --  
12 301.15. Hold on. Sorry, if you'd just hold on for one  
13 second so I can pull up our PowerPoint.

14 You know, as this Board is well aware that  
15 generally the Appellant would move forward and then DCRA, and  
16 so --

17 CHAIRPERSON HILL: That's okay, that's okay. We  
18 don't have to go into the -- into the presentation; just --

19 MS. MAZO: No, no, no, I -- I  
20 understand --

21 CHAIRPERSON HILL: So --

22 MS. MAZO: -- but my point is --

23 CHAIRPERSON HILL: So --

24 MS. MAZO: -- is that, as part of the  
25 presentation, I also include the language that -- the key

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1 language here for the vesting that we  
2 are --

3 CHAIRPERSON HILL: I --

4 MS. MAZO: -- looking at right here.

5 CHAIRPERSON HILL: I remember there's vesting  
6 language that --

7 MS. MAZO: So, just very clearly --

8 MR. RUEDA: I'm happy to point it out. I -- I  
9 have it pulled it up already, if you want.

10 CHAIRPERSON HILL: That's fine.

11 MS. MAZO: Okay. So, the language is very clear:  
12 notwithstanding, blah blah blah, that to completion, pursuant  
13 to -- pursuant --

14 CHAIRPERSON HILL: That's okay.

15 MS. MAZO: -- for --

16 CHAIRPERSON HILL: It's -- I'm going to catch up.  
17 Just one minute. So you're -- you're arguing the pre-17-18  
18 --

19 MS. MAZO: Correct, because --

20 CHAIRPERSON HILL: -- and that's when it's vested.  
21 That's --

22 MS. MAZO: It's -- it's vested, and also because  
23 the minor change in order to --

24 CHAIRPERSON HILL: Okay.

25 MS. MAZO: -- adjust the third story does not

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1 constitute a substantial change under the regulation.

2 CHAIRPERSON HILL: Okay. All right.

3 MR. RUEDA: I mean, that's the point at issue:  
4 is it a substantial --

5 CHAIRPERSON HILL: That's right.

6 Ms. Mazo, could you pull your computer just a  
7 little bit over there? I'm sorry. Oh -- oh, you're --  
8 you're sharing it. Okay, I didn't understand what was --  
9 okay. All right. So -- I just -- I was, like, I didn't know  
10 who -- where it was.

11 Okay. So let's see. Okay, so your argument, Mr.  
12 Rueda, is what? Are you pre-17-18 or you're both or you're  
13 -- I don't understand.

14 MR. RUEDA: Well, I'm prepared to argue either  
15 case.

16 CHAIRPERSON HILL: Okay. So you're -- I'm just  
17 trying to get -- okay, so -- fine. Because I -- I'm not  
18 ready to argue both cases. Like, I want to know what we're  
19 actually arguing. And so I think we're arguing pre-17-18  
20 right now, and so what does DCRA think you're doing?

21 MS. LORD-SORENSEN: It's DCRA's position that it's  
22 still pre-17-18.

23 CHAIRPERSON HILL: Okay. So do we need OAG to  
24 have a minute?

25 MR. RITTING: Yes --

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1 CHAIRPERSON HILL: Because I'd rather --

2 MR. RITTING: -- and -- and --

3 CHAIRPERSON HILL: -- you have an opportunity --

4 MR. RITTING: -- and --

5 CHAIRPERSON HILL: -- to have a minute. And so --

6 MR. RITTING: Is --

7 CHAIRPERSON HILL: Do --

8 MR. RITTING: Is the ANC going to take a position  
9 about this? I wasn't sure about that.

10 MR. RUEDA: Well, the question is whether or not  
11 the changes to the architectural elements are considered  
12 substantial or minor. Right? And so if you submitted a  
13 permit after the vesting date, with a substantial change,  
14 which DCRA is saying is minor -- or actually, they haven't  
15 said anything. Ms. Mazo said that it was a minor change.  
16 So the question is, is it a minor change or not? And so it  
17 should be -- it should be heard based on the -- you know, the  
18 response from DCRA clearly thought that they were measuring  
19 the floor, and they were citing five feet as the limiter for  
20 -- whether basement or cellar of a lower level.

21 CHAIRPERSON HILL: Okay.

22 MR. RUEDA: So they clearly thought that at one  
23 point. We agree that it could be that case but, if we have  
24 to argue the other, we will happily do that.

25 CHAIRPERSON HILL: Okay. Mr. May?

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1           COMMISSIONER MAY: All right, so I think we have  
2 -- we did get a response from DCRA on the question of -- of  
3 that issue, and -- and that was essentially an error in their  
4 filing, and that they consider this to be clearly 17 -- pre-  
5 17-18, and that the way to measure a cellar or  
6 basement -- at question is the measurement from the grade to  
7 the ceiling of the -- the basement or cellar. So I don't  
8 think there's any question on that and I don't think that  
9 changed in terms of what was approved in the application.  
10 Right?

11           And in terms of what's substantial or not, the  
12 fact that they've gone from two dormers to one I do not  
13 believe can be considered a substantial change. And so I  
14 believe we should just move forward on the assumption that  
15 this remains to be -- remains under pre-17-18. And I think  
16 that the -- the ANC can still argue their case. I don't  
17 think it invalidates anything about their case, on either  
18 point that they're arguing, and that we can dispense with  
19 this and move forward.

20           CHAIRPERSON HILL: Okay.

21           MEMBER JOHN: I -- I had a question. I'm not  
22 sure, I guess, the -- the zoning administrator might be able  
23 to answer it. So did the Commission case have a particular  
24 vesting provision that's -- that applied to applications for  
25 permits that were in the pipeline?

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1 MR. LEGRANT: It did. It -- it -- in the order  
2 that was approved by the Zoning Commission -- again, this is  
3 Order 17-18 -- it had a specific vesting provision that's  
4 laid out in Section A301.15, which -- I'm just going to  
5 summarize it -- basically says, if an application had been  
6 submitted -- well, to paraphrase, any building permit  
7 application shall be processed and any work authorized. The  
8 permit may be carried to completion pursuant to the rules for  
9 measuring for ratio, height, stories, as existed on August  
10 17, 2018, if the -- if the permit application was legally  
11 filed and accepted as complete, by DCRA, on or before that  
12 date, and then -- and not substantially changed after filing.

13 So I believe this application was filed in May --  
14 it -- it was deemed completed May 30th, 2018, which is, of  
15 course, prior to August 17th, 2018. So it was vested in the  
16 rules prior to 17-18, in my opinion.

17 MEMBER JOHN: And so the only issue, then, would  
18 be whether there was a substantial change that would take it  
19 out of that rule, into the post-17-18 rule?

20 MR. LEGRANT: I would agree that -- yeah, there  
21 the question is, oh, is the  
22 changes --

23 MEMBER JOHN: There is an issue.

24 MR. LEGRANT: Right.

25 MEMBER JOHN: Yes. Okay, thank you.

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1           CHAIRPERSON HILL: Okay. So I'm -- I'm actually  
2 over here with Commissioner May in terms of the reasoning as  
3 to how we're getting to pre-17-18 in terms of the discussion.  
4 Does the Board have -- is the Board in agreement of that?

5           MEMBER JOHN: Yes.

6           CHAIRPERSON HILL: Okay. So we're now going to  
7 argue the pre-17-18 measuring point. Okay? So that's that  
8 one.

9           So then the last thing -- and then we're going to  
10 actually -- we might take a minute because, like, I just want  
11 everybody to kind of like have a moment to -- the clearer we  
12 are, the better, right -- is that, as I understand it, the  
13 ANC alleges that the grade was modified twice, and the  
14 property owner is relying on the survey which was done in  
15 August and then -- and then manipulated the grade.

16           And so it seems to be that the discussion should  
17 be about how the grade was manipulated, before the -- how --  
18 how the ANC believes the grade was manipulated the first  
19 time. And so that's what I think is the issue that we want  
20 to hear about. Okay?

21           And so you guys can go ahead and give your  
22 presentation, but that's really what we're going to be  
23 focusing on. Okay? And so I don't know how much we may be  
24 getting, one way or the other, differently from the DCRA, but  
25 -- or either one of you, to be quite honest. But I'm going

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1 to take three minutes, okay, just -- or I'm going to take  
2 three to five minutes, okay, just so -- now, we've been  
3 through a lot of different things; we got through the  
4 preliminary matters, we got through what 17-18 are not, and  
5 now we know exactly what we're going to be arguing about.  
6 Okay? And then we'll start this hearing.

7 Thank you.

8                   Yeah, sure, go on.

9                   COMMISSIONER MAY: I wanted to add one other  
10 thing, and this is primarily for DCRA, which is an issue  
11 that, as -- you know, as I'm reviewing the materials, has  
12 come to my  
13 head -- into my head, which is, what is the location where  
14 the building-height measuring point is taken? Because this  
15 is a -- this is a circumstance where the major facade is in  
16 one plane and then -- but the facade where the grade could  
17 reasonably be considered is actually at the front of the  
18 porch, because it's not an open porch. It's open on the  
19 sides but it's not open on the front. So I wonder whether  
20 in fact the correct place to be measuring building height  
21 from is from the front of that porch.

22                   And -- and I say this for a couple reasons; one  
23 is that it's not visible, what's going on behind it, right,  
24 and then the second thing is that I -- you know, I had a  
25 house like this once, and I know that the grade that is

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1 behind that front facade of the porch is often a little bit  
2 different, and it's basically -- I mean, when the house was  
3 -- it's not a natural grade; right? The house was  
4 constructed -- it was -- they just throw in whatever they  
5 can; they don't necessarily fill it all the way up.  
6 Sometimes it's low. Sometimes it's high. It doesn't seem  
7 like that's a finished grade in any sense of the word.

8           And so -- or even a natural grade; right? So I  
9 wonder whether in fact the right place to be considering this  
10 is at the front of the porch. I understand there's also a  
11 step in the center, at the front of the porch, but it seems  
12 to me that that's -- you can interpolate from what's on  
13 either side, to get to what that measuring point is.

14           So this is just a question I have for you, and I'm  
15 hoping that maybe you can address that.

16           VICE CHAIRPERSON HART: I'm -- I'm --

17           CHAIRPERSON HILL: Oh. Sorry.

18           VICE CHAIRPERSON HART: I'm glad you raised that,  
19 because I had the same question, and it just didn't make  
20 sense, because it seemed like at some point you might  
21 actually have -- somebody may have filled that -- the whole  
22 thing in or -- you know, whatever. It just -- it's just --  
23 it was just a -- a very strange thing and I couldn't quite  
24 understand why we're -- and specifically because this is a  
25 masonry porch. You know, it's not a --

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1 COMMISSIONER MAY: Yeah.

2 VICE CHAIRPERSON HART: -- wood porch. This is  
3 a masonry porch that is, you know, in many ways kind of an  
4 extension of that facade. So --

5 COMMISSIONER MAY: Right.

6 VICE CHAIRPERSON HART: -- I'd -- I'd -- I'd  
7 appreciate that -- that answer as well.

8 COMMISSIONER MAY: Yeah. I mean, it's actually  
9 common to see these things blocked up on the sides either  
10 with solid block or with a block that's sort of a patterned  
11 opening so that air can flow through it. And so then it's --  
12 it's hard to argue that that's grade at all inside of it.  
13 It's more part of the structure. So anyway. It's a question  
14 for DCRA.

15 CHAIRPERSON HILL: Okay. All right, does anybody  
16 have any more clarifying opportun -- any clarifying issues  
17 before we take a quick break so everybody can get their  
18 thoughts organized?

19 (No audible response.)

20 CHAIRPERSON HILL: No? Okay. We're going to take  
21 a quick break.

22 (Whereupon, the above-entitled matter went off the  
23 record at 1:05 p.m. and resumed at 1:13 p.m.)

24 CHAIRPERSON HILL: Okay. Mr. Moy, we're back,  
25 okay?

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1 MR. MOY: Yes, sir.

2 CHAIRPERSON HILL: Okay. So I don't think we have  
3 to reintroduce ourselves.

4 So, Mr. Rueda, are you going to begin your --  
5 you're speaking, or is the  
6 commissioner -- Commissioner, you're going to argue it first,  
7 or -- however it's going to go?

8 (No audible response.)

9 CHAIRPERSON HILL: Okay. All right, so,  
10 Commissioner Guthrie, no relation to the famous Guthrie  
11 singer --

12 MR. GUTHRIE: (Off-mic comment.)

13 CHAIRPERSON HILL: Oh, you're --

14 (Laughter.)

15 CHAIRPERSON HILL: Okay. Well, then, Mr. Guthrie,  
16 you don't need a job, then, at this point, I would think,  
17 although I don't know if those -- those rights actually  
18 transfer this long.

19 So, okay, you do need to press the microphone,  
20 sir, when you're ready to begin. And what I'm going to do  
21 is I'm just going to put 20 minutes on the clock, for  
22 everybody, okay, and see -- because it's now -- it's one  
23 argument we're arguing, okay?

24 And so you can begin whenever you like.

25 MR. GUTHRIE: Yeah, I'd just like to be clear what

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1 the ANC's position is on this, and that is that we are very  
2 much in favor of this property, and another property on the  
3 same block, being developed in a way that makes the security  
4 and safety of the adjoining properties improved.

5 We've been suffering from having these buildings in a  
6 deteriorated state for a considerable period of time. It had  
7 significant adverse impact on adjoining property owners.

8           It's not that we're against development.

9 And frankly, I get a little tired of hearing that from people  
10 who suggest that our opposition to particular projects has  
11 to do with being anti-development. We're not. We're anti-  
12 development that is contrary to the rules. And this case,  
13 what they have proposed, what they got the permit for, is  
14 contrary to the rules.

15           There has been no suggestion by anyone that there  
16 was not a substantial amount of fill that was put in under  
17 the porch at the end of March, immediately after this owner  
18 took over the property. He claims that he did not do it.  
19 At the same time, there was apparently workers under the  
20 control of DCRA who were doing work to try and keep the  
21 building from collapsing and bringing with it its next-door  
22 neighbor.

23           The owner, the workers, the neighbors were all  
24 there when stuff was getting dumped under that porch. Very  
25 clearly, there was a change in grade, and a berm. The best

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1 example of that is on page 14 of our pre-hearing statement  
2 that shows what we assert to be the berm that was put in that  
3 should not be used as part of the measurement.

4 CHAIRPERSON HILL: Thank you. One second. Do you  
5 know which exhibit you're at?

6 VICE CHAIRPERSON HART: Exhibit 24.

7 MR. GUTHRIE: It's figure 1 --

8 CHAIRPERSON HILL: 24.

9 MR. GUTHRIE: -- is what it says here. I don't  
10 know. It's page 14 of 20.

11 CHAIRPERSON HILL: Okay.

12 VICE CHAIRPERSON HART: It -- it's -- it's Exhibit  
13 24. Page 14 of Exhibit --

14 MR. GUTHRIE: Oh.

15 VICE CHAIRPERSON HART: -- 24.

16 MR. GUTHRIE: Thank you.

17 And if you went out and were physically at the  
18 property, it would be really clear to you, because there is  
19 a retaining wall. This little green line at the north end  
20 of the property shows the retaining wall. The retaining wall  
21 is something like seven feet below the first floor.

22 There's a huge gap there that they have basically filled in  
23 with fill to make it look like the natural grade was  
24 significantly higher than it was. And none of the other  
25 properties along this row have cellars; they all have

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1 basements.

2           ANC 1C has taken the position in front of the  
3 Zoning Commission that we should eliminate this ridiculous  
4 distinction between cellars and basements and just talk about  
5 habitable space. If it's habitable space included in the  
6 FAR, if you need to add to the FAR, that's fine. But the  
7 Zoning Commission has not taken that position at this time.  
8 It certainly would keep us from having to spend our time  
9 dancing on the heads of pins the way we do over the inches,  
10 measures, to determine whether or not you get to build an  
11 extra entire story.

12           We believe that this was manipulated. We don't  
13 care who manipulated it, because the question is, within the  
14 last two years before that, what was the actual surface  
15 there? And it's quite clear that a huge amount of dirt was  
16 put in there to change the grade so that the benchmark  
17 they're using and that was indicated in the survey, which  
18 happened after the fill was put in, is not an appropriate  
19 benchmark.

20           And if you don't have the appropriate starting  
21 point, any measurement that you indicate is suspect. They  
22 have not used the right starting point, and that seems to us  
23 very clear.

24           What I don't understand about this entire case is  
25 that, to me, the application of regulations in the District

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1 is a three-legged stool: you have the self-certification of  
2 developers who are expected to be honest and straightforward  
3 when they put their documents in; you have neighbors who are  
4 supposed to be vigilant and point out to DCRA if there are  
5 problems; and you have DCRA that is supposed to be enforcing  
6 the rules as written. In this particular case, I can see  
7 absolutely no effort by DCRA to ascertain what the truth of  
8 the matter was. And I find that really appalling.

9 I'm not getting paid. The neighbors aren't  
10 getting paid. Presumably the developer will get paid  
11 eventually. But the person who is supposed to be there and  
12 supposed to be providing the scrutiny and making sure that  
13 the regulations are being complied with is DCRA, and that's  
14 not happening. And ANC 1C is very unhappy about this  
15 continued process of DCRA simply accepting the word of a  
16 developer for the facts, instead of doing any independent  
17 inquiry. And it would take minimal inquiry to determine that  
18 the documents that were submitted were in error in their  
19 dimensions.

20 We would ask that the Board, who's in a position  
21 to exert some influence on DCRA and how they are conducting  
22 themselves, help the neighbors make sure that these rules are  
23 enforced.

24 I'd cede the rest of my time to Mr. Rueda, who  
25 will be talking about the technical aspects. But we feel

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1 very strongly about this on ANC 1C. It was a unanimous vote.  
2 And we continue to be concerned about the failures of DCRA  
3 in enforcing the clear rules and regulations that are  
4 supposed to be applied to everyone, and they don't seem to  
5 be. Thank you.

6 MR. RUEDA: Thank you, Ted.

7 Chairman Hill, members of the Board, I guess I'm  
8 a little bit trying to figure out how I'm going to present  
9 the information that I prepared for you. So I'm going to  
10 start. I'm going to probably intercede to respond to  
11 Chairman May's -- Commissioner May's, excuse me, questions.  
12 But I wanted to at least start off in addressing the grade  
13 manipulation that we're talking about.

14 We've prepared a -- an exhibit in the -- in -- in  
15 the -- in our pre-hearing statement, Exhibit D, which is the  
16 cited diagram that you just -- that Mr. -- Chairman Guthrie  
17 had just mentioned. We also have prepared, which I'll go  
18 into later, a survey that neighbors on 18th Street  
19 commissioned specifically to address the two properties that  
20 are at issue on our block.

21 So as you may know from the pre-hearing statement  
22 that we submitted, I am a resident of this block. I am very  
23 familiar with this property. I'm familiar with the ins and  
24 outs, given that we had a prior developer that failed to  
25 convert this property into four condos. So, you know, we've

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1 been around -- we've been around this a few times.

2 But regarding the building height specifically for  
3 this project, we have the exhibit before you. The grade was  
4 altered two months before submitting the application for  
5 permit, which was in May -- end of May of 2018. They  
6 incorrectly represent the grade under the porch as existing  
7 and natural. The grade was modified unlawfully to modify the  
8 building height and the story count, which they wanted to add  
9 an additional story, but is not represented in the permit as  
10 it was read off as part of the statement by Mr. Moy.

11 The grade adjustments happened when ownership  
12 transferred to the new owners, Capitol Partners, LLC. The  
13 ANC's reply in the pre-hearing statements provide the  
14 timeline of events that documents how the -- how the  
15 alterations affected the approval. The new berm was  
16 installed at the building, under the porch, on March 24th,  
17 2018. Two months later, the property owner submits the  
18 application for additional alteration and repair, on May  
19 29th, 2018.

20 A week later, on June 4th, the adjoining neighbor  
21 sent comments to the property owner, challenging  
22 representation of the building-height measuring point and the  
23 alteration of the rooftop elements, among other things that  
24 were corrected.

25 Then four months after that illegal berm was added under the

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1 porch, the property owner contracted a surveyor on August 4th  
2 to certify that the illegal berm was a natural existing grade  
3 that's used by DCRA in its pre-hearing statement.

4           It's not true. That berm changed the natural-  
5 grade condition and raised the BHMP location on the drawings  
6 at least four inches higher -- 14 inches higher than  
7 previously existed at the midpoint of the facade. This  
8 change not only mismeasures the building height but, more  
9 importantly, it misrepresents the building as a three-story  
10 building over a cellar.

11 It's actually four stories.

12           Now, I wanted to interject here because  
13 Commissioner May is correct. We've had a lot of issues  
14 trying to understand where the zoning administrator measures  
15 the building-height measuring point, whether it's under the  
16 porch in a situation like this, or at the face of the porch.  
17 So as a result of that, when we did our analysis, we looked  
18 at the conditions at the face of the porch, by using a  
19 surveyor that we contracted. Right, so we commissioned  
20 Andrew Husbands, who's a certified D.C. surveyor, to conduct  
21 a survey, and he documented all the points across the face  
22 of that porch. And from that, we -- we showed the green line  
23 that's the existing grade at the face of the porch.

24           COMMISSIONER MAY: Is -- is that actual survey in  
25 the record?

1 MR. RUEDA: It is.

2 COMMISSIONER MAY: Can you point me to the number  
3 of --

4 MS. RUEDA: It's -- it's Exhibit K --

5 COMMISSIONER MAY: Okay.

6 MR. RUEDA: -- in our --

7 COMMISSIONER MAY: Yep.

8 MR. RUEDA: So we were able to determine that at  
9 the face of the porch you had a -- a building-height  
10 measuring point, elevation, of 138.75. Now, that has to be  
11 taken in consideration in relation to the floor and -- or the  
12 ceiling, which we've represented on this drawing, but I don't  
13 want to get hung up on the numbers right now.

14 What we -- what we did do is we also compared the  
15 BHMP that we determined at the face of the porch -- we also  
16 did a determination under the porch by taking the high point  
17 and the low point at the face of the building, since we can't  
18 measure underneath the porch without trespassing.

19 The average of the high low -- high point and low point is  
20 actually two inches higher than what we found at the face of  
21 the porch. And we did use that higher elevation when we  
22 determined that the lower level is a basement and not a  
23 cellar. And when measured to the ceiling, which, using the  
24 -- the Applicant's drawings, we determined was at 143.33 --  
25 this is all in relation to sea level -- we found that the

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1 basement -- excuse me; we found that the measurement from the  
2 ground under the porch, as an average, was four-foot-four-  
3 and-a-half to the ceiling of the lower level. Now, if you  
4 take that from the face of the existing porch, that actually  
5 increases the measurement to four-foot-six-and-a-half, give  
6 or take.

7           So the ANC obviously did its homework, did  
8 analysis based on what they could ascertain based on visual  
9 information of having seen the condition of the porch prior  
10 to the installation of this berm. We documented it with  
11 photographs in June, showing the new foreign fill, which is,  
12 you know, red in color, completely different from anything  
13 else on the block. We show photographs in September when  
14 they were again onsite manipulating the grade. And DCRA is  
15 now trying to suggest that only changes happened after the  
16 survey was done, after the permit was filed. It doesn't make  
17 sense to us.

18           How do we know this grade was altered? We saw  
19 them do it. There was four separate neighbors that  
20 witnessed, on March 24th -- it's a Saturday -- 2018. We  
21 texted about it. We went out in the alley to look at it and  
22 we were able to see that they were taking fill from the back  
23 of a pickup truck and putting it under the porch.  
24 DCRA's position is that these grade modifications actually  
25 happened after the survey is just not true.

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1           On the same day, March 24th, Ms. Schwartz, the  
2 adjacent property owner, was visited by the prop -- by the  
3 subject property -- the developer; visited her, introduced  
4 himself to them, she and her husband. And at the same time,  
5 you've -- hear testimony from the owner that he denies any  
6 knowledge of work being performed before September.

7           It doesn't really matter. Because of the way that  
8 the regulations are written, B100.2 stipulates that the  
9 established elevation of the ground, exclusive of  
10 improvements or adjustments to the grade, made in the two  
11 years prior to applying for a building permit -- natural  
12 grade may not include manually constructed berms or other  
13 forms of artificial landscaping.

14           We're not talking about an inch or two of a  
15 change. We're talking about, at the furthest extreme of the  
16 property -- because you have to remember these properties on  
17 18th Street all step -- they all have between 24 and 30  
18 inches of difference between each property. Right? So if  
19 you go to the site right now, you look under that porch,  
20 you'll see that the grade from Ms. Schwartz's property  
21 extends all the way level across the lower property, which  
22 used to be two feet lower. So, obviously you have some sort  
23 of change that's happened, and we saw when it happened. It  
24 was in March.

25           We notified DCRA and the developer repeatedly,

1 over the course of the year, that these changes had happened.  
2 DCRA ignored any consideration of the technical objections  
3 that were raised by the adjoining property owner. This is  
4 not what they're tasked to do. They're supposed to take a  
5 position on this, and they never did. They forced us to come  
6 here before you today to argue whether or not the BHMP should  
7 be taken before the berm was installed or after the berm was  
8 installed. And we argue that it should be taken before the  
9 berm was installed.

10           And in the absence of having clear information of  
11 what that condition was before, we ask that you look at our  
12 analysis, which is pretty thorough in terms of saying, hey,  
13 here's a survey, here are the elevations across the face of  
14 that. And we can tell you that the surveyor said that at the  
15 middle -- at the middle of  
16 the -- of the face of the porch, you can determine, from  
17 either side of the steps, that that elevation is 138.75.

18           I'm not sure if you need me to walk through how  
19 you do the math to get to whether it's a basement or a  
20 cellar, but suffice it to say, I think that the diagram is  
21 fairly clear.

22           VICE CHAIRPERSON HART: I -- I do have a question  
23 about some of this. The part that I'm trying to understand  
24 about this particular drawing that you're showing here -- I  
25 understand kind of where you're -- how you -- how you got the

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1 -- the numbers. What I don't understand is where're you  
2 saying that the Applicant -- the -- the -- the owner is --  
3 is measuring from, because there's a -- in -- a measurement  
4 that is here -- oh, sorry. I'll use a different color.

5 MR. RUEDA: Do you -- do --

6 VICE CHAIRPERSON HART: -- that's -- that's here.  
7 Do you see -- see down the --

8 MR. RUEDA: Oh, yes.

9 VICE CHAIRPERSON HART: It's showing up?

10 MR. RUEDA: Yes.

11 VICE CHAIRPERSON HART: Okay. So their  
12 measurement is showing here. You're showing a measurement  
13 that's up here, right, that's -- that's showing that -- that  
14 upper level, which is a level that's higher than what -- what  
15 that is.

16 But I'm not exactly sure what that's supposed to be telling  
17 me, because it's not what the owner  
18 is -- is saying that they're measuring from. But you're,  
19 like --

20 MR. RUEDA: No, they are saying that's where  
21 they're measuring from.

22 VICE CHAIRPERSON HART: Well, but that's not --  
23 well, then this drawing should be --  
24 this -- this measuring point, which I -- which -- this one  
25 here should be at that level and it's not. So I don't

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1 understand why that's not -- they're not the same. You see  
2 what I'm -- what I'm -- what I'm getting to?

3 MR. RUEDA: I -- I don't follow you. But what I  
4 can tell you is --

5 VICE CHAIRPERSON HART: Okay, so --

6 MR. RUEDA: Oh, go ahead.

7 VICE CHAIRPERSON HART: What I'm -- what I'm  
8 trying to figure out is -- there's a number that's right  
9 here.

10 MR. RUEDA: Yes.

11 VICE CHAIRPERSON HART: I circled it. Okay? That  
12 number says 34 and -- 34 -- 34 feet, 11 inches. That  
13 measures from here to the top of their building.

14 MR. RUEDA: Allegedly.

15 VICE CHAIRPERSON HART: I am telling you what this  
16 drawing is showing me.

17 MR. RUEDA: Thank you.

18 VICE CHAIRPERSON HART: Okay, so the drawing shows  
19 me that.

20 MR. RUEDA: Yes.

21 VICE CHAIRPERSON HART: Okay? So what you're  
22 telling me is that the drawing is -- and I understand you're  
23 -- that you -- you're disputing that; I -- I get that. What  
24 I don't understand is why don't the numbers -- why don't the  
25 -- either of the line that you've drawn, which are here and

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1 here, why don't either of those drawing -- either of those  
2 lines equal to what they are saying is their -- their --  
3 their measuring point is actually lower than the red line  
4 that you have and higher than the green line -- or blue line  
5 that you have, and I'm just trying to figure out why that's  
6 not consistent, why that's not the same.

7 MR. RUEDA: Okay, so, graphically this drawing has  
8 lots of errors in terms of it's not to scale. Okay? So what  
9 I did, so you understand, is that I established that purple  
10 line, the ceiling of the lower level, as the benchmark for  
11 which this drawing is -- is made from. Okay? In fact, the  
12 first floor is the benchmark, because I used the five-foot  
13 first-floor measurement that they have there, which is off  
14 of the existing grade. Right? And they're saying that  
15 that's five feet from the existing grade. Okay? But their  
16 section shows, from the grade to the floor, a much different  
17 dimension. And they have the dimension shown as three-foot-  
18 two-and-a-half from the -- from the BHMP that they use, to  
19 the ceiling.

20 So -- so you'll have to rely on the marked-up  
21 information as being graphically correct and representative  
22 of the differences in the numbers, even if you see that the  
23 existing-grade BHMP at zero. It's really not where it is.  
24 You'd have to use their section to be closer to what they  
25 actually use.

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1           So this is all about charting the information.  
2   And I -- charting the information from the survey, right,  
3   which has the ceiling of the lower level at 143.33. And you  
4   can determine that by -- you take the thickness of the floor  
5   assembly, you subtract it from 144.5, which is -- which is  
6   the -- the benchmark of the floor, and then you -- you just  
7   use the different BHMPs. Right?

8           So you have the -- the BHMP at the top of the  
9   berm, which is 140.10; right? That gives you a ceiling  
10   dimension of three-foot-two-and-a-half to the cellar. The  
11   red information is the owner's information. The red  
12   information is not correct.

13           When you measure to the blue information, that's  
14   the interpreted -- that's the information interpreted by the  
15   ANC, based on the high and low measurements at the face of  
16   the building. So the BHMP determined at the face of the  
17   building, as an average between the high and low points of  
18   the property line -- returns a -- a BHMP-to-ceiling  
19   measurement of four-foot-four-and a half inches.

20           Now, to answer Commissioner May's question: If  
21   you locate -- which I obviously, for purpose of this  
22   discussion, will say that that is -- that was a -- we've  
23   measured at the face of the porch for this exact reason,  
24   because we -- we think that, even if it's not properly  
25   considered by the -- by the Zoning Administrator, it does

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1 tell the story of where the grade was under the porch,  
2 because these porches were all designed the same way. Those  
3 porches underneath had windows -- this property does not --  
4 that extended the grade at that platform -- at that mid-  
5 level, which we're showing there in green, right, at the face  
6 of the porch would extend back under the porch.

7           So we were trying to present some context for the  
8 Board to understand where the grade was. And what we -- what  
9 we know -- what we know is that the grade was not altered in  
10 front of that porch; it was only altered under the porch.  
11 Right? So we know that the truest representation of the  
12 existing grade is at the face of that porch.

13           And so using Commissioner May's argument, it's  
14 logical to conclude that in the -- in the -- you know, in the  
15 face of not having actual information before the berm was  
16 installed, that you could comfortably rely on the -- the  
17 grade at the face of the porch, which is five-foot -- I'm  
18 measuring to the floor because -- anyway. It's five-foot-  
19 eight rather than five-foot-six, which is what it was before,  
20 to the floor level. Now, if you subtract one-foot-two for  
21 the floor assembly, you're -- I'm confusing you.

22           So the bottom line is -- is that we believe that  
23 the more -- the most restrictive condition at the face of the  
24 porch is ample to describe the lower level as a basement and  
25 not a cellar.

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1           The concluding thoughts I have, unless you have  
2 questions about the grade measurements --

3           COMMISSIONER MAY: I -- I have one question. I  
4 mean, is -- has any of this been built at this point?

5           MR. RUEDA: No, sir.

6           COMMISSIONER MAY: No, it hasn't been built.  
7 Okay.

8           MR. RUEDA: Only the berm.

9           COMMISSIONER MAY: Right. Well, yeah, and they --  
10 and they fixed the roof, right? Did somebody -- some point,  
11 somebody fixed the roof?

12           MR. RUEDA: There was a -- there was  
13 a -- the roof had -- basically, the roof had been removed  
14 illegally in 2015. So, yeah. So DCRA in March --

15           COMMISSIONER MAY: Put a roof over it.

16           MR. RUEDA: -- put a roof over it.

17           COMMISSIONER MAY: Yeah.

18           MR. RUEDA: Yeah.

19           COMMISSIONER MAY: Okay.

20           MR. RUEDA: So as a concluding thought, if we're  
21 not going -- if you don't want to talk, great. We do have  
22 issues with the restored elements, which, you know -- Mr.  
23 LeGrant and myself met in June of last year, at the end of  
24 June, June 23rd, specifically to talk about lots of projects  
25 and linear heights, where architectural elements are becoming

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1 an issue, and how they're interpreted, what's going to be  
2 enforced by DCRA.

3           And in this case, because we had a legal  
4 demolition, we wanted to know is DCRA going to make them  
5 restore the conditions or are they going to just sort of  
6 allow them to move forward.

7 The answer came back pretty clearly. The architectural  
8 elements needed to be restored. They were not shown that way  
9 until two months after we filed our appeal. They finally  
10 changed and it showed one dormer. And instead of replacing  
11 the dormer that was there, they're -- they're -- they're  
12 replacing a dormer --  
13 they're -- they're mirroring their design based on a  
14 different dormer up on the -- up on the block.

15           If you are okay with that, that's fine with us,  
16 but we should point out that the restoration that they're  
17 proposing includes asphalt -- you know, the cheapest-grade  
18 construction asphalt shingles and a dormer that seems to look  
19 like, you know, what's -- what's up on the block further.  
20 But there's no dimensions or anything to suggest that, you  
21 know, DCRA can go back and enforce that the -- that the  
22 architectural elements were restored properly.

23           So we would like to have some assurance that  
24 they're going to be held to some standard, you know,  
25 regarding these architectural elements.

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1           COMMISSIONER MAY: Are -- are the rest of the  
2 block, the shingles, all slate?

3           MR. RUEDA: They're not all slate. They're mostly  
4 slate or slate-like replacements.

5           COMMISSIONER MAY: What -- what --  
6 where -- when they're not slate, what are they?

7           MR. RUEDA: The recycled-rubber EcoStar kind of  
8 roofing.

9           COMMISSIONER MAY: Okay, so it's, yeah, slate-  
10 like.

11          MR. RUEDA: It's recycled rubber, but it looks  
12 like slate.

13          COMMISSIONER MAY: Yeah. Exactly.

14          MR. RUEDA: Yeah.

15          COMMISSIONER MAY: Okay.

16          MR. RUEDA: So anyway, I just -- I --  
17 I -- you know, I -- I really had tried to avoid a discussion  
18 about the numbers because I think that these things can  
19 become very tedious. But what I can tell you with authority  
20 is that a berm was installed of significant size, especially  
21 since he had, like, four or five guys working off the back  
22 of his truck to put dirt under there. It was eroding in as  
23 early as June, and they had to go back in September to  
24 stabilize it and reshape it so it was higher up on the -- on  
25 the face of the building. It's a disingenuous effort to

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1 basically add an additional story that's not permitted under  
2 the regulations.

3           This is a three-story zone. It was changed that  
4 way in 2015 under Zoning Commission Order 15-09. DCRA has  
5 been reluctant to enforce some of these things in our  
6 neighborhood. I think that they're getting the picture that  
7 we care about the neighborhood, care about, you know, keeping  
8 the integrity of the artificial elements. And we care about  
9 density at this point, in spite of the fact that this used  
10 to be an R-5-B neighborhood; R -- RA-2.

11           COMMISSIONER MAY: I -- I have a question. So,  
12 I mean, you do understand that, because this is under the old  
13 rules --

14           MR. RUEDA: Yes.

15           COMMISSIONER MAY: -- that they could manipulate  
16 the ceiling height in the basement or cellar so that it is  
17 very clearly a cellar; right?

18           MR. RUEDA: It depends on at what point in time  
19 you were talking to DCRA. But yes, I understand that. That  
20 is exactly why, in fact, Ted and myself and another member  
21 from the ANC went to OP to try to shore up the language that  
22 now is measuring to the floor, and also restricting the  
23 movement of floors.

24           COMMISSIONER MAY: Right.

25           MR. RUEDA: Right? So those things we had -- I

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1 don't know if we had a direct hand in them, but we sort of  
2 had an indirect hand in shaping that language, because we  
3 were seeing that happening, you know, far too often.

4 COMMISSIONER MAY: Right. Yeah.

5 MR. RUEDA: So -- so, yeah.

6 COMMISSIONER MAY: It's happening in a lot of  
7 places, but it -- it certainly was part of the -- big part  
8 of the discussion of the Zoning Commission. And that's why  
9 we -- you know, we made those changes, because of that  
10 manipulation of the ceiling height. And we were seeing  
11 really extreme examples of people dropping the ceiling height  
12 by, you know, two feet or two --

13 MR. RUEDA: But --

14 COMMISSIONER MAY: -- two --

15 MR. RUEDA: But previously it was always to the  
16 structure, and at some point that language sort of kind of  
17 went out the window and --

18 COMMISSIONER MAY: Yeah.

19 MR. RUEDA: -- DCRA was starting to allow what  
20 you're talking about, which was --

21 COMMISSIONER MAY: Yeah.

22 MR. RUEDA: -- kind of outrageous.

23 COMMISSIONER MAY: Yeah. I may have overstated  
24 that a little bit. Maybe not two feet. But it was dropping  
25 a lot, dropping --

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1 MR. RUEDA: What I meant by two feet was that the  
2 floor sand was --

3 COMMISSIONER MAY: No, no, no, I was --

4 MR. RUEDA: -- two feet.

5 COMMISSIONER MAY: -- I was -- yeah. Yeah. Okay.

6 MR. RUEDA: Yeah, that's what I was --

7 COMMISSIONER MAY: Right. That's what I was  
8 thinking was --

9 All right, well, that was -- that's it for my  
10 questions at the moment.

11 VICE CHAIRPERSON HART: So just to follow up --  
12 I'm sorry. So just to follow up on actually a question that  
13 I had -- I was thinking about earlier. So the information  
14 that you have that kind of describes -- or shows that there  
15 was this earth added is that you -- you have some emails that  
16 kind of say what -- you know, from various people that were  
17 in the neighborhood. There aren't any photos of that  
18 actually taking place. And -- and do you know what type of  
19 -- kind of earth was underneath this -- the porch, prior to  
20 the March 24th date? And I'm -- I'm just trying to kind of  
21 get to a -- okay, right now it's -- it's -- I mean this a --

22 MR. RUEDA: So -- so this is the modified  
23 condition in June.

24 VICE CHAIRPERSON HART: Yeah. That's what I'm  
25 saying. So -- but we don't -- you don't have anything that's

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1 prior to the -- the March 24th --

2 MR. RUEDA: I didn't anticipate --

3 VICE CHAIRPERSON HART: I -- I -- I --

4 I -- I --

5 MR. RUEDA: -- and took photographs, no.

6 VICE CHAIRPERSON HART: -- understand. I'm just  
7 -- I'm just asking --

8 MR. RUEDA: This is --

9 VICE CHAIRPERSON HART: -- if you had anything --

10 MR. RUEDA: This is what it looked  
11 like -- this is what it looks like next door and up the block  
12 a little bit. This is what it looked like -- this is what  
13 it looks like all up and down the block, what you're seeing  
14 there.

15 VICE CHAIRPERSON HART: So the -- by -- by  
16 extrapolation, that this would be expected to be underneath  
17 this particular --

18 MR. RUEDA: Well, I can tell you that that's what  
19 I saw before --

20 VICE CHAIRPERSON HART: I'm just saying that  
21 that's --

22 MR. RUEDA: -- yes.

23 VICE CHAIRPERSON HART: -- that's what that --  
24 that's what you're --

25 MR. RUEDA: That is --

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1 VICE CHAIRPERSON HART: -- that's why you're  
2 showing these is -- is that we are supposed to be saying,  
3 okay, well, this is kind of what's happened before, so this  
4 is also -- in other sites, this is also what we would expect  
5 to see underneath this -- this -- porch as well?

6 MR. RUEDA: And -- and I think you should find it  
7 odd that you would find a perfectly manicured grade under the  
8 porch in a building that's been vacant for the last five  
9 years. So yes, I do think that that --

10 VICE CHAIRPERSON HART: Yeah, well, I mean --

11 MR. RUEDA: -- it shows a little bit of excessive  
12 tensions --

13 VICE CHAIRPERSON HART: I --

14 MR. RUEDA: -- to an area that --

15 VICE CHAIRPERSON HART: No, I -- I -- I  
16 understand. I'm --

17 MR. RUEDA: Yeah.

18 VICE CHAIRPERSON HART: -- just trying to  
19 understand what information that we're -- we're --

20 MR. RUEDA: I apologize.

21 VICE CHAIRPERSON HART: -- to be using to --

22 MR. RUEDA: I understand; yes.

23 VICE CHAIRPERSON HART: No, no, I -- I understand  
24 it. I'm just trying to understand the information that we're  
25 supposed to be using; one of them is the -- the survey that

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1 you did, which is post this -- the survey that you all --  
2 that the neighborhood conducted, which is June, did you say?

3 MR. RUEDA: No, we ended up getting it, like, at  
4 the end of the year last year.

5 VICE CHAIRPERSON HART: I'm sorry, it was February  
6 of this year.

7 MR. RUEDA: This year. That's right. Sorry. I  
8 asked for it.

9 VICE CHAIRPERSON HART: No, that's fine.  
10 I just wanted to -- I was trying to remember when all these  
11 dates were happening.

12 But that was also -- that was also after all of  
13 the earth was -- was -- has been added to this. And I'll get  
14 to the owner about -- asking them about this as well. But  
15 I'm just trying to understand that's what you're -- you're  
16 also noting is that these -- this is where you see  
17 the -- this is how you have come to this understanding is by  
18 kind of putting together some information that is direct but  
19 it's not prior to the March date -- March 2018 date, which  
20 I understand. I'm just -- I'm just making sure that I under  
21 -- that I -- I got the information from -- from what you're  
22 -- what you have presented and what you've included in the --  
23 in the record to date.

24 MR. RUEDA: What I'd like to -- what I'd like to  
25 sort of clarify for you is that the -- the -- the nature of

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1 the survey, while it was two different properties on 18th  
2 Street -- the nature was exactly to address Commissioner  
3 May's point, which is, I wanted to understand what the --  
4 what we could measure that we knew -- that we know exists.  
5 It was not touched. Right? So that's why we did that. You  
6 know, we wanted to be able to give you a comparison and say  
7 there's no way that there's, like, an additional two feet of  
8 earth underneath this porch, which, you know, at the extreme  
9 points it's -- it's almost 27 inches of difference, but at  
10 the midpoint it's -- it's 14. Right?

11 So again, using an average which coincides with  
12 exactly the landing level, which is what you would expect if  
13 you walked up and down the street, every landing level  
14 extends under the porch at the same approximate elevation,  
15 give or take, you know, couple of inches.

16 VICE CHAIRPERSON HART: Okay. Thank you.

17 MEMBER JOHN: Chair, I have a question.

18 So on this photograph, could you show me where the  
19 BHMP, according to your survey --

20 MR. RUEDA: On the photograph?

21 MEMBER JOHN: On the photograph. I'm try --  
22 there's a tree right here, which to me as a layperson looks  
23 like it could be the natural grade, right there. So where --  
24 where would you put the BHMP on this -- on this slide?

25 MR. RUEDA: I --

1 MEMBER JOHN: I'm just trying to  
2 marry --

3 MR. RUEDA: I -- I -- I --

4 MEMBER JOHN: -- your --

5 MR. RUEDA: -- I understand, and I don't know how  
6 to do that, I guess. Maybe in this photograph right here --

7 MEMBER JOHN: Whichever photograph --

8 MR. RUEDA: The -- where the -- where the cursor  
9 is, right, you could -- from the survey, I can tell you what  
10 the elevation is of that landing at the face of the stair.  
11 But the BHMP that I interpreted was taken from measurements  
12 on either side of the stair, at the face of the porch. So  
13 you -- I can't point to it, is what I'm trying to say.

14 But it's not substantively different from the face  
15 of that stair, at the landing.

16 It -- you know, it might be -- it might be an inch lower.  
17 It might be the same. I -- I -- I'd have to look at the  
18 survey to figure that out.

19 But -- but that is where, in my mind,  
20 at -- at that face, at the midpoint of that stair, at that  
21 landing, that is the BHMP. And -- and if you count stairs  
22 alone, right, if you count stairs alone, you're going to have  
23 way more than enough if you use eight inches, which it's more  
24 than eight inches. But if you use a conservative number of  
25 eight inches per stair, you're going to be at 64 inches to

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1 that first floor. Okay, but I know it's more, because I have  
2 actual survey information to help me. But just as a -- you  
3 know, when you go by projects, you can interpret stuff  
4 through counting bricks or counting stairs.

5 MEMBER JOHN: Can you go back to the slide that  
6 shows the new dirt being put in -- or that was put in?

7 MR. RUEDA: So -- okay. We photographed under the  
8 porch, basically -- on June 2nd is like three days after I  
9 saw the drawing. So it's, like, I knew what they were doing  
10 at that point, because I saw their drawings. Right? I knew  
11 what they were going -- what they were alleging.

12 And we look under the porch; you could see that  
13 it had already eroded. This work was done in -- in March,  
14 but it was already eroding to the point where they had to  
15 come back in September. And see -- here you can see, again,  
16 at the face of the -- of the retaining wall, you can see all  
17 the pink dirt washing over the top of it. You can see it on  
18 the alley level. And then on September 1st, we saw the guy  
19 come again. He brought some gravel. He brought some mulch.  
20 He brought more than three buckets of gravel, but that's what  
21 we photographed. And he -- he stabilized the berm and shaped  
22 it so that it reached higher.

23 Now, if you look at the testimony -- the statement  
24 from Ms. Schwartz, she wrote a statement that's included as  
25 part of our pre-hearing statement, and she followed up, as

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1 did three other neighbors, with an affidavit talking about  
2 the work that happened under the porch. We submitted a reply  
3 on Monday.

4           The exhibit included in the pre-hearing statement  
5 -- I can pull up -- because it has additional photographs.  
6 And here you can see, you know, additional buckets of gravel,  
7 as opposed to the three that, you know, the property owner  
8 thinks that is a minor adjustment. You can see the worker.  
9 You can see the mulch there. And you can see him working  
10 under the porch here.

11           So we know it's from September. We know that --  
12 that what they had to do was to ensure that the measurements  
13 that they had shown on their application could be  
14 substantiated.

15           MEMBER JOHN: Do you have any photographs from the  
16 March 14 time frame -- March 24th?

17           MR. RUEDA: No, I don't. So -- but I do have  
18 sworn testimony. If that's not good enough for you, I'm not  
19 sure what else I can do.

20           MEMBER JOHN: Thank you.

21           MR. RUEDA: You're welcome.

22           CHAIRPERSON HILL: Okay. Let's see. So if we  
23 could now go ahead and let the -- I'm going to start with  
24 DCRA first, I guess, ask any questions that they have of the  
25 Appellant.

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1 MR. RUEDA: I -- I apologize for not --

2 CHAIRPERSON HILL: Sure.

3 MR. RUEDA: Ms. Schwartz, the property owner, is  
4 -- the adjacent property owner is here, and she did tell me  
5 -- she just whispered in my ear --

6 CHAIRPERSON HILL: Sure.

7 MR. RUEDA: -- why she didn't take photographs,  
8 and she says it's because it was the Sabbath and they're not  
9 allowed. She's -- she observes the Sabbath, and they don't  
10 use electricity.

11 CHAIRPERSON HILL: That's okay. She -- we can --  
12 I mean, she can come testify. I -- actually, I guess you're  
13 kind of making a swimming pool right now. Did -- did she not  
14 want to come forward and just give testimony?

15 MR. RUEDA: At the appropriate time.

16 CHAIRPERSON HILL: Sure.

17 MR. RUEDA: Sure. Whenever you want.

18 CHAIRPERSON HILL: Okay, well, we have -- I mean,  
19 you're now -- I mean, what I was trying to do was do the 20  
20 minutes so that I got your presentation and any witnesses  
21 that you might have. And so, you know, you basically got  
22 your 20 minutes. And so I'll go ahead. And now you have  
23 testimony from how many witnesses?

24 MR. RUEDA: I have -- I have --

25 CHAIRPERSON HILL: Yeah, the button. Sorry.

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1 MR. RUEDA: So the -- the sworn testimony I  
2 presented is signed affidavits.

3 CHAIRPERSON HILL: Got it.

4 MR. RUEDA: Ms. Schwartz is here to provide  
5 additional information --

6 CHAIRPERSON HILL: Got it. Okay.

7 MR. RUEDA: -- in support of --

8 CHAIRPERSON HILL: Ms. Schwartz, will you come on  
9 forward, please, just since -- since it'd be odd for Mr.  
10 Rueda to provide your testimony about what he just provided  
11 testimony about. So I know you did get sworn in earlier;  
12 correct?

13 MS. SCHWARTZ: I did.

14 CHAIRPERSON HILL: If you'd just introduce  
15 yourself for the record.

16 MS. SCHWARTZ: Sure. I'm Stephanie Schwartz. I  
17 live at 2918 18th Street Northwest, which is the adjoining  
18 townhouse to 2920 --

19 CHAIRPERSON HILL: Okay.

20 MS. SCHWARTZ: -- 18th Street.

21 CHAIRPERSON HILL: Okay. And the testimony that  
22 you just gave -- or what you just told Mr. Rueda to tell us,  
23 could you just please tell us again?

24 MS. SCHWARTZ: Yes. My husband and I are  
25 observant Jews. We observe the Sabbath, which is Friday

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1 evening at sundown through Saturday night at sundown, and we  
2 don't use electricity or drive or engage in business on  
3 Saturday -- Jewish Sabbath. So I -- I would not be able to  
4 take pictures of something occurring in my neighborhood --

5 CHAIRPERSON HILL: Got it.

6 MS. SCHWARTZ: -- on a Saturday.

7 CHAIRPERSON HILL: Okay. All right, great. Thank  
8 you.

9 All right. So is there anything else that the  
10 Board has any questions for, for the Applicant's -- I'm  
11 sorry, for the Appellant's presentation, at this point?

12 (No audible response.)

13 CHAIRPERSON HILL: Okay. All right. Thank you.  
14 And if you wouldn't mind turning off the mic. Thanks. It  
15 feeds back if more than one is on.

16 So, DCRA, do you have any questions of the  
17 Appellant?

18 MS. LORD-SORENSEN: Just one quick question.

19 CHAIRPERSON HILL: Sure.

20 MS. LORD-SORENSEN: Mr. Rueda, just to clarify;  
21 when you calculated the grade, right, for -- and -- used that  
22 information for the BHMP, you started at the front of the  
23 porch; correct?

24 MR. RUEDA: As I tried to explain,  
25 the -- the analysis that we did compared the average grade

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1 at the face of the building,  
2 right -- and we compared that to the average grade of the  
3 middle -- excuse me, the midpoint grade at the face of the  
4 porch. Okay, so we compared those two to be within two  
5 inches of each other, and we used the -- the -- the more  
6 conservative, the least -- we used the higher BHMP to confirm  
7 that the lower level was a basement.

8 MS. LORD-SORENSEN: No further questions.

9 CHAIRPERSON HILL: Okay. Does the property owner  
10 have any questions for the Applicant -- or Appellant, I  
11 should say?

12 MS. MAZO: Sure. I just have a couple questions  
13 of clarification. So Mr. Rueda and Ms. Schwartz, you all  
14 have -- have stated, and now very recently, very vociferously  
15 and very affirmatively, that there was a very large grade  
16 change in March. However, Mr. Rueda, I'm confused because  
17 you also indicated that the pictures you showed were in June  
18 and that they documented a significant runoff. Is that  
19 correct?

20 MR. GUEDA: The photographs speak for themselves.  
21 I made an assumption that there was runoff, yes.

22 MS. MAZO: Well, no, the photographs don't speak  
23 for your -- for themselves. You indicated that you -- in the  
24 photograph, that there was a significant -- that in -- in  
25 your observation, that there was a runoff. I mean, I don't

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1 -- I don't know if the photograph shows -- there's no runoff  
2 I see in that photograph; it's just a picture. So --

3 MR. GUEDA: I can explain.

4 MS. MAZO: Well, but my question, though, is that  
5 you also agree that the property owner's survey was prepared  
6 in August, correct, and so it would be based on the measuring  
7 point as determined in August, correct?

8 MR. RUEDA: The application was filed in May.

9 MS. MAZO: Right, but you --

10 CHAIRPERSON HILL: Oh, now I'm just --  
11 I -- it's okay; I'm just trying to understand the question.  
12 What's your question --

13 MS. MAZO: My --

14 CHAIRPERSON HILL: -- Ms. Mazo?

15 MS. MAZO: My question is -- is that they have  
16 made these allegations that there was somewhat -- some large  
17 amount of fill that was provided in March, okay, and then the  
18 pictures that they show are in June, but then it's also clear  
19 that the survey was filed in August. And they have indicated  
20 that there's runoff between whenever the fill was provided,  
21 whether or not it happened in March, and then when these  
22 photographs were shown in June. And so my question here is  
23 how -- how are you aware of how much fill was provided in  
24 March if these pictures are in June and then the survey was  
25 in August?

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1 MR. RUEDA: So what I tried to explain was that  
2 we used analysis of the existing grade conditions that we do  
3 know, and I relied on my recollection of the conditions under  
4 the porch. So I can't tell you how much fill was, other than  
5 by this analysis, which was conducted at the face of the  
6 building and at the face of the porch --

7 CHAIRPERSON HILL: Okay.

8 MR. RUEDA: -- and compared the two.

9 CHAIRPERSON HILL: Okay.

10 MS. MAZO: Okay, so have you taken a measurement  
11 under -- for the -- in the area under the porch?

12 MR. RUEDA: I'm not allowed to, unless I ask for  
13 permission from the owner, which I assumed would not be  
14 given. So I didn't ask.

15 CHAIRPERSON HILL: Okay, so no is the answer.

16 MS. MAZO: But my understanding is you just said  
17 that you based it on your analysis of the area under the  
18 porch. How -- how were you able to make that analysis if you  
19 haven't been under the porch?

20 MR. RUEDA: So I can see under the porch, from the  
21 neighbor's property, and we can shoot -- the surveyor can  
22 shoot elevations, with his laser, at the property line of the  
23 subject property, right, and at the other property line.  
24 And on the property -- he doesn't have to step onto the  
25 property to measure these things, because of how modern

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1 surveying happens. So anything under the porch that he  
2 doesn't have a direct line of sight to he can't measure.

3 CHAIRPERSON HILL: I understand what the answer  
4 was. What's your next question, Ms. Mazo?

5 MS. MAZO: Can you go back through your survey  
6 again and explain to me, and I guess also to the Board,  
7 exactly what you believe to be the height of the lower level,  
8 based on your survey analysis? And -- and using the pre-17-  
9 18 calculations, which is what we are proceeding under.

10 MR. RUEDA: I -- I don't understand your question.

11 MS. MAZO: My question is -- is that the survey  
12 you provided, as identified by the Board, has a whole bunch  
13 of different numbers. So can you tell me --

14 CHAIRPERSON HILL: That was not the survey.

15 MS. MAZO: -- or -- and the Board -- well, then --

16 MR. RUEDA: So you -- that's why I -- I want to  
17 make sure --

18 MS. MAZO: Okay, so then this --

19 MR. RUEDA: -- is it the survey or is it this?

20 MS. MAZO: -- this is fine. This -- which is --  
21 I guess you identified as Exhibit D. But can you tell us,  
22 based on the pre-17-18 calculations, what this, your  
23 annotations to the front elevation on Exhibit D, is showing  
24 what you believe to be the difference in the height for the  
25 lower level, based on a pre-17-18 calculation?

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1           COMMISSIONER MAY: Before we go into this again --  
2 I mean, we've been through this. And if you could bring up  
3 the section -- or the elevation again, please.

4           So, I mean, the -- I think the -- the Appellant  
5 described pretty clearly that they were able to take  
6 measurements that are shown in blue, right: the low point  
7 on the right, 137.7; the high point on the left, at 140.2.  
8 And those were represented, the -- you know, the dimensions  
9 that they could get, you know, from the outside. And they  
10 interpolated the difference between them, to come up with a  
11 building-height measure -- measuring point, for the midpoint  
12 of it.

13           So I'm not -- can you explain to me what you don't  
14 understand? Because I don't want to go through every number  
15 again, you know, just to explain stuff we already understand.

16           MS. MAZO: I'm just trying to understand. So  
17 they're showing four feet four-and-a-half inches. Is that --

18           COMMISSIONER MAY: Correct. Okay, yes.

19           MS. MAZO: Is that based on the pre-17-18  
20 language, or is that based on the post-17-18 language?

21           MR. RUEDA: So --

22           COMMISSIONER MAY: Measurements are not dependent  
23 on the language of the zoning regulations. Measurements are  
24 based on what they did in the survey and what's shown in the  
25 drawings that were submitted to DCRA. So I assume that they

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1 got the ceiling of the lower level at 143.33, working from  
2 the permit drawings. And they're -- they're --

3 MR. RUEDA: That's correct.

4 COMMISSIONER MAY: -- you know, four feet four-  
5 and-a-half inches is the difference between the ceiling in  
6 the -- of the lower level, based on those plans and what they  
7 surveyed onsite. So what don't you understand?

8 MS. MAZO: I -- I would just -- would like the  
9 Applicant -- the Appellant to explain it.

10 COMMISSIONER MAY: Was that correct?

11 MR. RUEDA: You are correct, yes.

12 COMMISSIONER MAY: Thank you. So let's not have  
13 to go through it again.

14 MS. MAZO: No more questions.

15 CHAIRPERSON HILL: Okay. DCRA, you're up. You  
16 get 20 minutes.

17 Please --

18 MS. LORD-SORENSEN: I just need to  
19 grab --

20 CHAIRPERSON HILL: -- on the clock, Mr. Moy.

21 MS. LORD-SORENSEN: -- a laptop.

22 CHAIRPERSON HILL: Sure.

23 (Pause.)

24 CHAIRPERSON HILL: Okay, Ms. Lord-Sorensen. You  
25 know what we're arguing about, right?

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1 MS. LORD-SORENSEN: Yes. Just the --

2 CHAIRPERSON HILL: Okay.

3 MS. LORD-SORENSEN: -- BHMP --

4 CHAIRPERSON HILL: Okay. Great. Thank you.

5 MS. LORD-SORENSEN: Okay. So good afternoon  
6 again, Chairman Hill and members of the board. We're here  
7 today because the Appellant ANC 1C claims that the proposed  
8 construction at 2920 18th Street Northwest exceeds the  
9 maximum height for the zone. DCRA asserts that -- after  
10 you've heard the testimony and reviewed the evidence -- that  
11 you'd find that the zoning administrator correctly approved  
12 the permit.

13 So, Mr. LeGrant, could you tell us which zone 2920  
14 18th Street Northwest is located?

15 MR. LEGRANT: Yes. This is the RF-1 zone.

16 MS. LORD-SORENSEN: And is there a height  
17 limitation for this zone?

18 MR. LEGRANT: Yes, there is.

19 MS. LORD-SORENSEN: And what is the height  
20 limitation?

21 MR. LEGRANT: Okay. The height limitation is  
22 three stories, 35 feet.

23 MS. LORD-SORENSEN: Okay. And are these limits --  
24 limitations found in the zoning regulations?

25 MR. LEGRANT: Yes, they are.

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1 MS. LORD-SORENSEN: Okay, do you know where?

2 MR. LEGRANT: Yeah. It's Subtitle E, Section  
3 303.1.

4 MS. LORD-SORENSEN: Okay.

5 So the Appellant alleges that the building height  
6 is incorrect because the owner measured the building height  
7 from a finished grade rather than existing grade. First, how  
8 is the height of a building measured?

9 MR. LEGRANT: Okay. So the height of the building  
10 is measured for the difference between the BHMP located at  
11 the existing grade, to the top of the building. This is as  
12 per Section B308.2 of the zoning regulations.

13 MS. LORD-SORENSEN: Okay. I'd like to direct your  
14 attention to the August 4th, 2018 survey that was submitted  
15 to DCRA. Now, based on this survey, where's the starting  
16 point for the building-height measurement point?

17 MR. LEGRANT: Okay. So consistent with the -- the  
18 -- the measurement of building height that's from the face  
19 of the building, the middle of the face -- the -- where the  
20 grade meets the middle of the face of the front of the  
21 building.

22 MS. LORD-SORENSEN: And what is that number  
23 depicted on the survey?

24 MR. LEGRANT: Yes, the number is 107.06 and is the  
25 elevation above mean sea level -- mean sea level. That's --

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1 that's located under the porch, at the face of the building.

2 (Pause.)

3 MS. LORD-SORENSEN: Appellants argue that the area  
4 under the porch is inaccurate because the starting point is  
5 from the top of  
6 the -- is from the front of the landing right here. Could  
7 you please provide your opinion on whether or not the  
8 measurement should have started from the front of the porch  
9 versus underneath the porch?

10 MR. LEGRANT: So it should not be at  
11 the -- at the front of the porch. It needs to be at the face  
12 of the building, and this is consistent with, again, B308.2  
13 that calls out how we measure building height; it's from the  
14 face of the building. I believe there's language in the  
15 zoning regulations that says what the -- a -- a building face  
16 or facade is, exclusive of appurtenances.

17 And so my office has consistently looked at -- and  
18 I'm not even in the subject case but, for other cases when  
19 there are porches or stairs, landings, there's -- these  
20 elements can manifest themselves in a thousand different  
21 ways. But the benchmark, I believe, consistent with the  
22 zoning regulations, is to be the face of the building, and  
23 that provides a clear point in which we can establish the  
24 BHMP consistent with the building-height measurement methods  
25 prescribed by the zoning regulations, to accurately determine

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1 what a building height is.

2 MS. LORD-SORENSEN: And to further support what  
3 the zoning administrator just told the Board, I would like  
4 to just bring to the Board's attention again the definition  
5 for building-height measurement -- or, excuse me, how a  
6 building-height measurement point is established under 11-  
7 308.2. And that reads, "The building-height measurement  
8 point shall be established at the existing grade at the  
9 midpoint of the building facade of the principal building  
10 that is closest to a street lot line."

11 And then when you -- there is a definition --  
12 "building facade" is defined in the zoning regs, under 11-  
13 B100.2, and that reads, "an exterior vertical plane, face,  
14 or side of a building, exclusive of any permitted  
15 projections." So it's the front space of the building.  
16 Okay.

17 Okay, Mr. LeGrant, I'd like direct your attention  
18 to A3.2. A few moments ago, you mentioned that the building-  
19 height measurement point starts underneath the porch, and so  
20 I'm showing you the side elevation under the revised plans.

21 MR. LEGRANT: Yes.

22 MS. LORD-SORENSEN: Could you please identify to  
23 the Board where the building-height measurement point should  
24 begin?

25 MR. LEGRANT: Yes. Use the cursor. The end of

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1 the arrow that intersects the -- where it intersects the face  
2 of the building, it's called out consistent with the  
3 indication in the -- in the other elevation view, that the  
4 107.06 above mean sea level is the BHMP location.

5 MS. LORD-SORENSEN: And based on this particular  
6 elevation -- side elevation, what is the height of the  
7 proposed construction at 2920 18th Street?

8 MR. LEGRANT: Right. So it's dimensioned here as  
9 I -- as I take the cursor and it's been noted in previous  
10 witness testimony, 34 feet ten-and 11/16ths inches.

11 MS. LORD-SORENSEN: And is that height compliant  
12 with 11 E DCMR 303.1?

13 MR. LEGRANT: It is, because the height limitation  
14 is 35 feet.

15 MS. LORD-SORENSEN: And lastly, the Appellant  
16 argues that the proposed construction calls for four stories,  
17 claiming that the owner identified the BHMP from the higher  
18 finished grade. Could you -- could you first explain to the  
19 Board -- well, let me take a step back.

20 MR. LEGRANT: Yeah.

21 MS. LORD-SORENSEN: So the property owner  
22 identified the lowest level as a cellar, and it appears that  
23 the Appellant takes issue with that. So could you please  
24 explain to the Board what is a cellar, or how is a cellar  
25 defined --

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1 MR. LEGRANT: Right.

2 MS. LORD-SORENSEN: -- under the regs?

3 MR. LEGRANT: Okay. So I think, as the Board is  
4 aware, and the -- using the pre-17-18 regulations, a cellar  
5 is defined as a level of the building which, from top of the  
6 finished grade to the ceiling, is no greater than four feet.  
7 We all know that was changed with the 17-18 regulations, but  
8 that is the operative provision that applies here. And in --  
9 in this case, therefore, based on this representation of the  
10 submitted plan and approved plan, it illustrates that this  
11 lowest level is indeed a cellar and not counted as a story.

12 MS. LORD-SORENSEN: And based on the revised  
13 plans, what is the height from existing grade to the cellar  
14 ceiling?

15 MR. LEGRANT: It's three -- three-foot-two-and-a-  
16 half inches.

17 MS. LORD-SORENSEN: I'm just going to take a step  
18 back for a moment, Mr. LeGrant. Earlier, Commissioner May  
19 asked why didn't the BHMP start on the porch. Could you  
20 please just address that?

21 MR. LEGRANT: Yeah. Okay, I'll reiterate.

22 COMMISSIONER MAY: I don't think you need to go  
23 over that. I mean, you just answered it. Right?

24 MR. LEGRANT: Okay.

25 COMMISSIONER MAY: I mean, it's, it's -- the

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1 regulations call for it to be from the building facade, and  
2 the facade is defined as being absent any projections. I  
3 mean, I would argue that that's an oversight in the part of  
4 the regulations because it kind of doesn't make sense in this  
5 circumstances, but it is what it is, right? I mean, did I  
6 miss anything there?

7 MS. LORD-SORENSEN: No.

8 COMMISSIONER MAY: Okay.

9 MR. LeGRANT: Yeah.

10 MS. LORD-SORENSEN: And there's been a lot of  
11 discussion about, you know, whether or not the berm or the  
12 landscaping or the grade was manipulated any way such -- in  
13 any such way. Are there any sort of safeguards in place to  
14 try to prevent a building being constructed in excess of  
15 what's allowed in this particular zone?

16 MR. LeGRANT: So any departure from the approved  
17 plans, the process of -- DCRA's building permit process  
18 includes, after a building permit's issued, the construction  
19 is subject to inspection. So at the time of final  
20 inspection, those -- any change, if they build the building,  
21 you know, taller, or they change footprint or other  
22 representations, including the location of the grade,  
23 deviates from the plans, it would become an enforcement issue  
24 as to the consistency with the approved plans.

25 MS. LORD-SORENSEN: And are cellars included in

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1 the calculation of stories?

2 MR. LeGRANT: They are not.

3 MS. LORD-SORENSEN: No further questions.

4 CHAIRPERSON HILL: Does the Board have questions  
5 for DCRA?

6 MEMBER JOHN: Yes, one quick question.

7 So, Mr. LeGrant, if the grade was changed before  
8 the survey, would DCRA have an enforcement action on that  
9 change after the building was built? I guess I'm looking  
10 at -- maybe I didn't ask that right. So there's a question  
11 about when this berm was installed.

12 MR. LeGRANT: Yes.

13 MEMBER JOHN: March 24th or just before the  
14 survey.

15 MR. LeGRANT: Right.

16 MEMBER JOHN: And the building height that was  
17 used for the application was the post-March 24th grade, but  
18 before the survey?

19 MR. LeGRANT: Right.

20 MEMBER JOHN: So DCRA would use that measurement,  
21 not the measurement after the survey?

22 MR. LeGRANT: Right. So --

23 MEMBER JOHN: If you could clear that up?

24 MR. LeGRANT: Sure. Well, obviously, a key issue  
25 is this: Is the owner misrepresenting the grade. And one

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1 of the reasons that we have a survey is to put the applicant,  
2 the building permit applicant on record as to what is the  
3 grade. They retain the services of a surveyor, which I'm  
4 sure you're going to hear more from the property owner to  
5 speak to that. And that surveyor affixed his or her seal;  
6 this is a representation of the grade.

7           If we have information from the ANC that no, the  
8 grade was manipulated and changed, then they obviously, to  
9 my office as well as to this Board, present information that  
10 they believe is contrary to the applicant's representation.

11           As I am charged to do as far as the zoning  
12 regulations, I have to look at all the information  
13 before me. And the ANC's information was brought to me and  
14 it showed allegations that the grade was changed, people  
15 brought in clay or gravel or whatever. I had to go back to  
16 the property owner and say you show me what the grade is,  
17 make a representation. I look at that information, and  
18 that's where I landed, was the representation from the  
19 property owner, to me, illustrates where the grade point is.

20           They are held to that going forward with the  
21 approval of the building permit and that representation that  
22 they must build to those plans and not have any deviations  
23 from the approved plans.

24           MEMBER JOHN: Just to follow up, so you don't know  
25 what the building measurement, building height measurement

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1 point was on March 25th?

2 MR. LeGRANT: I do not.

3 MEMBER JOHN: Okay. Thank you.

4 VICE CHAIRPERSON HART: Also to follow up on that  
5 question, does DCRA send out surveyors to verify information?  
6 I mean, you're relying on the owner's representatives and the  
7 owner themselves on what they're submitting to you, but  
8 does -- is there any sort of verification that DCRA does in  
9 any case, and what would that -- how would you get to that  
10 point to be able to do that or to have to do that?

11 MR. LeGRANT: So DCRA, although we have an Office  
12 of Surveyor, we do not have surveyors that go out in the  
13 field and do measurements. DCRA, similar to -- separating  
14 the grade question from a building form question, it is the  
15 job of the inspectors to go out to ensure that the  
16 construction's in compliance with the approved plans. If a  
17 question arose like, wait a second, last week somebody  
18 changed the grade here and there's a dispute, my office can,  
19 and has, required the property owner to retain -- you know,  
20 present information, which can include retaining the services  
21 of a private surveyor to present information to my office for  
22 review and analysis.

23 At that point, I can talk with the surveyor, the  
24 district surveyor to see if that information appears correct.  
25 But we rely on, basically rely on the fact that any survey

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1 submitted is affixed with the seal of the surveyor that they  
2 are representing that as a true and accurate information.

3 VICE CHAIRPERSON HART: And do you think that  
4 there has been any -- we've been calling it manipulation.  
5 I don't know what you want to call it, but adding earth  
6 underneath this porch. The Appellants are arguing that there  
7 has been, you know, some soil added to the underneath of the  
8 porch, which would of course raise that grade and then allow  
9 the owner to be able to, well, kind of deal with how to  
10 measure the cellar and all that stuff.

11 So, in approving the permit, you're asserting that  
12 you are -- actually, I don't know what you're saying about  
13 the -- what happened underneath the porch.

14 MR. LeGRANT: Well, I don't dispute the ANC's and  
15 the neighbors' assertion that something happened here where  
16 some gravel or clay was brought in. Was that something that,  
17 in the ANC's view, increased the elevation? Was this  
18 replacement of material that was there? Was it spread out?  
19 What I do not know personally is the before situation, before  
20 these buckets of material were brought in.

21 I go to the property owner and say you make a  
22 representation of what the grade is, and I looked at that.  
23 I looked at what, again, was -- it was a certified survey.  
24 It shows that and I determine that that information is  
25 acceptable for reliance on the permit.

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1 VICE CHAIRPERSON HART: Thank you.

2 COMMISSIONER MAY: So, I mean, I think there's  
3 pretty clear evidence that stuff was put under there, and  
4 it's hard for me to believe that it was replacing anything  
5 that was already there. And again, looking at the similar  
6 circumstance of other adjacent properties, it seems pretty  
7 clear that they elevated and bermed up against the face of  
8 the building. And there are lots of good reasons to do that.  
9 It's not just about, you know, how you measure the building  
10 height.

11 But the notion that we would -- I mean, first of  
12 all, the fact that there's been a survey doesn't mean  
13 anything because the surveyor was, I assume, was not charged  
14 with finding the natural grade and measuring to the natural  
15 grade. They were just going out there to measure the  
16 building and give grades across the site, right?

17 MR. LeGRANT: They, the Applicant, was tasked with  
18 providing information --

19 COMMISSIONER MAY: I'm not asking about the  
20 Applicant, I'm asking what the surveyor stamped.

21 MR. LeGRANT: Okay. Well, as part of the  
22 application, the surveyor had provided information that  
23 included the grade level.

24 COMMISSIONER MAY: But that's the existing grade?

25 MR. LeGRANT: That's the grade that surveyor saw,

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1 apparently, at the time.

2 COMMISSIONER MAY: At the time.

3 MR. LeGRANT: Yes.

4 COMMISSIONER MAY: Which was post manipulation,  
5 or post addition of material, according to the testimony of  
6 the ANC?

7 MR. LeGRANT: Now that's, of course, the question  
8 we're all here about.

9 COMMISSIONER MAY: Well, right, but I mean, it's  
10 pretty clear that stuff was put in there, right? I mean, we  
11 saw a pictures -- we see pictures of soil that was added.

12 MR. LeGRANT: I don't disagree that material was  
13 brought in there.

14 COMMISSIONER MAY: Right. So, but, you know, if  
15 we -- in a circumstance like this, when material is brought  
16 in, have there been cases in the past where you've gone out  
17 and tried to figure out what the natural grade was through,  
18 I don't know, photographic evidence, or looking at the  
19 compaction of the soil, or anything else that could give you  
20 hints as to what the original grade was?

21 MR. LeGRANT: There have been instances in which,  
22 you know, similarly, the grade -- I'm trying to think of the  
23 instances that I'm aware of. At least in one instance where  
24 it was much more dramatic of, you know, several feet of soil  
25 differentiation. So that was easier to make a determination.

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1 Which that other case resulted in an enforcement case.

2 COMMISSIONER MAY: Right.

3 MR. LeGRANT: And, I mean, the applicant having  
4 to come back to the Board. But it is difficult when -- to  
5 ascertain what was the grade, you know, before.

6 COMMISSIONER MAY: Right.

7 MR. LeGRANT: If somebody brought in a few inches  
8 of material. In that respect, that is one of the key reasons  
9 why this office supported 17-18 to try to prevent such  
10 situations going forward.

11 COMMISSIONER MAY: Right. Yeah, I mean, this has  
12 been a longstanding issue. I remember back to my first stint  
13 on the Zoning Commission, so in the early 2000s, wrestling  
14 with the issue of building height measurement point. Which  
15 is, I think, where we got the natural or existing grade --  
16 I'm sorry, finish grade or natural -- finish grade or  
17 original grade, something. Whatever that language was.

18 MR. LeGRANT: Yes.

19 COMMISSIONER MAY: I think it dates back that far.

20 MR. LeGRANT: Okay.

21 COMMISSIONER MAY: You know, in this circumstance,  
22 essentially what it's going to come down to, since I think  
23 there's clarity on where we should be looking at the grade,  
24 that -- you know, the question is whether it fits the  
25 definition of building height measuring point. And that

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1 hinges on whether we think the grade has been manipulated.  
2 And again, there's been evidence presented that indicates  
3 that maybe it has.

4           So if we conclude that it has and that the  
5 building height measuring point -- and this is a completely  
6 hypothetical situation. But if we conclude that the grade  
7 was manipulated and that, in fact, it should be measurably  
8 less than what's there, you know, or what was in the survey  
9 from back in March, what does that mean for you in terms of,  
10 you know, enforcement from here?

11           I mean, are we going to have to -- you know, will  
12 you be able to go out there with -- I mean, not you  
13 personally but your staff be able to go out there and try to  
14 investigate and determine where you think the actual grade  
15 should be measured from?

16           I mean, what does it mean, you know, if we --  
17 because I don't -- I mean, we don't have any indication of  
18 what it actually should be. We could certainly go by the  
19 interpolation that was done by the ANC, but I'm not sure that  
20 that's the right solution. So what would you do in that  
21 circumstance?

22           MR. LeGRANT: Well, if the Board were to grant the  
23 appeal, I believe it would be in its purview to void the  
24 permit, tell them to apply again, provide different -- or  
25 supplement the information. I am not suggesting the Board

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1 could say -- now, that, you know, that is, in your judgment,  
2 that's a basement, you know, and enforce as needed. And then  
3 if that were the decision of the Board, then obviously my  
4 office would go back and, for the subject application, it  
5 would no longer be a matter right project. It would require  
6 relief.

7           COMMISSIONER MAY: Well, they could also further  
8 revise the project to manipulate the height of the ceiling  
9 or the height of the roof depending on where the building  
10 height measuring point came out, whether they could have  
11 habitable space on the top floor and things like that. But,  
12 I mean, this is close enough where they could tweak a few  
13 things here and there and still have a matter right project,  
14 I would think.

15           MR. LeGRANT: I would have to look at any revised  
16 application.

17           COMMISSIONER MAY: Oh, of course. Of course.  
18 Yeah. All right. Thank you.

19           VICE CHAIRPERSON HART: So, Mr. LeGrant, do you  
20 ever have anybody do, like, test bores to figure out what the  
21 soil -- I mean, you could figure out what the actual, you  
22 know, condition was by looking at the change and the type of  
23 soil that was, you know, underneath there. I mean, do you  
24 all do that?

25           MR. LeGRANT: Not to date. My office has not

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1 gotten to the extent of requiring somebody to do a bore, a  
2 soil sample to differentiate, to attempt to address  
3 differentiation of soil types to come to a conclusion of  
4 where a pre-existing grade level might have been.

5 VICE CHAIRPERSON HART: Okay. Thank you.

6 MS. SCHWARTZ: May I interrupt for a moment?

7 CHAIRPERSON HILL: What happened?

8 MS. SCHWARTZ: May I interrupt for a moment?

9 CHAIRPERSON HILL: No, wait. So hold on. I'm  
10 sorry. You actually asked whether you could interrupt for  
11 a moment.

12 MS. SCHWARTZ: I did.

13 CHAIRPERSON HILL: So let me just respond for a  
14 second. No, just let us get through our questions first and  
15 then you'll have a chance for questions to actually --your  
16 appellant, your -- your -- the Appellant has an opportunity  
17 to ask questions of the testimony that was provided. So  
18 that's the next phase that we're going to get into. And then  
19 at -- I'm just telling you how the regulations work. And  
20 then there will be an opportunity for rebuttal at some point  
21 in time. So that will be your opportunity to make comments,  
22 so --

23 MS. SCHWARTZ: Unfortunately, I'm not going to be  
24 able to stay for that because I need to take my son to a  
25 pediatrician appointment at 3:00 o'clock.

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1 CHAIRPERSON HILL: Okay. Okay. Okay. Hold on  
2 a second. This is new information.

3 MS. SCHWARTZ: And you may have seen, I've been  
4 here since 9:30.

5 CHAIRPERSON HILL: I know, but there's nothing --  
6 yeah, we all have, too. And so you want to ask questions,  
7 you want to ask a question of DCRA or you just want to make  
8 a comment?

9 MS. SCHWARTZ: I don't. I want to make a few  
10 short comments.

11 CHAIRPERSON HILL: Make a few short --

12 MS. SCHWARTZ: Because I need to take my son to  
13 the pediatrician.

14 CHAIRPERSON HILL: I understand. I'm just trying  
15 to figure out --

16 (Pause.)

17 CHAIRPERSON HILL: Okay. So OAG, we're just going  
18 through this. So now what's going to happen is, whatever  
19 you're going to say, they're going to have an opportunity to  
20 cross-examine whatever you're just about to say. So you're  
21 going to have to stay for that portion of the cross-  
22 examination, whatever it is you're going to say. So, what  
23 is -- so you have to decide right now if you want to say  
24 something, then they're going to ask some questions on  
25 whatever it is you're going to say.

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1 Okay. So, what would you like to say?

2 MS. SCHWARTZ: Okay. Thank you for your  
3 flexibility. I appreciate it.

4 CHAIRPERSON HILL: Sure.

5 MS. SCHWARTZ: I'd like to say that my husband and  
6 I have lived in D.C. for 15 years and we bought our home 6  
7 years ago. And we put our life savings into it, expecting  
8 to live in our home for many years. And we love living in  
9 our home along with our 18-month-old son.

10 Unfortunately, the development of 2920 18th Street  
11 Northwest has been a dark cloud that has been hanging over  
12 our home for many years. The home has been in an utter state  
13 of disrepair for years, becoming an eyesore on our block and  
14 causing significant damage to our home. We've spent \$10,000  
15 out of pocket thus far repairing damage to our home which has  
16 come as a result of the Developer's callous treatment of the  
17 property. The property has --

18 CHAIRPERSON HILL: Excuse me, ma'am. What's your  
19 name again?

20 MS. SCHWARTZ: Stephanie Schwartz.

21 CHAIRPERSON HILL: Ms. Schwartz. So,  
22 Ms. Schwartz, you're now starting to give testimony. You're  
23 not actually making any comments on any of the things that  
24 they said. You are now starting to give testimony. So we  
25 just went through the testimony part. You have your

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1 testimony in the record already at some point, correct?

2 MS. SCHWARTZ: I've not submitted this because it  
3 was asked that I make a statement.

4 CHAIRPERSON HILL: Okay. How come, Mr. Rueda, how  
5 come we didn't do this during the normal time?

6 MS. SCHWARTZ: I'm happy to leave this.

7 MR. RUEDA: I have no answer for that.

8 CHAIRPERSON HILL: Okay. So hold on again one  
9 second. That's okay.

10 MS. MAZO: I have a suggestion on a way to do it.

11 CHAIRPERSON HILL: Okay. So okay, you have a  
12 suggestion. Go ahead.

13 MS. MAZO: Sorry. Just one suggestion is you  
14 could ask leave of the parties if it would be okay for  
15 Ms. Schwartz to provide her statement.

16 CHAIRPERSON HILL: Okay. So OAG has just left my  
17 side. So does anybody mind if Ms. Schwartz provides  
18 testimony?

19 MS. LORD-SORENSEN: No.

20 CHAIRPERSON HILL: Okay. Does Property Owner?

21 MS. MAZO: We don't mind.

22 CHAIRPERSON HILL: Okay. All right, Ms. Schwartz,  
23 go ahead.

24 MS. SCHWARTZ: I appreciate that. Thank you. And  
25 I'm sorry to cause an inconvenience.

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1           So, as I mentioned, as I was saying, our  
2 property -- the property next to us had no roof for several  
3 years and currently has no back, which has caused water to  
4 seep into our home on each of our three levels. We currently  
5 have water leakage and damage on our second and third floors  
6 and have been unable to get the Developer to address it  
7 despite notifying him on Mach 5th, 2019.

8           We've repaired masonry along the party wall  
9 several times. It's eroded because it was unprotected and  
10 exposed to the elements. And we had our drainpipe illegally  
11 moved, and then removed, and needed to replace it.

12           My husband and I are law-abiding, tax-paying  
13 citizens who are proud D.C. residents, but we don't feel that  
14 the City has held up its end of the bargain. I have sent  
15 hundreds, hundreds of emails to DCRA to address these issues  
16 and have had my councilwoman's office reach out on my behalf.  
17 Many of these emails have gone personally to the director of  
18 DCRA. Many of the emails go unanswered. And when DCRA does  
19 respond, it's often delayed, incomplete and ineffective. I  
20 had a situation like that just this week, and I'll spare you  
21 the details.

22           But suffice it to say, all of this not only takes  
23 finances away from me in terms of protecting my home from  
24 damage caused by the adjoining property, but it takes time  
25 away from my work and my family. And I would say the same

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1 of Chairman Guthrie and Mr. Rueda, we're just D.C. citizens  
2 here trying to protect our properties and our neighborhood.

3 I'm not in any way against development. I am not  
4 opposed to this home next to me being converted to condos.  
5 My simple request is that the Developer be made to comply  
6 with the City's rules and regulations, just as I am expected  
7 to do. And as a law-abiding, tax-paying citizen, that seems  
8 like an appropriate request.

9 Thank you for your time.

10 CHAIRPERSON HILL: Okay. Does the Board have any  
11 questions for the witness?

12 (No audible response.)

13 CHAIRPERSON HILL: Okay. Does the -- which way  
14 are -- does DCRA have any questions for the witness?

15 MS. LORD-SORENSEN: No.

16 CHAIRPERSON HILL: Okay. Does the Property Owner  
17 have any questions for the witness?

18 MS. MAZO: No questions.

19 CHAIRPERSON HILL: Okay. All right. Thank you.

20 MS. SCHWARTZ: Thank you. I really appreciate  
21 your flexibility.

22 CHAIRPERSON HILL: Sure. Actually, I've got a  
23 couple questions for you just real quick. So there's nothing  
24 there right now, correct?

25 MS. SCHWARTZ: No, there is a structure. It had

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1 a roof that DCRA put on it.

2 CHAIRPERSON HILL: Right. Right. I understand.

3 MS. SCHWARTZ: But it's missing the back.

4 CHAIRPERSON HILL: But you would rather that it --

5 MS. SCHWARTZ: But it's a -- property.

6 CHAIRPERSON HILL: -- you would rather that it be  
7 developed, correct?

8 MS. SCHWARTZ: In accordance with the rules and  
9 regulations of the City, yes.

10 CHAIRPERSON HILL: Sure. I understand. And so --  
11 And this is actually when I'm going to get to you  
12 guys, also, at some point again.

13 It's -- well, never mind. It doesn't matter. So  
14 that was the only question I had. Okay. Thanks,  
15 Ms. Schwartz.

16 MS. SCHWARTZ: I'm not trying --

17 CHAIRPERSON HILL: No, no, Ms. Schwartz, I just  
18 had one --

19 MS. SCHWARTZ: I'm not trying to delay the  
20 process.

21 CHAIRPERSON HILL: I just had a quick, simple  
22 question.

23 MS. SCHWARTZ: I've lived next to this --

24 CHAIRPERSON HILL: I just had a quick, simple  
25 question. Thank you so much.

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1 MS. SCHWARTZ: I've lived next to this property  
2 for many years and it's very unpleasant --

3 CHAIRPERSON HILL: Okay. Thank you.

4 All right. So I was back over here to -- right,  
5 DCRA was still giving their presentation. Did we finish with  
6 that? I think we were in kind of Q&A's. So I do have a  
7 couple of Q&A's. Right. So, again, how -- and it was kind  
8 of along the lines of even the previous witness; that what  
9 is there -- okay, so what's supposedly going to get built is  
10 going to be 35 -- if you have the building height whatever,  
11 you know, blah, blah, BMHB, building -- I get the acronym all  
12 screwed up. BHMB. That it would be 35 feet high, correct?

13 No?

14 MR. LeGRANT: By 34 feet -- and 11/16 inches.

15 CHAIRPERSON HILL: Okay. So the difference that  
16 we're talking about in terms of the grade from what the  
17 Appellant is saying the building height measuring point  
18 should be and what the Applicant is saying the building  
19 height measuring point should be, how much is the difference?

20 MR. RUEDA: Fourteen inches.

21 CHAIRPERSON HILL: Fourteen inches. Okay. So the  
22 height is still -- so 14 inches. So, right, it would be,  
23 like, 35 feet, a couple of inches or something?

24 MR. LeGRANT: Is the question to me?

25 CHAIRPERSON HILL: Yeah, I don't know. Somebody

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1 was going to answer it. So, yeah. I'm just trying to  
2 understand. I'm just trying to -- and it's okay. I've done  
3 this one a couple of times. And so what I'm trying to figure  
4 out again is just where the ANC's, you know -- I mean, I  
5 understand. Believe me, we all want DCRA to do the right  
6 thing. We're going to try to figure out what that is, right?

7 I also understand that, really, what people  
8 usually seem to be clamoring about the most is cellar versus  
9 basement, density versus not density, and it's not like a  
10 foot at the top of the ceiling, okay? So we're really  
11 arguing about the cellar/basement issue, okay?

12 And so what I'm just trying to figure out is --  
13 and I'm going to talk through -- because Commission May did  
14 a good job, also, of kind of talking through his discussion,  
15 although he's way more technical than I am. Is that, that --  
16 right, so the cellar/basement thing.

17 So my question, I guess I'm getting to you is,  
18 right, so it's 34 feet 10 inches right now given the building  
19 measuring point that the surveyor gave you when you got the  
20 survey.

21 MR. LeGRANT: Yes.

22 CHAIRPERSON HILL: Right? Okay. And if you used  
23 their building height measuring point, then they would have  
24 to lower the ceiling -- I'm sorry, the roof, right, to get  
25 down below 35 feet, correct?

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1 MR. LeGRANT: Yes.

2 CHAIRPERSON HILL: They would have to do that.  
3 I'm just trying to say they would have to do that, right?

4 MR. LeGRANT: Yes.

5 CHAIRPERSON HILL: And then the -- and I'm just  
6 kind of talking through some scenarios here. And then the  
7 building is already razed, right? So --

8 MR. RUEDA: It's not razed.

9 CHAIRPERSON HILL: Oh, it's not razed?

10 PARTICIPANT: The other one.

11 CHAIRPERSON HILL: I'm sorry. I thought there was  
12 nothing here but like a ceiling --

13 MR. RUEDA: It's not razed. It's partially  
14 demolished.

15 CHAIRPERSON HILL: Okay, it's partially  
16 demolished. So they could fully raze it, and then they could  
17 dig down the basement, right, and then --

18 Could they do that?

19 No? Right. Okay.

20 So, all right, I'm talking through a bunch of  
21 things. I don't know what my eventual question is here now  
22 that I've gotten this discussion going, but I do understand  
23 the difference now. It's 14 inches between -- we're talking  
24 about the 14 inches and the manipulation of the cellar.  
25 Okay.

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1 Does anybody have any questions for the -- I'm  
2 going to continue to have a question, but does anybody else  
3 want to talk for a minute?

4 MEMBER JOHN: I think, Mr. Chairman, you were  
5 trying to ask a question about how the Property Owner could  
6 bring this property into compliance by either manipulating  
7 the roof or the ceiling. Okay.

8 CHAIRPERSON HILL: No, but thanks for helping.  
9 Yeah, I -- no.

10 MEMBER JOHN: But I would like to, I would at some  
11 point like to have that question answered. Because you could  
12 technically, as Commissioner May said, drop the ceiling under  
13 the old rules and it would still be a cellar.

14 CHAIRPERSON HILL: Right. So that could be --  
15 that's a good question that I was going to ask the ZA.

16 MEMBER JOHN: Okay, I did ask the right question  
17 for you.

18 CHAIRPERSON HILL: You got a better question for  
19 me, which was that, under the old reg, right, you could drop  
20 the ceiling, okay? And if they used the 14 -- if they used  
21 the original measuring point that the Appellant is arguing  
22 about and they dropped the cellar -- sorry, they dropped the  
23 ceiling, they could still comply with the regulations?

24 MR. LeGRANT: Possibly. As always, I would have  
25 to see a representation in terms of a submitted plan. The

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1 key issue, frankly, then would be, would that ceiling drop  
2 be a substantial change consistent with the -- regulations  
3 that are enumerated in 17-18. I don't think I, right now,  
4 can offer an opinion on that until I would see a revised  
5 building permit plan proposal.

6 CHAIRPERSON HILL: And if it were a substantial  
7 change, then it would get kicked into the new regulations?

8 MR. LeGRANT: That's correct.

9 CHAIRPERSON HILL: Okay.

10 VICE CHAIRPERSON HART: And then actually -- but  
11 you're also saying that if you do the -- if you're looking  
12 to change the floor of the -- yeah, if you're going to drop  
13 the ceiling in the basement/cellar level, that means that the  
14 building height measuring point is lower, would be lower?

15 MR. LeGRANT: No, no, the two points that are used  
16 in the pre-17-18 zoning regulations regarding cellar  
17 classification is from the BHMP to the ceiling of that lower  
18 level.

19 VICE CHAIRPERSON HART: Yeah.

20 MR. LeGRANT: That's the key dimension.

21 CHAIRPERSON HILL: Yes. But I'm saying, why would  
22 you change that if you're not changing the -- if we're  
23 saying -- if we decide that there is an error and that the  
24 BHMP is not correct, that it's actually lower, right? So if  
25 it is lower, then you'd have to deal with lowering the cellar

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1 ceiling to kind of come in compliance with whatever that is.

2           The point that I'm actually raising is not  
3 necessarily about that, it's about once you drop the building  
4 height measuring point, then you have the issue of the actual  
5 overall height of the building, which is then over 35 feet.  
6 So that is the -- to me, there are some other things that  
7 kind of come into play that you'd have to deal with. But I'm  
8 not even saying any of that, I'm just saying that there are  
9 some other things that would need to change if the building  
10 height measuring point was seen as not being at the correct  
11 point, which is shown on this slide.

12           And I'm not asking for a response, I'm just  
13 pontificating.

14           MR. LeGRANT: Thank you.

15           MEMBER JOHN: Go ahead, Mr. Chairman.

16           CHAIRPERSON HILL: No, I was just going to say,  
17 thankfully, this is not part of the appeal at all. But I  
18 just understand -- I'm just kind of trying to get my head  
19 around a bunch of stuff. And, I mean, what I understand now  
20 the focus is, is again, whether or not that grade was  
21 manipulated before the survey was done, right? And I guess  
22 just to clarify again, the grade's not allowed to be  
23 manipulated, correct?

24           MR. LeGRANT: Under 17-18, which is not  
25 applicable, it's the lower of the finished or natural grade.

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1 In the rules that are in effect here, the cellar measurement  
2 is from the top of the finished grade to the ceiling of that  
3 lower level becomes the key determinate. The building height  
4 is measured from the natural grade. So that was the conflict  
5 that 17-18 tried to deal with, but -- so, right, that's the  
6 issue. There was a conflict there.

7 If the Board were to grant the appeal and/or if  
8 the Applicant changed the plans, I would have to look at  
9 those plans to see if they were in compliance with the  
10 applicable regulations.

11 CHAIRPERSON HILL: I should have paid more  
12 attention to that training session.

13 (Laughter.)

14 CHAIRPERSON HILL: So before the 17-18, right --  
15 and I'm just trying, again, trying to find clarification.  
16 Before the 17-18, you could manipulate the grade or you could  
17 not?

18 MR. LeGRANT: The definition of cellar says you  
19 measure from the top of the -- you can measure from finished  
20 grade. There's other --

21 CHAIRPERSON HILL: Finished grade?

22 MR. LeGRANT: Right.

23 CHAIRPERSON HILL: Hold on, give me a second.  
24 Give me a second. You'll have plenty of time. Mr. Rueda,  
25 we're all watching the same show.

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1 So, okay, so finished grade.

2 MR. LeGRANT: For the cellar aspect.

3 CHAIRPERSON HILL: Yeah, I understand. Okay, for  
4 the cellar aspect. Okay, for the cellar aspect. Okay,  
5 because this was the argument that I know we had gone through  
6 several times before and I just wanted to clarify. Okay.  
7 Anybody else have questions?

8 MEMBER JOHN: So, I guess this would be for  
9 Mr. Rueda. About how many bags of red dirt and stone would  
10 you need to get a foot of height under that basement?

11 MR. RUEDA: I can't answer that question.

12 MEMBER JOHN: But it would be substantial, right,  
13 to get a whole foot?

14 MR. RUEDA: They had a pickup truck filled with  
15 dirt that they were shoveling from the pile of dirt in the  
16 truck under the porch, okay? I can't -- I don't know how to  
17 quantify that.

18 CHAIRPERSON HILL: That's okay. So now -- and  
19 this is -- and so this is where I'm getting confused now.  
20 So does that count as finished grade?

21 MR. LeGRANT: Well, as the diagram that is up  
22 illustrated, the representation is existing/finished grade.  
23 So the Applicant, for the permit, is representing those as  
24 the same.

25 CHAIRPERSON HILL: Okay. But they don't have to

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1 be?

2 MR. LeGRANT: They do not have to be.

3 CHAIRPERSON HILL: Okay.

4 MR. RUEDA: This is ludicrous.

5 CHAIRPERSON HILL: Okay. You'll get a chance to  
6 ask your questions, Mr. Rueda.

7 All right. Is that it?

8 Okay. All right. So, Mr. Rueda, now you get to  
9 ask your questions. And so you can ask your questions of  
10 DCRA.

11 MR. RUEDA: Okay. Thank you.

12 I'm trying to pull up the definition -- excuse me,  
13 the regulation for how you measure stories. And maybe  
14 Mr. LeGrant has it handy, because you might have the  
15 regulations there, but I'm going to --

16 COMMISSIONER MAY: You can just ask him. This is  
17 your chance for questions.

18 MR. RUEDA: Mr. LeGrant, does Subtitle B identify  
19 how you measure stories for buildings?

20 MR. LeGRANT: Yes.

21 MR. RUEDA: Did it change pre 17-18, post 17-18?

22 MR. LeGRANT: I'm sorry, ask that --

23 MR. RUEDA: So, did the regulation change  
24 substantively in terms of where you measure from?

25 MR. LeGRANT: In 17-18?

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1 MR. RUEDA: Okay. Would you agree that B-310  
2 describes the rules for measurement for numbers of stories?

3 MR. LeGRANT: One moment.

4 (Pause.)

5 MR. LeGRANT: Yes, Subtitle B, Section 310 has the  
6 rules of measurement for the number of stories in residential  
7 zones.

8 MR. RUEDA: So then I understand that you said  
9 that you measure cellars from the finished grade?

10 MR. LeGRANT: I do, yes.

11 MR. RUEDA: Okay. So 310.1, can you read that  
12 since you seem to have that out?

13 MR. LeGRANT: Sure. B-310.1. Well, this is the  
14 current regulations now, post 17-18. "The number of stories  
15 shall be counted at the point at which the height of the  
16 building is measured."

17 MR. RUEDA: Did that change?

18 MR. LeGRANT: I don't believe it changed. One of  
19 the things that -- in 17-18, provisions from -- that were in  
20 the definitions that were in conflict with the regulations  
21 were aligned. That was part of 17-18, and it was the  
22 definition of story. From my recollection, pre 17-18 spoke  
23 to how stories were determined and how cellars were excluded  
24 from being counted as stories.

25 MR. RUEDA: Okay. But the point here is that

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1 building height is measured from existing grade, is it not,  
2 in the pre-17-18 language?

3 MR. LeGRANT: Yes.

4 MR. RUEDA: Okay. And in the same language,  
5 before August 17th, did it not in fact say you measure  
6 stories from the point at which you count height, building  
7 height?

8 MR. LeGRANT: Yes.

9 MR. RUEDA: Okay. So you don't use finished  
10 grade. Okay.

11 MR. LeGRANT: But my point was --

12 MR. RUEDA: I understand your point, but I don't  
13 really --

14 MR. LeGRANT: Okay.

15 MS. MAZO: -- want to hear it right now.

16 MS. LORD-SORENSEN: Objection. Can you allow him  
17 to finish his statement?

18 MR. RUEDA: No.

19 CHAIRPERSON HILL: Hold on a second. Yeah. Hold  
20 on a second.

21 (Pause.)

22 COMMISSIONER MAY: All they're saying in 310.1 is  
23 this is the place at which you count the number of stories.

24 MR. RUEDA: That's right.

25 COMMISSIONER MAY: It does not determine what is

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1 a story and what is not. And what Mr. LeGrant is talking to  
2 is whether the -- you know, is whether that below-grade space  
3 is a basement or a cellar.

4 MR. RUEDA: Understood.

5 COMMISSIONER MAY: Therefore, whether or not it  
6 is a story. And that is -- I mean, I haven't verified it,  
7 but what he's saying is that's, the measurement for that is  
8 between finished grade and underside of ceiling. That is  
9 something that we tried to get straight in 17-18 so that we  
10 could align these things.

11 MR. RUEDA: That's right.

12 COMMISSIONER MAY: But they were misaligned --

13 MR. RUEDA: But that doesn't mean --

14 COMMISSIONER MAY: -- with the old regs.

15 MR. RUEDA: But that doesn't mean that the intent  
16 was determined from finished grade. The intent is -- from  
17 the un-manipulated grade that does not include berms --

18 COMMISSIONER MAY: Not when it came to cellars.  
19 In the old regulations, that was not addressed as part of the  
20 issues.

21 CHAIRPERSON HILL: Right. And I appreciate the  
22 discussion, because this is the clarity that we went back and  
23 forth on many times before with previous cases. And so  
24 that's why I appreciate all the Board's help.

25 So your next question, Mr. Rueda?

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1 MR. RUEDA: My next question is, you testified  
2 that the building height for this project was 34 foot 10 and  
3 11/16, is that correct?

4 MR. LeGRANT: Yes.

5 MR. RUEDA: And that's represented on sheet A-3.2.  
6 It's over to the right.

7 COMMISSIONER MAY: It was that sheet that was  
8 right in front of us.

9 MR. LeGRANT: That's correct.

10 MR. RUEDA: Okay. And then could you focus back  
11 in on the dimension from the building height measuring point  
12 to the first floor? Now, what does that say?

13 MR. LeGRANT: Right. Okay. Well, there's a 3  
14 foot 2½ inch dimension from --

15 MR. RUEDA: To the first floor.

16 MR. LeGRANT: To the ceiling. I will get to the  
17 floor. And then you add, I believe it's 1 foot 2 inches.

18 MR. RUEDA: Two and a half, yeah.

19 MR. LeGRANT: Yeah, 1 foot 2½ inches between the  
20 ceiling and the floor level of the first floor.

21 MR. RUEDA: Okay. So that adds up, approximately,  
22 to 4 foot 5 and 3/16, I suppose. Okay.

23 MR. LeGRANT: That's a question or --

24 MR. RUEDA: I guess no. So, could you -- you  
25 pulled up -- you also testified, I think, with Ms. Sorenson,

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1 on page A-3.1, that the building height was 34 feet 11  
2 inches. Do you mind looking at that real quick?

3 (Pause.)

4 MR. LeGRANT: So that dimension is 34 10-and-11/16  
5 inches.

6 MR. RUEDA: You've got a different exhibit up.  
7 That's fine.

8 MR. LeGRANT: I guess I was a 16th of an inch off.

9 MR. RUEDA: No, that's not the question. The  
10 question -- you had an elevation up that showed a 5-foot --  
11 never mind.

12 MR. LeGRANT: Okay.

13 MR. RUEDA: On the elevation here, it represents  
14 that the elevations are in relation to sea level. Is that  
15 true?

16 MR. LeGRANT: Right. I think it's -- ASL, I  
17 believe, is the average sea level. It's the elevation above  
18 average sea level.

19 MR. RUEDA: Right. So do you know if the District  
20 maintains records on what sea level is for properties?

21 MR. LeGRANT: I do not.

22 MR. RUEDA: Okay. No further questions.

23 CHAIRPERSON HILL: Okay. Okay, thanks. Okay.  
24 All right, we're going to take questions from the Property --  
25 yeah, sure.

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1 MEMBER JOHN: May I ask a question?

2 CHAIRPERSON HILL: Of course. You may ask, sure.  
3 Sure.

4 MEMBER JOHN: So, Mr. LeGrant, did you say that --  
5 or for some reason, I'm confused. Under the old rule, which  
6 is what we're using now --

7 MR. LeGRANT: Yes.

8 MEMBER JOHN: -- the rule was that BHMP was  
9 measured at the finished grade, and then it was changed to  
10 existing grade for the new rule?

11 MR. LeGRANT: Let me try to clarify.

12 MEMBER JOHN: Okay.

13 MR. LeGRANT: In the previous definition, cellar,  
14 the cellar definition referred to from finished grade to the  
15 ceiling of, I believe, of that level.

16 MEMBER JOHN: Okay.

17 MR. LeGRANT: That drove the classification of  
18 cellar.

19 MEMBER JOHN: Yeah. And BHMP is from?

20 MR. LeGRANT: I think the BHMP reference simply  
21 said grade.

22 MEMBER JOHN: I'm seeing finished grade. No, I'm  
23 seeing existing grade in the definition right now. So, "In  
24 residential zones, the vertical distance measured at the  
25 existing grade at the midpoint of the building facade." So,

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1 I don't know when finished grade comes into play except for  
2 in measurement of the cellar. Anyway, it's clear that BHMP,  
3 under the rule that I'm looking at online, is --

4 MR. LeGRANT: Existing grade.

5 MEMBER JOHN: -- from existing grade. Okay.

6 MR. LeGRANT: Okay.

7 MEMBER JOHN: Thank you.

8 CHAIRPERSON HILL: Okay. We're going to take  
9 questions from the Property Owner, and then we're going to  
10 take a break, and then we're going to do a presentation from  
11 the Property Owner. But I am going to ask some more  
12 questions of Mr. LeGrant. And this is just so I can continue  
13 to try to get my head around what I think is the argument.

14 And I'm repeating what my fellow board member  
15 said: The finished grade is, under the 4-14 -- 14-18?  
16 Whatever. 17-18. I'm thinking -- 14-11 is just always  
17 burned in my brain. 17-18, before 17-18, one could use the  
18 finished grade to define what a cellar was. Meaning the 4  
19 feet from the top of the ground floor could then be  
20 considered a base -- I'm sorry, could then be considered a  
21 cellar rather than the basement, and therefore the seller  
22 didn't go against FAR.

23 And finished grade, at that point, and this is  
24 what kind of the, you know, the discussion, I suppose is  
25 about, is, again, you could finish the grade however you

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1 wanted to finish the grade, and then that was then the  
2 finished grade in relationship to how the cellar was defined.  
3 So, you could manipulate the ground before 17-18 so that you  
4 could get under the 4 foot problem, right? And then what  
5 happened after 14-18 (sic) is you guys tried to fix that by  
6 then now going from the existing grade or natural grade --  
7 this is now where I'm getting a little confused -- the  
8 existing grade/natural grade to the floor of the first floor,  
9 correct?

10 MR. LeGRANT: Let me clarify.

11 CHAIRPERSON HILL: Okay.

12 MR. LeGRANT: My office, working with the Office  
13 of Planning, presented, and the Commission agreed, that the  
14 BHMP is now measured from the lower of the existing or  
15 finished grade to the floor above, with the dimension of 5  
16 feet.

17 CHAIRPERSON HILL: With regards to a  
18 cellar/basement conversation?

19 MR. LeGRANT: It's consistent for building  
20 height --

21 CHAIRPERSON HILL: Okay.

22 MR. LeGRANT: -- measurement and for cellar  
23 classification.

24 CHAIRPERSON HILL: Okay. And before 17-18, you  
25 could manipulate the grade to make it finished grade and then

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1 get inside the 4 foot issue?

2 MR. LeGRANT: For cellar purposes.

3 CHAIRPERSON HILL: Okay. Okay.

4 MEMBER JOHN: So by marrying the existing or  
5 finished grade, whichever is lower, it really doesn't make  
6 sense to try to manipulate the grade under the new rule. The  
7 new rule says BHMP is the lower of the existing or finished  
8 grade. So am I correct in thinking that that takes away the  
9 incentive to, you know, change the grade?

10 MR. LeGRANT: That was the goal of the regulation.

11 MEMBER JOHN: Okay. Thank you.

12 CHAIRPERSON HILL: Okay. The Property Owner has  
13 some questions for DCRA?

14 MS. MAZO: I do. Mr. LeGrant, thank you for your  
15 time today. Getting back to this question, of course, we're  
16 under pre 17-18. In pre 17-18, there were two types of --  
17 well, can you -- am I correct in saying there were three  
18 types of grades that were identified in the zoning  
19 regulations? There was existing grade, natural grade and  
20 finished grade, is that correct?

21 MS. LORD-SORENSEN: That's correct. Between the  
22 definitions and references and regulations, those were the  
23 three qualifiers that were employed in referring to grade.

24 MS. MAZO: Okay. Now, under pre 17-18, the  
25 definition -- and this is going to Ms. John's question -- the

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1 definition of cellar was that portion of a story the ceiling  
2 of which is less than 4 feet above the adjacent finished  
3 grade, is that correct?

4 MR. LeGRANT: That's correct.

5 MS. MAZO: Okay. Now, again, pre 17-18, the  
6 definition of building height measuring point in a  
7 residential zone was at the existing grade at the midpoint  
8 of the building facade of the principle building. So it  
9 mentions existing grade, is that correct?

10 MR. LeGRANT: Yes.

11 MS. MAZO: Okay. Now, under pre 17-18, there was  
12 a separate definition of natural grade, which was -- natural  
13 grade, correct me if I'm wrong, is not referenced in either  
14 the cellar definition or the building height measuring point  
15 definition, is that correct?

16 MR. LeGRANT: That's correct.

17 MS. MAZO: Okay. So under that definition --  
18 sorry, under pre 17-18, there was a definition of natural  
19 grade as the established elevation of the ground exclusive  
20 of the improvements or adjustments to the grade made in the  
21 2 years prior to applying for a building permit, is that  
22 correct?

23 MR. LeGRANT: Yes.

24 MS. MAZO: Okay. So Appellant has made an  
25 assertion that even under pre 17-18, if -- and we say if, we

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1 don't know for certain -- the grade was changed, he is  
2 asserting that if that grade was changed at any point within  
3 the 2 years, that that grade change would impact either the  
4 cellar definition or the BHMP definition. However, am I  
5 clear in my understanding that the discussion of a change to  
6 the grade in the 2-year period only applied to the definition  
7 of natural grade? Is that correct?

8 MR. LeGRANT: Yes.

9 MS. MAZO: Accordingly, it would be your office's  
10 position that, under pre 17-18, the application or discussion  
11 of a change in a grade to a natural grade, if that occurred,  
12 would not apply to the application determining whether a  
13 lower level was a cellar, because that lower level, the  
14 cellar definition relates only to the adjacent finished  
15 grade, is that correct?

16 MR. LeGRANT: Yes.

17 MS. MAZO: And then it's also the same assertion  
18 in regards to any potential change in natural grade -- which,  
19 again, is a defined term -- would not apply to the definition  
20 of the building height measuring point under pre 17-18, which  
21 applies to the term existing grade, is that correct?

22 MR. LeGRANT: Yes. And I'd hasten to add that's  
23 why 17-18 came about, to align those definitions with  
24 applicable rules of measurement.

25 MS. MAZO: So we are all on the same page that the

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1 term natural grade, which is a defined term, was a defined  
2 term in 17-18, continues to be a defined term under the post  
3 17-18. In fact, I don't believe the definition has changed.  
4 That term natural grade was not to be -- was not applied in  
5 the -- sorry, was not to be applied in the pre-17-18 review  
6 of cellar or building height measuring point?

7 MR. LeGRANT: Yes.

8 MS. MAZO: Okay. So, accordingly, Appellant has  
9 made arguments that this 2-year period should have been  
10 critical to your office's review and, indeed, that there was  
11 an error in your office's review because you did not look at  
12 that 2-year period. But what I'm understanding you're saying  
13 is that, based on the language, the pre 17-18 language of the  
14 zoning regulations, you are not directed to look at the  
15 natural grade and therefore -- is that correct?

16 MR. LeGRANT: That's correct. And, again, the  
17 drawing, the reference in the drawings that were submitted,  
18 and the survey makes a reference to existing and finished,  
19 existing/finished grade.

20 MS. MAZO: And to be clear, those were the only  
21 grades that your office was directed to look at pursuant to  
22 the zoning regulations under 17-18?

23 MR. LeGRANT: Yes.

24 MS. MAZO: Okay. Accordingly, if there was a  
25 change in the grade which -- separately, and as you are

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1 aware, the property was not under the control and any change  
2 in grade that may have occurred was not under the control of  
3 the current Property Owner, but that's separate and aside.  
4 But if there was a change in grade, that change in grade  
5 would have been immaterial to your office's review of this  
6 particular issue under pre 17-18?

7 MR. LeGRANT: Yes.

8 MS. MAZO: Separately, going forward, as you have  
9 identified, post 17-18, the world that we are not in right  
10 now, post 17-18, a change in grade would apply because your  
11 office is directed to take the BHMP from the lower of the  
12 natural or finished grade?

13 MR. LeGRANT: Right, because the term existing  
14 grade was removed.

15 MS. MAZO: Okay. And so going forward, for an  
16 application that was filed and would not be vested under pre  
17 17-18, an application that was not deemed to be complete, no  
18 substantial change prior to the 17-18 date, your office would  
19 be required to make this determination as to what is the  
20 lower of these two points, correct?

21 MR. LeGRANT: Yes.

22 MS. MAZO: Also, going forward, under 17-18, there  
23 is a timeline that was -- that included in the definition of  
24 natural grade, correct?

25 MR. LeGRANT: That's correct.

1 MS. MAZO: And that timeline has been expanded  
2 from two years to five years. So therefore, going forward,  
3 your office, under 17-18, would require, I guess,  
4 documentation for the natural grade, the natural grade had  
5 not been changed within the previous five years in order to  
6 make a determination regarding cellar or lower level story  
7 and height?

8 MR. LeGRANT: That's correct.

9 MS. MAZO: But going back to the situation we have  
10 at hand, a pre-17-18 application that's vested under that  
11 time period, your office was not required to make that  
12 determination, is that correct?

13 MR. LeGRANT: Yes.

14 CHAIRPERSON HILL: Ms. Mazo, do you have a bunch  
15 more questions?

16 MS. MAZO: I do not have any more questions.

17 CHAIRPERSON HILL: Okay. That's all I had to do?  
18 I would have done that with you earlier.

19 MS. MAZO: No, wait. Hold on. I have one more  
20 question. Very briefly, you and your office were in receipt  
21 of the many technical objections that Mr. Rueda filed on  
22 behalf of the Property Owner, is that correct? Prior to  
23 issuing the building permit.

24 MR. LeGRANT: Yes.

25 MS. MAZO: And accordingly -- and my understanding

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1 now is that you and Mr. Rueda had multiple conversations  
2 about this property and other properties that he has concerns  
3 about, is that correct?

4 MR. LeGRANT: That's correct.

5 MS. MAZO: Okay. So your office was very well  
6 aware of any concerns that would have been raised in advance  
7 of the issuance of the building permit and your office still  
8 decided to issue the building permit, correct?

9 MR. LeGRANT: We did.

10 MS. MAZO: No more questions.

11 CHAIRPERSON HILL: Okay. Thank you.

12 Yeah, I've just got a couple questions. Can you  
13 all manage for two minutes?

14 Just following up on some of the questions there,  
15 and this is, again, this whole, like, natural grade, finished  
16 grade, existing grade, right, pre 17-18, right, for  
17 Mr. LeGrant. And you can just say yes or no to me, as well.  
18 The finished grade, that can -- pre 17-18, and this is what  
19 I remember it being before, it could be manipulated with  
20 regard to cellar and basement, correct?

21 MR. LeGRANT: That's correct.

22 CHAIRPERSON HILL: Okay. And then what was the  
23 difference again between the existing grade and the natural  
24 grade pre 17-18?

25 MR. LeGRANT: In terms of the cellar or in terms

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1 of the overall --

2 CHAIRPERSON HILL: So there was no -- in terms of  
3 cellar, it didn't exist because you were just concerned about  
4 the finished grade, correct?

5 MR. LeGRANT: Correct.

6 CHAIRPERSON HILL: Right. So it's just, then, the  
7 building height measuring point for the existing versus the  
8 natural, pre 17-18?

9 MR. LeGRANT: Right. I'll say that throughout the  
10 regulation, between the definitions and the applicable  
11 regulations, that there were references in some cases to  
12 finished, in some cases to natural, in some cases to  
13 existing, with, I believe, inconsistencies.

14 CHAIRPERSON HILL: Okay. And so what was the  
15 difference between natural and existing again?

16 MR. LeGRANT: Well, natural is the --

17 CHAIRPERSON HILL: What it has been like for  
18 2 years was considered natural, correct?

19 MR. LeGRANT: Right. We read the definition.  
20 It's prior to human intervention or the state of that grade  
21 2 years prior to a --

22 CHAIRPERSON HILL: And then how does that differ  
23 from existing?

24 MR. LeGRANT: Well, in many cases, it's the same  
25 if there's been no changes in the previous 2 years or if

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1 there's been no human intervention.

2 CHAIRPERSON HILL: Right. So they tried to tie  
3 it all in after 17-18 to, because of the wisdom of the Zoning  
4 Commission, the natural and finished; oh yeah, whatever was  
5 the lower of natural versus finished?

6 MR. LeGRANT: That's correct.

7 CHAIRPERSON HILL: Okay. Okay, I'm done. Anybody  
8 else?

9 COMMISSIONER MAY: Yeah, a little more clarity on  
10 the existing. I mean, someone referred to existing as a  
11 defined term in the regulations before 17-18. Is that  
12 correct or not?

13 MR. LeGRANT: That's not correct.

14 COMMISSIONER MAY: No, I didn't think so either.

15 MR. LeGRANT: No, you're right.

16 COMMISSIONER MAY: So existing was just we went  
17 by what was in the dictionary?

18 MR. LeGRANT: Yeah.

19 COMMISSIONER MAY: Putting this particular case  
20 aside at the moment, if there were an existing grade when  
21 somebody bought a property and when they actually went for  
22 permit they had done some manipulation and it raised the  
23 grade at the facade of the building by a foot, and took the  
24 survey then and provided that information, you would be going  
25 on what was in that survey because that was what was existing

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1 when the permit was applied for?

2 MR. LeGRANT: Yes.

3 COMMISSIONER MAY: And is that really what the  
4 standard is, it's when the application is made, or when the  
5 permit is applied for, what's existing at that moment? Is  
6 that how you define it, or how you --

7 MR. LeGRANT: Are you talking about the pre 17-18  
8 now?

9 COMMISSIONER MAY: Yes.

10 MR. LeGRANT: Yeah, at the time of the  
11 application, the representation of what the existing grade  
12 was, I would say, at the time of the building permit  
13 application.

14 COMMISSIONER MAY: Okay. So coming back to this  
15 one, the building permit application was done in March,  
16 right?

17 MR. LeGRANT: May.

18 COMMISSIONER MAY: May. Okay. And the survey was  
19 done when?

20 MR. LeGRANT: August. I'd have to look back to  
21 see if the clarification of the grade was a request from my  
22 office, or it may have been in response to the concerns that  
23 were raised that we wanted clarification from the property  
24 owner.

25 COMMISSIONER MAY: So in the circumstance where,

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1 you know, a permit application was made and there was  
2 subsequent modification, so there were representations about  
3 what it was but there were subsequent modifications and you  
4 sought clarity, I mean, would you -- and therefore you got  
5 the survey, would you be looking to the subsequent survey or  
6 would you be trying to figure out what the condition was when  
7 the permit application was made?

8 MR. LeGRANT: We would first look to the  
9 representation made in the survey.

10 COMMISSIONER MAY: Right.

11 MR. LeGRANT: That, you know, tells us what the  
12 grade is.

13 COMMISSIONER MAY: Right. But if it was not --  
14 I mean, if it was -- you didn't have that survey information  
15 at the moment when the application was made?

16 MR. LeGRANT: Yes, that's correct.

17 COMMISSIONER MAY: So it's arguable that that is  
18 what could be meant by existing, when the application was  
19 made as opposed to when the survey was done?

20 MR. LeGRANT: I guess that is arguable, yes.

21 COMMISSIONER MAY: Yeah. I don't know, I'd have  
22 to think about the dates.

23 MR. LeGRANT: Sure.

24 COMMISSIONER MAY: But that's the question for me.

25 Thank you.

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1 CHAIRPERSON HILL: Okay. So after this, we're  
2 going to hear from the Property Owner. We're going to take  
3 Q&A, which I love so much, from everybody. And then we're  
4 going to do rebuttal from the Appellant, we're going to do  
5 rebuttal from the Property Owner -- I'm sorry, from DCRA, and  
6 then we're going to do rebuttal from the Property Owner.  
7 OAG's going to --

8 (Pause.)

9 CHAIRPERSON HILL: So then, okay, so then we're  
10 going to take rebuttal from Appellant, DCRA, Property Owner,  
11 then we're going to do conclusion again from Appellant, DCRA,  
12 Property Owner. And then we'll see where we get, okay? So  
13 we're going to take a break. Thank you.

14 MEMBER JOHN: Can I ask --

15 CHAIRPERSON HILL: Sure. Hold on, hold on. Wait  
16 one second.

17 MEMBER JOHN: Can I also ask that you go over this  
18 in your rebuttals and conclusions, whichever, you discuss  
19 this whole issue of finish grade pre 17-18 and post,  
20 existing, finished and natural? Because it's very confusing.

21 (Whereupon, the above-entitled matter went off the  
22 record at 3:12 p.m. and resumed at 3:32 p.m.)

23 CHAIRPERSON HILL: Okay, Mr. Moy, we're back, I  
24 guess. And before we begin, I do have just a couple of quick  
25 questions for DCRA.

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1 Okay, just to continue to clarify for me, the pre 17-18, when  
2 you were determining things, the difference between finished  
3 and existing, sounds like there wasn't a difference to you.  
4 Meaning that if you were measuring building height from  
5 existing, however it was finished, that was now then the way  
6 it was existing when the survey was done; is that correct?

7 MR. LeGRANT: Well, again, I would -- where  
8 there's a distinction, like in the definition of cellar, I  
9 think it was important to focus on what -- the finished  
10 grade, if it differed from either an existing or an actual  
11 previous condition, because it was specific about finished  
12 grade. Elsewhere in the code, where it said existing grade  
13 or grade, then I would agree that the distinction between  
14 what was a finished aspect was not as critical. It's because  
15 in those provisions or definitions where finished was  
16 referred to that I believe it was, and how I administered,  
17 is how that would be important to that situation.

18 CHAIRPERSON HILL: Okay. So, again, and I think  
19 I understand what your response was, but again, when it came  
20 to building height, it was the existing grade. Okay, like,  
21 you weren't concern necessarily with finished grade because  
22 you were looking at finished grade when you were worried  
23 about cellar versus basement?

24 MR. LeGRANT: Correct.

25 CHAIRPERSON HILL: Okay. So somebody comes along

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1 and they say this is the existing grade, you go ahead and  
2 measure from the existing grade -- and this is pre 17-18 --  
3 and that's how you got your height of your building, correct?

4 MR. LeGRANT: Correct.

5 CHAIRPERSON HILL: And so it was only when  
6 somebody came to you about whether it was a cellar or not  
7 that you got concerned with finished grade?

8 MR. LeGRANT: Correct.

9 CHAIRPERSON HILL: Okay.

10 COMMISSIONER MAY: Can I ask for clarification?  
11 When you talk about measuring building height from existing  
12 grade, that's under the rules of measurement as opposed to  
13 in the definitions?

14 MR. LeGRANT: Yes. Yes. I believe in pre 17-18  
15 there was some language in the definitions that had to do  
16 more with how things were measured that were ultimately, you  
17 know --

18 COMMISSIONER MAY: Right. Because, I mean, I was  
19 looking back and I don't have a copy of the pre 17-18 regs  
20 all in front of me. And where I thought I would find it in  
21 one of the attachments, it didn't seem to be there.

22 MR. LeGRANT: Well, I happen to have it here.

23 COMMISSIONER MAY: Okay. So that definition,  
24 yeah, can you read that to us?

25 MR. LeGRANT: So the pre 17-18 definition of

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1 building, comma, height of. This is for the non-residential.

2 COMMISSIONER MAY: Yeah, residential zones,  
3 building height residential zone. It was separately defined.

4 MR. LeGRANT: Oh, here it is. Okay. So right.  
5 There's two parts. I'll skip over the non-residential.

6 COMMISSIONER MAY: Right.

7 MR. LeGRANT: And then after a semicolon, in  
8 residential zones, the vertical distance measured from the  
9 existing grade at the midpoint of the building facade of the  
10 principle building that is closest to a street lot line to  
11 a point designated in the zone district. Berms or other  
12 forms of artificial landscaping shall not be included in  
13 measuring building height. That was in the definition of  
14 building height of pre 17-18.

15 COMMISSIONER MAY: Right. So I'm sorry, can you  
16 repeat the very first part, vertical distance measured at  
17 what grade?

18 MR. LeGRANT: At the existing grade.

19 COMMISSIONER MAY: At the existing grade. Okay.  
20 All right, yeah. Thank you.

21 VICE CHAIRPERSON HART: So that kind of then leads  
22 to the question, that last sentence that you read, which was,  
23 berms or other forms of artificial landscaping shall not be  
24 included in measuring building height.

25 MR. LeGRANT: Correct.

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1 VICE CHAIRPERSON HART: So how does that not apply  
2 to this?

3 MR. LeGRANT: Well, the question before us is, was  
4 this berm added that changed the BHMP. You know, was it  
5 manipulation of building height.

6 VICE CHAIRPERSON HART: And so far, your office,  
7 you and your office have -- your determination -- and I may  
8 use that and it may be too strong. But what you have --  
9 because you have approved the building permit, then you  
10 are -- I'm not even sure if it's making a determination, but  
11 making a determination that that is not applicable here?

12 MR. LeGRANT: Right. We relied on the  
13 representation of the property owner as to the grade point,  
14 as I've testified previously.

15 MEMBER JOHN: Which would be the survey?

16 MR. LeGRANT: Yeah, the survey.

17 MEMBER JOHN: As represented by the survey.

18 MR. LeGRANT: As part of the property owner's  
19 building permit application, yes.

20 MEMBER JOHN: But the survey was done -- so the  
21 application was done in May or April and the survey was done  
22 in August.

23 MR. LeGRANT: Correct.

24 MEMBER JOHN: So at the time of the application,  
25 are those measurements the same?

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1 MR. LeGRANT: I assumed that they -- the  
2 representation was to the building permit, keyed to the  
3 building permit application date. But that could be a  
4 question for the property owner. That was my assumption,  
5 that they are making a representation as part of a full  
6 package of what the conditions of the existing building, the  
7 grade and the proposed building as one unit.

8 MEMBER JOHN: So, where would that be in the  
9 application? Wouldn't that be in the DCRA records to show  
10 when the property owner came in initially and said this is  
11 our BHMP, therefore it's three stories, not four? So that  
12 should have been stated to DCRA in April or May, and then the  
13 later survey would just be to confirm that initial statement,  
14 I assume.

15 MR. LeGRANT: As with many applications, when  
16 they're initially submitted, we, in the course of doing this  
17 review, ask for additional information to clarify the  
18 application. I do not specifically recall if there was a  
19 prior representation made or if that survey was submitted in  
20 response to our concern or the ANC's concern to clarify the  
21 grade situation.

22 COMMISSIONER MAY: Sorry, I have another one.

23 CHAIRPERSON HILL: And I was going to have one,  
24 too.

25 COMMISSIONER MAY: Oh, do you want to go?

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1 CHAIRPERSON HILL: No, go ahead.

2 COMMISSIONER MAY: So back to that definition,  
3 berms or other forms of artificial landscaping shall not be  
4 included in measuring building height. So, to you, does that  
5 mean that measuring building height should be measured from  
6 the top of the berm to the top of the building, or is it that  
7 it should not be included in setting the building height  
8 measuring point?

9 MR. LeGRANT: I would say that it's -- you exclude  
10 that from measuring the building height. The berm or --

11 COMMISSIONER MAY: You exclude it?

12 MR. LeGRANT: Yeah.

13 COMMISSIONER MAY: Yeah.

14 MR. LeGRANT: Berms or other forms of  
15 artificial -- shall not be included in measuring building  
16 height. So I would say that's an exclusion from using it for  
17 BHMP.

18 COMMISSIONER MAY: So it's the -- yeah. So,  
19 basically, you're measuring building height from the top of  
20 the berm? No, I mean, it says that you're measuring from the  
21 existing.

22 MR. LeGRANT: Right.

23 COMMISSIONER MAY: So, I mean, it's like a  
24 nonsense sentence. It doesn't necessarily add clarity or --  
25 one of the reasons we fixed it, right?

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1 MR. LeGRANT: 17-18 revised the language.

2 COMMISSIONER MAY: Yeah. I mean, I don't know  
3 what to make of that sentence, so --

4 CHAIRPERSON HILL: Okay. So, again, I'm trying  
5 to figure out whether you made an error, right? And so the  
6 way that -- I'm just going to keep saying it so I can try to  
7 figure it out, maybe get it around my head. Somebody comes  
8 to you, they've given you a survey, they've told you what the  
9 existing -- you know, the building height measuring point is,  
10 and that is the existing grade, okay? So you take that at  
11 their word and then you go ahead and move about your day,  
12 right?

13 MR. LeGRANT: Well, let me clarify.

14 CHAIRPERSON HILL: I'm sorry. You clarify, right,  
15 and figure out whether or not there was a berm that was made?

16 MR. LeGRANT: I would ask, initially ask for the  
17 information in terms of a survey, if there was an issue.  
18 Like in a situation like this where there's an issue, ask for  
19 a survey. And then I gather information to come to a  
20 conclusion whether that is a correct representation by the  
21 applicant as to that grade point.

22 CHAIRPERSON HILL: And that would, in your  
23 experience again, that would mean that there would not have  
24 been a berm there?

25 MR. LeGRANT: Correct, that there was not -- the

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1 representation in the drawing was existing and finished grade  
2 were synonymous.

3 CHAIRPERSON HILL: Right. And that's what I'm  
4 just trying to -- I mean, it's not easy, right? I mean, it's  
5 understandable what people tried to do or what people did do,  
6 whatever, tried to do. Because in my mind, I'm separating  
7 the issues a little bit, where there's the finished grade,  
8 which is, again, the cellar/basement thing, which everybody  
9 tried to manipulate for a while, or whatever they did, and  
10 they fixed that, okay, supposedly.

11 And now what is confusing me even about kind of  
12 some about where the Applicant is, is that to kind of correct  
13 that cellar -- well, I don't even want to get into that  
14 thing. So just once again, existing is existing; that's the  
15 way it was, okay. So if there was a berm there, then it was  
16 existing, right? And so that is the way that -- so, but then  
17 no. Then I'm confused about this other thing again here with  
18 the, you know, the excludes berms or forms of artificial  
19 landscaping.

20 For the whole thing concerning the  
21 cellar/basement, again, it didn't matter because it was  
22 finished grade and a berm could be there. That much is  
23 correct, correct?

24 MR. LeGRANT: Yes.

25 CHAIRPERSON HILL: Yes. That's correct. That's

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1 already been established and we've gone through this many  
2 times before with other cases. And that's what 14-18 was  
3 done to fix, right? Sorry, 17-18. And so now I'm just  
4 trying to understand the building height.

5           Because if the building height was measured  
6 incorrectly, then the building is now 14 and 12 inches too  
7 high, or whatever it is. Because they've measured it, and  
8 if you measure it at the wrong point because of the berm,  
9 then it shouldn't be -- because now it's, right, 14 feet --  
10 I mean, sorry, 34 feet, whatever it was, right? And if you  
11 measured it at whatever they say, the Applicant is saying you  
12 should measure it at, then it actually should be shorter.  
13 In other words, it's too tall, it's too tall, right?

14           So they'd have to lower the building, okay, to get  
15 within compliance, right. So the permit would get kicked out  
16 or whatever if we determined that the height was measured  
17 incorrectly. In order for us to currently figure out whether  
18 the height was measured incorrectly, and this is the part  
19 that I'm kind of struggling with in terms of the berm thing,  
20 is that -- yeah, okay, so I don't know whether -- I'm kind  
21 of talking to myself.

22           Okay. So does anybody have anything else for  
23 the --

24           (No audible response.)

25           CHAIRPERSON HILL: All right. I'm sorry. Thank

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1 you for your patience. And, property owner, you can begin  
2 whenever you like.

3 Mr. Moy, could you put 20 minutes on the clock for  
4 us? Thank you.

5 You can begin whenever you like.

6 MS. MAZO: Just very briefly, Samantha Mazo on  
7 behalf of the property owner. I'm going to just start off  
8 with talking about the timeline here just to try to clarify  
9 a few facts that have been brought out, and then I am going  
10 to go through the pre 17-18 -- or provide for the Board's  
11 information, the pre 17-18 regulations, which I think we've  
12 all now become a little bit more familiar with. I will then,  
13 you know, discuss our position that certainly as of  
14 September, that there was no grade change.

15 I also have the property owner here if there are  
16 questions about what he may know about what happened in  
17 March. As shown on the timeline here, the property owner did  
18 not take possession or did not purchase the property until  
19 March 15th, 2018. And what has been undisputed is the fact  
20 that whatever occurred on March 24th, which, you know, I  
21 identify was really not really discussed or brought to light,  
22 that specific date, until the ANC's most recent filing, but  
23 whatever may have occurred on March 24th was not under the  
24 property owner's watch.

25 The issue was there had been a permit that was

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1 issued to DCRA in order to abate the roof issue which  
2 Ms. Schwartz identified. My understanding, and so I was not  
3 part of this team, I don't know, but my understanding is, you  
4 know, beginning in 2014 and 2015, there was a prior owner who  
5 had removed part of the roof, who was trying to go through  
6 a process to convert that property to four units. That  
7 process was halted for whatever reason. The property sat,  
8 as we understood, vacant, unimproved certainly for a very  
9 long time. DCRA undertakes abatement measures related to the  
10 property maintenance.

11 My understanding now from discussions that have  
12 recently come out is that that is the -- the allegations of  
13 the critical time in which if there was a change in the  
14 grade, that was when it would have occurred. Again, you  
15 know, the property owner was not involved in that. And then  
16 on May 29th, the property owner did apply for the building  
17 permit that we're talking about now.

18 And on the question of whether the initial  
19 building permit application identified the BHMP and  
20 identified the distance between the BHMP and the cellar, the  
21 answer to that is yes. And that answer is actually in  
22 Appellant's Exhibit Number 2, which includes the plans that  
23 were provided to the Applicant -- I'm sorry, provided to the  
24 neighbors as part of the neighbor notification. So that  
25 would have been the plans that were filed at the time of

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1 application. May 31st that first neighbor notification  
2 letter was sent to the adjacent neighbors.

3 My understanding, and I am just getting this  
4 information from the ANC's filings, but then in early June  
5 or late June, the Zoning Administrator met with the neighbors  
6 to discuss this project as well as the adjacent property  
7 that's also been appealed on 18th Street. July, the adjacent  
8 owners send their first objections to DCRA. Those objections  
9 did clearly state the concerns about the change in grade,  
10 about the height.

11 And then August 4th, the licensed surveyor  
12 conducts a survey of the property. That survey is in our  
13 record at Exhibit 34D. It is signed and sealed. It was  
14 prepared by a licensed surveyor and was provided as part  
15 and -- submitted into Project Docs, which is the DCRA  
16 permitting system.

17 17-18 -- oh, I'm sorry, I did forget one key  
18 thing, but I think we all have accepted it; that the  
19 application was deemed complete as of May 30th, 2018. So  
20 we've all accepted that we're vested under pre 17-18.

21 Next, on -- no, go forward. Let me try this  
22 again. I'll just go old school.

23 Can you guys see this?

24 Okay. Sorry. Okay, can you see it now?

25 CHAIRPERSON HILL: Yes.

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1 MS. MAZO: Okay, perfect. Now we're on page 2,  
2 Timeline.

3 17-18 was effective on August 17th.

4 August 27th, the second neighbor notification  
5 letter was sent to the adjacent owners in response and  
6 providing detailed responses to the owners' concerns.

7 September 8, 2018, which as we have -- is not a  
8 critical date anymore but had always been discussed as a  
9 critical date in terms of the property. The property was  
10 landscaped. That property landscaping was the pictures that  
11 you all have seen with the buckets of rocks. You know, as  
12 has been stated, there are no pictures of whatever may or may  
13 not have occurred, whatever occurred in, you know, being --  
14 whatever occurred in March, there's no pictures of that.  
15 There are, of course, allegations that there was a truck that  
16 came with all this fill. But what we do have photos of from  
17 the neighbors is, September, some rocks and some landscaping.

18 Also, I do note that there was also an allegation  
19 in regards to some mulch and other landscaping that was  
20 apparently included in the grassy berm. So let's see.

21 October 26th, DCRA issues the building permit.  
22 And then we get into the appeal December 5th. They voted to  
23 support it. On the 10th, there was an appeal. And then  
24 March 19th there was the minor revision that we, you know,  
25 have determined as minor and is part of the application.

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1           Now we're kind of getting into the pre 17 zoning  
2 regulations. And instead of using this, I'm -- no, no,  
3 instead of using that, I'm actually going to provide pictures  
4 that a colleague of mine sent of the pre 17 zoning  
5 regulations so that we all see, you know, there's no question  
6 about what was or wasn't there if there's an interpretation.  
7 I don't know if you guys can see this.

8 Okay. Let me see how I get that on the screen. Well, okay,  
9 let's see. Can you see it now?

10           (No audible response.)

11           MS. MAZO: Okay. Well, we'll figure that out in  
12 terms of being able to see those, but --

13           CHAIRPERSON HILL: I don't know if the tech is  
14 around?

15           MS. MAZO: Okay. Well, I do have images of those,  
16 so --

17           Hey, sorry. I feel like this always happens to  
18 me, the tech issues. I'm like primed for it. So, what I'm  
19 trying to show are these pictures that I have of the -- okay,  
20 got it.

21           Again, not the world's greatest photos because  
22 they were taken on an iPhone of my old zoning regulations,  
23 but hopefully this will give us an opportunity to talk  
24 through what the pre 17-18 zoning regulations said and didn't  
25 say.

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1 I will start here, actually, with the definition  
2 of natural grade because, as we have discussed, the  
3 definition of natural grade is not included in -- was not one  
4 of the requirements that the Zoning Administrator was  
5 required to review as part of making his determination of  
6 whether that lower level is a cellar or basement, and also  
7 is not part of the calculation of BHMP.

8 So the definition is up on the screen. It says,  
9 you know, the undisturbed elevation of the ground of the lot  
10 prior to human intervention or where there are existing  
11 improvements to the lot, the established elevation of the  
12 grade exclusive of the improvements or adjustments to the  
13 grade made in two years prior to applying for building  
14 permit. Natural grade may not include manually constructed  
15 berms or other forms of artificial landscaping. So that's  
16 the definition of natural grade.

17 Next, and I will turn this, we now have the -- on  
18 the fly here. We now have the 17-18 definition of cellar:  
19 that portion of a story the ceiling of which is less than 4  
20 feet above the adjacent finished grade. Okay, so now we know  
21 we're talking about adjacent finished grade, different from  
22 natural grade. That is for the definition of cellar.

23 We then have the definition of -- let's see. Oh,  
24 we already have that one. Again, the BHMP for the point used  
25 to measure building heights in the R, RF and RA zones. And

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1 then this here is talking about how the measurement of height  
2 of buildings not including a penthouse in the R and RF zones  
3 shall be measured in accordance with the rules. the building  
4 height measuring point shall be established at the existing  
5 grade at the midpoint -- existing grade, again -- at the  
6 midpoint of the building facade of the principle building  
7 that is closest to a street line.

8 And then the other, which I'm not sure I had a  
9 chance to upload but I do have a photo of here is the  
10 definition of finished grade under 17-18. So let me just  
11 find that shortly.

12 I already showed that? For pre 17 -- no, I have  
13 natural grade. Oh, perfect. Okay, we're going back, then,  
14 to the natural grade. Finished grade. I'm sorry. So  
15 finished grade was above it. The elevation of the ground  
16 directly abutting the perimeter of a building or structure.

17 So we are aware that these are the definitions  
18 that we are working under for the purposes of 17-18 and for  
19 the purposes of evaluating the Zoning Administrator's correct  
20 analysis of the building permit before him.

21 I now will go back very briefly to my PowerPoint.  
22 So, again, we're talking about the pre 17. You know, we have  
23 spent quite a bit of time looking at these photos and there  
24 is the red clay. You know, again, that work was not done by  
25 Capitol Partners. September 2018 is the post survey. There

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1 are the pictures of the rocks which we have already seen.

2 COMMISSIONER MAY: Yeah, can you stay on that?  
3 This. No, that one. Stay there for a second.

4 MS. MAZO: Sure. And for ease of reference, we  
5 have included that kind of bracket to identify what, in our  
6 estimation, documents the fact that there's really no  
7 difference between what occurred -- the facts on the ground  
8 in June as opposed to September in terms of the materials  
9 that are to be calculated as part of the existing grade for  
10 purposes of building height measuring point, and then, also,  
11 simultaneously, as finished grade for the purposes of cellar.

12 I'm now going to take you to the plan section,  
13 which I know we have all seen before. It identifies where  
14 the BHMP is taken from. It's taken from that point that is  
15 the midpoint of the building facade of the principle  
16 building. As established, the term building facade is a  
17 defined term and is defined as being at that vertical plane.  
18 So I think we've addressed that question.

19 You know, now I just want to provide a little  
20 bit -- I don't -- so the Board is aware, I don't have all the  
21 comparisons here. But we'd be happy to provide this  
22 information and, if the record needs to be supplemented in  
23 terms of what the differences are -- but the comparison  
24 between the pre 17-18 definition of cellar and post 17-18  
25 definition of cellar, you know, those definitions are on

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1 the -- hopefully you can see them.

2 But as the Zoning Administrator alluded to, post  
3 17-18, the calculation is now taken from the adjacent natural  
4 or finished grade, whichever is lower in elevation. And so,  
5 whereas pre 17-18, it was above the adjacent finished grade,  
6 which, as we have reviewed, is a defined term. That term  
7 adjacent -- I'm sorry just finished grade.

8 Building height measuring point, again, there's  
9 a comparison there. And this is for the building height  
10 measuring point as it pertains to a residential zone. It's  
11 at the building facade, the existing grade at the midpoint.  
12 And again, that's pre 17-18. Post 17-18, adjacent, natural  
13 or finished grade, whichever is lower in elevation.

14 And, you know, we know that the Zoning Commission  
15 worked very closely with the Zoning Administrator on this  
16 definition of the post 17-18. And I know, with having spoken  
17 at length with the Zoning Administrator about many, many  
18 cases, about the reasons why they needed to put that  
19 information, that definition in there, because, as the Zoning  
20 Administrator testified, there was a lot of lack of clarity.  
21 I know last year or maybe a year and a half ago this Board  
22 dealt with a very meaty case that precipitated the zoning --  
23 the text amendment 17-18, in large part.

24 But there is a clear distinction and there's a  
25 clear definition change, and it was purposeful. But you

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1 know, as this Board, you know, understands, and OAG,  
2 obviously, would not question that the Zoning Administrator  
3 was working under the zoning regulations in place and  
4 effective at that time, which was the pre 17-18.

5           You know, one thing, and really this is just for  
6 the Board to take under consideration, is that there was  
7 recently a BZA Appeal Number 19-106, in which there was a  
8 question about where and when grade was to be calculated.  
9 And because it's the same issue that was addressed in 17-18  
10 but had been addressed.

11           And really, there, this Board -- on a different  
12 set of facts, but it was an appeal -- determined that the  
13 DCRA has to work off the documents that they are provided;  
14 that there is a single universe of documents that when, as  
15 in this case, as in our case here, DCRA obtains technical  
16 objections, the neighbors object, and DCRA works with the  
17 applicant and the neighbors to resolve questions. It's still  
18 the material and the facts that are before DCRA is how DCRA  
19 has to make a determination. And then in that case, the  
20 Board upheld the Zoning Administrator's determination that  
21 the lower level is a cellar and the Board determined that  
22 final determination is the grade to be made during DCRA's  
23 final inspection after construction is complete.

24           And so I identify this case, you know, not  
25 necessarily to say this is the end-all, be-all but just to

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1 advise the Board on how they have looked at this issue  
2 before, trying to grapple with this question that  
3 Commissioner May raised and that Ms. John has raised, which  
4 is what is existing grade, when is DCRA supposed to make this  
5 identification? And, you know, understanding the realities  
6 of the situation, which, as the Zoning Administrator  
7 identified, is that they get an application, they look at it,  
8 they say okay, we need more information, and they come back  
9 at another time. So that is that.

10           Again, you know, just kind of reminding the Board,  
11 the Zoning Administrator, about the discretion that is  
12 entitled to the Zoning Administrator's review. Of course,  
13 it is a de novo review but, really, we're just looking at  
14 clearly erroneous nor inconsistent -- or inconsistent with  
15 the zoning regulations as a whole. And, you know, to be  
16 added there, the zoning regulations in effect at the time of  
17 review.

18           Just in case there were questions, questions had  
19 been raised about, or questions have been made about the roof  
20 removal. So this was, you know, after the roof removal in  
21 2015, and then after DCRA's enforcement action where there  
22 was this roof that was replaced. I mean, it was not clearly  
23 replaced in kind, but it was a roof that was put on. And,  
24 you know, just to provide a visual there in case there are  
25 questions about that.

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1           And then a copy of the building permit. And one  
2 thing I do want to identify in the building permit which was  
3 unique to me, quite frankly, is that the building permit  
4 itself identifies that there were technical objections that  
5 were raised by the neighbors, you know, expressly says that  
6 they were raised and, you know, essentially says that they've  
7 got to go to DDOE before starting; a wall check is required.

8           So there are stop gaps in place in this particular  
9 building permit to identify the fact that this was a property  
10 that neighbors raised questions about that the -- and that  
11 DCRA -- I mean, I'm speaking now, but DCRA did its job. I  
12 mean, I know there's a lot of arguments that DCRA didn't do  
13 its job, but from our perspective and from, you know, the  
14 perspective of the -- somebody who works very closely with  
15 DCRA on enforcement issues and on permitting issues, you  
16 know, we see this all the time.

17           Oftentimes, we get brought in at a much later  
18 date, but we see people who get into big trouble because they  
19 get a building permit and people -- or they apply for a  
20 building permit, they get a building permit and it comes back  
21 and, you know, there's additional review. DCRA revokes the  
22 permit and, you know, we're called in to help. It, you know,  
23 become a much bigger -- not much bigger but it becomes an  
24 issue that DCRA handles all the time.

25           And in this instance, I really do believe DCRA did

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1 their job. I mean, they got technical objections, talked to  
2 the neighbors, talked to Mr. Rueda numerous times,  
3 corresponded with them. And, you know, while the neighbors  
4 and Mr. Rueda may not like the ultimate decision, I don't  
5 think that the Board could say this was not a considered  
6 decision, that this was not a decision where the Zoning  
7 Administrator didn't have the full information in front of  
8 him. He had those pictures that you all have seen. He had  
9 the Appellant's, I guess, elevation plan. I mean, all of  
10 that documentation was before the Zoning Administrator and  
11 he still came to this decision.

12           So, with that, if the Board has any questions  
13 about anything kind of pertaining to the permitting of the  
14 property or what may have happened in March 2018, the  
15 property owner is here and can address those.

16           CHAIRPERSON HILL: Okay, great. Thank you.

17           Does the Board have any questions for the property  
18 owner?

19           COMMISSIONER MAY: I have one quick one. Can you  
20 bring the timeline back up?

21           MS. MAZO: Yes. Here you go.

22           COMMISSIONER MAY: Okay. So the Appellant's  
23 submissions indicate that the changes to the grade occurred  
24 on March 24th, which is after it was purchased by Capitol  
25 Partners. But you also state somewhere in the timeline --

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1 or in this presentation that they had nothing to do with the  
2 placement of that soil.

3 MS. MAZO: Yes. So --

4 COMMISSIONER MAY: So it happened after they  
5 bought the property but they didn't have anything to do with  
6 it?

7 MS. MAZO: Correct. And I can actually have the  
8 property owner who's here address that.

9 COMMISSIONER MAY: So I'm curious as to how that  
10 came to pass.

11 MS. MAZO: Yeah, no, and I understand that. And  
12 I would like the property owner to come here to introduce  
13 himself and then to explain that issue. But as a preface,  
14 my understanding is that part of that came to be that they  
15 purchased the property and then once they purchased the  
16 property, there was a time lag between once a property is  
17 purchased and then once the recordation of the contract comes  
18 up in the land records. And so that would explain why these  
19 enforcement actions, the property owner was not aware that  
20 they were happening at the time, because they were never  
21 advised. Because the permit --

22 COMMISSIONER MAY: So why don't we just let the  
23 property owner speak.

24 MS. MAZO: Sure.

25 COMMISSIONER MAY: Sorry. Identify yourself for

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1 the record.

2 CHAIRPERSON HILL: Can you introduce yourself for  
3 a second?

4 MR. NAWAZ: Hi. Good afternoon. Thank you for  
5 letting me -- giving me a chance to speak. My name is  
6 Mahmood Nawaz. I am the manager of Capitol Partners, LLC.

7 CHAIRPERSON HILL: Can you spell your last name,  
8 please?

9 MR. NAWAZ: Nawaz, N-A-W-A-Z, Nawaz.

10 CHAIRPERSON HILL: Okay. Mr. Nawaz, were you  
11 sworn in earlier?

12 MR. NAWAZ: Yes, sir.

13 CHAIRPERSON HILL: Okay.

14 COMMISSIONER MAY: So, Mr. Nawaz, when you -- you  
15 closed on the property on the 20 -- I'm sorry, on the 15th  
16 of March, 2018?

17 MR. NAWAZ: That is correct, sir.

18 COMMISSIONER MAY: And there was work done on the  
19 property after that point?

20 MR. NAWAZ: That is correct.

21 COMMISSIONER MAY: And who did that work?

22 MR. NAWAZ: It was multiple contractors under the  
23 DCRA-issued permit. It was a DCRA enforcement action to  
24 replace the roof.

25 COMMISSIONER MAY: So it was DCRA's contractor

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1 that did the work on the building, including adding that soil  
2 for grading purposes?

3 MR. NAWAZ: I will address the soil issue. I am  
4 not aware of, nobody has added any soil before my eyes, or  
5 I have not observed anything.

6 COMMISSIONER MAY: Well, I mean, there was stone  
7 that was added under your watch, right?

8 MR. NAWAZ: The stones were added. And if you'd  
9 like to --

10 COMMISSIONER MAY: All right. So the soil that  
11 was added that the neighbors said went in on the 24th, you  
12 don't know anything about that?

13 MR. NAWAZ: I have no information. And my belief  
14 is there was no soil added. If you can -- if I can make a  
15 short statement that may clarify some of the, you know --

16 COMMISSIONER MAY: Okay.

17 MR. NAWAZ: The property was purchased on March  
18 15, as we all said. Prior to our purchase, there was an  
19 active enforcement action going on, on the property by the  
20 DCRA. There was a building permit issued, as it is listed,  
21 in September 2017. And DCRA -- and we came became aware of  
22 these building permits and enforcement because there was an  
23 about \$40,000 lien or so which was put against the property  
24 by the DCRA. DCRA wanted to charge that amount to the owner  
25 for not doing its job and so forth. And that is how we

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1 became aware.

2           And there was -- significant work was started.  
3 Like, you know, a roof was replaced. I observed the property  
4 in November and December and I saw the workers working there  
5 in the property, on the roof. But at that time, we had  
6 signed the contract. And I tried to speak with them, but  
7 they would not speak to me, obviously. But then somehow,  
8 from January onward, nobody was doing any work. It was snow,  
9 also, and it was, you know, it was outside work. With all  
10 of the weather or something, we thought they may do it later  
11 on. But then in March, another permit was obtained.

12           Now, here is the disconnect a little bit I wanted  
13 to address how we did not know. The problem is, once you  
14 close on a property, it takes some time for the online  
15 records from the -- office to, you know, populate and the  
16 DCRA itself to come to know that there's a different owner.  
17 DCRA enforcement staff will not know that there's a different  
18 owner unless somebody approaches them. We had not approached  
19 them. There was a permit issued, the second permit, which  
20 ends at 569. That was issued in March 2018, and that was  
21 also issued to replace the roof under the DCRA enforcement.  
22 Why the work was not done under the prior permit, we don't  
23 know.

24           Now, during March, that is -- the workers were  
25 doing the work, and then there was another notice of

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1 violation was issued by the DCRA. That was issued on March  
2 9, and that was issued to the previous owner again, and that  
3 was issued to address the issue that the property entrances  
4 are not secured. And DCRA initiated an enforcement action.  
5 Their contractor did an enforcement action. They installed  
6 the plywood, they boarded up the place properly, and did some  
7 cleanup work, also. This is my belief. And DCRA went ahead  
8 and issued us a bill for that particular enforcement action.

9 I went and I made an application, appealed against  
10 that particular charge to the Office of Administrative  
11 Hearings. And at the Office of Administrative Hearings, DCRA  
12 consented that this violation should be dismissed against the  
13 Capitol Partners; it was against the previous owners. And  
14 that is how we came to know that there is -- some enforcement  
15 action is going on.

16 That all is a part of record. That particular  
17 enforcement action did occur, but it was dismissed because  
18 the DCRA counsel filed a consent motion that the abatement  
19 has already been completed prior to the -- before the new  
20 owner took over the property, so it should be dismissed.  
21 That is how we came to know. So there was a small little  
22 disconnect before DCRA came to know.

23 COMMISSIONER MAY: I think I got the picture.

24 MR. NAWAZ: Thank you, sir.

25 COMMISSIONER MAY: I understand how that was

1 playing out. That's it.

2 MR. NAWAZ: What I want to add here is, as far as  
3 the issue of adding the, you know, any soil, we were not  
4 aware of any soil issue, neither we have added any soil  
5 issue. We did not do any work till sort of middle of, around  
6 middle of -- somewhere around towards the end of June or  
7 start of May. Our neighbor called and they said, you know,  
8 grass is tall, so we just had our landscaper guy go and cut  
9 the grass. The issue of the stone has been brought up quite  
10 a bit, you know, the mulching and the stone.

11 COMMISSIONER MAY: And I don't have a question  
12 about that.

13 MR. NAWAZ: But I want to address it. It is an  
14 allegation against us. I have a chance, so I'd like to  
15 address it. Very shortly.

16 COMMISSIONER MAY: It's up to you, Mr. Chairman,  
17 whether you want to hear it. I mean, the Applicant had  
18 their -- or the property owner had the opportunity to make  
19 their case. My question has been answered, so I don't --

20 CHAIRPERSON HILL: Oh, no, that's okay. So just  
21 give me one second, sir. You can go ahead and make your  
22 statement.

23 MR. NAWAZ: Okay. Thank you. There was a runoff  
24 going on, on the property. This property is 2 feet at a  
25 lower elevation from our neighbors. And actually, in the

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1 entire block, this is at the lowest elevation. The elevation  
2 runs from north to south, and each property is sort of 2 feet  
3 higher.

4           So, during the -- you know, whenever we visited  
5 the property, there was a lot of runoff going on. There was  
6 a lot of water going on. So we asked the landscaping guy,  
7 you know, why this, and we see there's a lot of, you know,  
8 leaves and other, you know, dirt on the alley side. And we  
9 were concerned; DCRA can issue, you know, a notice of  
10 violation at any minute. So we asked him. He said we can  
11 mulch it and we can add some stone so that it won't go out.  
12 It was sort of make sure that, you know, the runoff is  
13 controlled. That is why.

14           And it was only maybe two or three small buckets.  
15 The stones were added in September, we are talking. There  
16 was never an intention to change the grade or do anything  
17 else with it. That was the only intention, was to control  
18 the runoff.

19           CHAIRPERSON HILL:    Okay.    All right.    Okay.  
20 Anybody got more questions?

21           (No audible response.)

22           CHAIRPERSON HILL:    Ms. Mazo, can you pull up that  
23 slide that has the two side-by-sides, whatever it is?

24           MS. MAZO:    For 17-18?

25           CHAIRPERSON HILL:    No, the pictures, the two

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1 pictures.

2 MS. MAZO: Oh.

3 CHAIRPERSON HILL: Yeah. So the only thing is,  
4 what I got is, you all purchased the property and it looked  
5 like that in June of 2018, correct? And I'm not actually  
6 asking the property owner, I'm asking you, but the property  
7 owner can answer if they want. But that's what you  
8 understand it to be, correct?

9 MS. MAZO: My understanding is that when they  
10 purchased the property --

11 CHAIRPERSON HILL: In 2018, that's the way it was  
12 on the left. And then on the right, in 2018, September, the  
13 reason why it's like, you know, there's no longer the red  
14 dirt there is there was, like, runoff and they put, you know,  
15 mulching and rocks to kind of keep the runoff from going.  
16 That's what I understand. Correct?

17 MS. MAZO: That is correct.

18 CHAIRPERSON HILL: Okay. All right. And then  
19 just the one last thing, I guess, for even maybe DCRA, so --  
20 and I still kind of -- well, actually, I'm going to have to  
21 come back to you again with this whole building height  
22 measuring point in a minute, but the -- why wouldn't they  
23 just lower -- and I keep going back to this, why wouldn't  
24 they just lower -- if they could lower the building 14 inches  
25 or whatever that is, right, and they'd still have everything

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1 they have there -- I mean, I'm just hypothetically speaking,  
2 I guess, right? They'd still have the cellar. They'd still  
3 have all the floors. They'd have to kind of manipulate a  
4 couple of inches here or there on the other floors, but  
5 they'd still probably have the same building. You don't  
6 know?

7 MR. LeGRANT: Possibly. I'd have to see a  
8 submittal of plans --

9 CHAIRPERSON HILL: Sure.

10 MR. LeGRANT: -- to give you a definitive answer.

11 CHAIRPERSON HILL: And now this doesn't matter to  
12 me but I am going to ask the question: you don't know if  
13 that would then trigger a significant enough change to kick  
14 you over into post 17-18?

15 MR. LeGRANT: Correct. I don't know.

16 CHAIRPERSON HILL: You don't know, right? You  
17 wouldn't know. Okay.

18 And then back to the ANCs again, so these are  
19 only -- it's only two units that are in the property?

20 MR. RUEDA: They're converting it to two units.

21 CHAIRPERSON HILL: They're converting it to two  
22 units. So, okay. So, I mean, I'm just trying to -- and  
23 don't -- and believe me, I completely get it. I live in the  
24 city. I've got neighbors. You know, and so I understand  
25 what people don't want or want and all that, so I'm not

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1 trying to not justify your objection. I'm just trying to  
2 understand it a little bit more, right?

3 So, really, again, you're still only getting two  
4 units. And so, really, one of the issues is -- the issue  
5 tends to complete -- and this is why, again, the whole 17-18  
6 thing did come up and try to get resolved. It's the density  
7 of the -- it's how much density they're getting in the  
8 building. It's not -- they're just -- they're still getting  
9 just two units.

10 MR. RUEDA: But you're allowing an additional  
11 story. That's a 33-percent increase.

12 CHAIRPERSON HILL: Well, you're allowing -- the  
13 height's going to be the same. You're still going to be --

14 MR. RUEDA: Yes, but there's a density issue.  
15 It's also a height issue. But the reality is, is that  
16 it's -- you're talking about two things that can't be  
17 mutually exclusive.

18 CHAIRPERSON HILL: So the density -- and I'm just  
19 trying to understand. So the density that you're speaking  
20 of is that -- wouldn't they be able to do two by matter of  
21 right, anyway? They'd be able to do two by matter -- I'm  
22 just trying to understand what's the density part in this  
23 discussion. You can touch the microphone.

24 MR. GUTHRIE: Part of the density issue --

25 CHAIRPERSON HILL: You need to bring the

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1 microphone a little bit closer. Sorry.

2 MR. GUTHRIE: Part of the density issue has to do  
3 with the provision of services to people in urban areas. I  
4 don't know if you're on D.C. Alerts. I get at least two or  
5 three alerts per day about water, where the waterlines going  
6 in or out of buildings have sprung a leak and water is being  
7 turned off and streets are being closed because we have  
8 increased the volume that's going through some very aged  
9 pipes. Part of the problem is age and part of the problem  
10 is getting a hell of a lot more use than it ever used to.

11 CHAIRPERSON HILL: Okay. Commissioner, I'm not  
12 objecting to your opinion and everything, I mean, I'm just  
13 trying to understand.

14 MR. GUTHRIE: But that's part of the -- you were  
15 saying the density issue.

16 CHAIRPERSON HILL: Exactly. I'm just trying to  
17 understand the increased density. Meaning you have two  
18 families, you have two flats. You're still going to have two  
19 families and two flats, you're just going to have less FAR.  
20 You're still going to have the same height. So that's just  
21 what I'm just trying to understand. I'm not arguing what  
22 you're bringing forward. I'm just trying to get to what I  
23 was trying to understand is the crux of the objection. And  
24 so you're not going to get more people, they're just going  
25 to have more space. So there might be an increase in

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1 plumbing, that's what you're speaking of, and increased water  
2 use, and increased shower or something like that. Okay,  
3 that's what I'm just trying to understand.

4 MR. GUTHRIE: That's a huge issue in the District  
5 that is not being addressed --

6 CHAIRPERSON HILL: I understand.

7 MR. GUTHRIE: -- by the folks who should be  
8 addressing it.

9 CHAIRPERSON HILL: I was just trying to -- I'm  
10 just trying to understand. It's not three units versus two;  
11 it's still two units.

12 Okay. All right. Does anybody have any  
13 questions?

14 MEMBER JOHN: Mr. Chairman, I do have a question.  
15 I was trying to find the statements in opposition in the  
16 record. Can you tell me, Mr. Rueda, where those statements  
17 are, what exhibit?

18 MR. RUEDA: I'm sorry, the statements of what?

19 MEMBER JOHN: Of the opposition, the neighbors who  
20 are in opposition.

21 MR. RUEDA: Oh, the technical objections or the  
22 affidavits?

23 CHAIRPERSON HILL: Where in the record --

24 MEMBER JOHN: Where in the record --

25 CHAIRPERSON HILL: -- the affidavits.

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1 MR. RUEDA: The affidavits were submitted in the  
2 reply this past Monday.

3 MEMBER JOHN: I'm just trying to find the exhibit  
4 because I wanted to ask --

5 MR. RUEDA: We added it as Exhibit A to the reply.  
6 I didn't affix a number.

7 VICE CHAIRPERSON HART: It's Exhibit 36.

8 MR. RUEDA: I'm sorry.

9 MEMBER JOHN: I can just ask the owner.  
10 Did you speak with any of the neighbors after you  
11 purchased the property on March 15?

12 MR. NAWAZ: We spoke to them on the second week,  
13 after about a couple of weeks, about 10 days or so after, to  
14 the neighbors on the left, and to the neighbors on the right.

15 MEMBER JOHN: So that would be around the 24th or  
16 the 25th?

17 MR. NAWAZ: Probably that date. I'm not sure  
18 about the date, but if the other person is -- you know,  
19 Ms. Schwartz was saying 24th, so that must be the date then.

20 MEMBER JOHN: Okay. Thank you.

21 MR. NAWAZ: I don't remember the exact date, but  
22 that may be true.

23 MEMBER JOHN: Okay. Because I believe, if I'm  
24 correct, which is why I was trying to find the exhibit, one  
25 of the neighbors said that on that day they saw people

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1 putting dirt, red dirt in, you know.

2 MR. NAWAZ: I also sort of thought of, but I  
3 wanted to speak to her but she had left. She did not brought  
4 it to my notice that day. You know, she did not brought it  
5 to my notice if there are people working there or they're not  
6 working. Because that day, there was no people. When I was  
7 there, nobody was working there. And I was there earlier  
8 part of the day, that day.

9 I just said hello to her and, you know, said we  
10 were here, we thought we should introduce to you and if you  
11 have any concern. Because the property was sort of  
12 abandoned, so we were going to put up a tarp, so we wanted  
13 to get their permission to go onto their roof to lower the  
14 tarp in the back. We wanted to secure it. So she did not,  
15 on that particular day or a couple of days thereafter, she  
16 did not brought into my notice or question that why the  
17 people are working, are the people working there or not. But  
18 during those days, also, I wanted to reconfirm that there was  
19 work going on for the roof replacement.

20 MEMBER JOHN: How many times did you speak with  
21 Ms. Schwartz?

22 MR. NAWAZ: In March, only once. And thereafter,  
23 in May sometime, a couple of times, and then in June a couple  
24 of times. She called me, your grass is tall, you take care  
25 of it. There were some other small little issue in the back,

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1 they asked me take care of it.

2 MEMBER JOHN: Okay. Thank you. Thank you.

3 MS. MAZO: Sorry, just for a point of  
4 clarification, it looks like Exhibit 24C-1 has a compilation  
5 of texts between Ms. Schwartz and Mr. Rueda. I'm not -- you  
6 know, it looks -- and I'm just reading these now, but it  
7 looks like there were texts March 14th at 2:35-ish, I  
8 suppose, that says --

9 MR. RUEDA: I can address this if you want.

10 MS. MAZO: No, I'm just trying to read it.

11 I think it says that they -- are you home? So  
12 March 14th, that's Stephanie Schwartz saying, that's DCRA.  
13 And then on March 14th, it says, the new owner at 29 stopped  
14 by just now. They bought it for 830K. And then kind of  
15 confusingly, the bottom part of those texts is dated March  
16 24th, 2018, but then has the same language. So I'm not sure  
17 what date the texts were actually sent. You know, so I'm not  
18 sure if Mr. Nawaz spoke to them on the 14th or the 24th, but  
19 there's certainly documentation about outreach from the  
20 property owner.

21 MR. NAWAZ: Sorry. I did meet them on the day of  
22 purchase or the day prior to purchase. On day prior to  
23 purchase, we went there to make sure everything is fine. I  
24 mean, you know, it's just sort of the practice, the building  
25 is not burned or something. It was not occupied building,

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1 you know, vacant building. So that particular day, you know,  
2 I do recall that I met her on the March -- it may be March  
3 14 or 15. It's March 14, so that is the date. Sort of a day  
4 prior to the purchase.

5 MEMBER JOHN: All right. Thank you.

6 MR. NAWAZ: One day prior to the settlement.

7 MEMBER JOHN: Thank you.

8 MR. RUEDA: Excuse me, Commissioner. We did  
9 correct the exhibit, in the exhibit to the reply, which was  
10 submitted on Monday. So the same Exhibit 36 contains the  
11 exhibit with the -- basically, the texts were duplicated  
12 between the 14th and the 24th. So I went back and I checked  
13 the record in my phone, which is where it's stored, and the  
14 meeting date was the 24th, at least the one that we were  
15 talking about. I'm not sure if there was a different  
16 meeting.

17 MR. NAWAZ: Yeah, I also met her on the day of,  
18 you know, purchase, same day or next day. So March 14 sounds  
19 correct.

20 MEMBER JOHN: And on the 24th?

21 MR. NAWAZ: Yeah, I'm not sure about the exact  
22 date of 24th.

23 MEMBER JOHN: Okay. That's fine.

24 MR. NAWAZ: But say a couple of weeks, you know.

25 MEMBER JOHN: That's fine.

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1 MR. NAWAZ: But it was only -- but this  
2 introduction was only once, and that was either on the day  
3 of purchase, 15 or 14. I'll guess it was 14. The  
4 introduction where I said hello, you know, you are my  
5 neighbor and so forth, that was on the 14.

6 MEMBER JOHN: Okay.

7 MR. NAWAZ: That was not on 24.

8 MEMBER JOHN: Okay. Thank you.

9 CHAIRPERSON HILL: Okay, just one, I guess, for  
10 Mr. Nawaz. I mean, when you bought the property, again, the  
11 finished grade was the way the finished grade was. You guys  
12 didn't manipulate the finished grade?

13 MR. NAWAZ: I am not a very sort of technical sort  
14 of person.

15 CHAIRPERSON HILL: Sure.

16 MR. NAWAZ: But we have not done anything change  
17 to the grade. And the grade -- and what is the finished  
18 grade and what's the level, more information came from the  
19 architects.

20 CHAIRPERSON HILL: The photograph, Ms. Mazo, just  
21 put up that photograph again if you wouldn't mind?

22 This is fine with me. When you purchased that  
23 property in June 2018, that's the way the property looked on  
24 the left there, correct?

25 MR. NAWAZ: This will be the correct picture of

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1 the property at the time we purchased it.

2 CHAIRPERSON HILL: Okay. Okay. That's fine.

3 So you'll have a chance, sir, to ask questions.

4 MR. RUEDA: I just want --

5 CHAIRPERSON HILL: Oh.

6 MR. RUEDA: No, it's not a question.

7 CHAIRPERSON HILL: Oh.

8 MR. RUEDA: I wanted to point out that the  
9 photograph is from June, right?

10 CHAIRPERSON HILL: Yeah, I said June 2018, didn't  
11 I?

12 MR. RUEDA: Correct. But the date of purchase was  
13 from March.

14 CHAIRPERSON HILL: Oh.

15 MR. RUEDA: And the erosion that we're showing,  
16 by the way, is at the midpoint of the building.

17 CHAIRPERSON HILL: When you purchased the  
18 property, this was the level of grade that you purchased it  
19 at?

20 MR. NAWAZ: Yes. The first application which was  
21 made for the actual permit, you know, filing, that was end  
22 of May. And whatever the grade depictions are in that  
23 application, those were the actual grades once we purchased  
24 the property. We haven't done any work between the time we  
25 purchased the property and the time we made the application

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1 in 5/29/2018.

2 CHAIRPERSON HILL: Okay. All right. Okay.

3 All right, anyone else?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay. Okay. All right. So,

6 Mr. -- well, first of all, actually, how do I do this?

7 Mr. Rueda, do you have any questions for the presentation?

8 MR. RUEDA: I don't.

9 CHAIRPERSON HILL: Okay.

10 MEMBER JOHN: Mr. Chairman?

11 CHAIRPERSON HILL: We're going to take a quick

12 break.

13 (Whereupon, the above-entitled matter went off the  
14 record at 4:28 p.m. and resumed at 4:38 p.m.)

15 CHAIRPERSON HILL: Okay, let's get started again.

16 Okay. All right. So the Property Owner did have -- I'm  
17 sorry, the Appellant didn't have any questions of the  
18 Property Owner. Does DCRA have any questions of the Property  
19 Owner?

20 MS. LORD-SORENSEN: No.

21 CHAIRPERSON HILL: Okay. So, Mr. Rueda, you --  
22 or I'm sorry, Commissioner, you have, both of you have time  
23 for rebuttal. I can go ahead -- can I give you 10 minutes  
24 for rebuttal?

25 (No audible response.)

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1 CHAIRPERSON HILL: Okay. Great. We'll start and  
2 see where we're getting to, and then we'll do conclusions,  
3 okay? So --

4 MS. MAZO: Can I make a quick point?

5 CHAIRPERSON HILL: Sure. Sure.

6 MS. MAZO: I just don't remember. Do we cross on  
7 rebuttal or do we not cross on rebuttal? I don't remember.

8 CHAIRPERSON HILL: I thought that you didn't cross  
9 on rebuttal. I thought you got to provide your own rebuttal.  
10 And so they'll get rebuttal, then you'll get rebuttal, and  
11 then everybody gets rebuttal. And then you'll get a  
12 conclusion, you'll get a conclusion, and you'll get a  
13 conclusion. And then that's where we'll end up.

14 And so, Commissioner, you can go ahead and begin.  
15 I'm going to have Mr. Moy put 10 minutes on the clock. And  
16 start whenever you like.

17 MR. RUEDA: -- or is he ceding to me? I need a  
18 minute.

19 CHAIRPERSON HILL: Does somebody else want to go  
20 first then?

21 (Off-mic comments.)

22 CHAIRPERSON HILL: Oh, all right. Okay. All  
23 right. Then hold on.

24 MR. RUEDA: We may need tech support.

25 CHAIRPERSON HILL: Is tech support still here?

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1 MR. RUEDA: I could get it up before. I'm sorry.

2 Okay. I apologize. So the ANC has diligently  
3 gone through in its pre-hearing statements and replies to the  
4 Property Owner and DCRA that the property is four-stories  
5 high and incorrectly measured from atop a berm, which was  
6 installed on 3/24/18. We know this because affidavits were  
7 signed by four neighbors.

8 You can see in the photograph that the ground is  
9 abnormally level and extends across the -- at the same level  
10 as the adjoining property. The BHMP, if it had been measured  
11 at the midpoint in August, would have been at the eroded  
12 condition that you see there. So the only thing that you can  
13 surmise is that in September they filled in the area at the  
14 midpoint of the building, which is eroded as you can see in  
15 the photograph, and they were able to sustain the claims that  
16 they made in their drawings, which are meant to give them an  
17 additional story that other people on the block are not able  
18 to do without the addition of a berm. Which now, obviously,  
19 has been corrected through 17-18 language.

20 The language of the regulations, the words that  
21 we rely on regardless of all of this discussion about  
22 finished and natural and all that grade is that you measure  
23 building height exclusive of berms or other artificial  
24 features. Stories, according to B-310, are counted at the  
25 point from which building height is measured, exclusive of

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1 berms.

2 Finished grade and the definition, we know from  
3 corrections in 17-18, relate only to FAR, because in FAR  
4 calculations you could manipulate the grade. You could rely  
5 on finished grade in order to determine whether it was a  
6 basement or a cellar. But because you have additional  
7 language which tells you how you measure stories, which is  
8 different from how you measure FAR, and it's different from  
9 how you measure building height. The regulations under 310  
10 tell you that you measure stories from the point you measure  
11 building height, which is not finished grade.

12 That's all I have.

13 CHAIRPERSON HILL: Okay. Thank you, Mr. Rueda.  
14 DCRA, have anything for rebuttal?

15 MS. LORD-SORENSEN: No.

16 CHAIRPERSON HILL: Okay. Does the Property Owner  
17 have anything in rebuttal?

18 And also, just -- it's funny, OAG, I can't  
19 remember, like is this rebuttal of rebuttal or this is just  
20 rebuttal of the testimony?

21 MR. RITTING: Good question. I think it's  
22 supposed to be rebuttal of the testimony, followed by the  
23 closing arguments.

24 CHAIRPERSON HILL: Okay, but we already did -- so  
25 rebuttal -- and maybe you can -- we can have a sidebar on

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1 this again afterwards, but, like, you know, I thought it was  
2 rebuttal of the rebuttal, because we've already had -- oh,  
3 anyway, I don't know. Or maybe one of the attorneys knows.  
4 We've already had the presentation, we've already had cross,  
5 we've already had -- you know, I mean, I just -- I'm a little  
6 lost in what rebuttal is at this point, but go ahead and  
7 rebut away.

8 MS. MAZO: Thank you. I'm going to just take a  
9 couple of minutes. The first is Mr. Nawaz has just informed  
10 me that the image of the, sorry, the image of the area under  
11 the porch that we were looking at, which is that one?

12 MR. NAWAZ: Yes.

13 MS. MAZO: Okay. Oh yeah. That that's actually  
14 an image of the corner of the area under the porch, that it's  
15 not, may not really be showing the midpoint. And so I just  
16 want the Board to realize that; that in terms of kind of the  
17 documentation that we have been seeing, that may or may not  
18 be representative of what that area actually looked like on  
19 June 2nd. I mean, which would make sense because it would  
20 have had to have been taken -- because it couldn't have been  
21 taken while he was on the property, it would had to have been  
22 taken from somebody who wasn't on the property. So, you  
23 know, just to kind of take that under advisement.

24 The other issue that came up is this question of  
25 the berm and that language under the building height

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1 measuring point under 17-18. And I just wanted to identify  
2 to the Board that this Board dealt with that issue directly  
3 in the Cafritz (ph.) case, which is 18615. And in that case,  
4 looking at that issue specifically, the Board found that  
5 indeed the ability to build up against the side of a building  
6 did not constitute a berm or an artificial landscaping that  
7 would be detrimental to the BHMP calculation. And I'm going  
8 to find the Board's decision there.

9 But that issue was specifically addressed and was  
10 addressed kind of ad nauseam in that particular case, and it  
11 was determined by the Board that indeed such an area was not  
12 a --

13 Oh, okay. Let's see. I'm just reading from that  
14 decision: The slightly elevated grade along Military Road is  
15 no greater and it is in reaction to the potential abuse of  
16 this practice that the Zoning -- subsequent to that, they  
17 adopted a rule. And then, But although the Board doubts that  
18 the minor increase in grade involved here would run afoul of  
19 this rule, they said that they were vested.

20 And so the point is, is that this particular issue  
21 was also addressed in DCRA's pre-hearing statement in that  
22 case where they said, Appellant also objects to DCRA  
23 considering the top of the berm along Military Road to be  
24 adjacent finished grade. Appellant calls this an artificial  
25 adjacent finished grade, but as shown on that exhibit the

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1 berm is little more than a few feet of soil that has been  
2 built up along the Military Road side of the building. In  
3 fact, the height of that grade at the top is almost the same  
4 as the existing.

5           And so there, they would say that, you know, that  
6 they've looked at this issue about whether putting soil up  
7 against the side of a building, really, to address runoff or  
8 to be the side of the building, really, does not trigger this  
9 berm definition that is -- has been raised or questions that  
10 have been raised about that.

11           Now, with that, I will end our rebuttal.

12           CHAIRPERSON HILL: Okay. Mr. Rueda, do you have  
13 a conclusion?

14           MR. RUEDA: Well, I was going to say that that  
15 case actually supports our premise because that was about  
16 FAR, not about stories.

17           As a concluding fact, though, I guess I would  
18 surmise what we've been saying all along, which is that  
19 building height measurements cannot rely on berms or  
20 artificial features. And we know from having seen the berm  
21 being installed March 24th, after the Owner had possession  
22 of the property, regardless of whether or not the work was  
23 performed by him, was installed and used to benefit the  
24 project in getting an additional story of development.

25           We've shown through extensive review of the

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1 regulations, using the words of the regulations with regards  
2 to measurement of stories and not FAR, that you cannot use  
3 the finished grade in determining the story, because stories  
4 are counted from the point at which you measure building  
5 height. Thank you.

6 CHAIRPERSON HILL: Okay. DCRA?

7 MS. LORD-SORENSEN: So DCRA asks that the Board  
8 find that the Zoning Administrator correctly approved the  
9 permit in this case. Now, the primary issue is the building  
10 height measurement point.

11 Now, the Zoning Administrator reviewed the August  
12 2018 survey, as well as the architectural plans. Based on  
13 these representations, the BHMP started from the grade, which  
14 the Owner identified on the plans as existing/finished grade.  
15 And the pre 17-18 definition Height of Building reads, in  
16 part, In residential zones, the vertical distance measured  
17 at the existing grade at the midpoint of the building facade  
18 of the principle building that is closest to a street lot  
19 line to a point designated in the zone district. So, again,  
20 according to the plans, the BHMP started from the  
21 existing/finished grade.

22 Also, as mentioned earlier, the building facade  
23 is the face of the building. And as testified by the Zoning  
24 Administrator earlier, that was located under the porch. And  
25 so, when you look at the actual height of the building for

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1 the proposed construction, it is under 35 feet, which means  
2 that the proposed height is in compliance with the zoning  
3 regulations.

4 Now, the next issue was the cellar. And -- let's  
5 see. Okay. And under pre 17-18 definitions, a cellar is  
6 defined as, That portion of a story the ceiling of which is  
7 less than 4 feet above the adjacent finished grade. And  
8 again, when you look at the architectural plans, grade is  
9 identified as existing/finished grade. So, when you take the  
10 measurement from that existing/finished grade to the ceiling  
11 above, the measurement is 3 feet 2½ inches, which is below  
12 the 4-foot requirement.

13 So based on the submissions to DCRA, the Zoning  
14 Administrator correctly approved this particular permit. So  
15 DCRA asks that the Board deny this appeal. Thanks.

16 CHAIRPERSON HILL: Ms. Mazos -- Mazo? Sorry.

17 MS. MAZO: Just very briefly as I try to bring the  
18 slideshow back up here. I can use our F8. Duplicate, okay.  
19 I feel so accomplished. Well, I'll feel accomplished when  
20 it actually works.

21 Just again, you know, not to beat a dead horse  
22 here, because we've all been here for a long time; as an  
23 initial matter, as established in the timeline, the Property  
24 Owner, my client, didn't take possession, didn't purchase the  
25 property until March 15th. There are now allegations that

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1 there was some backfilling that occurred on March 24th. My  
2 client has testified that he's not the one who directed  
3 those, that he didn't know about them, and that he couldn't  
4 have known about them. So, for that reason alone, that, you  
5 know, just to make clear on that.

6           Next is, again, going to this issue of did the  
7 Zoning Administrator correctly interpret the zoning  
8 regulations that were in place and were applicable to this  
9 particular building permit. And the answer to that is  
10 resoundingly yes. All the definitions of 17-18 were complied  
11 with here. The definition of cellar, cellar is based on the  
12 adjacent finished grade. The building height measuring point  
13 is based on at the existing grade. And in terms of building  
14 height, it is also based on existing grade.

15           Questions about what may or may not have occurred  
16 in terms of putting some fill in that area, that would have  
17 related to the question of natural grade. The issue, as the  
18 Zoning Administrator very clearly testified to, the issue of  
19 natural grade was not one that he was looking at or that he  
20 was authorized to look at under the zoning regulations.

21           And we know that these are very tricky issues and  
22 that, you know, for this reason, my client, who, mind you,  
23 is kind of new to development in the District of Columbia,  
24 he has really, in his mind, really been trying to work very  
25 closely with the neighbors. You know, there's documentation

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1 just really from the beginning that there were meetings.

2           In fact, you know, the email from Ms. Schwartz on  
3 Saturday, March 24th indicated that they had indeed met --  
4 in the text exchange, that she identified that they had met  
5 on that day. They may have previously met earlier. That  
6 there was a lot of communication between my client and  
7 Mr. Rueda in regards to cleaning up the site and landscaping  
8 and trying to take steps, really, to remediate what had been  
9 an eyesore and I'm sure was very difficult to live -- and  
10 probably continues to be difficult to live next to if you're  
11 the adjacent neighbor. But you know, the neighbor  
12 notifications were filed. And when there were question about  
13 the neighbor notifications, they were revised.

14           And so, you know, one thing that I just want the  
15 Board, you know, to continue to be aware of is that, as I  
16 stated earlier, I believe that this is a case where the  
17 process worked, where neighbor notifications were filed. The  
18 neighbor was well aware of what was going on from the very  
19 beginning. They were engaged with DCRA. They were engaged  
20 with the Property Owner. And this is a case that was fully  
21 reviewed by DCRA and correctly determined by the Zoning  
22 Administrator in regards to this question of the cellar and  
23 the height of the property.

24           So, for those reasons, I would ask the Board to  
25 deny the appeal.

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1 CHAIRPERSON HILL: Okay. All right. So --  
2 Okay. So --

3 (Off-mic comments.)

4 CHAIRPERSON HILL: Sure. Of course.

5 COMMISSIONER MAY: So I have a question for  
6 Mr. LeGrant. We didn't really talk about this. We've been  
7 focusing on the building height.

8 MR. LeGRANT: Yes.

9 COMMISSIONER MAY: But the dormer replacement, the  
10 drawings that we received in the amended permit are different  
11 from what the prior condition was and I'm wondering if, you  
12 know, since that was pointed out, that it's -- you know,  
13 originally, they were casement windows and now they're drawn  
14 as double-hungs, and oddly-proportioned double-hungs at that.  
15 I mean, is that -- you know, do you stand by your position  
16 that that's a replication of what was there before?

17 MR. LeGRANT: Well --

18 COMMISSIONER MAY: And also things like the  
19 shingles.

20 MR. LeGRANT: So the challenge is we don't have  
21 dimensions of the prior feature, right? The way the  
22 regulation is, as I understand this to work is, you can't  
23 remove, alter or extend an elevation, a protected rooftop  
24 architectural feature. The feature's gone. The first -- I  
25 think as you're well aware, the first submission was not a

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1 correct replacement and it was pointed out by the ANC. We  
2 brought it back to the Property Owner to present a  
3 replacement that was consistent. That replacement is now a  
4 single dormer. And my review of the plans is that the window  
5 size, I believe, was consistent with my impression of the  
6 previous window opening size.

7           So, when it gets down to the materials and the  
8 type of window, you know, I would only -- when I work with  
9 applicants, and I'm speaking of other cases now, we urge them  
10 to replicate what was there. If the existing feature is  
11 gone, in some cases months or years have gone by, to look at  
12 neighboring properties.

13           All I can say is that the information that was  
14 presented to me appeared to be consistent. At this point in  
15 time, I would simply urge the owner, if it's a material  
16 question, they try to replicate as close as possible the  
17 prior feature.

18           COMMISSIONER MAY:    Okay.    So the difference  
19 between double-hungs and casements is substantial in terms  
20 of the look of what's there.    It certainly has been  
21 substantial when I've had to go for building permits.    So,  
22 I mean, it seems to me that that's something, since, you  
23 know, there's photographic evidence of what it looked like  
24 before, that that's something that they could change.    It  
25 certainly is something that they could go to, you know, a

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1 slate shingle or a slate-looking shingle. I see that the  
2 Property Owner wants to try to address that. You know, if  
3 this were a normal zoning -- I mean BZA case, you know, I'd  
4 ask them would you commit to doing that.

5 MR. LeGRANT: Sure.

6 COMMISSIONER MAY: I'm not sure the, you know --  
7 I mean, let me put it this way: If they were to submit  
8 further modifications, then you could amend the permit once  
9 again to --

10 MR. LeGRANT: Well, I don't know if it's correct  
11 procedure, but perhaps the Owner could be asked to stipulate  
12 that, you know. I would try -- the regulation is a difficult  
13 regulation to administer.

14 COMMISSIONER MAY: I understand.

15 MR. LeGRANT: Okay. I would urge the Commission,  
16 ultimately, to address -- to improvement. That being said,  
17 when I look at the architectural feature, the rooftop  
18 architectural feature, I look at the volume and the, like for  
19 the windows, the size of the openings of the windows. I'm  
20 trying to think of another instance where somebody has  
21 changed the window type. I can't even think of one.

22 COMMISSIONER MAY: No.

23 MR. LeGRANT: But the appearance with -- and I do  
24 get into, like, mullions. When the mullion arrangement  
25 varies, I stipulate that they must do the mullion arrangement

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1 that was on the previous feature.

2 COMMISSIONER MAY: Okay. So, I mean, I think  
3 that's very close to the issue of double-hung versus  
4 casements, because that -- it's the same issue as mullions,  
5 right? I mean, in a certain way, because -- I mean, you're  
6 looking at just the single divider between the two windows  
7 when you talk about the mullions, or are you talking about  
8 the muttons and the entire window pattern, like how many --

9 MR. LeGRANT: Well, the mullions, of course, is  
10 the status of the feature, you know, the fixed feature.

11 COMMISSIONER MAY: Right.

12 MR. LeGRANT: If you have a casement, then there's  
13 going to be an open versus closed.

14 COMMISSIONER MAY: Right.

15 MR. LeGRANT: And I am not, I'm not aware of an  
16 instance where someone has identified casement windows and  
17 I've asked for drawings to show the open and closed versions  
18 of that.

19 COMMISSIONER MAY: All right. Well, I mean,  
20 certainly if this were under the guidelines of an historic  
21 district, the casement versus double-hung would be a big  
22 issue, right? But it's not a --

23 MR. LeGRANT: I would agree.

24 COMMISSIONER MAY: Yeah. But that's not something  
25 that's -- what I'm getting at is that if they, if the

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1 neighbor two doors away wanted to change their casements into  
2 double-hungs, they'd be able to get a permit to do that?

3 MR. LeGRANT: I would agree.

4 COMMISSIONER MAY: Yeah. Okay. Okay.

5 (Off-mic comments.)

6 COMMISSIONER MAY: No, I mean, you know, it would  
7 be -- I would be interested to hear if the Owner is  
8 interested in amending the permit to address the concerns of  
9 the ANC, at least with regard to this, because it seems to  
10 me that's a simple thing to do.

11 MR. NAWAZ: Thank you for giving me --

12 MEMBER JOHN: Mr. May, if I could just add some  
13 information? I am looking at the Google Maps and I note that  
14 there are several houses in that same row that don't have  
15 casement windows.

16 COMMISSIONER MAY: That's true, but we're just  
17 talking about what was there previously.

18 MEMBER JOHN: Right. But as you correctly noted,  
19 it's not an historic district and the Owner could get  
20 permission to put something else in. I just wanted to put  
21 that out as a --

22 COMMISSIONER MAY: Yeah, I'm aware of that.  
23 Because they modeled this on one of the other neighboring  
24 properties as opposed to a photograph of a -- a previous  
25 photograph of this property.

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1 CHAIRPERSON HILL: Mr. Nawaz, do you have a  
2 comment?

3 MR. NAWAZ: Yes, sir. What I wanted to comment  
4 was we have no intention not to restore what was in the  
5 original. And we have no preference to do something which  
6 is not consistent. We are more than happy to work with  
7 Mr. Rueda in terms of, you know, size and, you know, shape  
8 of those windows.

9 And also, on terms of, you know, slate or the  
10 current shingles, the current shingle surface which you see  
11 on the picture, it was done by the DCRA enforcement  
12 contractor. We will do -- we'll go back and do a slate or  
13 slate-like material so it's consistent with what other roofs  
14 have there.

15 CHAIRPERSON HILL: So you'll go back and work with  
16 the ANC to see if you can come up with something that's  
17 closer to what was originally there?

18 MR. NAWAZ: Correct. Yeah, we initially worked  
19 with them.

20 CHAIRPERSON HILL: Okay, that's fine. But you'll  
21 go back?

22 MR. NAWAZ: Correct.

23 CHAIRPERSON HILL: Okay. All right. So I do want  
24 one thing, and then maybe you all can tell me, the Board, if  
25 this is something -- to the issue that Commissioner May is

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1 bringing up in terms of -- and I also appreciate the fact  
2 that Ms. John -- her comments. The issue that Commissioner  
3 May is bringing up, in terms of if we were to see a different  
4 design, right, then if we saw a different design, then the  
5 permit would have to be changed again and we'd have to then  
6 have to have a motion to incorporate the new plans into the  
7 new permit, correct?

8           So that could all be something that -- I have  
9 something that I want, actually, so we're not going to  
10 deliberate today. So if we could see that, okay? If you  
11 could get together with the ANC and see if you can kind of  
12 figure out whatever it -- I mean, double-hung -- actually,  
13 I've got to say I'm a little ignorant to all this. And so,  
14 you know, but I do know what a fake shingle is, and so if you  
15 want to try to get fake shingles or whatever, you know, work  
16 with the ANC on that, and then go ahead and resubmit that  
17 permit, okay? And then ask for a modification of the permit.  
18 That would be helpful, okay?

19           MR. NAWAZ: Yes, sir. It's a well-taken point.  
20 We'll do that expeditiously.

21           CHAIRPERSON HILL: Okay. And then the other  
22 thing, if you could listen to me as carefully as you can, so  
23 the ANC, DCRA and the Property Owner, could you submit a  
24 briefing about how the ZA should in this case evaluate, A,  
25 whether the lower level was a cellar for purposes of

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1 determining the number of stories and, B, the height of the  
2 building, particularly addressing the issues whether the  
3 measurement is from the existing grade, natural grade and  
4 finished grade. And you can go back and read this, and also  
5 read it again. And Rule B100.2, which is presumably part of  
6 the building height definition, address how the alleged  
7 artificial berm here after the measuring point for purposes  
8 of each test.

9 (Off-mic comments.)

10 CHAIRPERSON HILL: Right. So, Mr. May --

11 COMMISSIONER MAY: No, I just want to emphasize  
12 the fact that he said brief, a brief on this.

13 CHAIRPERSON HILL: Right, just a brief. And so,  
14 I'm going to read it again, right? And I guess, actually,  
15 you know what? I will read it again, and then also the  
16 secretary can help you get a copy of this, the statement,  
17 okay?

18 But again, I ask the ANC and DCRA and Property  
19 Owner to submit a briefing about how the ZA should in this  
20 case evaluate, A, whether the lower level was a cellar for  
21 purposes of determining the number of stories and, B, the  
22 height of the building, particularly addressing the issues  
23 whether the measurement is from the existing grade, natural  
24 grade and finished grade, and Rule B100.2, which is  
25 presumably part of the building height definition, address

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1 how the alleged artificial berm here affects the measuring  
2 point for purposes of each test. And I love this, I am going  
3 to ask you to talk to the secretary after we conclude.

4 And so if we could get that back by June 5th, then  
5 Mr. May will be back here on the 19th?

6 COMMISSIONER MAY: Mm-hmm.

7 CHAIRPERSON HILL: The 19th. And then we could  
8 have a deliberation on the 19th.

9 Was there a little bit of questions on all that  
10 or you kind of got the gist of it and you can catch up with  
11 the secretary to get a written copy of that?

12 (Off-mic comments.)

13 CHAIRPERSON HILL: Okay. Just a briefing, just  
14 a briefing. I don't want findings of fact, conclusions of  
15 law, any of that stuff. I don't want any more time and  
16 effort being spent on all this by anybody, okay?

17 And so, you know, I think that if you can go ahead  
18 and work with the Applicant there and try to figure out what  
19 could be helpful in terms of getting it back to the way it  
20 was. The thing's awful right now, okay? So getting it back  
21 to the way it was, right? And then do that little briefing,  
22 and then we'll come back here on the 19th to deliberate. And  
23 by that time, hopefully, you would have already gone ahead  
24 and changed the drawings, submitted them, and asked for a,  
25 you know, whatever.

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1 Amendment. Thank you.

2 MS. MAZO: And so just to be clear on that?

3 CHAIRPERSON HILL: Sure. Go on.

4 MS. MAZO: Applicant, DCRA and -- I'm sorry,  
5 Appellant, DCRA and Property Owner, those statements or  
6 briefings are all due simultaneously on the 5th, correct,  
7 June 5th?

8 CHAIRPERSON HILL: I was going to say so. I mean,  
9 I don't think you guys need to go back and forth on the  
10 brief.

11 MS. MAZO: Yes. No, I agree with you.

12 CHAIRPERSON HILL: Sure.

13 MS. MAZO: I agree with you.

14 CHAIRPERSON HILL: Sure. Yeah.

15 MS. MAZO: That's fine. And then also on the 5th,  
16 the Property Owner would have, hopefully, by that time, been  
17 able to obtain the amended permit and would submit that at  
18 that time?

19 CHAIRPERSON HILL: Yes. And then there would be  
20 whatever, a motion to incorporate.

21 MR. RUEDA: It's, excuse me, an amendment to  
22 specifically address the architectural elements?

23 CHAIRPERSON HILL: Yes.

24 MR. RUEDA: Nothing else?

25 CHAIRPERSON HILL: That's all, yes.

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1 Okay, anybody else?

2 (No audible response.)

3 CHAIRPERSON HILL: Okay. Well, this has been fun.

4 (Laughter.)

5 CHAIRPERSON HILL: And I really appreciate all the  
6 time. And do the Board have anything else?

7 (No audible response.)

8 CHAIRPERSON HILL: Okay. So the 5th of June, get  
9 all that stuff in. Other than that, the record is closed.  
10 And we will come back on the 19th to deliberate.

11 Mr. Moy?

12 MR. MOY: Just one minor, Mr. Chairman. I believe  
13 one of the parties used a PowerPoint presentation. I just  
14 want confirmation --

15 CHAIRPERSON HILL: Sure.

16 MR. MOY: -- that that's in the record, whether  
17 or not you would allow that in the record.

18 CHAIRPERSON HILL: If you could please put the  
19 PowerPoint presentation into the record, that would be  
20 helpful. Thank you.

21 MS. MAZO: I will.

22 CHAIRPERSON HILL: Okay.

23 MS. MAZO: No problem.

24 CHAIRPERSON HILL: Great.

25 MS. MAZO: Thanks.

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1 CHAIRPERSON HILL: Okay. So we'll keep the record  
2 open for the PowerPoint. All right, anything else, Mr. Moy?

3 MR. MOY: Not for me, sir.

4 CHAIRPERSON HILL: Okay. Thank you guys very  
5 much.

6 Anything else for the Board, Mr. Moy?

7 MR. MOY: Not today, sir.

8 CHAIRPERSON HILL: Okay. Great. We stand  
9 adjourned.

10 (Whereupon, at 5:13 p.m. on May 8, 2019 the  
11 hearing in the above-entitled matter was adjourned.)

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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 Hearing

Before: DC BZA

Date: 05-08-19

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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Court Reporter

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