

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

JUNE 19, 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
LESYLLEE M. WHITE, Board Member
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER[S] PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.
JACOB RITTING, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JONATHAN KIRSCHENBAUM
CRYSTAL MYERS

The transcript constitutes the minutes from the
Public Hearing held on June 19, 2019.

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Case Number: 20020 4
Case Name: Application of Scott and Emilee Tison

Case Number: 20040 13
Case Name: Application of Department of General Services

Case Number: 19961 35
Case Name: Appeal of ANC 1C

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

(10:25 a.m.)

1
2
3 CHAIRPERSON HILL: All right, Mr. Moy, whenever
4 you get a chance, you can call our first hearing case.

5 MR. MOY: Okay. I'm ready. So we're in the
6 public hearing session and that first application is Number
7 20020 of Scott and Emily Tison, T-I-S-O-N. If the parties
8 can come to the table? This application is captioned and
9 advertised for special exceptions under Subtitle E Sections
10 206.2 and 5203.3, from the rooftop architectural elements
11 provisions, Subtitle E Section 206.1, to allow alteration of
12 an existing porch rooftop architectural element on an
13 existing, attached principal dwelling unit, RF-1 Zone at
14 premises 2219 Second Street N.W., Square 3121, Lot 7.

15 CHAIRPERSON HILL: Okay. Good morning, everybody.
16 If you could please introduce yourselves from my right to
17 left? Just push the microphone there and introduce yourself,
18 please?

19 MS. OLIVER: Jane Oliver. I live at 2217 Second
20 Street N.W., Washington, D.C.

21 CHAIRPERSON HILL: Okay. Great. Thank you.

22 MR. TISON: Scott Tison. I live at 2219 Second
23 Street N.W.

24 CHAIRPERSON HILL: Okay. Just to let you all
25 know, if you can just have one microphone on at a time down

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1 there because otherwise, it feeds back up here. Thank you.

2 MS. KEIHANI: Hi. I'm Zahra Keihani. I'm a
3 designer at Case Design Remodeling.

4 CHAIRPERSON HILL: Okay. Could you spell your
5 last name for us, please?

6 MS. KEIHANI: Keihani, K-E-I-H-A-N-I.

7 CHAIRPERSON HILL: Okay. Great. Thank you.

8 MS. SHEPARD: Hi. I'm Elizabeth Shepard. I'm an
9 architect at Case Design Remodeling.

10 MR. SHAWT: Hi. I'm Neil Shawt, Director of
11 Project Development at Case Design.

12 CHAIRPERSON HILL: Okay. Great. So who's going
13 to be presenting to us?

14 (No audible response.)

15 CHAIRPERSON HILL: Okay. So are you all here for
16 this case?

17 (No audible response.)

18 CHAIRPERSON HILL: Okay. And you're all here in
19 favor of the case, like you're all not -- okay, okay. This
20 -- all right. So it was Shepard, correct?

21 (No audible response.)

22 CHAIRPERSON HILL: Okay. So Ms. Shepard, if you
23 could go ahead and walk us through what you're trying to do,
24 and then kind of, if you could, tell us again how you're
25 meeting the standard with which we should grant this

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1 application? I did note that there wasn't an ANC report, and
2 so if you could speak to that, or maybe it came in. I've
3 been mistaken already but you can just speak to it as you're
4 going through your presentation. I'm going to put 15 minutes
5 on the clock just so I know where we are, and the clocks are
6 up at the top of the ceiling. And you can begin whenever you
7 like.

8 MS. SHEPARD: Hopefully, this won't take 15
9 minutes. Mr. Tison is planning on having his front porch
10 rebuilt. When we applied for a permit to do this work, we
11 were told that we couldn't touch the roof without a special
12 exception. I'm sorry, it's -- it's labeled down here Section
13 206.1, to allow alterations to an existing porch rooftop,
14 architectural elements.

15 The design intent and construction intent is to
16 rebuild the porch as it is with a minor alteration that --
17 in the photo, it's the light-colored one in the center of the
18 photo is Mr. Tison's home. The one to the right on the photo
19 has the original brick piers of the construction. They are
20 brick all the way up to the roof construction of the porch.
21 The Historic Preservation Office asked us to rebuild the
22 piers to look like his neighbors instead of his. So that's
23 the only design alteration here; otherwise, we're replacing
24 in-kind. There's no change to design, size, height, or
25 anything like that.

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1 Can you forward one more? This is a more close-up
2 view and then this is the view to show you the reason we're
3 rebuilding the porch is that it's in disrepair. That column
4 is listing way further than we'd like it to. So rather than
5 just being able to repair the porch, we need to rebuild this
6 column down to the footer, if not a new footer. And that's
7 all I have to say about this. Mr. Tison, do you want to talk
8 about the ANC?

9 MR. TISON: Yes, please. Thank you. I presented
10 at the ANC yesterday. I had missed the meeting the month
11 previously related to the hearing. I just wasn't able to
12 make it. So I presented to our -- the Bloomingdale Community
13 Association on Monday and it was approved 21 to nothing with
14 no opposition. Yesterday I presented at the ANC and again,
15 it was approved 9 to nothing with no opposition.

16 CHAIRPERSON HILL: Okay. All right. Let's see,
17 does the Board have any questions of the applicant?

18 COMMISSIONER MAY: I have a question of Ms.
19 Shepard. The new column there is going to be all brick?

20 MS. SHEPARD: Yes.

21 COMMISSIONER MAY: And can you explain -- I mean
22 is that fluted column an original feature?

23 MS. SHEPARD: No.

24 CHAIRPERSON HILL: You have to push on the
25 microphone.

1 COMMISSIONER MAY: Yes.

2 MS. SHEPARD: Sorry. Zahra, can you pull up the
3 drawings of that. The original construction, from our
4 understanding, it matches what the neighbor had. All these
5 row houses were obviously built the same, and it was a brick
6 column all the way up to the cornice of the roof --

7 COMMISSIONER MAY: Okay.

8 MS. SHEPARD: -- of the porch. Currently, the
9 column is brick up to the railing height and then has a wood
10 column coming up. The Office of Preservation asked us to
11 rebuild it as a brick pier all the way up.

12 COMMISSIONER MAY: Okay.

13 MS. SHEPARD: So that is the one design change
14 that will happen. It will match the neighbor downhill.

15 COMMISSIONER MAY: Right. So at some point,
16 somebody replaced the --

17 MS. SHEPARD: Exactly.

18 COMMISSIONER MAY: -- brick column with a --

19 MS. SHEPARD: Yes.

20 COMMISSIONER MAY: -- wood column. One other
21 question.

22 MS. SHEPARD: Okay.

23 COMMISSIONER MAY: Did you study architecture at
24 the University of Maryland?

25 MS. SHEPARD: I did. Were you in my class?

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1 COMMISSIONER MAY: I believe we were, yes.

2 (Laughter.)

3 MS. SHEPARD: That was a couple --

4 COMMISSIONER MAY: As --

5 MS. SHEPARD: -- lifetimes ago, Peter.

6 COMMISSIONER MAY: -- no -- I know. No bearing
7 on the decision-making today, but --

8 MS. SHEPARD: I don't know. I think you're going
9 to have to recuse yourself on that one.

10 COMMISSIONER MAY: Puts it in jeopardy, I don't
11 know. Thank you.

12 MS. SHEPARD: Okay.

13 COMMISSIONER MAY: Nice to see you.

14 MS. SHEPARD: It's wonderful to see you, too.

15 CHAIRPERSON HILL: All right. Does anybody have
16 an affiliation or a school chum down there on the Board?

17 (No audible response.)

18 CHAIRPERSON HILL: Okay. All right. I got to
19 turn to the Office of Planning.

20 MS. MYERS: Good morning. Crystal Myers for the
21 Office of Planning. The Office of Planning's recommending
22 approval of this case and stands on the record of the staff
23 report.

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

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1 (No audible response.)

2 CHAIRPERSON HILL: Okay. Mr. Tison, you did get
3 sworn in, right?

4 MR. TISON: Yes, I did.

5 CHAIRPERSON HILL: Okay. Everybody there got
6 sworn in?

7 CHAIRPERSON HILL: Okay. Great. All right.

8 MR. SHAWT: I did not.

9 CHAIRPERSON HILL: Oh, you did not get sworn in?
10 Okay. Mr. Moy, if you could just stand up and swear in Mr.
11 Shawt? And anybody else who hasn't been sworn in, if you're
12 going to testify and you want to stand and get sworn in, now
13 is a good time.

14 MR. MOY: Looks like it's just you. Do you
15 solemnly swear or affirm that the testimony you're about to
16 present in this proceeding is the truth, whole truth, and
17 nothing but the truth?

18 (No audible response.)

19 MR. MOY: Thank you. You may be seated.

20 CHAIRPERSON HILL: Okay. Great. Did you testify
21 -- you didn't testify to anything, right?

22 (No audible response.)

23 CHAIRPERSON HILL: Okay. Great. I was going to
24 say --

25 COMMISSIONER MAY: He testified to his name.

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1 CHAIRPERSON HILL: Right, he testified his name.
2 Right, so I guess that's okay. All right. Let's see -- all
3 right, is there anyone here who wishes to speak in support?

4 (No audible response.)

5 CHAIRPERSON HILL: Is there anyone here who wishes
6 to speak in opposition?

7 (No audible response.)

8 CHAIRPERSON HILL: Okay. Ms. Shepard, is there
9 anything you'd like to add at the end?

10 (No audible response.)

11 CHAIRPERSON HILL: You can -- you need to talk in
12 the microphone. Sorry.

13 MS. SHEPARD: Nope. Happy to answer any questions
14 but I think this is pretty straightforward.

15 CHAIRPERSON HILL: Okay. Great. All right. I'm
16 going to go ahead and close the record. Is the Board ready
17 to deliberate?

18 VICE CHAIR HART: Yeah.

19 CHAIRPERSON HILL: You can go ahead, right?

20 VICE CHAIR HART: No -- no. I just wanted to ask
21 Ms. Oliver if you had any --

22 CHAIRPERSON HILL: Oh, I'm sorry --

23 VICE CHAIR HART: I think if you were --

24 MS. OLIVER: No --

25 CHAIRPERSON HILL: You need to push the

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1 microphone, sorry.

2 MS. OLIVER: I'm the baseline for the historical
3 because I've been in my house longer than most of you have
4 probably been alive. And so that's why I am here. I have --
5 I've talked with the new neighbors about the -- what they
6 were planning to do, and they assured me that it was only
7 going to be a duplicate of what my house looks like, which
8 is in that picture.

9 CHAIRPERSON HILL: Okay.

10 VICE CHAIR HART: Okay. And the reason I just
11 asked because you came all the way down here, so --

12 MS. OLIVER: Right.

13 VICE CHAIR HART: -- you at least -- you could at
14 least give her a chance to say something.

15 CHAIRPERSON HILL: Okay.

16 VICE CHAIR HART: Thank you very much for your
17 testimony.

18 CHAIRPERSON HILL: Yes. Thank you. All right.
19 So I'm going to go ahead and close the record. Is the Board
20 ready to deliberate? Okay. I can start and I mean again, I
21 thought it was very straightforward. I mean they're trying
22 to replace the wood post with now the brick post, and so I
23 thought that the Office of Planning's report was concise.
24 I would agree with their analysis. I'm glad to hear that at
25 least the ANC had been engaged with and, you know, we have

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1 testimony that they have voted in favor. Yeah. I don't
2 really have a lot of questions about it, so I'm going to go
3 ahead and vote to approve. Does anybody have anything they'd
4 like to add?

5 (No audible response.)

6 CHAIRPERSON HILL: All right, going to make a
7 motion to approve Application Number 20020 as captioned and
8 read by the secretary and ask for a second.

9 MEMBER JOHN: Second.

10 CHAIRPERSON HILL: Motion made and seconded. All
11 those in favor, say aye?

12 (Chorus of ayes.)

13 CHAIRPERSON HILL: All those opposed? Motion
14 passes, Mr. Moy.

15 MR. MOY: Staff would record the vote as 5-0-0.
16 This is on the motion of Chairman Hill to approve the
17 application for the relief requested; seconded the motion is
18 Ms. John; also in support of the motion, Ms. White, Vice
19 Chair Hart, and Commissioner Peter May.

20 CHAIRPERSON HILL: I guess -- and if you guys
21 could also -- thank you, Mr. Moy. Thank you all very much.
22 If you could please give the cards -- your witness cards to
23 the transcriber to my right? That's great. Thank you all
24 very much.

25 MR. MOY: I'm sorry. Thank you, Mr. Chairman.

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1 So next application is 20040 of the Department -- of the
2 Department of General Services. This application is
3 captioned and advertised for area variance from the penthouse
4 height limitations of Subtitle D Section 303.2, to construct
5 a rooftop mechanical equipment screen-in on an existing
6 public school, R-3 Zone. This is at 301 53rd Street S.E.,
7 Square 5301, Lot 809. And I believe -- Mr. Chairman, I just
8 checked the record. There is no affidavit of maintenance.

9 CHAIRPERSON HILL: Okay. Great. Okay. Could DGS
10 please come forward?

11 MR. WILLIAMS: So I'm Nicholas Williams with
12 Perkins Eastman-DC. I'm the architect and I'm acting as the
13 agent for the owner on this one.

14 CHAIRPERSON HILL: Okay.

15 MR. MORRIS: I'm Nathan Morris with DC Public
16 Schools.

17 CHAIRPERSON HILL: Okay. Great. All right. Mr.
18 Williams, you're going to be presenting?

19 MR. WILLIAMS: Yes.

20 CHAIRPERSON HILL: Okay. Wait. Before you do --
21 so you are. So I guess the first question again is the whole
22 thing about the affidavit of maintenance. I mean I see that
23 there is the affidavit of posting, so that's one thing that
24 you can kind of address as you're going through your
25 presentation. Again, if you can just kind of tell us what

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1 you're trying to do and how you believe you're meeting the
2 criteria for us to grant the relief requested in this case
3 of variance. And I'm going to put 15 minutes on the clock
4 again, just so I know where we are, and you can begin
5 whenever you like.

6 MR. WILLIAMS: So at C.W. Harris Elementary
7 School, we are doing a full modernization on the building,
8 and in doing so, we're replacing all of the mechanical
9 components of the building.

10 CHAIRPERSON HILL: I'm going to cut you off just
11 real quick.

12 MR. WILLIAMS: Sure.

13 CHAIRPERSON HILL: So because it's a preliminary
14 matter for us, so how come you don't have an affidavit of
15 maintenance?

16 MR. WILLIAMS: I can't -- can't speak to that at
17 this time. I --

18 CHAIRPERSON HILL: Do you know what it is?

19 MR. WILLIAMS: It's an affidavit that we've
20 maintained the signs, correct?

21 CHAIRPERSON HILL: Yes. Have you -- well, let's
22 put it this way.

23 MR. WILLIAMS: Okay.

24 CHAIRPERSON HILL: Have you maintained the signs?

25 MR. WILLIAMS: Yes, we have. We have maintained

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1 the signs. They're currently up at -- the two signs are up
2 on the two sides of the building --

3 CHAIRPERSON HILL: Okay.

4 MR. WILLIAMS: -- that face the street.

5 CHAIRPERSON HILL: Okay. If in the future, you
6 can -- I mean you're not DGS but --

7 MR. WILLIAMS: Okay.

8 CHAIRPERSON HILL: -- if you can just kind of try
9 to make sure that they get the application in as -- you know,
10 in a very complete manner?

11 MR. WILLIAMS: Yes.

12 CHAIRPERSON HILL: In this particular case, I do
13 think -- and I'm just -- I'm speaking to the Board now -- in
14 this particular case, I do think that there is the affidavit
15 of posting. I think that, you know, the ANC obviously has
16 been notified, so I don't have an issue with waiving the
17 affidavit of maintenance as a preliminary matter. Does the
18 Board have any issues?

19 COMMISSIONER MAY: No. I mean the question I have
20 is, you've testified that they are there now?

21 MR. WILLIAMS: Yes.

22 COMMISSIONER MAY: The affidavit of maintenance
23 would say that you've gone and monitored it --

24 MR. WILLIAMS: Okay.

25 COMMISSIONER MAY: -- over a period of time.

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1 MR. WILLIAMS: I have. I've seen them --

2 COMMISSIONER MAY: You've been there --

3 MR. WILLIAMS: I have been there --

4 COMMISSIONER MAY: -- every couple of days?

5 MR. WILLIAMS: -- I'm there every other day
6 actually, pretty much --

7 COMMISSIONER MAY: Yeah.

8 MR. WILLIAMS: -- just not on the weekends, yes.

9 COMMISSIONER MAY: And you see them when you're
10 there?

11 MR. WILLIAMS: Yes.

12 COMMISSIONER MAY: Okay. So that's what we --

13 CHAIRPERSON HILL: Okay. That's fine.

14 COMMISSIONER MAY: -- want in the affidavit of
15 maintenance.

16 CHAIRPERSON HILL: Okay. But again --

17 COMMISSIONER MAY: So --

18 CHAIRPERSON HILL: -- yeah, the incomplete record
19 --

20 MR. WILLIAMS: Okay.

21 CHAIRPERSON HILL: -- and that's where it turns
22 into we have to have this discussion every single time -- or
23 not every time but often. So --

24 COMMISSIONER MAY: Every time DGS comes.

25 CHAIRPERSON HILL: Yes. DGS -- DGS has a whole

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1 bunch of different things. Well, actually, I like DGS so I
2 mean I don't know, they're -- so okay, it's not necessarily
3 maintenance but there's all kinds of things sometimes that
4 happen with DGS. So -- but -- okay, so Mr. Williams, you can
5 start again now that we've gone through that; okay?

6 MR. WILLIAMS: Sure. So we're -- we are asking
7 for an area variance relief from the height -- penthouse
8 height requirements in R-3 Zone. Twelve feet is what is
9 allowed per the Zone for a -- in a residential zone, and
10 we're asking for 13 feet 4". We found this to be the
11 shortest height that we are able to fully accommodate the
12 mechanical systems and have them fully screened in the
13 building. And I'll let Nate speak to our -- kind of our
14 community outreach to the ANC.

15 MR. MORRIS: Yes. So we've worked closely with
16 the ANC Chair, who is actually the ANC for that SMD,
17 explaining the situation to her and presenting at -- at two
18 meetings, actually, just to make sure that there is full
19 awareness of it. So the reality is it's 16-inch difference
20 and, you know, I'm sure Nick can speak more to that but we
21 have engaged with the community as well as the school
22 community on everything just to make sure that people are in
23 the know.

24 MR. WILLIAMS: And we've had this -- we found that
25 this has been a pretty consistent problem with the school

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1 modernization projects where they're often located in
2 residential zones and the Zoning Administrator considers the
3 residential height restrictions for a penthouse rather than
4 the 18 foot 6" allowed by institutional -- typically allowed
5 for institutional buildings.

6 MR. MORRIS: Yes. So I guess piggybacking off
7 what Nick said, it is something we're dealing with in a lot
8 of our projects, modernizations. And I know that there have
9 been conversations going on with the Office of Planning
10 about, you know, amending the Code at some point because it's
11 challenging to have public schools fall under residential
12 requirements for building.

13 CHAIRPERSON HILL: Okay. But can you speak to why
14 you can't like -- and Mr. Williams, I mean you can't lower
15 the -- as I read through the record, you couldn't lower the
16 things below the equipment because of the -- it just couldn't
17 be done, correct?

18 MR. WILLIAMS: Yes, because of how the -- how the
19 units themselves feed into the ductwork and then down into
20 the existing building. Because we're dealing with a -- with
21 a renovation, not a new construction, we have to work -- we
22 have to work around the existing structural system. So we're
23 -- we're not able -- we're not able to lower the units and
24 the ductwork that feeds into the building to a point below
25 12 feet. It's -- it's -- our engineers studied it multiple

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1 ways, and it -- it's just not feasible.

2 CHAIRPERSON HILL: Okay. All right. Does anybody
3 have any questions for the applicant?

4 MEMBER WHITE: Just -- I'm sorry, just one
5 question. Can you demonstrate that? Is there a visual that
6 kind of shows me why that would be impossible or too
7 difficult to do? I don't know if there was a drawing or
8 anything of that nature.

9 MR. WILLIAMS: I could -- I can -- I -- I can take
10 a section through the -- like through the mechanical systems.
11 I don't think we had a section through the building that
12 really showed -- in our application that really showed how
13 the ductwork --

14 MEMBER WHITE: Okay.

15 MR. WILLIAMS: -- you know, the ductwork and the
16 units, you know, are so tight. But yeah, the issue is just
17 -- is just the size, the ability -- the ability to compress
18 them.

19 MEMBER WHITE: If you don't have a visual, that's
20 okay.

21 MR. WILLIAMS: Okay.

22 MEMBER WHITE: I just want to make sure I
23 understand.

24 MR. WILLIAMS: Sorry. I don't have one on hand.

25 MEMBER WHITE: Yeah, but basically the testimony

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1 is that in order for you to execute on the modernization, you
2 would need to have that variance in order --

3 MR. WILLIAMS: Yes.

4 MEMBER WHITE: -- to complete the project?

5 MR. WILLIAMS: Yes.

6 MEMBER WHITE: Okay. Thank you.

7 CHAIRPERSON HILL: Okay. Anyone else for the
8 applicant?

9 COMMISSIONER MAY: Yeah. So when did you learn
10 that you had an issue with height?

11 MR. WILLIAMS: We learned that we had an issue
12 with height when we went in for our building permit.

13 COMMISSIONER MAY: Which was when?

14 MR. WILLIAMS: Which was last fall, late last
15 fall.

16 COMMISSIONER MAY: Okay. I mean I think that I
17 saw something about August, you met with them -- the Zoning
18 Administrator --

19 MR. MORRIS: Yes.

20 COMMISSIONER MAY: -- in August. So why are you
21 here now? Why weren't you here in September or October?

22 MR. WILLIAMS: We had a number of meetings with --
23 with the Zoning Administrator and a zoning attorney to try
24 to resolve this internally.

25 COMMISSIONER MAY: Okay.

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1 MR. WILLIAMS: And after a series of meetings over
2 the course of a couple of months, it appeared that there was,
3 you know, there was an impasse. So we, you know, we -- we
4 prepared our application and then we had to -- we had a bit
5 of a delay because we wanted to present to the ANC to key
6 them in before we came -- before we put in our application
7 and came forward. And maybe Nate, you can speak to that a
8 little bit.

9 MR. MORRIS: The ANC had requested that we come
10 to two separate meetings. The Chair -- Chair of the ANC
11 wanted to make sure that everyone had a chance to digest the
12 information and not vote on it the first time. So with that,
13 we would present at the first meeting and then --

14 COMMISSIONER MAY: So when were those meetings?

15 MR. MORRIS: We were at the -- when was the last
16 one that we --

17 MR. WILLIAMS: The last one we were at was in May.

18 MR. MORRIS: So we were at May and then we were
19 also at April for those -- for this item specifically.

20 COMMISSIONER MAY: Okay. So there are pictures
21 in the record that indicate that this is already all built;
22 is that correct?

23 MR. WILLIAMS: It's not -- no, it's not yet
24 constructed. The screening is not -- is not constructed.

25 COMMISSIONER MAY: But the equipment is up there?

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1 MR. WILLIAMS: Yes. Some of the equipment is
2 currently --

3 COMMISSIONER MAY: And there's a frame around it?

4 MR. WILLIAMS: Yes.

5 COMMISSIONER MAY: Okay. So you were allowed to
6 build it even though you didn't have zoning approval?

7 (No audible response.)

8 COMMISSIONER MAY: The reason I ask this is that
9 this is a part of a pattern that we get from DGS regularly
10 where they seem to, you know, start construction, finish the
11 design, get the permits or something in a convoluted order.
12 And that's not the way it should be. I mean if there's an
13 issue that was identified in August, I don't see why there
14 wasn't a fairly immediate application and a conversation with
15 the ANCs back then. And this is not a new issue to DGS. I
16 -- you know, it's -- I'm astounded by how many ways in which
17 a case that comes from DGS can be messed up. And I -- you
18 know, I feel like I could just go back and rewind the
19 previous lectures that I've given on this topic to DGS
20 representatives. And I don't know if you were -- either of
21 you were there for any of them but, you know, it doesn't
22 matter. It doesn't seem to be having an effect.

23 Let me ask you this. Is there a drawing in the
24 record that actually shows anything about the penthouse
25 structure, the roof planning. I mean I saw landscape plans

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1 and I saw, you know, civil drawings, but I don't see a plan
2 that had dimensions on it.

3 MR. WILLIAMS: Yea. We had -- we had, in the --
4 in the application, we had an architectural roof plan as well
5 as elevations that had dimensions --

6 COMMISSIONER MAY: Where was that? For some
7 reason, I missed that.

8 MR. WILLIAMS: It was -- it was in a -- it was in
9 a -- in a set -- set of PDFs, so it was in our -- it was
10 labeled as "architectural."

11 COMMISSIONER MAY: All right. So architectural
12 and elevations.

13 MR. WILLIAMS: Yes.

14 VICE CHAIR HART: It looks like it may be Exhibit
15 9.

16 COMMISSIONER MAY: Okay.

17 VICE CHAIR HART: But --

18 COMMISSIONER MAY: All right. Got it.

19 VICE CHAIR HART: -- I mean it's -- yeah.

20 COMMISSIONER MAY: All right. I don't know why
21 I missed that first time around. And are you meeting all of
22 the required setbacks at 13'4"?

23 MR. WILLIAMS: Yes, we are.

24 COMMISSIONER MAY: Okay. I -- you know, just --
25 it's -- it's frustrating to have projects that have

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1 essentially -- are more or less constructed and it's not --
2 well, I mean if we denied it, what would you do, you know?

3 MR. MORRIS: I absolutely understand. I mean, you
4 know, I can't claim to have been here the last time that it
5 was brought up. I know this is a recurring issue. I think
6 in this specific instance, a lot of it did stem from the
7 interpretation of the code and the delay you're speaking to
8 is absolutely, you know, pragmatic that we would have gone
9 right away. But we, frankly, didn't believe that a school
10 fell under residential requirements and that it would be an
11 institutional and they're -- we -- as Nick mentioned --

12 COMMISSIONER MAY: But you were informed of that
13 --

14 MR. MORRIS: Yes.

15 COMMISSIONER MAY: -- in August last year.

16 MR. MORRIS: Yes.

17 COMMISSIONER MAY: So --

18 VICE CHAIR HART: Well, actually, it's even worse.
19 I mean I just keep on -- and I'm -- I keep on hearing you say
20 that we have -- we're aware of this in residential zones.
21 Is this a residential zone?

22 MR. MORRIS: Yes. That's not a -- it's a
23 rhetorical question.

24 VICE CHAIR HART: Is it something -- is it a
25 school that's there? Is it something that you probably

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1 should have -- I mean if you have dealt with this before,
2 then the first thing, as Commissioner May is saying, is that
3 oh, you know what, we probably need to seek some sort of
4 relief if that's necessary. Have you sought -- because I
5 can't recall, have you all sought relief for this particular
6 issue in other zones?

7 MR. MORRIS: That's not what I meant to imply for
8 this specific issue.

9 VICE CHAIR HART: Well --

10 MR. MORRIS: I'm not certain. To my knowledge,
11 I -- I don't know.

12 VICE CHAIR HART: Well, then what were you
13 describing?

14 MR. MORRIS: I mean more so the idea of having
15 something constructed before it had been -- and then coming
16 after the fact, that issue --

17 VICE CHAIR HART: No -- no -- no --

18 MR. MORRIS: -- specifically.

19 VICE CHAIR HART: No. I'm just asking -- you'd
20 said that in residential zones, that you thought that maybe
21 there needed to be some change in the zoning regs that kind
22 of dealt with schools in --

23 MR. MORRIS: I was just referring to our -- DCPS
24 leadership and DGS leadership has been meeting with Office
25 of Planning about potentially amending the code to have

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1 schools not fall under the residential. That's all I was
2 implying, referring specifically to issues of these nature
3 where the code is set to prevent -- in my understanding, it's
4 set to prevent, you know, more so of a condo or apartment
5 building going too high whereas it's a two-story school
6 building. So I don't mean to get bogged down in something
7 that I'm not --

8 VICE CHAIR HART: That's okay.

9 MR. MORRIS: -- an expert on.

10 VICE CHAIR HART: I just -- I thought what you had
11 said was that you had had this particular issue before and
12 so that you were -- it's kind of like well, if you already
13 know that this is an issue -- and that was the part that I
14 was trying to understand. If you already know this is an
15 issue, then why not, as Commissioner May said, deal with this
16 in -- you know, months ago before it's -- we have photographs
17 of it being actually built. So it just is a little bit --

18 MR. MORRIS: No. And I apologize if I misspoke.
19 That was not --

20 VICE CHAIR HART: -- out of sequence and it's
21 really kind of --

22 MR. MORRIS: Sure.

23 VICE CHAIR HART: -- aggravating to see in any
24 project, to see oh, well, this is actually built already and,
25 you know --

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1 MR. MORRIS: Right. Again --

2 VICE CHAIR HART: -- I mean -- and it be one thing
3 if you were actually looking for a special exception, which
4 is a lower bar, but you're actually looking for a variance
5 which is -- which, in theory, should be a much higher bar for
6 this. And so -- and I understand what the project is. I get
7 it. I understand that it's quote, unquote, just one, you
8 know, of one foot four inches. I get that, too. But again,
9 it is a variance that you are seeking, and anything over --
10 if it's one inch, then it's a variance. It's --

11 MR. MORRIS: Absolutely.

12 VICE CHAIR HART: We have to look at them the
13 same. So it is unfortunate that we get these and
14 Commissioner May is right, we've seen projects that have been
15 constructed before. And it just gets kind of like a record
16 that keeps on playing the same tune, and you're just kind of
17 wanting to get off that so.

18 MR. MORRIS: Understood. And that -- again, just
19 to clarify, that was the only thing I was referring to having
20 seen before. I can't speak to whether this is an issue that
21 DCPS specifically has dealt with with this exact screen
22 height. If that -- if that is what I said, that was a miss
23 -- a misspoken part on -- on my behalf.

24 VICE CHAIR HART: So on the existing -- what --
25 in the photograph that you have in Exhibit 10 -- I don't know

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1 if you have -- the photograph that you have, the fifth
2 photograph that you have is a view of the school from the --
3 I guess from the school property looking towards the back of
4 the school I guess it is, and it shows this mechanical
5 equipment that's up there. What part of that is actually
6 new?

7 MR. WILLIAMS: So there was an -- there was
8 existing mechanical equipment on the roof of the building.
9 That was all removed as part of the modernization process,
10 and we are -- we're replacing it all with -- with -- with the
11 new penthouse to be -- that we're asking for the variance
12 for, that's receiving a roof screen. The existing mechanical
13 equipment that was up there was never screened previously.

14 VICE CHAIR HART: So the photograph that we're
15 seeing is what? The photograph that we have that you all
16 provided --

17 MR. WILLIAMS: Is it --

18 VICE CHAIR HART: -- in your packet is the --
19 is what was done previously?

20 MR. WILLIAMS: That's what was existing before we
21 started the modernization process. The windows were replaced
22 about a year-and-a-half ago, which is why the school may look
23 like it's modernized already in that photograph.

24 VICE CHAIR HART: And so the -- and so are you
25 reusing some of this or -- it looks like there's a small

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1 brick -- maybe that's a chimney that's on the room; is that
2 on the roof as well?

3 MR. WILLIAMS: Yes. That's being -- that's being
4 -- that has been removed.

5 VICE CHAIR HART: That's been removed as well.

6 MR. WILLIAMS: Yes.

7 VICE CHAIR HART: So this is basically a flat roof
8 --

9 MR. WILLIAMS: Yeah.

10 VICE CHAIR HART: -- that you're going to --

11 MR. WILLIAMS: Yeah. The existing condition is
12 a flat roof. There is a little -- there's a small bump out
13 where the elevator -- the top of the elevator shaft protrudes
14 but other than that, it -- it is a flat roof.

15 VICE CHAIR HART: Okay. And the ductwork that
16 you're talking about is -- you're saying that you have to
17 build this -- the -- how big is the unit itself?

18 MR. WILLIAMS: The unit --

19 VICE CHAIR HART: How tall is the unit itself?

20 MR. WILLIAMS: The unit itself is approximately --
21 it's approximately 10 feet, 9, 10 feet tall, and then it sits
22 about -- it sits roughly about three -- the dunnage grading,
23 the base of the unit is about 3, 4 feet off of that, about
24 3 feet.

25 VICE CHAIR HART: So it is like 7 feet tall with

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1 -- the unit itself is 7 feet tall and then 3 feet with the --

2 MR. WILLIAMS: No. The unit -- I mean the unit
3 itself is -- is like about 9 feet tall roughly.

4 VICE CHAIR HART: Okay. All right.

5 MR. WILLIAMS: It's -- it's a fairly large unit
6 because we have -- we have -- we have a pair of units up
7 there that will serve the entire modernized original
8 building.

9 VICE CHAIR HART: Okay. Thank you.

10 CHAIRPERSON HILL: Anyone else? Okay.

11 MEMBER JOHN: I would just --

12 CHAIRPERSON HILL: Sorry.

13 MEMBER JOHN: -- like to say, Mr. Chairman, that
14 I agree with Commissioner May. I think that the applicant
15 knew from last year that this here relief was necessary, and
16 I just think it's not appropriate to, I would call it,
17 dithering and building, you know, the -- doing the
18 renovations before coming before the Board. And this would
19 not be something we would like to entertain for other
20 applicants before the Board. And I don't believe that DG --
21 Department of General Services should be treated differently,
22 notwithstanding that this is something that's necessary for
23 educating students. And so if there was a way for me to find
24 that you do not meet the variance test, I would do that. So
25 that's all I have to say.

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1 CHAIRPERSON HILL: Okay. All right. Going to
2 turn to the Office of Planning.

3 MR. KIRSCHENBAUM: Good morning, Chair Hill,
4 members of the Board. Jonathan Kirschenbaum for the Office
5 of Planning. We recommend approval of the variance request
6 for the mechanical penthouse and we rest on the record.
7 Please let me know if you have any questions. Thank you.

8 CHAIRPERSON HILL: Does the Board have any
9 questions for the Office of Planning?

10 (No audible response.)

11 CHAIRPERSON HILL: does the applicant have any
12 questions for the Office of Planning?

13 MR. WILLIAMS: I do not.

14 CHAIRPERSON HILL: Okay. Is there anyone here who
15 wishes to speak in support?

16 (No audible response.)

17 CHAIRPERSON HILL: Is there anyone here who wishes
18 to speak in opposition?

19 (No audible response.)

20 CHAIRPERSON HILL: Mr. Williams, is there anything
21 you'd like to add at the end?

22 MR. WILLIAMS: No. I'm -- I'm good.

23 CHAIRPERSON HILL: Okay. All right. I'm going
24 to go ahead and close the record. Is the Board ready to
25 deliberate?

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1 (No audible response.)

2 CHAIRPERSON HILL: Okay. I mean I can start. I
3 mean I'm withdrawing my statement that I like DGS.

4 (Laughter.)

5 CHAIRPERSON HILL: So -- but I also do think that
6 they've met the criteria. I don't think that this is
7 something that, you know, now I will pay more attention to,
8 I suppose, in terms of us, you know, making sure that we're
9 not just kind of a gate that people kind of get through as
10 they kind of, you know, are moving along their way. I'm sure
11 that the applicant knows now at this point that that's
12 something that they would also not like to see themselves
13 before us again, because you never know what the Board's
14 going to do. And so -- but anyway, I do think that they've
15 met the test in order for us to grant this application. I
16 would agree with the Office of Planning in terms of their
17 analysis. DDOT did not have any objection to it, and the ANC
18 was in support, so I will be voting in favor of the variance.
19 Does anyone else have anything they'd like to add?

20 MEMBER WHITE: Mr. Chair, I would just say that
21 I will be supporting the application as well, but I can
22 understand why my colleagues were kind of irritated in terms
23 of the lateness in submitting the application. But I do
24 think that they met the standard for the variance test. I
25 think there is an exceptional situation because it would not

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1 be, in my mind, feasible to reduce the mechanical enclosure
2 by the required 1 feet, 4 inches and that they need this
3 variance in order to have that enclosure and that mechanical
4 equipment still functioning for the school, and it's part of
5 the modernization for this particular school, which I believe
6 is necessary and supportive for the public good for the
7 community. So I will be in support. I don't see that it
8 would pose any detriment to the community, so I'll support
9 the application.

10 CHAIRPERSON HILL: Okay. I'm going to make a
11 motion to approve Application Number 20040 as captioned and
12 read by the secretary and ask for a second.

13 MEMBER WHITE: Second.

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

16 (Chorus of ayes.)

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

19 MR. MOY: Staff would record the vote as 5-0-0.
20 This is on the motion of Chairman Hill to approve the
21 application for the relief requested; seconded the motion is
22 Ms. White -- or rather Ms. John -- Ms. White -- is it Ms.
23 White? Yes. I'm sorry, Ms. White; also in support, Ms.
24 John, Vice Chair Hart, Commissioner Peter May. Motion
25 carries, sir.

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1 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
2 Moy. Thank you, gentlemen.

3 PARTICIPANT: Thank you.

4 CHAIRPERSON HILL: All right. So for everyone
5 who's left here in the audience, we only have one case left,
6 which is the appeal. So we're going to be taking a break
7 real quick. And then I thought we were going to try to go
8 through some preliminary matters and then possibly take
9 lunch, but we'll see how it goes. We might actually be able
10 to get into some of the -- the merits of the appeal before
11 lunch. And then we'll just kind of work our way through it.
12 So we're going to take a quick break. Thank you.

13 (Whereupon, the above-entitled matter went off the
14 record at 10:59 a.m. and resumed at 11:17 a.m.)

15 CHAIRPERSON HILL: All right. Mr. Moy, if you can
16 go ahead and call our next case.

17 MR. MOY: Yeah, with pleasure. Thank you, Mr.
18 Chairman. So that would be Appeal Number 19961 of ANC 1C,
19 captioned and advertised as an appeal from the decision made
20 on November 2, 2018 by the Zoning Administrator, Department
21 of Consumer and Regulatory Affairs to issue a Building Permit
22 Number B1806 -- again, B1806082, to construct a 3 -- to
23 construct a new 3-story building, RF-1 Zone at 2910 18th
24 Street N.W., Square 2587, Lots, 4, 95. And there are a
25 number of preliminary matters, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay. All right, everybody.
2 Good afternoon -- or good morning. Let's see, if we could
3 please introduce ourselves from my right to left.

4 MS. LORD-SORENSEN: Hi. Good morning, Chairman
5 Hill and members of the Board. Adrienne Lord-Sorensen,
6 Assistant General Counsel with the DC Department of Consumer
7 and Regulatory Affairs.

8 MR. LEGRANT: Good morning. Matthew LeGrant, the
9 Zoning Administrator, DCRA.

10 MS. FERSTER: Good morning. Andrea Ferster. I'm
11 counsel for Wendy and Guillermo Rueda, who are the
12 interveners.

13 MR. MR. GUTHRIE: Ted Guthrie, ANC 1C.

14 MS. RUEDA: Guillermo Rueda, intervener. Good
15 morning.

16 MS. RICHARDS: Laura Richards, witness for the
17 appealing party.

18 MR. SULLIVAN: Good morning. Marty Sullivan on
19 behalf of the property owner.

20 CHAIRPERSON HILL: Okay. Great. All right. So
21 good morning, everybody. We are going to be together for a
22 little while today, and so let's see, first, I'm going to do
23 -- kind of go through some preliminary issues and just see
24 how far we get with those and then, I don't know, just see
25 how we can kind of move through this case.

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1 The first issue was -- and I would appreciate,
2 obviously, the help of my Board members as we kind of go
3 through this -- but one was DCRA's motion for leave to file.
4 And I guess if you could, DCRA, kind of speak to that motion,
5 and then I know that the property owner was in support of the
6 motion, and the appellant and intervener are not. And so I
7 guess if you could kind of speak a little bit to the motion
8 to leave for file, and then we can talk about that on the
9 Board. What I remembered was that the last time we were
10 together in April, we asked for some clarification from DCRA
11 about 17-18, and that as I understand it now, you believe
12 that what you originally submitted was in error and now what
13 you have submitted is more accurate. And I suppose if you
14 could just speak a little bit more to that?

15 MS. LORD-SORENSEN: Chairman Hill, before we
16 start, the Zoning Administrator needs to be sworn in.

17 CHAIRPERSON HILL: Okay. Great. Thank you.
18 Sure. Mr. Moy, if you could please swear in the Zoning
19 Administrator and if anybody else missed it, obviously,
20 please stand up.

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

24 MR. LEGRANT: I do.

25 MR. MOY: Thank you. You may be seated.

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1 MS. LORD-SORENSEN: Thank you. So as -- Chairman
2 Hill, as you correctly indicated, the Board did ask us to
3 file some responses to specific questions. And after DCRA
4 submitted its filing, we noticed that there was an error in
5 that filing, and based on that revelation, DCRA filed a
6 motion for leave to amend DCRA's May 1, 2019 original filing
7 to this Board. Specifically, what we realized is in the
8 original filing, we mentioned that this case was governed by
9 Zoning Commission Order 17-18. However, when we looked at
10 the file, we noticed that the building permit at issue here
11 was actually accepted as complete in May of 2019, which
12 preceded the effective date of the Zoning Commission Order
13 17-18.

14 So ZC 17-18 went into effect in August of 2018 and
15 like I said, the building permit application was accepted as
16 complete in May of 2018 and, therefore, it wasn't governed
17 by Zoning Commission Order 17-18. And so pursuant to
18 11Y101.9, we -- we felt as though the Board should have a
19 complete and accurate record before itself so that it can
20 make a good decision in this particular case.

21 So the first amendment that we have, like I
22 mentioned before, was just clarifying that the application
23 was accepted as complete and that is not governed by Zoning
24 Commission Order 17-18. And the other change that we made
25 was just clarifying the definition of cellar, pre 17-18

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1 versus post 17-18 under the -- the regulations. So we ask
2 that the Board grant DCRA's motion for leave to file the
3 amended response so that you'll have accurate information to
4 correctly decide this case.

5 CHAIRPERSON HILL: Okay. So again, you thought
6 -- you just -- you didn't realize when the permit had vested
7 or when it was properly accepted?

8 MS. LORD-SORENSEN: That's correct.

9 CHAIRPERSON HILL: Okay. And I'm going to let
10 everybody have a chance to respond but before I do that, does
11 anybody have any questions of DCRA on this particular
12 question?

13 COMMISSIONER MAY: I do. So the question I have
14 is when an application is deemed complete but it includes
15 errors, can it be, you know -- I mean what happens in that
16 circumstance? Can you reverse your previous determination
17 that it was a complete application? I believe I've seen that
18 happen before so is that -- am I correct?

19 MR. LEGRANT: The -- again, Matthew LeGrant, DCRA.
20 The determination as to whether an application is complete
21 has to do with the amount -- the adequacy of the information
22 in which the Office of the Zoning Administrator and the other
23 disciplines of DCRA can do a review. So for example, the
24 individuals that do intake review of applications are looking
25 at, oh, is there a plat, is there floor plans, the

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1 supplemental applications.

2 COMMISSIONER MAY: I understand you have a
3 checklist --

4 MR. LEGRANT: Yes.

5 COMMISSIONER MAY: -- of have they --

6 MR. LEGRANT: Yes.

7 COMMISSIONER MAY: -- submitted everything.

8 MR. LEGRANT: Right. And so --

9 COMMISSIONER MAY: So you're saying that the only
10 standard is have they submitted everything?

11 MR. LEGRANT: Is it -- it's informational, yes.

12 COMMISSIONER MAY: Okay. So if the information
13 that is submitted has substantial errors in it -- and I'm not
14 saying at this moment that I believe that's the case -- but
15 is it -- you know, can that -- you know, if that happens,
16 there are substantial errors and it would require
17 modification, a substantial modification after that point,
18 wouldn't that mean that it is not vested?

19 MR. LEGRANT: My experience has been that that has
20 -- does not occur. The -- because it's informational, and
21 then when you speak of errors, like somebody comes in and
22 they -- they show plans, let's say they're not dimensioned
23 correctly, we typically ask the applicants to correct that
24 information. Okay. I can't even think of an instance in
25 which an application that was --

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1 COMMISSIONER MAY: So --

2 MR. LEGRANT: -- deemed complete was so deemed
3 after the fact so flawed that it would reverse that -- that
4 status.

5 COMMISSIONER MAY: So you think that's never
6 happened?

7 MR. LEGRANT: I cannot think of an instance.

8 COMMISSIONER MAY: Okay. I don't know the
9 particulars of it, but I can think of an instance --

10 MR. LEGRANT: Okay.

11 COMMISSIONER MAY: -- where there was a case. I
12 won't go into the particulars of it, but it wound up -- it
13 had been deemed complete and there was a subsequent zoning
14 map amendment that essentially invalidated that. Now it was
15 not that the map amendment was retroactive but that the facts
16 underling the initial application were substantially flawed.
17 And so ultimately, it was, even though it might have been
18 something where it had all the checks in the right boxes,
19 when it was -- the initial application was made, there were
20 sufficient flaws that the permit was, in effect, denied.

21 MR. LEGRANT: Okay. I do not know the case you're
22 speaking of. It's certainly -- that -- that's something that
23 can be looked at but --

24 COMMISSIONER MAY: Yeah.

25 MR. LEGRANT: -- yeah.

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1 COMMISSIONER MAY: I mean this is why I am not
2 totally sold on the idea of what zoning regulations apply --
3 Nor am I totally sold on whether that actually affects the
4 critical matters of the case. But it seems to me that if --
5 I mean essentially, what you're saying is that if I submit
6 a plan that shows a one-story building and I've checked all
7 the boxes and things like, you know -- and then I decide
8 later on after, you know, six months to submit a substantial
9 modification, then it's -- the previous vesting still
10 applies, or would it have to be -- would I go through a new
11 vesting because I've made a substantial change of my own
12 volition?

13 MR. LEGRANT: I guess my response to that would
14 be if somebody submitted an application and then came back
15 six months later with the -- was not -- no longer -- not even
16 a deviation or a substantial change, it was a completely
17 different project, like --

18 COMMISSIONER MAY: Well, what if it is just a
19 deviation, right?

20 MR. LEGRANT: Because a deviation then typically,
21 that -- and we -- well -- was we look at applications that
22 are -- that have been deemed complete, that for vesting
23 purposes, we would then ask for, in the hold for correction
24 process, clarification of the information, submit new plans
25 to respond to specific comments, not only from Zoning but

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1 from the other disciplines of DCRA so they get the
2 information that is consistent throughout the application and
3 all the elements of that application so that we can get to
4 the point to do the proper analysis.

5 COMMISSIONER MAY: Okay. So the fact that you've
6 gone back to the applicant and sought corrections doesn't
7 affect that original vesting date, vesting date from -- in
8 terms of when it is complete?

9 MR. LEGRANT: That's correct.

10 COMMISSIONER MAY: Well, okay. I had my questions
11 answered.

12 CHAIRPERSON HILL: That's okay. We can keep going
13 through this. I mean this is the first part of this. Does
14 anyone else have any questions for the DCRA, for DCRA about
15 this one issue about the allowing -- and then again, I'm
16 going to turn to the intervener and the ANC -- but allowing
17 their motion in terms of motion to leave to allow this
18 information into the file. And I guess part of this -- and
19 now we're going to, I guess -- I don't know if we're deciding
20 this during this motion to leave but whether or not 17-18 is
21 applying or not. And so does anybody else have any
22 questions?

23 MEMBER JOHN: Mr. Chairman, I think we're just
24 deciding whether to grant the leave for motion to -- the
25 leave to amend, and I think there is good cause shown, and

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1 I don't see any prejudice to any party in allowing that, in
2 allowing DCRA to amend their statement. I think it would be
3 of benefit to the Board to have that information in
4 deliberate -- I'm sorry -- in reviewing the appeal.

5 CHAIRPERSON HILL: Okay. And even then, we'd
6 still be talking about whether or not 17-18's applying or
7 not. Okay. So that's your opinion there, so that's one.
8 Does anybody have any questions of DCRA? Okay. Ms. Ferster,
9 are you representing both the -- or I guess what I remember
10 from last time, you guys had decided that you would split the
11 time in terms of -- from the intervener and the ANC. Are you
12 basically going to kind of be running the argument for both
13 a little bit?

14 MS. FERSTER: I'm only representing the
15 intervener, but I would defer to the ANC about what level of
16 involvement they want to have.

17 CHAIRPERSON HILL: Okay. So I'm going to let --
18 I'll let you start then, because I know you were opposed to
19 this motion to leave. So if you could please just go ahead
20 and share with the Board why you're opposed to it?

21 MS. FERSTER: Sure. The reason why we opposed it
22 is because the -- the Board asked for the Zoning
23 Administrator's view on this issue, and in our prehearing
24 filings, we presented the information that we had obtained
25 during the permitting process where the Zoning

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1 Administrator's position was quite clear, made quite clear
2 that the Zoning Commission Order 17-18 did apply here. And
3 in part, it was because due to the substantial post filing
4 revisions to the permit. So in our view, an amendment to the
5 Zoning Administrator's response would, in effect, be a post
6 hoc rationalization at that point.

7 Now that being said, I think there are legal
8 arguments that counsel can make under the zoning regulations
9 and particularly, I believe that counsel would argue -- and
10 we've addressed this in our -- in our reply -- that Subtitle
11 A 301.15 would govern whether or not Zoning Commission Order
12 17-18 applies. And that's a legal argument that I think can
13 be made, but it needs to be made after the -- there is a
14 factual determination, because a key issue in whether or not
15 this vesting during the -- this vesting of when the permit
16 application is accepted applies is that if, in fact, there
17 were substantial changes to the permit application after it
18 was accepted, then that grandfathering provision, 301.15,
19 does not apply and you're back to the basic rule that the
20 permit is governed by the rule that the -- the zoning rules
21 in effect at the time of the permit's issuance would apply.
22 And since this permit was issued after Zoning Commission
23 Order 17-18 went into effect, we believe it clearly applies
24 due to the substantial revisions that were made. That's a
25 fact issue, okay. And we'll be adjudicating that and we'll

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1 be presenting evidence and testimony as to that issue during
2 the course of the hearing. My only position is that the
3 Zoning Administrator's position in the record was clear. If
4 counsel wants to modify that in their post hearing briefs
5 based on a legal argument, that's fine but we have an
6 objection to the Zoning Administrator sort of post hoc
7 changing their position based on the arguments that they saw
8 in our prehearing submission.

9 CHAIRPERSON HILL: Okay. Does the Board have any
10 questions for intervener?

11 MEMBER JOHN: Just one question. So the Zoning
12 Administrator could testify at the hearing that he reviewed
13 the records again and noticed that, you know, the vesting
14 occurred when the application was accepted as substantially
15 complete. So you see a difference between the oral testimony
16 and amending their prehearing statement?

17 MS. FERSTER: I think the difference I see is the
18 difference between what the Zoning Administrator determined
19 in reviewing the permit application up to the point that the
20 permit was issued, which was that this Zoning Commission
21 Order 17-18 applies versus what DCRA, as Mr. LeGrant's legal
22 counsel can then argue based on the record. She's free to
23 make any legal argument she wants but his position was set
24 at the time the permit was issued. It said Zoning Commission
25 Order 17-18 applies. So that's -- that's -- our position is

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1 that that's what the Zoning Administrator determined.

2 MEMBER JOHN: Okay. No other questions.

3 CHAIRPERSON HILL: Okay. Anyone else for the
4 intervener? Okay. Mr. Chairman -- oh, Mr. Chairman -- Mr.
5 Commissioner, do you have anything you'd like to speak about
6 concerning what the intervener said or whatever DCRA might
7 have said in terms of allowing the motion for leave?

8 MR. GUTHRIE: I don't pretend to be an expert in
9 the notice before this Board but, frankly, I was shocked at
10 the last-minute flip in the goal posts that the attorneys for
11 the Agency and the Zoning Administrator are trying to put
12 into play. And it seems to me incredulous that this Agency,
13 which is charged with the regulation and the applications of
14 the rules, only recently discovered what they now to believe
15 to be the crucial question of when this permit application
16 was filed. It's filed with them. How is this a surprise
17 suddenly? To me, it feels like bad faith and I don't quite
18 get it and I'm not happy about it.

19 CHAIRPERSON HILL: Okay. All right. Does anybody
20 have any questions for the Commissioner? Okay. All right.
21 So let's go ahead and kind of figure this out. So Ms. John,
22 you have kind of stated your point in terms of allowing this
23 into the record. And I guess my thoughts on this is that we
24 had asked for the DCRA to give us their opinion in terms of
25 whether or not -- or how 17-18 applied or not. Then later

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1 on it seems as though, you know, they have found an error in
2 their original discussion that they do think that 17-18 does
3 not apply and there's reasons why they believe that to be the
4 case.

5 In terms of -- they would be able to make that
6 argument even now orally, as you mentioned -- I mean I don't
7 see why they wouldn't be able to make that argument orally.
8 I mean all we're trying to do as a Board is try to figure out
9 what is or isn't before us. And so, you know, I would be in
10 favor of allowing them to -- allow them to put their
11 information into the record and then we can determine whether
12 or not we think 17-18 is applying or not. So that's where I
13 am. Where is everybody else?

14 MEMBER WHITE: I think I'm with you and Ms. John
15 with respect to -- I think it makes sense to allow the
16 document. I mean the document wasn't created yesterday. It
17 was just a matter of fact-finding and -- but I can understand
18 why the parties are taken aback. But I think we would still
19 be able to get the information orally. But I think actually
20 seeing the actual document would be helpful, but it still
21 means we'd still have to decide the question of whether or
22 not 17-18 applies. That's still a matter that has -- still
23 has to be clarified and ruled on. So I would be in favor of
24 accepting it.

25 CHAIRPERSON HILL: Okay. Anyone else?

1 COMMISSIONER MAY: I'm okay with accepting it into
2 the record. I don't necessarily agree with this change of
3 position on DCRA's part, but I think that we'll have to
4 figure that out in the course of the hearing.

5 CHAIRPERSON HILL: Okay. Mr. Hart?

6 VICE CHAIR HART: I don't have anything.

7 CHAIRPERSON HILL: Okay.

8 VICE CHAIR HART: I'm generally okay with it. It
9 just is -- you know, it's --

10 CHAIRPERSON HILL: I mean I -- yeah, okay. Never
11 mind.

12 VICE CHAIR HART: You can go ahead.

13 CHAIRPERSON HILL: All right. No -- no, because
14 I mean I don't disagree. I mean I'm just trying to -- you
15 know, this has been going on a long time and so I'm just
16 trying to figure out where we are with all this. So I'd
17 rather have more information than less. So I'm going to go
18 ahead and make a motion to approve DCRA's motion for leave
19 to file and ask for a second.

20 VICE CHAIR HART: Second.

21 CHAIRPERSON HILL: Motion made and seconded. All
22 those in favor, say aye?

23 (Chorus of ayes.)

24 CHAIRPERSON HILL: All those opposed? Okay. All
25 right. So that's that. All right. Then the next thing that

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1 we have to kind of get through is whether or not we think --
2 because this is what I like to do in terms like how we're
3 going to move forward on this in terms of the appeal --
4 whether or not 17-18 is applying or not. Okay. So I don't
5 exactly know how to do this. I think maybe we could start
6 with DCRA telling us how they think, you know, it's basically
7 the information that you've just given to us.

8 And then I think I know that at least Commissioner
9 May is going to have some questions as to whether or not he
10 thinks 17-18 does or doesn't apply. And then just as far as
11 the appellants are concerned as well, whether or not 17-18
12 does apply or doesn't apply, you'll still be making, I think,
13 kind of the same case. But so that is at least what I
14 thought may be the case, but you're shaking your head no, so
15 I guess I am not correct.

16 So if Ms. Sorensen, you can tell us why you think
17 17-18 is or isn't applying?

18 MS. LORD-SORENSEN: Certainly. So based on Agency
19 records, the application for B1806082 was accepted as
20 complete on May 7, 2018. Zoning Commission Order number
21 17-18 became effective on August 17, 2018, which was after
22 the building application was accepted as complete by the
23 Agency. And it's the Agency's position that there was no
24 substantial change to the plans after the May 7th filing.
25 And so based on the vesting provisions, Zoning Commission

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1 Order 17-18 does not apply in this case.

2 CHAIRPERSON HILL: Okay. I mean I'm going to have
3 some questions also based upon things that I think
4 Commissioner May has somewhat brought up, but I'm going to
5 go ahead and ask if anyone has any questions for the -- for
6 DCRA concerning their point.

7 MEMBER WHITE: Just one question. You said that
8 there were no substantial changes made, so why do you say
9 that? Can you just kind of expand on that just a little bit
10 in terms of -- yeah, can you just expand on that, because
11 that's part of the test.

12 MS. LORD-SORENSEN: So when you look at the
13 original application to the point where the permit was
14 actually issued in November of 2018, it's our -- it's DCRA's
15 opinion that they didn't make any substantial changes to the
16 plans during the course of that period, which would then kick
17 -- if they had made substantial changes, then it would have
18 kicked them out of the vesting provision, and they would have
19 been subject to Zoning Commission Order 17-18.

20 MEMBER WHITE: Did they make any changes?

21 MS. LORD-SORENSEN: I believe there were some
22 changes.

23 MEMBER WHITE: What were those changes? I'm just
24 curious.

25 MS. LORD-SORENSEN: I'll defer to the Zoning

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1 Administrator.

2 MR. LEGRANT: Okay. So --

3 MEMBER WHITE: Administrator, before you start,
4 is there an exhibit that shows the changes -- the
5 Administrator?

6 MR. LEGRANT: One moment.

7 CHAIRPERSON HILL: Yeah. It looks like Mr. Rueda
8 and/or Ms. Ferster might have an exhibit, but we can also
9 turn to that when we get to you guys as well, okay?

10 MS. LORD-SORENSEN: What I can do is put up the
11 plans and it does have some of the bubbling that shows the
12 changes that were made.

13 CHAIRPERSON HILL: Okay. That's great.

14 MR. LEGRANT: Okay. So I believe the image before
15 you is an elevation from the approved plan set sheet A301
16 dated November 2, 2018. The -- the bubble portions between
17 the elevation -- this is the street front elevation on the
18 left and then on the right -- and you'll -- you'll see the
19 bubbles around a couple of details in the front show the
20 changes and additional information. The -- the -- my overall
21 analysis on substantial deviation of plans is, you know, is
22 there change in the number of stories, is there a change in
23 the gross square footage, is there a change in the -- in the
24 lot occupancy, is there a change in the use. Those are the
25 -- the -- the major elements when I'm looking at whether a

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1 -- an application -- the depicted plans show a -- a
2 substantial deviation.

3 Here I believe that, as you can see from the
4 images, they're very close. There was some just
5 clarification on the -- the dimensions. So I concluded that
6 from the time the application was deemed -- was accepted as
7 complete to the point of the permit issuance that there were
8 not substantial deviations.

9 COMMISSIONER MAY: What were these dimensions
10 before?

11 MR. LEGRANT: Well, I think part of the problem
12 was that the -- the original application, they were not
13 dimensioned, and so part of the information that was added
14 was the actual dimension numbers themselves to clarify what
15 -- what the height is so, in fact, a analysis can be done.
16 But on its face, it's like well, they still, if we accept the
17 lower level being a cellar, then three stories or three
18 levels above, that's how I think my office approached the
19 analysis. Now we have another image.

20 COMMISSIONER MAY: So basically it did not have
21 a building height measuring point before?

22 MR. LEGRANT: That particular drawing did not.

23 COMMISSIONER MAY: No, the drawings that --
24 complete. It's not just a matter of a single drawing.

25 MR. LEGRANT: Well, we -- we have some images here

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1 as well. Pull up -- the next image is A302.

2 MR. MOY: For the record, Mr. Chairman, if I may,
3 the drawing that was shown just now is, I believe, in our
4 record under Exhibit 40 for the record.

5 CHAIRPERSON HILL: Thank you, Mr. Moy.

6 MR. LEGRANT: Okay. So the next image is sheet
7 number A402, again from the same approved plan set. This is
8 a building section that shows a cutaway view, longitudinal
9 section of the building. The bubbled portion shows at the
10 front of the building the slight angle at the top of the top
11 story. The -- and the -- I'm sorry, that second bubble at
12 the very top, insulation of the roof, details of the roof
13 assembly. And the last bubble to the left shows the roof
14 assembly and the connection with the stair going to the story
15 below. Is that all the bubbles there?

16 MS. LORD-SORENSEN: Yes.

17 MEMBER JOHN: So is there a building height in
18 this drawing -- Overall height.

19 MS. LORD-SORENSEN: Yes. If you look at this
20 particular drawing, off to the left, it reads 34 feet 11
21 inches.

22 MEMBER JOHN: And is -- did you say there was
23 nothing for the cellar on this one?

24 MS. LORD-SORENSEN: Well, for this one, it's --
25 this is not the better image, but when you look at this one,

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1 they have the measurement from the building height measuring
2 point, so from grade to the walking surface. However, when
3 you look at the other plan, architectural plan 402, you get
4 a better sense because under pre 17-18, the definition of a
5 cellar, when you measure for the cellar height, it's from
6 grade to the ceiling, and so on A402, you can see the
7 measurement from grade to the ceiling is 3 feet 8 inches.
8 The other drawing had it from grade to the walking surface.

9 MEMBER JOHN: I'm sorry, that's the same as -- no,
10 that's --

11 MS. LORD-SORENSEN: Three feet eight.

12 COMMISSIONER MAY: So these two drawings don't
13 agree, right?

14 MS. LORD-SORENSEN: The measurements differ so for
15 A402 -- okay, so under pre 17-18, when you measure the --

16 COMMISSIONER MAY: No, no, no. I'm not talking
17 about how you measure cellars. I'm talking about the fact
18 that the dimensions on these two drawings do not agree.

19 MS. LORD-SORENSEN: They're measuring two
20 different things.

21 COMMISSIONER MAY: What -- well, I'm looking at
22 the measurement of the 3 feet 8 inches and then 1 foot 1
23 inch to the first floor, and you get 4 feet 9 inches,
24 correct?

25 MS. LORD-SORENSEN: Yes.

1 COMMISSIONER MAY: And that 3 foot 8 is from the
2 building height measuring point, right?

3 MS. LORD-SORENSEN: From grade.

4 COMMISSIONER MAY: From grade, presumably the
5 building height measuring point?

6 MS. LORD-SORENSEN: Yes.

7 COMMISSIONER MAY: Okay. And then if you go to
8 the other drawing, that same dimension, instead of 4 feet 9
9 inches is 4.92 feet, which is 4 feet 11 inches?

10 MEMBER JOHN: It's the top of the roof.

11 MS. LORD-SORENSEN: Commissioner May, did you say
12 one one for right here, correct?

13 COMMISSIONER MAY: Isn't that right?

14 MS. LORD-SORENSEN: You said one one?

15 MR. LEGRANT: It's one one.

16 COMMISSIONER MAY: Correct.

17 MR. LEGRANT: Okay.

18 MS. LORD-SORENSEN: Sorry, so please repeat your
19 question?

20 COMMISSIONER MAY: Three eight plus one one is
21 four nine?

22 MS. LORD-SORENSEN: That's correct.

23 COMMISSIONER MAY: And what we're showing here is
24 4.9, which is not 4 9. It's 4.9 -- or 4.92, which is 4 feet
25 11 inches. I'm just pointing out that there's still errors

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1 in this drawing set, at least inconsistencies.

2 MS. LORD-SORENSEN: There seems to be a
3 discrepancy.

4 CHAIRPERSON HILL: Okay. Which again is the
5 approved drawings that we're -- I'm trying -- I'm a little
6 confused actually -- I'm sorry -- between -- what's the
7 current approved drawings?

8 MS. LORD-SORENSEN: They're both -- this one is
9 approved as well as the other page. They're just -- this
10 one's the front and the other one's a side.

11 COMMISSIONER MAY: Okay. I see. Right, I see
12 that, yeah. Okay. So that's what the Commissioner is
13 speaking to in terms of the error.

14 MEMBER JOHN: So could you help me here again?
15 Pre 17-18, let's go back to the other drawing that shows the
16 grade measurements. Okay. So pre 17-18, we would measure
17 from the grade to the ceiling of the cellar/basement or to
18 the top of the floor?

19 MS. LORD-SORENSEN: To the ceiling pre 17-18, and
20 then post, it'll be to the walking surface.

21 MEMBER JOHN: To the walking surface.

22 MS. LORD-SORENSEN: Yes.

23 MEMBER JOHN: Finished floor. I just wanted to
24 clarify that for my own purposes. Thank you.

25 CHAIRPERSON HILL: Okay. We're still going to try

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1 to get through this as to whether or not it's -- we're
2 arguing this one way or the other, so does anybody have any
3 more questions for the Zoning Administrator for this issue
4 in terms of whether they think this is something that we
5 should be looking at post 17-18 or pre 17-18?

6 Okay. Ms. Ferster, I am going to get to the
7 property owner again as well at some point, but Ms. Ferster,
8 can you give us your -- and I don't know whether you can do
9 it off of the drawings or not but whatever your argument is
10 as to why it should be pre 17-18?

11 MS. FERSTER: Sure. And what we'll -- what I'd
12 like --

13 CHAIRPERSON HILL: Sorry -- I'm sorry, yeah -- oh,
14 I'm sorry, post 17-18.

15 MS. FESTER: Post 17-18.

16 CHAIRPERSON HILL: I'm sorry.

17 MS. FESTER: And so part of it's a legal argument
18 and part of it's going to be factual, so I'll shift after
19 I've finished setting the legal groundwork over to Mr. Rueda,
20 who -- I guess he should be accepted as an expert witness.
21 If you want -- you were previously --

22 CHAIRPERSON HILL: I think we did do that --

23 MS. FESTER: Yes.

24 CHAIRPERSON HILL: -- the last time but thank you.

25 MS. FESTER: Yes. Okay. So I'm going to start,

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1 of course, with the legal standard that we're going to
2 operate under, which is Subtitle A 301.15, and it says,
3 notwithstanding Subtitle A Section 301.4, which is the
4 general rule that the permit will be governed by the zoning
5 in effect at the time the permit is issued. This is an
6 exception to that. It says that it shall be processed and
7 any work authorized by the permit may be carried to
8 completion pursuant to the rules for measuring FAR height and
9 stories as existed on August 17th, 28 with two conditions.
10 And we believe both of those are applicable here -- not
11 applicable here.

12 If the permit application was legally filed with
13 and accepted as complete by DCRA on or before that date.
14 Okay. So that's what they're arguing now is they accepted
15 it as complete and, therefore, they're grandfathered. We
16 will dispute that and Mr. Rueda will explain why he believes
17 that the changes, you know, made this permit drawing not
18 legally -- was not legally filed or properly accepted as
19 complete.

20 But there's a second exception, too, and it says,
21 and not substantially changed after filing. That's another
22 factual issue and we have submitted evidence in two Exhibits
23 attached to our reply. They're Exhibits, I think, 74 and 75,
24 BZA Exhibits 74 and 75, which are the permit tracker from
25 DCRA. And what they show is many substantial changes that

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1 were made both before the permit was issued and then after
2 the permit was issued. And in terms of Mr. LeGrant's sort
3 of definition of what he views as a substantial change, I
4 think -- and Mr. Rueda will explain this -- I think by any
5 definition, these changes are very substantial.

6 Number one, in terms of whether or not the
7 drawings were legally compliant at the time and properly
8 accepted as complete at the time the application was filed,
9 I think the answer he would -- and he'll explain -- is no,
10 because among other things, including the discrepancies that
11 have been identified here, the permit application did not
12 even depict Mr. Rueda's solar panels, which is obviously a
13 key omission in an application for a permit for an addition,
14 which this was.

15 And then I will also reference you to Exhibit 21G,
16 BZA Exhibit 21G, which disputes Mr. LeGrant's statement made
17 here today that -- and I don't think he actually said this,
18 but he suggested that at the time he reviewed these
19 revisions, that he did not view these changes as substantial
20 and, therefore, would not render 17-18 applicable. And this
21 email that I am reading you, 21 -- it's 21G -- is an email
22 from Ramon Washington which says exactly the opposite. It
23 says, Good afternoon, Ms. Dong, who is the architect for the
24 owner, After speaking with Mr. LeGrant, we will need to
25 provide elevations and section plans based on the proposed

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1 raise of the property. The plans will need to meet the
2 requirements of Zoning Commission Order 17-18 Subsection
3 100.2 definition for natural and finished grade. The
4 implication being that because those required elevations and
5 section plans had not been submitted and needed to be
6 corrected, it was a significant enough change so as to
7 require Zoning -- make Zoning Commission Order 17-18
8 applicable.

9 So that's our legal argument. It's a factual one
10 -- and so I would ask that Mr. Rueda then now be allowed to
11 specifically address the nature of the changes that were made
12 to the permit application, both before the permit was issued
13 and afterwards.

14 CHAIRPERSON HILL: Mr. LeGrant, while Ms. Sorensen
15 is just kind of cleaning that up, do you have a comment to
16 what Ms. Ferster just said in terms of the emails, and what
17 had seemed to be that there was a discussion that pre 17,
18 18 was going to apply?

19 MR. LEGRANT: Okay. Well, she noted the email
20 from one of the members of my staff, Ramon Washington. I
21 don't have that email before me.

22 I would surmise that at that stage of the
23 analysis, Mr. Washington was trying to get additional
24 information, which is very common in the review of any
25 application.

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1 Asking the question for additional drawings and
2 information in and of itself is not determinative of whether
3 it's a substantial deviation. But that's my initial
4 reaction.

5 CHAIRPERSON HILL: That's okay, I mean, you can
6 take a look at an email at a break or something, just in
7 terms of like, it seems as though she is saying that you will
8 need to comply with post 17-18.

9 So, that's what I'm just trying to understand from
10 the email. And it could've just been a mistake. I mean, you
11 can say it was a mistake, I don't know. I mean, so that's
12 why I'm just trying to ask --

13 MR. LEGRANT: Oh, it could've been in stance at
14 that point in time that we -- okay, we look like the -- this
15 will look like -- it looks like this will be subject to give
16 us information to help do that analysis. And then as we
17 previously noted, like, oh, now we realized it doesn't apply.

18 CHAIRPERSON HILL: Okay.

19 VICE CHAIRPERSON HART: One of the things that you
20 may want to do, Mr. LeGrant, is to look at the email chain
21 because the emails start back in June of -- June 26, 2018.

22 And it basically is -- the email that Ms. Ferster
23 just read is the culmination of that, or at least it's the
24 end of that chain.

25 MR. LEGRANT: Okay.

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1 VICE CHAIRPERSON HART: And it's on October 10,
2 2018. And it was kind of a back and forth between the --
3 looked like the architect and someone -- a representative
4 from -- a staff member in your office.

5 And they were kind of saying, at the -- kind of
6 the end of this process, where that conversation was -- then
7 they -- Mr. Washington saying that they'll need to provide
8 elevations and sanction plans based on -- it says after
9 speaking with Mr. LeGrant, you'll need to provide elevations
10 and sanctions based on -- raise of the property.
11 And then, that they'll need to meet 17-18.

12 So, it was -- it seemed as though it was a
13 conversation that kind of ended with that.

14 MR. LEGRANT: Okay.

15 VICE CHAIRPERSON HART: So, it's just -- it'd be
16 helpful if you could look through the entire -- that entire
17 piece.

18 CHAIRPERSON HILL: Okay, great. All right, Mr.
19 Rueda?

20 MR. RUEDA: Yes, hi. Thank you. So, I guess
21 there's lots of different points to go over, and so I ask for
22 your indulgence.

23 But, I think primary to all of this was what Mr.
24 LeGrant said, that application errors can be reversed,
25 depending on the adequacy of the information for review,

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1 right?

2 So, the adequacy information, in this case, for
3 zoning review. And one of the first changes that was made --
4 I guess specifically, this is the original permit filing for
5 the property.

6 So, this shows that they had three identical
7 stories plopped on top of each other at the time of
8 application. Right?

9 And the changes are important in relation to the
10 application, not just the drawings. So, the actual changes
11 that were made to the plans started with the fact that there
12 was no BHMP shown on the application drawings.

13 And this was one of the first requirements back
14 in August, where the applicant was required to show the BHMP
15 and the measurement -- the applicable measurements. The
16 absence of a BHMP alone is sufficient to render the permit
17 application incomplete.

18 The zoning administrator said that it required the
19 BHMP to perform the height analysis, and in no way can this
20 permit be complete without a BHMP.

21 Secondarily, the -- you can see that the bubble
22 that was missing from DCRA's exhibit is the bubble of the
23 fourth story, which was changed to attempt to address
24 comments about 206.1(a), Subtitle E.

25 And so, the entire fourth story was revised to

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1 mimic, in some fashion, a mansard-like design. Going to --

2 VICE CHAIRPERSON HART: Mr. Rueda, all of these
3 changes happened after May -- these are all -- you've kind
4 of had all these dates in here.

5 But these are all a variety of changes that
6 happened, and you kind of compiled them onto one -- showing
7 them on one drawing?

8 MR. RUEDA: I did. I tried to represent the
9 changes, you know, as words because I didn't want to go
10 through ten different drawings.

11 VICE CHAIRPERSON HART: No, it's fine. I just --
12 what I'm trying to make sure that I'm understanding is that
13 it wasn't that it was one drawing that said the -- and these
14 were kind of where these happened.

15 You're saying that there was a -- an amendment in
16 June of 2019 that was, you know, the -- oh, sorry -- the
17 roof. There was another amendment in August of 2018 that was
18 -- looked like something to the upper story.

19 And I'm not sure if August 2018 was another
20 amendment, or if it was the same one as the one that's above
21 it. And October and June -- so, are the June ones going
22 together?

23 Are the -- you know, was this kind of five
24 different -- or six different amendments, or are you just
25 looking at like, two or three that you've compiled on one --

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1 in one drawing?

2 MR. RUEDA: So, Exhibit 74 tracks when the project
3 was required -- was submitted the changes. Right? And these
4 are all changes that happened after the project was accepted
5 as complete in May.

6 The height changes that you just asked about,
7 there was two different ones. One was the initial -- if you
8 look at the initial. There.

9 So, if you look at the initial upper story
10 addition in this filing from March, which is when the permit
11 was -- application was submitted, they show seven feet from
12 -- that's my roof down there -- up to the top of that upper
13 story addition.

14 VICE CHAIRPERSON HART: And that was their
15 measurement that they put on there?

16 MR. RUEDA: That's their measurement.

17 VICE CHAIRPERSON HART: Okay, I'm just --

18 MR. RUEDA: That's right.

19 VICE CHAIRPERSON HART: It's hard because --

20 MR. RUEDA: I'm just telling you --

21 VICE CHAIRPERSON HART: -- you've added some of
22 this stuff, it's hard to understand if there's stuff that's
23 been -- you know, just for our clarification, that's been --
24 that you've added it, or they're adding it. So, I appreciate
25 the information.

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1 MR. RUEDA: Yep. Sorry. In August of '18, DCRA
2 approved the lowering of that roof element and the addition
3 of these architectural elements and mansard-like design. In
4 June of '19 -- do you have the other one?

5 (No audible response.)

6 MR. RUEDA: So, these changes also spanned the two
7 permit applications.

8 The one that was required to address the errors
9 that DCRA issued a notice to correct on, which required that
10 they submit these changes, or face revocation of this permit.

11 Okay. So, we've established that there was no
12 BHMP. We've established that they revised the four story
13 addition. We've established that the height was lowered.

14 And we also show that the ground floor elevation
15 was lowered four inches in August of '18 as part of this
16 requirement that they show the BHMP.

17 In October, when they were notified of -- when
18 they were approved to change the application from an addition
19 to a new building, the zoning administrator required that the
20 applicant revise the elevation in sections to represent
21 natural and finished grade, and to represent the measurements
22 based on 17-18 language.

23 Those are the changes that were required in
24 October and were approved in November.

25 So, if we go back to the exhibit that DCRA

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1 presents, which you can see here is the recorded BHMP
2 changes, which include a lowering of the first floor by four
3 inches.

4 So, that dimension that's shown as -- that
5 elevation of the first floor is shown as 155.0, and their own
6 documents show that the elevation of the first floor is
7 155.3.

8 The four inch lowering, which they relied on in
9 order to gain approval of a fourth story. And the
10 administrator additionally said that a significant change
11 would be a change in number of stories.

12 And the drawings that they show represent four
13 stories, and they represent it as three, when in fact the
14 measurements that they relied on not only relied on lowering
15 of the first floor, but they also relied on a center grade
16 measurement that is not depicted as either natural or
17 finished.

18 And if you go to their section, which was not
19 revised to comply with 17-18, and that's why there's
20 discrepancies of where they measure -- but the bottom of this
21 window well is not excluded at the time of this drawing from
22 grade, per 17-18 language.

23 So therefore, their depictions of measurements in
24 this case are further confounded by the fact that the
25 finished grade is actually 30 inches lower than the

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1 representations of existing grade -- or grade. They don't
2 even call it existing, they just call it grade.

3 COMMISSIONER MAY: I'm sorry, you're arguing that
4 the bottom of the window well is where the building height
5 measuring point should be?

6 MR. RUEDA: I'm just saying -- I am saying that.
7 What I'm also saying, though, is that the argument as to
8 whether or not this is compliant is not -- it doesn't depend
9 on that because they lowered the first one --

10 COMMISSIONER MAY: I just wanted to get clarity
11 on that one. That one question.

12 MR. RUEDA: Yep.

13 COMMISSIONER MAY: Maybe you want to -- well no,
14 I don't want to complicate things. Go ahead.

15 MR. RUEDA: It doesn't comply with the definition
16 of exceptions to grade because it exceeds the four foot
17 requirement for window wells.

18 What you see there is a depiction of the building
19 restriction line, which is five feet. And if you look at the
20 additional information in the application, you would note
21 that the wall is an eight inch wall.

22 COMMISSIONER MAY: Okay, but the limitation on
23 window well sizes came in with 17-18, didn't it?

24 MR. RUEDA: Which is what this is. This approval
25 relied on 17-18. It's based on the exhibit that we provided,

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1 21G.

2 They were required to make these changes, and they
3 were required to comply with 17-18, even though they now
4 reversed that position. Right? So this drawing just didn't
5 --

6 (Simultaneous speaking.)

7 COMMISSIONER MAY: And it does not re-comply with
8 the window well requirements because of its width across the
9 face of the building?

10 MR. RUEDA: No, because of the projection from the
11 face of the facade --

12 (Simultaneous speaking.)

13 COMMISSIONER MAY: Projection of the face --

14 MR. RUEDA: -- exceeds four feet.

15 COMMISSIONER MAY: Exceeds four feet.

16 MR. RUEDA: I mean, I could -- I don't have the
17 structural drawing or the plan.

18 VICE CHAIRPERSON HART: And you're also relying
19 on that because the building restriction line, which is this
20 line that's here -- actually, let me get another color --

21 MR. RUEDA: Yep.

22 VICE CHAIRPERSON HART: That line that's there is
23 actually at five feet, so that you know if these things are
24 at the same point, that it has to be five feet. It can't be
25 less than that?

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1 MR. RUEDA: But, you know, but as the
2 administrator will tell you, he's going to measure to the
3 inside face of that wall. And so, I can determine --

4 VICE CHAIRPERSON HART: It may be four -- four
5 four. Okay.

6 MR. RUEDA: I determined from the drawings that
7 it was four four.

8 VICE CHAIRPERSON HART: Okay.

9 MR. RUEDA: And even if you determine that's
10 minor, it still exceeds the definition, and it's still
11 arguably where you would measure building height and stories
12 from under a 17-18 language.

13 But, as I stated before, if you refer to their own
14 drawing here, the two inch error that you noted, Commissioner
15 May, was actually picked up later -- earlier this year in a
16 revision where they caught the error, which, you know, I
17 could also tell you that this building was an inch over, you
18 know, the building height, but that's not the point here.

19 The point is is that the representations here for
20 compliance with 17-18 language relies on the fact that it --
21 they lowered the first floor.

22 MEMBER JOHN: I have a question. Pre 17-18, could
23 they lower the floor?

24 MR. RUEDA: Yes.

25 MEMBER JOHN: They could?

1 MR. RUEDA: Yes, that's essentially why they've
2 changed their argument. But yes, that's right.

3 The -- so, this drawing here sort of captures all
4 the different changes, and this slide here captures the five
5 errors that basically, DCRA required the applicant to correct
6 with a new permit application, which is 190 --

7 MS. LORD-SORENSEN: Objection, relevance?

8 MR. RUEDA: -- 4575.

9 MS. LORD-SORENSEN: When you look at these items,
10 they pertain to the building code.

11 MR. RUEDA: The application is what's referenced
12 here, it doesn't say the zoning application. And if you look
13 at the bold-faced items that are required, number 3 requires
14 that sheet A 101 depict the solar panels, right?

15 So, they had obviously omitted that from their
16 original filing, which prevented the reviewer -- until I
17 notified them again in September -- that we had solar panels.

18 Those panels basically never became an issue
19 because they weren't represented on the drawings, and the
20 reviewer had no idea.

21 CHAIRPERSON HILL: Okay, that's okay. Just one
22 question about the solar panels.

23 I thought that the -- so, the solar panels -- or,
24 I'm asking, I guess, Mr. Rueda, in terms of this number 3
25 that you're speaking to, that would only be in effect if it

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1 was after the 17-18, correct?

2 MR. RUEDA: No.

3 CHAIRPERSON HILL: No? Okay.

4 MR. RUEDA: No, no. My panels are protected
5 regardless.

6 CHAIRPERSON HILL: Okay. So then, to the zoning
7 administrator -- and this is maybe -- we're getting farther
8 into the different aspects of the discussion. If it was new
9 construction, you can lower the floor, or you can't?

10 MR. LEGRANT: The question of lowering the floor
11 -- if it's new construction, that does not apply. Lowering
12 the floor applies if you have an existing building, and I
13 think the provision is A -- one moment.

14 CHAIRPERSON HILL: That's okay. So if it's new
15 construction, they can lower the floor?

16 MR. LEGRANT: Yes.

17 CHAIRPERSON HILL: Okay. It can be? All right.
18 (Simultaneous speaking.)

19 MR. RUEDA: That's not how it's phrased in the
20 code -- in the regulations.

21 COMMISSIONER MAY: If it's new construction, there
22 is no floor to lower.

23 CHAIRPERSON HILL: Okay.

24 COMMISSIONER MAY: So, it -- but it can be set at
25 a lower level than what was existing.

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1 CHAIRPERSON HILL: Okay, all right. Okay.

2 COMMISSIONER MAY: Is that right?

3 MR. LEGRANT: That's correct.

4 CHAIRPERSON HILL: Okay, all right. So that just
5 gets into a whole different discussion.

6 So, but I'm just trying to -- and I'm thankful
7 that I'm not alone here -- that -- does anybody have any more
8 questions for Mr. Rueda, in terms of whether or not we're
9 going to look at this pre or post 17-18?

10 COMMISSIONER MAY: Actually, you know what? I do
11 have one more question for DCRA, if that's all right?

12 So, why was it that you considered it at one point
13 to be subject to 17-18?

14 MR. LEGRANT: I believe that earlier on,
15 mistakenly, we looked at, oh okay, this is now -- this is
16 subject to the 17-18.

17 The vesting aspect wasn't looked at carefully
18 enough, and so the analysis of my reviewer proceeded on the
19 assumption that 17-18 applied.

20 It was only later in the process, we go, oh, you
21 know, now let those be noted it was vested pre 17-18, so --

22 COMMISSIONER MAY: So, what prompted that change
23 in your thinking?

24 MR. LEGRANT: I believe it was -- my counsel can
25 speak to that.

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1 MS. LORD-SORENSEN: Actually, it stems from
2 another issue we had before the board.

3 And so, based on what happened in another case,
4 I went back and that's when I realized that the application
5 -- the building application in this case was accepted as
6 complete.

7 For consistency, I had to inform the board and
8 make sure that this board had accurate information then in
9 proceeding.

10 COMMISSIONER MAY: So it was your own review of
11 this case in the aftermath of another issue that prompted
12 that?

13 MS. LORD-SORENSEN: Yes.

14 COMMISSIONER MAY: And the property owner's
15 discussions with the zoning administrator, or anything else,
16 didn't have anything to do with that?

17 MS. LORD-SORENSEN: That's correct.

18 COMMISSIONER MAY: And they never raised the issue
19 of the applicability of 17-18 versus pre 17-18 at any point
20 in the process?

21 MS. LORD-SORENSEN: I brought this issue to the
22 zoning administrator.

23 COMMISSIONER MAY: No, and that's not what I'm
24 asking. I'm asking the zoning administrator -- I mean, you
25 obviously had many discussions with the applicant?

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1 MR. LEGRANT: Yes.

2 COMMISSIONER MAY: Or sorry, with the property
3 owner. And did they ever try to make the case that it --
4 that this should be considered pre 17-18?

5 MR. LEGRANT: I think we had a -- we had the
6 shared assumption that it was subject to 17-18 before my
7 counsel informed me, well wait a second, no.

8 COMMISSIONER MAY: Right, okay. All right.
9 That's helpful to know. Thank you.

10 VICE CHAIRPERSON HART: Say that -- can you say
11 that again?

12 MR. LEGRANT: I believe the -- my discussions with
13 the property owner, that we shared the assumption it was
14 subject to 17-18.

15 It was only until my counsel informed me, oh wait
16 a second. The completion -- the application was deemed
17 complete prior to the effective date of 17-18. Then, we
18 changed our position.

19 VICE CHAIRPERSON HART: Okay, thank you.

20 CHAIRPERSON HILL: Okay, we can keep asking
21 questions and everything, but I am going to let the property
22 owner speak to -- I know that we're basically having a
23 discussion right now, Mr. Sullivan, about, as you know, pre
24 or post 17-18.

25 Do you -- does the property owner have any

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1 comments?

2 MR. SULLIVAN: Just the comment that I don't think
3 it's unreasonable for the zoning administrator to find that
4 there hasn't been a substantial change after filing just
5 because the mass of the building wasn't changed, the
6 footprint.

7 There were changes in measurements and comments,
8 of course, which is common in any application.

9 However, I don't -- in the end, we don't think
10 it's determinative, and that's why we really didn't make an
11 issue of it when they requested us to change the plans, so
12 as to comply with 17-18, as well.

13 I think we meet the height requirement on both pre
14 and post, but -- so I don't have a strong opinion of it,
15 other than I don't think it's unreasonable for the zoning
16 administrator to find that it's not substantial.

17 CHAIRPERSON HILL: Okay. All right. So, what do
18 you all want to do?

19 (No audible response.)

20 CHAIRPERSON HILL: So, we'll take -- I guess
21 somebody has to use -- I mean, we're going to take a quick
22 break. So -- huh?

23 (Whereupon, the above-entitled matter went off the
24 record at 12:21 p.m. and resumed at 12:22 p.m.)

25 CHAIRPERSON HILL: Hi, we're -- yeah. Somebody

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1 said something. Sure.

2 MR. GUTHRIE: On behalf of the ANC, it seems to
3 be when you're evaluating whether or not to apply a
4 grandfather clause to preclude application of a new,
5 supposedly better remedial consideration, that 17-18 is
6 supposedly an improvement over the prior situation, and it
7 unscrambles a lot of things.

8 As a policy matter, it is an improvement to the
9 regulations that should be -- if there is a balancing test,
10 should be applied because the grandfather clause should only
11 be protecting those who really have a vested interest in the
12 prior regulations.

13 And there's been no showing that that's the case
14 here.

15 And it seems to me that when you're weighing
16 whether or not to apply a new statutory provision, you should
17 be looking at the purpose of the grandfather clause, which
18 is to protect those who were in a situation and detrimentally
19 relied on something changing between the time they filed the
20 permit and the time they actually got it issued.

21 This is not that case. This is a case where there
22 were substantial changes to that -- were made -- significant
23 changes that were made, and that the zoning administrator
24 himself was operating under the assumption that the new rules
25 applied.

1 And it seems really inappropriate for this board
2 to decide in a closed case that the new rules shouldn't
3 apply. CHAIRPERSON HILL: Well, Commissioner, I
4 understand your opinion, and we're just trying to figure it
5 out also. And I guess as far as -- I'm just saying, like,
6 we're trying to figure it out as well.

7 Everybody's making their argument, and we're
8 trying to figure it out. You don't think that they apply,
9 right? You don't think that it's been vested?

10 MR. GUTHRIE: Exactly.

11 CHAIRPERSON HILL: The zoning administrator is
12 telling us why he's been vested this way. I don't know if
13 we're going to agree with him or not, I really don't.

14 And I'm just letting you know that in the past,
15 however, he has come forward before us and had a similar
16 discussion with other cases, in that when you determine
17 whether or not things vest or not, and he's given his
18 opinion, as he's done before.

19 But I understand your opinion, and we'll see where
20 we get. I'm sorry, you had a question, Ms. White?

21 (No audible response.)

22 CHAIRPERSON HILL: Oh okay. Then we're just going
23 to take a quick break, okay? And then we'll come right back.
24 Okay?

25 (Whereupon, the above-entitled matter went off the

1 record at 12:24 p.m. and resumed at 12:35 p.m.)

2 CHAIRPERSON HILL: All right, Mr. Moy, I'm going
3 to call us back in session, okay?

4 MR. MOY: Yes, sir.

5 CHAIRPERSON HILL: All right. So, just to let you
6 know -- guys know what we're going to try to do here is I
7 would like to make a motion for the board to have an
8 emergency closed meeting, so that we can speak with OAG and
9 kind of understand a little bit more about the pre and post
10 17-18 discussion.

11 And then come back out here and let everybody know
12 what we've decided -- or not decided. I should say come back
13 out here, and then deliberate and talk about what it is we
14 think one way or the other, and then have lunch. Okay?

15 And then everybody will know what at least we are
16 on the pre and post 17-18. We could have lunch, and you can
17 kind of figure out your strategy one way or the other.

18 And then, the one other thing that I did want to
19 talk about, when maybe -- probably after lunch, or right
20 after we figure out the pre or post 17-18 thing, but that
21 there's a revised permit out at OAH.

22 And so, if the revised permit is incorporated into
23 this, or what you guys -- if the revised permit fixes any of
24 the things that you guys are talking about, okay? So, just
25 kind of throwing that out there again.

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1 So, I'm going to make a motion as chairperson of
2 the Board of Zoning Adjustment for District of Columbia, in
3 accordance with Section 407 in the District of Columbia
4 Administrative Procedure Act, I move that the Board of Zoning
5 Adjustment hold a closed emergency meeting on June 19 for the
6 purpose of seeking legal counsel, but not deliberating on the
7 issue concerning pre and post 17-18 for this case.

8 Is there a second?

9 VICE CHAIRPERSON HART: Second.

10 CHAIRPERSON HILL: Will the secretary please take
11 a roll call vote on the motion?

12 MR. MOY: When I call your name, if you would
13 reply -- respond with a yes or no. Ms. John?

14 MEMBER JOHN: Yes.

15 MR. MOY: Vice Chair Hart?

16 VICE CHAIRPERSON HART: Yes.

17 MR. MOY: Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MR. MOY: Ms. White?

20 MEMBER WHITE: Yes.

21 MR. MOY: Zoning Commissioner Peter May?

22 COMMISSIONER MAY: Yes.

23 CHAIRPERSON HILL: Okay, as it appears, the
24 motion's passed. We're going to just recess this proceeding
25 at 12:40, and hopefully be back very quickly. Okay? Thank

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1 you.

2 (Whereupon, the above-entitled matter went off the
3 record at 12:37 p.m. and resumed at 12:47 p.m.)

4 CHAIRPERSON HILL: Okay. Mr. Moy, are we back?

5 MR. MOY: Yes sir, and the time is about 12:49
6 p.m.

7 CHAIRPERSON HILL: Okay. Hi everybody. What I
8 had thought we could do is, as a board here now, deliberate
9 after we've had an opportunity to ask some questions about
10 this issue, about pre and post 17-18, and see where we are,
11 and then break for lunch.

12 So, I can start. I'd like to start by saying, you
13 know, everyone has an opportunity to give their opinion. I'm
14 a member of the D.C. public as well, and so, I say that
15 because I'm not going to -- my opinion's not going to be
16 opinion of the ANC.

17 I -- my opinion is that I don't think that -- I
18 think that this would be pre 17-18 based upon what the zoning
19 administrator has put forward, in terms of what I've seen
20 before, in terms of similar situations with changes.

21 I mean, I think there has been a lot of changes
22 in terms of, like, little things, as we've kind of moved
23 along the way.

24 But in terms of the vesting, because we had a lot
25 of discussion with the whole 14-11 stuff, with the vesting,

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1 in terms of, like, what would be considered -- you know, when
2 we were talking about the pop-ups and the pop-backs, because
3 there was a lot of people that had gotten into the system
4 ahead of time, and whether or not things had changed.

5 And what the zoning administrator has stated, and
6 what he has stated before -- and why I'm going to be voting
7 towards the pre 17-18 stuff -- is that, you know, the number
8 of stories didn't change, the number -- the FAR didn't
9 change.

10 You know, it's basically the same project, but
11 there were a number of changes along the way.

12 But in the past, the way he has determined whether
13 something has vested or not has been consistent, at least as
14 far as what I have seen, and I believe that this is also
15 consistently how he's approaching that.

16 I am disappointed that -- I don't think it's
17 helpful for the applicant to -- or the appellant, I should
18 say, who in this case is actually the ANC, have thought they
19 were going to be doing one way, and then, you know, later on
20 it turns out it's kind of another way.

21 I mean, in something that the appellant had -- I'm
22 sorry -- yeah, that the appellant had submitted, they did --
23 I understand, and the argument was that they would prefer
24 that they have been presenting their case for the pre 17-18
25 submission.

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1 They, the ANC, which is the appellant, submitted
2 something that they thought that the appeal was valid, pre-
3 17-18 versus post 17-18.

4 So, at least in my opinion -- and I just, you
5 know, this is my opinion -- I'm going to say that it -- you
6 know, I'm going to side with the zoning administrator in that
7 this application has been -- has not been substantially
8 changed to the point that it should not be vested under the
9 pre 17-18.

10 And I ask for whoever wants to go next.

11 MEMBER JOHN: I will jump in. I'm not -- I was
12 hoping one of the architects would go next, but okay.

13 So the non-architect thinks that this case should
14 be decided under the pre 17-18 rule because as the chairman
15 said, we've had several cases that discussed the substantial
16 change test.

17 And in each case, the zoning administration's
18 argument has not wavered. It's always been something really
19 major, like a change in stories, as you've said, and I'll
20 just go over the criteria that he described.

21 Stories, gross square footage, lot occupancy use.
22 And I don't think that the fact that the specific dimensions
23 were not included in the -- in one of the drawings, and
24 there's a little bit of inconsistency with another drawing.

25 I think we see that all the time, and it's

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1 something that can be corrected. So, based on that
2 reasoning, I would go with the chairman in deciding that the
3 pre 17-18 rule would apply.

4 And I appreciate Mr. Rueda's stepping us through
5 all of the changes, but I don't think that the fact that the
6 basement could've been a cellar, or verse -- vice versa,
7 would be a substantial change because the measurement
8 would've been the same -- overall measurement. Thank you.

9 (Simultaneous speaking.)

10 MEMBER WHITE: Well, I'm not going to say anything
11 that much different, but that's why I poked and prodded on
12 the substantial change issue with respect to the pre 17-18
13 language.

14 And I found that, you know, there were changes,
15 but I was really trying to get at whether or not they were
16 substantial changes made after the filing.

17 And with respect to the vesting issue -- and you
18 know, I found that, you know, there weren't any -- the lot
19 occupancy stayed the same, the square footage stayed the same
20 pretty much, the use for the property stayed the same, and
21 there were some other issues, too.

22 But I didn't see enough meat there to really
23 justify not looking at this from a pre 17-18 perspective, so
24 I will be voting in line with my colleague, Chair Hill, and
25 Ms. Lorna.

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1 So, the tough part is that, depending on where we
2 go, that will determine how the issues need to be framed.

3 CHAIRPERSON HILL: Okay, thanks. And I wanted to
4 point out this was a deliberation, meaning that I'm just --
5 seriously, because I wanted to hear from the architects, and
6 you know, if you guys are both the other way, I'll be
7 interested in --

8 VICE CHAIRPERSON HART: Yeah, no. I think my only
9 -- I think the difficult part about this one for me was just
10 really around were the individual changes or amendments to
11 the plans -- were they -- while they were fairly
12 insignificant in them -- in and of themselves, with the
13 exception of, I think, one of them, which was the building
14 height change.

15 I think that there is -- I think that
16 cumulatively, you could make an argument, and I -- I'm kind
17 of coming down on that side, that the -- that there could've
18 been a substantial change with all of the changes that were
19 provided or submitted after the May 2018 deadline.

20 And I think that I'm -- would be on the side of
21 saying that it was post 17-18, only because of just
22 cumulative changes that Mr. Rueda described in his
23 presentation.

24 I -- and I'll say that it is not a -- this -- and
25 as you heard from, I think, from the other board members,

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1 it's not something that was very clear cut.

2 And I think that's probably why we've had some --
3 quite a bit of discussion of here, as well as quite a number
4 of questions and things that we've asked during the -- well,
5 during -- I don't know what you call -- pre-hearing
6 discussions with the appellant and the others that are in the
7 case.

8 So, I think where I'm on it is that I am looking
9 at it post 17-18, but understanding that it's not a -- this
10 wasn't a definitive case in saying that, oh yes, I see where
11 all of these pieces are, and then coming to it, I think I've
12 just -- I believe that it is because of the cumulative
13 changes that have happened between May, and actually, it
14 looked like February -- or actually even now, it seems like
15 there are quite a number of changes that have happened.

16 So, that's where I am.

17 COMMISSIONER MAY: Okay, so this is very hard.
18 And I went through the same sort of internal debate that
19 Board Member Hart described. And I think I'm leaning
20 slightly toward pre 17-18.

21 I understand that there are a number of small
22 changes -- or number of changes, and there -- you know,
23 thinking about it, like start to finish, you know, what they
24 had in the beginning, you know, was not approvable for a
25 number of reasons, and the changes that had to be made were

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1 necessary to get it to comply.

2 And in fact, most of those changes were done with
3 the understanding that it was a post 17-18 consideration.

4 And while there are imperfections, even in the
5 drawings that we see, in terms of its compliance with the
6 regulations post 17-18, they are also, you know, relatively
7 small and correctable.

8 So, you know, on a certain level, part of my
9 thinking is just that it doesn't really matter. And
10 certainly, we heard that from the property owner, that it
11 doesn't really matter that much from their perspective.

12 And I think also in terms of the argument that's
13 being made by the appellant, it's not critical that it be
14 considered one way or the other.

15 But, again, I'll just -- my gut reaction overall
16 is that I'm leaning toward pre 17-18.

17 CHAIRPERSON HILL: Okay, so we're having a little
18 bit of a discussion. Yeah, we're having a little bit of a
19 discussion.

20 Yeah, I mean if the two architect -- if you guys
21 had been voted -- you're split, right?

22 I mean, if you guys had voted for post 17-18, then
23 I would understand that, and I'd probably have leaned on your
24 all's side, which is post 17-18, but so I don't -- so, now
25 that, you know -- and again, I can only turn to the board

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1 members that I have with me here in terms of the discussion.

2 So, again, did Carlton -- did Vice Chair Hart's
3 discussion change anybody's mind?

4 MEMBER JOHN: Not really, but I thought it was a
5 very good discussion in terms of looking at the cumulative
6 impact. And I listened to it very carefully and I think
7 that's reasonable.

8 And it's always something that I'm concerned
9 about, even though each, you know, change looks minor, but
10 maybe, you know, when you bunched them all together.

11 I just happened to disagree with Mr. Hart that in
12 this particular case, they're so significant that we should,
13 you know, say it's a substantial change.

14 Just looking at some of the things we have done
15 in the past, I wouldn't say this is a substantial change.

16 CHAIRPERSON HILL: Okay. Ms. White, anything?

17 MEMBER WHITE: They were good arguments, and I can
18 understand his position, but I'm still comfortable with the
19 analysis that I did with respect to the facts of the case.

20 CHAIRPERSON HILL: Okay. All right, so I guess
21 we're going to be talking about this as if we're pre 17-18
22 in terms of the arguments, and when we come back after lunch,
23 you guys go ahead and just, you know, stick with that
24 argument.

25 And then, as I mentioned before, Mr. LeGrant --

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1 and I guess we can all speak to this -- there was a revised
2 building permit B1904575. Is that -- or is that the one
3 we're talking about?

4 MS. LORD-SORENSEN: We're talking about the
5 earlier permit that was issued in 2018. There was a
6 subsequent --

7 (Simultaneous speaking.)

8 CHAIRPERSON HILL: There's a revised permit. I
9 mean, OAG mentioned the -- I'm trying to understand. There
10 was something at OAH with a revised permit. Has that been
11 incorporated, or what's the status on that?

12 MS. LORD-SORENSEN: It has not been incorporated.
13 The building -- the revised building permit was issued, I
14 want to say, on or around June 10 of 2019. And they had to
15 deal with some of the structural --

16 (Simultaneous speaking.)

17 CHAIRPERSON HILL: Okay, so we won't be talking
18 about any of those issues?

19 MS. LORD-SORENSEN: It's not pending before the
20 board, Your Honor.

21 CHAIRPERSON HILL: Okay. Mr. Rueda?

22 MR. RUEDA: I would like to direct the board's
23 attention to Exhibit 21G, which is the notice to correct.
24 That notice specifically states that because of the errors
25 that were presented in 1806082 --

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1 CHAIRPERSON HILL: Give me one second. 21G?

2 VICE CHAIRPERSON HART: Which page in that? Do
3 you know?

4 MR. RUEDA: That's the exhibit.

5 VICE CHAIRPERSON HART: I mean, the exhibit is ten
6 pages long, so I just didn't know if there was something that
7 -- this is the letter -- this is the email chain --

8 CHAIRPERSON HILL: Are you talking about the email
9 chain?

10 VICE CHAIRPERSON HART: Email chain.

11 MR. RUEDA: It's 21D. I apologize.

12 VICE CHAIRPERSON HART: That's okay.

13 CHAIRPERSON HILL: It's all right. D as in David.

14 MR. RUEDA: Just D.

15 CHAIRPERSON HILL: Okay, go ahead and you can
16 continue, Mr. Rueda.

17 MR. RUEDA: You can see in the opening paragraph
18 of the notice to correct that the District -- that DCRA
19 required the applicant to amend the permit.

20 That the permit alone that's being challenged,
21 right, was not sufficient in information, and required that
22 a new permit be filed, or face revocation.

23 They determined it on their own that this was a
24 requirement, that that application was not complete. It
25 doesn't matter that the changes that you might perceive are

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1 minor.

2 The application itself, the language of the
3 regulation states that the substantive changes to the
4 application, they were substantive enough that they required
5 a new permit to be filed and reviewed in order for the other
6 permit to remain active.

7 That's all, I guess, I'll say.

8 MS. LORD-SORENSEN: May I be heard on that issue?

9 CHAIRPERSON HILL: I was just trying to understand
10 if it had been issued, okay? And so, it has. And so now,
11 do you need to say something?

12 MS. LORD-SORENSEN: I just would like to respond
13 briefly to what Mr. Rueda just said.

14 CHAIRPERSON HILL: Okay.

15 MS. LORD-SORENSEN: So, in December, yes, DCRA did
16 issue a notice to correct. There were some structural-
17 related plans that we asked the property owner to submit, and
18 those plans were submitted.

19 However, they fall under the construction codes
20 well outside the purview of the zoning regulations, which are
21 irrelevant.

22 So therefore, the corrections that we requested
23 of the property owner are irrelevant to the case pending
24 before the board today.

25 CHAIRPERSON HILL: Mr. Rueda?

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1 MR. RUEDA: But I don't see how I can consider it
2 irrelevant to the application for permit. Right?

3 They're all -- it's all information related to the
4 application, whether it was accepted as complete legally,
5 which I -- we are positing that it was not accepted legally
6 because it failed to respond to both structural and zoning
7 issues. Right?

8 And if you look at the --

9 CHAIRPERSON HILL: Okay, Mr. Rueda. That's okay.
10 So, I'm just trying to -- you're going to -- you're going to
11 have an opportunity now to, I guess, discuss your case as
12 well.

13 And so, I just want to have -- I had a quick
14 question about the permit. Now, I understand where we are
15 with that. And so --

16 MR. RUEDA: But the permit is relevant to your
17 prior stand -- your prior ruling.

18 CHAIRPERSON HILL: I just had a question about it.
19 And so, now we're going to come back and we're going to
20 actually hear the case, right?

21 Okay, so now, when we get back here, I guess as
22 I know -- I think -- well, I know -- I think all of you have
23 been involved in appeal. I'm not terribly sure or not.

24 But so, you know, we're going to start with the
25 appellant, which is the ANC, okay? And so, Mr. Commissioner,

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1 you know, as I understand it, you can -- you have given up
2 your time, or you're sharing your time with the intervener.

3 I just want to be clear again, which OAG has
4 continued to remind me, is that the appellant is actually
5 DCRA -- I'm sorry -- the appellant is the ANC, and you're the
6 intervener.

7 So, you are the actual appellant, okay? So just
8 to let you know, right?

9 And so -- and it is great that you have Ms.
10 Ferster with you to help you through this process, and so Ms.
11 Ferster will have an opportunity to kind of like, give the
12 case.

13 And I'm just saying that it's your case, but I'm
14 going to -- however you want to do it is up to you. I'm just
15 letting you know it's the ANC's case.

16 So, there's time that you guys are going to share
17 between the ANC and the intervener.

18 We're going to hear from you guys first, and then
19 we're going to go to DCRA, then we're going to go to the
20 building -- the property owner, and then, you know, we're
21 going to have cross-examination.

22 We're going to have rebuttal, we're going to have
23 conclusions, we're going to have everything like that. But
24 at least now I think we know where the beginning is, or the
25 starting point is.

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1 So, we're going to go ahead and take lunch. I'm
2 hoping we're back here at like 2:10? 2:00? We'll shoot for
3 2:00, okay?

4 And then hopefully we can get done -- it'd be
5 great if we can get done by 5:00, but we'll just go and see
6 where we end up. Okay? Thank you.

7 (Whereupon, the above-entitled matter went off the
8 record at 1:05 p.m. and resumed at 2:16 p.m.)

9 CHAIRPERSON HILL: Okay. Mr. Moy, we are back,
10 correct?

11 MR. MOY: Yes sir.

12 CHAIRPERSON HILL: Okay. All right, you guys.
13 Sorry that we're starting a little bit later. It -- they
14 were having cake for my birthday.

15 And so, at the break at around 5:00, we'll bring
16 the cake out and you guys can have some cake, as well,
17 because I think we're going to go that long.

18 So, let's see. So, if we could, I suppose Ms.
19 Ferster, we're going to start with you, I believe, or
20 commissioner -- whoever -- however you'd like to go. I know
21 that -- yeah, I guess that's it.

22 I don't particularly have, like, a time limit per
23 se. I mean, we talked on April 3 about an hour, and so, I
24 always get -- and I say this because like, I always just get
25 confused as to what we are supposed to do in terms of the

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1 time limit or not.

2 I mean, the appeals go on for hours. And so,
3 because we want to hear what the issues are -- and so, I'm
4 not -- I'm going to keep a running clock just so I know.

5 So Mr. Moy, you can just go ahead and start, you
6 know. I mean, you got to -- you might as well put 30 minutes
7 up there because I don't think it's going to be 15.

8 And then we can see where we get. Okay? And so,
9 Ms. Ferster, you can begin whenever you like.

10 MS. FERSTER: Okay, well, first of all, happy
11 birthday. We -- I don't think we will take an hour exclusive
12 of questions. So, we have three witnesses. As I said
13 earlier, we're presenting a consolidated case with the ANC.

14 The -- so the witnesses are the ANC, Mr. Guthrie,
15 who will be testify -- presenting the ANC's position. Then
16 Mr. Rueda, and then our zoning expert, Laura Richards.

17 And I -- I'm not going to make an opening
18 statement.

19 I will make a closing statement, but I will say
20 that because of your ruling that Order 17-18 doesn't apply,
21 we are going to confine the testimony to the independent
22 issue of the applicability of the protections under E --
23 Subtitle E 206.1(a) and (c), which is, you know, an
24 independent issue.

25 It doesn't depend on the application in Zoning

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1 Commission Order 17-18.

2 We have made arguments in our pre-hearing
3 statements and in our reply about the building height issue,
4 and I will only say that, you know, we're not going to go
5 over those again, but what the upshot of those arguments are
6 is that in particular, if Order 17-18 does apply, and
7 specifically the provision of 17-18 that says that you
8 measure from the pre-existing floor of the first floor in
9 determining whether a lower level is a basement versus a
10 cellar.

11 When you apply that measurement, we win because
12 a lower floor is a basement.

13 Under that measurement, when you measure from the
14 floor of the lower level to the height of the building -- the
15 first floor of the building that has been partially
16 demolished.

17 If Zoning Commission Order 17-18 is not
18 applicable, we can't use that measuring rule, and so that
19 argument would not be applicable, but we think obviously that
20 the order is applicable, and that if you apply that order,
21 there's no question that the basement -- the lower level is
22 a basement, not a cellar, and therefore this is a four story
23 building.

24 That said, that's in our papers, and you can
25 consider them at, you know, when -- comes -- before you make

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1 your final deliberation.

2 We're going to combine our oral testimony today
3 on the issue of the solar panels and the architectural
4 embellishments, and the applicability of Subtitle E, 206.1.

5 COMMISSIONER MAY: Can I clarify one thing with
6 you? You were -- I mean, you basically were saying that if
7 17-18 applied, then you'd win on the cellar versus basement
8 issue.

9 But, that doesn't take into consideration the
10 argument that -- or the basis upon which DCRA is making their
11 decisions, that, in effect, the building has been razed.

12 And so, it's a new building. And if it were a new
13 building, it wouldn't matter whether it was 17-18 applied or
14 not.

15 MS. FERSTER: Yeah. And let me also say that the
16 whether or not this is a new building versus an addition is
17 relevant -- is illegal relevant to the 206.1 argument, as
18 well, and we are going to address that.

19 We don't believe -- and I think DCRA --

20 COMMISSIONER MAY: Okay. I just wanted to make
21 sure you addressed that because I think that's kind of the
22 hinge point of the whole case.

23 MS. FERSTER: Oh, yes.

24 And it's the hinge -- it's one of the hinge points
25 of both arguments in terms of building versus cellar

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1 measurement, and as well as the addition, is that this is --
2 whether or not this is a complete raze and new construction
3 versus a partial demolition, and it -- and an addition.

4 And I think DCRA has conceded in their papers that
5 this is a -- not a complete raze. This is an addition. But
6 we will be addressing that issue.

7 MR. GUTHRIE: Good afternoon. I'm Ted Guthrie,
8 chair of ANC 1C.

9 And I'm here today to make clear the ANC's support
10 for the policies regarding the preservation of row house
11 districts, their architectural elements, and the efficacy of
12 solar panels that were supposed to be implemented by the
13 rules and regulations laid out by the District of Columbia,
14 and outlined in our submissions and those of the interveners,
15 with whose arguments we agree.

16 These policies reflect the considered evaluation
17 of District counsel and the Zoning Commission on how
18 developments should proceed in the District.

19 It's the ANC's opinion, which is entitled to great
20 weight both by this board and by the agency, that the permits
21 in this case failed to comply with those requirements by
22 allowing a building taller than allowed, with a story more
23 than is allowed, without requiring replacement of the
24 architectural elements, wrongfully demolished in a way -- and
25 in a way that will significantly impair the pre-existing

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1 solar array of the structure's neighbors.

2 These -- the permit should be revoked. I fully
3 understand why the developers want to exceed the scope of
4 development allowed under the policies of the District. They
5 will make more money than they would if they complied with
6 the rules.

7 What I do not understand is why the agency that
8 is charged with enforcing the regulatory limits prescribed
9 by the counsel and the Zoning Commission is failing to do its
10 job.

11 I am perplexed that the zoning administrator,
12 DCRA, and its attorneys have expended so much time and energy
13 trying to defend the permit, which are so clearly contrary
14 to the intent and spirit of these regulations.

15 Instead of interpreting the rules in this case
16 according to the spirit in which they were enacted, at every
17 step along the way, the agency, zoning administrator, and
18 their lawyers have used fanciful definitions and changed
19 goalposts to bolster their arguments that the permits were
20 somehow appropriate and consistent with the rules.

21 That's simply not true. The proposed building
22 will effectively be four stories. It exceeds the 35 foot
23 height limit.

24 It fails to restore what were protected
25 architectural elements, and will drastically curtail the

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1 existing solar panels on its neighbor to the north.

2 The arguments put forward by the developer and the
3 agency in this case are smoke and mirrors to obscure that
4 reality.

5 Since the board has determined that 17-18 does not
6 apply, I'll move onto the other issues. Previously, the
7 agency suggested that a zoning raze of the original structure
8 occurred.

9 And when that seemed to be un-persuaded --
10 unpersuasive, suggested that the partial demolition of the
11 building was an act of God.

12 Given the history of unauthorized demolition and
13 neglect by owner's predecessor in interest, I doubt that God
14 would agree with that characterization.

15 These fanciful arguments have been put forth in
16 the attempt to justify the agent's -- agency's issuance of
17 the permits.

18 I was a lawyer for 20 years. Although that was
19 20 years ago, I fully understand the obligation of an
20 attorney to zealously represent his or her client.

21 But where that client is a governmental official
22 or agency, there is also a duty to advise the client to act
23 in concert with the regulations they're charged with
24 enforcing.

25 I might even, at my advanced age, be naive. But

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1 to me, the approach taken by the zoning administrator and
2 DCRA in this case is contrary to their duty as
3 representatives of the District of Columbia to apply
4 regulations fairly and consistently.

5 My constituents deserve to have their government
6 approach their objections in a manner that's consistent with
7 the purpose and spirits of the rules to protect the nature
8 of our row house districts, to protect their investment in
9 solar arrays.

10 This agency has failed to do its job, and we ask
11 the board to step in and please revoke these permits. Thank
12 you.

13 CHAIRPERSON HILL: Thank you, commissioner.

14 MR. RUEDA: So good afternoon. Happy birthday,
15 Chairman Hill.

16 CHAIRPERSON HILL: Thank you.

17 MR. RUEDA: The facts of this case are relatively
18 simple. On November 3, 2016, my wife and I applied for a
19 permit to install solar panels on our property.

20 On November 7, 2016 our solar permit to install
21 a 5.52 kilowatt solar system was accepted as complete by
22 DCRA. There were no other applications or permits in
23 effect at the time, and based on that acceptance, we relied
24 on the protections afforded to those who invest in rooftop
25 solar -- rooftop solar energy production.

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1 The permit was issued on December 19, 2016, and
2 our installation was completed by the following February.

3 Our investment in our solar panels was
4 substantial, and fully qualified to the protections
5 established by 11-E, DCMR 206.1(c).

6 Specifically, our solar energy production system
7 is greater than the two kilowatt minimum set by the
8 regulation. It is 5.52 kilowatts.

9 It relied on the existing solar condition on the
10 date that the permit was accepted as complete by DCRA. Our
11 solar installer said it would be able to produce more than
12 six kilowatts of energy per year, and it does.

13 We will be significantly impacted by at least --
14 at least a 35 percent reduction in produced energy, as
15 evidenced by our solar installer's shading study, which was
16 submitted to the zoning administrator.

17 It was in existence and operational more than 16
18 months prior to this subject permit application being
19 accepted as complete by DCRA.

20 It has been legally permitted and operational for
21 more than two years. It was authorized, operative, and
22 connected to the grid within three months of receiving the
23 permit from DCRA.

24 These protections were discussed at length with
25 Mr. Tondro, who at that point was counsel for DCRA. And I

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1 relied on my discussions with him at the time to ensure that
2 these facts were true.

3 Let me now address the factual issue of whether
4 the permit that is being challenged for new construction,
5 rather than as an addition.

6 11-E DCMR 206.1 mandates that any addition shall
7 not significantly interfere with the operation of an existing
8 solar energy system, and has been noted in the various
9 filings the permit on its face calls for demo, addition --
10 excuse me -- addition pop-out, and alteration level. And it
11 doesn't specify what level it was.

12 This is included as BZA Exhibit Number 5. As DCRA
13 now concedes, the nature of the work be undertaken by the
14 owner also makes clear that the work is a partial demolition.

15 The work here is also clear an addition, under all
16 applicable definitions of an addition.

17 Although addition is not specifically defined in
18 the zoning regulations, the word addition is, in the Merriam
19 Dictionary -- in the Merriam-Webster dictionary, per 11-B
20 DCMR Section 100.1, is defined generally as a part added to
21 a building or residential section. The act or process of
22 adding.

23 Additionally, the 2013 D.C. Construction Code,
24 which cannot be contravened by the zoning regulations,
25 further defines addition as an extension or increase in the

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1 building area, aggregate floor area, number of stories, or
2 height of a building or structure.

3 The project clearly adds height and an additional
4 story that did not exist at the time that our solar permit
5 was accepted as complete by DCRA.

6 DCRA wants you to believe that a new building is
7 somehow distinguished from the words of the regulations, any
8 addition.

9 These are included in E 206.1(c). But now,
10 concedes that no raze occurred on the site.

11 The photographic evidence that the ANC submitted
12 shows the existing condition of the 2910 18th Street property
13 at the time of and prior to acceptance of our solar permit.

14 This is included as BZA Exhibit 21B and C. And
15 you can see onscreen that the pre-demolition condition of the
16 roof is shown on the left, and on the right is the current
17 condition.

18 And in both conditions, the highest projecting
19 element is the same party wall that you can see in the shadow
20 there on the left, and on the right, obviously, both arrows
21 pointing to the structural elements.

22 COMMISSIONER MAY: Can I ask a quick question
23 about this one photo on the right?

24 MR. RUEDA: Yes sir.

25 COMMISSIONER MAY: It looks like the front facade

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1 of the building is standing up through the top of the second
2 floor. Is that the current condition?

3 MR. RUEDA: The current condition has -- all of
4 the original masonry exists on the front facade.

5 COMMISSIONER MAY: On the front facade? And
6 that's the way it is right this moment?

7 MR. RUEDA: Currently, it's been mischaracterized.

8 COMMISSIONER MAY: Because I thought it -- yeah,
9 I thought it was -- someone said it was -- it had been
10 reduced to just four feet.

11 MR. RUEDA: That's the proposal.

12 COMMISSIONER MAY: I understand it's -- yeah,
13 okay.

14 MR. RUEDA: But that's not what's the existing
15 condition.

16 COMMISSIONER MAY: All right, good, thank you.

17 MR. RUEDA: Yeah. The demolition of the property
18 included removal of the roof, and the further collapse of the
19 structure damaged the coordinates.

20 MEMBER JOHN: Excuse me. Can I ask you what
21 demolition are you talking about? Is that before the
22 snowfall, or after?

23 MR. RUEDA: So, in 2015, the property was trying
24 to pursue a conversion of the single-family dwelling into a
25 four unit condo.

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1 And they didn't have legal permits to do any of
2 the structural demolition, so all of the demolition that
3 proceeded the collapse in 2016, which was all of the interior
4 demolition, all of the finishes, all of the partitions, the
5 roof, and the rear portion of the building -- which I can
6 show you in this picture here, which is in October of --
7 October 8 of 2015 -- that basically shows the work activity
8 on that date, which removed that whole entire section of the
9 rear building.

10 And that's the condition that it was in basically
11 until the collapse, which you can sort of see, if I can use
12 this. I cannot. Never mind.

13 All right. So the photographs that I've been
14 showing you show that the -- what the condition of the
15 property was when we secured our permit.

16 From a light and air perspective, that condition
17 is identical to the condition that exists now, with no
18 significant portion of the structure higher than the shared
19 parapet, as I stated before.

20 They also show that the represented architectural
21 elements -- you know, they also show -- the photographs show
22 that the original architectural elements that existed on the
23 site are not represented in the permit documents correctly,
24 and they do not restore the original condition that was
25 illegally demolished by the previous developer.

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1 And to be clear, the represented design of the
2 documents expands the height of the mansard by at least 24
3 inches, and this is exacerbated by a parapet that they
4 include as part of the design.

5 It significantly alters the dormers that exist at
6 the property -- existed, and they basically represent a
7 cornice that looks like, but they do not describe how it will
8 be replaced to be the same as the original cornice.

9 And I guess I'll point out that the slope of the
10 mansard doesn't even replicate or come close to the stepping
11 of the parapets that exist on-site.

12 So, you know, I think that's a building issue that
13 may be corrected, but currently is not shown correctly.

14 These issues obviously become more relevant in the
15 context of a special exception application, which we believe
16 should've been required.

17 And for purposes of standing, I want to make clear
18 that the architectural elements proposed are deficient as
19 represented in the permit, and it is further not disputed
20 that the proposed work of this permit will alter the
21 available light and air that existed when we secured our
22 permit, except it is complete on November 7, 2016, and our
23 shading study can be provided and reviewed at -- actually,
24 it's submitted as an exhibit, but it can be reviewed at the
25 appropriate time.

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1 As you can see, the existing building is being
2 altered and expanded to increase the overall height of the
3 building four to five feet than what had existed before, and
4 adds a full story that rises 15 feet -- up to 15 feet at the
5 back end above our roof.

6 That will significantly interfere with our solar
7 energy production.

8 As a result of this additional building height,
9 100 percent of our solar production will be eliminated in the
10 winter, and our yearly solar production will be reduced by
11 a total of 35 percent, well over the five percent threshold
12 established in Subtitle E, 206.1(c)1.

13 VICE CHAIRPERSON HART: Mr. Rueda, can you --
14 since you just -- you're showing this, there are a lot of
15 lines on here.

16 And usually I could read drawings, but I'm not
17 exactly sure what part of this that we're trying to kind of
18 focus on.

19 MR. RUEDA: Okay.

20 VICE CHAIRPERSON HART: That'd be helpful. So,
21 that's it.

22 MR. RUEDA: So, anything at the ground floor level
23 can be discounted for the moment, right? The issues that we
24 are bringing up are identified as additional height, right?
25 So, the height of the addition extends up --

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1 VICE CHAIRPERSON HART: Everything I just circled?
2 That stuff up there on your --

3 MR. RUEDA: Yes sir.

4 VICE CHAIRPERSON HART: Okay.

5 MR. RUEDA: Yeah. So, the green line represents
6 the actual parapet outline between the two properties.
7 There's a blue line that's on top of that that represents the
8 location of the solar panels.

9 And you can see it's kind of blocked by the line
10 of the dimensional line that shows that the height of the
11 addition is about eight and a half feet.

12 VICE CHAIRPERSON HART: Can you -- okay, so I see
13 where the green line is. And then there's a blue line that's
14 parallel to where the green line is?

15 MR. RUEDA: Those -- that would be the solar
16 panels.

17 VICE CHAIRPERSON HART: And that's your -- the
18 green line is your roof?

19 MR. RUEDA: It's the shared parapet.

20 VICE CHAIRPERSON HART: Okay.

21 MR. RUEDA: The red line is my roof. So this line
22 here is the line of my roof.

23 VICE CHAIRPERSON HART: And the blue line is what
24 again?

25 MR. RUEDA: The blue line are the solar panels.

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1 VICE CHAIRPERSON HART: So, those are --

2 MR. RUEDA: Mounted to the parapet. Right, so the
3 building addition goes more than 15 feet above my roof, but
4 as I stated in the pre-steering -- in the pre-hearing
5 statement, the obstruction, if you will, goes for about seven
6 and a half feet to 13 feet.

7 VICE CHAIRPERSON HART: And do you have on here
8 what is -- so, what is -- what would be allowed by matter of
9 right? Is that the purple line?

10 MR. RUEDA: The purple line is the representation
11 of building height, which --

12 VICE CHAIRPERSON HART: Is above what would be 35
13 feet. It's like, point -- it's like, six, seven inches
14 higher than what would be allowed?

15 MR. RUEDA: Right.

16 VICE CHAIRPERSON HART: .70 would be about three
17 quarters, and that's --

18 MR. RUEDA: It's actually eight and three eighths.
19 Sorry.

20 VICE CHAIRPERSON HART: Okay. And so, something
21 that's just barely less than that would be matter -- would
22 be considered as matter of right?

23 MR. RUEDA: So long as --

24 VICE CHAIRPERSON HART: 35 inch?

25 MR. RUEDA: So long as --

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1 VICE CHAIRPERSON HART: 35 feet?

2 MR. RUEDA: So long as it did not interfere with
3 my solar production, yes. It's not matter of right if it
4 blocks my solar.

5 VICE CHAIRPERSON HART: Okay, we'll get back to
6 that, but okay. I hear what you're saying. Okay, thank you.

7 MR. RUEDA: So, 35 feet is the referent height.

8 CHAIRPERSON HILL: I'm sorry, Mr. Rueda, I'm also
9 -- so, the height of the addition is the black line?

10 MR. RUEDA: It's just below it. It's that red
11 line. The black line is the frame of the sheet that I copied
12 onto here.

13 So the red line is -- it's dimension -- it's where
14 the dimensional lines hit, right?

15 So you have at the front, you have seven and a
16 half feet, and there at the middle, you have eight and --
17 8.49, which is off the top of my roof. And then at the back
18 is the parapet height, 13 feet.

19 COMMISSIONER MAY: But the black line that we're
20 seeing that goes up like that, that's tracing the small
21 parapet wall and then the larger parapet wall that are on top
22 of the roof?

23 MR. RUEDA: Right, and so I drew a red line to
24 show what the --

25 COMMISSIONER MAY: Where the actual roof is?

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1 MR. RUEDA: Where the actual height -- yeah,
2 extends to. Yes, that's correct.

3 CHAIRPERSON HILL: Okay, thank you.

4 MR. RUEDA: Yeah, and sorry about that. Yeah.

5 MEMBER JOHN: Okay. So --

6 MR. RUEDA: And so, you can see also that I've
7 included a TP 183.4. So that elevation mark was established
8 by my surveyor. So that's the top of that parapet right
9 there.

10 And so, all of these dimensions are made in
11 reference to the drawings -- the information from the
12 drawings.

13 MEMBER JOHN: So can I just trace what I think
14 you're saying? And if I'm not correct, let me know. So,
15 this is the top of the roof in the proposal? Where the red
16 is?

17 MR. RUEDA: So, this whole black line that steps
18 up, that shows the roof of the building, plus the roof deck
19 that's proposed, right? So, this portion on the -- can you
20 see the cursor?

21 MEMBER JOHN: I see the cursor.

22 MR. RUEDA: So, that, that cursor -- that line
23 represents the height of the parapet above the roof. And
24 then where there's a roof deck proposed, they extend the
25 parapet higher to provide a railing.

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1 And then that's why it extends up to seven and a
2 half feet above the solar panels at that point.

3 And then as it steps down, then you again have a
4 parapet condition between the top of that black line and the
5 purple line, which is what they state is the roof. The
6 actual surface of the membrane.

7 All of this to say that anything that is above
8 this green line didn't exist at the time that I permitted my
9 solar panels, and is relevant under 206.1(c), because any
10 addition is not allowed to interfere with these, production
11 of solar energy next door -- or at my house.

12 Should I move on?

13 (No audible response.)

14 MR. RUEDA: Because I can explain in painstaking
15 detail every dimension on this, if you like.

16 CHAIRPERSON HILL: Yeah, I'm sure we're going to
17 -- I mean, you can tell us whatever you like because I'm sure
18 we're going to have a bunch of questions so you can please
19 continue on.

20 MR. RUEDA: Yeah, and just so you understand
21 again, the red line that is -- the wrong cursor. This red
22 line here shows the profile of my house, the volume of my
23 house. Right?

24 The green line shows the parapet that extends
25 beyond that. The blue line represents my solar panels. And

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1 this black line that steps up represents the addition.

2 VICE CHAIRPERSON HART: And so, the blue line is
3 also the solar panels. Because they are probably, you know,
4 at an angle or something, that's the height of them along the
5 -- along your roof?

6 MR. RUEDA: They're mounted parallel to the
7 parapet line.

8 VICE CHAIRPERSON HART: Yeah, so they are at the
9 -- kind of the same height as the parapet, or a little taller
10 than the parapet?

11 MR. RUEDA: A little bit taller than that -- than
12 the parapet. Yeah.

13 VICE CHAIRPERSON HART: Okay.

14 MR. RUEDA: Which is why the dimensions are shown
15 the way that they are.

16 VICE CHAIRPERSON HART: Okay.

17 MR. RUEDA: So, as I stated, this addition is
18 going to reduce the production on a yearly basis by 35
19 percent, which not only impacts the energy that I use, but
20 it also impacts the income that I gain from producing solar
21 energy credits, which is basically -- one kilowatt equals a
22 credit. And we get income back based on that, so there's a
23 long-term effect beyond the immediate.

24 Now, let me address DCRA's assertion that this is
25 somehow considered new construction because the partial

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1 demolition was the result of an act of God.

2 In addition to the fact that this argument is
3 untethered to any zoning regulation or any applicable
4 definition of an addition, it's just plain wrong as a matter
5 of fact. As a factual matter, it's just wrong.

6 As we first learned last November, DCRA argued
7 that the protections of E 206.1 no longer applied to our
8 property, or to the property next door, because a zoning raze
9 was determined.

10 The owner proposed a zoning raze and the zoning
11 administrator accepted that. This is how the permit was
12 issued, as a zoning raze.

13 But unable to defend its position, DCRA now
14 pretends that no building existed by an act of God.

15 As if this allows them to distinguish the proposed
16 expansion from the -- from that considered by the regulatory
17 language assigned to upper floor additions in 11-E DCMR 206.

18 There's no factual support for DCRA's assertion
19 that the current site condition is the result of an act of
20 God. Instead, it's a direct result of the prior owner's
21 illegal demolition activity and subsequent neglect.

22 We included Exhibits 1 through 5 to append our
23 reply.

24 They were appended to our reply brief, and it
25 shows that DCRA was fully aware of the illegal activity that

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1 led to the collapse of the floor and the ceiling framing of
2 the depleted shell.

3 DCRA ignores its own timeline on-site recorded by
4 multiple violations at the property that started on February
5 24, 2015, when DCRA issued a stop-work order for illegal
6 excavation.

7 This is included as Exhibit 2 in the stop-work
8 order log that I pulled off of the Property Information
9 Verification System, PIVS.

10 This effectively ended with the documentation by
11 the -- by DCRA's inspector two days after the collapse that
12 describes the illegal demolition in detail. Exhibit 3, the
13 inspector report.

14 In addition, I repeatedly emailed DCRA about the
15 situation prior to the collapse. And I included, on October
16 8, a report from my structural engineer, attached as Exhibit
17 4.

18 That clearly outlines the unsafe demolition
19 practices and the condition of the site that I showed you in
20 the photographs before, from October 8.

21 And as the D.C. Office of Administrative Hearings
22 conclusively found, the collapse of the property, quote,
23 incurred -- occurred after a developer illegally removed the
24 roof, gutted, partially demolished, and then abandoned the
25 house --

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1 MS. LORD-SORENSEN: Objection. I have to object
2 to this misleading statement.

3 (Simultaneous speaking.)

4 MR. RUEDA: -- leaving the remnants exposed to the
5 elements --

6 CHAIRPERSON HILL: Whoa, just one second. Wait
7 a second. Objection to a misleading statement. You'll have
8 a chance to kind of like, respond back or ask questions.

9 I'm just trying -- he's talking about the OAH
10 report that's in the record. All right, okay?

11 MR. RUEDA: It's in the record. We included a
12 copy of that consolidation order as Exhibit 5. After the
13 current owner filed the new permit application in 2018, I met
14 with the zoning administrator various times.

15 And on June 23, 2018, we confirmed the
16 requirements of 11-E DCMR 206 in relation to architectural
17 elements and solar energy production. That architectural
18 elements must be restored where they were illegally removed
19 or altered.

20 This is reflected in DCRA's review of the property
21 on June 26, where they -- zoning reviewer required the
22 property owner to establish the architectural elements, which
23 we showed the original condition of the submission, which
24 showed three identical stories.

25 And then it was revised to include this faux

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1 mansard that does not replicate the existing architectural
2 elements that were on-site before they were illegally
3 removed.

4 MEMBER JOHN: May I ask you a question?

5 MR. RUEDA: Yes sir -- yes, ma'am.

6 MEMBER JOHN: Can you perhaps show us side-by-side
7 comparison? I have been struggling with that to try to
8 figure out what is the substantial difference.

9 MR. RUEDA: Side-by-side? I don't know.

10 MEMBER JOHN: Well, just try to help me understand
11 why --

12 MR. RUEDA: I can do it like this. So in this
13 case, you have three stories above the porch level.

14 MEMBER JOHN: I get that one. It's what was there
15 originally, and what -- and the revised mansard roof?

16 MR. RUEDA: Originally. Yes ma'am.

17 MEMBER JOHN: And why the new mansard roof, or
18 proposed, isn't reasonably reproductive of what's -- what was
19 there before?

20 MR. RUEDA: So, if you look at this photograph on
21 the left, that is -- the white building with the black trim
22 is 2910.

23 And you can see the large scale cornice that's not
24 really accurately shown in the drawings. And you can see
25 that the dormers are smaller and have a roof element that's

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1 capped by a finial.

2 You can sort of see the single roof element on the
3 next picture over. The roofs are basically the same. It's
4 just, you know, instead of one large dormer, there's two
5 smaller dormers.

6 You can see that there are casement windows. You
7 can see that there's a projecting eave. And I'm not sure --
8 I don't have a better picture because I didn't take the
9 picture before. This is from Google.

10 Does that answer your question, or can I add
11 something to that?

12 CHAIRPERSON HILL: Actually, Mr. Rueda, just real
13 quick for me.

14 So like, I'm a little confused in terms of -- and
15 we'll talk about all of this when we kind of get through
16 everybody -- but like, so I see this side, which is the
17 height of the addition, right? And again, it's this black
18 line supposedly, correct?

19 MR. RUEDA: Yes.

20 CHAIRPERSON HILL: And this is what is currently
21 permitted, and then when you go to -- there's another slide
22 that you had, and I -- there's a lot of things in the record
23 and I've been trying to find it, but -- where you had the
24 front of the town homes.

25 So, it was just two slides ago, I think. Maybe.

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1 Yeah. So the one -- yeah, right there. So, are you able to
2 -- so, this is what is currently proposed again, right?

3 MR. RUEDA: Yes.

4 CHAIRPERSON HILL: And just like how you have that
5 other slide that has the black line around it, and it shows
6 that it's 15 -- I can't remember how many feet you said, but
7 I mean, I'm looking at how your solar panels are now being
8 blocked more because of this particular design then with --
9 then what was originally there. Right?

10 So, I'm just trying to figure out the height.
11 Because here it doesn't seem like it's -- it only seemed like
12 it was a couple feet more than what was originally there,
13 whereas the other slide that you have with the black line,
14 it looks -- you know, the volume looks a lot more.

15 So, is there a way to kind of show me what was
16 there before when your solar panels were installed?

17 (No audible response.)

18 CHAIRPERSON HILL: You can't like, put a line
19 there or anything, I guess not?

20 MR. RUEDA: I'm going to try to find the --

21 COMMISSIONER MAY: Well, I -- can I point out, I
22 think that it actually would've been below the parapet there.

23 MR. RUEDA: Right here.

24 COMMISSIONER MAY: Right there.

25 MR. RUEDA: Yeah.

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1 COMMISSIONER MAY: It's below -- so, it's roughly
2 equivalent to the top of the two dormers? Because that roof
3 has to butt up against the parapet wall -- that stepped
4 parapet wall.

5 CHAIRPERSON HILL: So is that a few feet, or is
6 that a --

7 MR. RUEDA: Okay, but what's missing from this
8 drawing is the representation of the roof deck, so that
9 projects another four feet higher than this.

10 CHAIRPERSON HILL: Okay. And is the roof deck a
11 railing, or it's a solid --

12 MR. RUEDA: It's solid.

13 CHAIRPERSON HILL: Solid?

14 MR. RUEDA: It's a solid parapet that's
15 represented by that bump up.

16

17 CHAIRPERSON HILL: I got you. Okay.

18 MR. RUEDA: So they set the roof deck back so that
19 the immediate height isn't apparent, and that's why it's not
20 represented in the elevation.

21 CHAIRPERSON HILL: Right, but on the side it is,
22 and that's how it's still going to block your solar.

23 MR. RUEDA: It most certainly does.

24 VICE CHAIRPERSON HART: And what's also I think
25 somewhat of an issue is that you have on the property -- I

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1 don't know -- the property owners -- the project that is
2 under question, they have a flat roof -- or a fairly flat.

3 You have a flat roof, but it's actually sloped
4 down in the back, so it actually gets larger.

5 There's a greater distance between the top of your
6 roof and the side wall, I guess, the parapet -- not really
7 the parapet, but --

8 MR. RUEDA: So, as you move to the back of my
9 property, the distance is higher because it's flat on the
10 neighbor, but it's sloped -- and the previous existing
11 condition -- as you can see in the photograph of the original
12 condition, it was the same roof, it was just two feet higher
13 because all of the properties stepped on this hill, right?

14 You go from 2922 up to 2900, about two to -- about
15 24 to 30 inches at a time. And so --

16 VICE CHAIRPERSON HART: In this case, we actually
17 see this building, which I'm not sure who that is. Or if you
18 can go back for that one.

19 MR. RUEDA: Oh, sorry.

20 VICE CHAIRPERSON HART: Yeah, it's okay. Yeah,
21 this one. You see that that one -- that is actually -- it
22 looks like a flat roof with something on top. A roof deck
23 or something on top.

24 MR. RUEDA: There's no roof deck. It's the
25 similar condition to my property. It's a sloped roof --

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1 (Simultaneous speaking.)

2 VICE CHAIRPERSON HART: No, I'm saying the one
3 that is circled. This -- the -- excuse me.

4 MR. RUEDA: Oh, yeah.

5 VICE CHAIRPERSON HART: So there's a -- you know,
6 it looks like a flat roof, and then you can see somewhat of
7 what the -- a shadow does to the next door neighbor.

8 MR. RUEDA: That's correct. That's exactly right.
9 Thank you for pointing that out.

10 Anyways, I was stating I had met with the zoning
11 administrator on various times, and one of these times is
12 reflected in their ruling on the 26 of June, which is when
13 they required the property to change from their original
14 proposed design to the one that we were just discussing with
15 the mansard roof that expands the original mansard design and
16 changes the dormers.

17 And this was a case that I wanted to ask about
18 because on a previous case, where I had a client who had
19 bought a property that did not comply with 14-11 -- or excuse
20 me, with Subtitle E, 206.1, the zoning administrator said in
21 that case the cornice had already been altered.

22 And the zoning administrator had ruled that the
23 cornice was protected under 206.1, and it must -- and it had
24 to have been restored to its original condition. This is
25 included as BZA Exhibit 29.

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1 OP has also been clear on the importance of rule,
2 11-E 206. -- 11-E DCMR 206.1(a), to include the retention of
3 porches by denying an applicant's request to demolish a part
4 of a porch.

5 This was included as BZA Case 19771. OP's memo
6 was included in the record as BZA Exhibit 21J.

7 I will only add that as an architect, I'm
8 frequently called upon to make judgments about how to
9 characterize the work being undertaken on a particular
10 project, and determine whether, based on the accepted
11 definitions of the building code and the zoning regulations,
12 if they're considered a demolition, a raze, or an addition,
13 or wholly new construction.

14 In this case, the work identified in the
15 challenged permit is correctly identified as being for
16 alteration, addition, and repair. That is the permit that
17 they received from DCRA.

18 The 2013 D.C. Construction Code defines an
19 addition as an extension or increase in the building area,
20 aggregate floor area, number of stories, or height of a
21 building or structure.

22 Even putting aside the arguments of how the
23 building height is measured.

24 As this exhibit demonstrates, following completion
25 of the challenged permit, the building will be higher than

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1 the current height of the party wall, and therefore interfere
2 with production of energy at my home. Thank you.

3 CHAIRPERSON HILL: Thank you, Mr. Rueda.

4 MS. RICHARDS: Now? Okay.

5 CHAIRPERSON HILL: Sure, whoever would like to go
6 next.

7 MS. RICHARDS: Okay.

8 MS. FERSTER: Excuse me. Laura Richards has
9 written testimony, so I'm going to -- she's going to --

10 (Simultaneous speaking.)

11 CHAIRPERSON HILL: Okay, sure.

12 MS. RICHARDS: Good afternoon.

13 CHAIRPERSON HILL: Good afternoon.

14 MS. RICHARDS: And happy birthday, as we all will
15 tell you. Enjoy it.

16 I've been asked to address the issue of whether
17 this is a demolition or raze. And it is clearly -- this is
18 not a new building.

19 Whether it's considered as a zoning raze, or
20 whether it was affected by a purported act of God, it was
21 never wholly destroyed or demolished.

22 And whatever is built is an addition to a
23 partially demolished building, and as such, it is subject to
24 E 206.

25 So, I'll start by sort of like, going over some

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1 of the -- the zoning administrators passed rulings on what,
2 you know, is not a complete raze.

3 These are in some of the zoning administrator's
4 informal letter rulings. Okay. Now, 82 P Street, Northwest.

5 There was one party wall and four feet of the
6 front face of a building left. This was deemed to be an
7 addition to an existing building and not a full raze of the
8 building.

9 And that's letter A, 82 P Street, Northwest,
10 September 29, 2014 -- at 630 through 632, 14th Street,
11 Northwest.

12 There was a retention of a portion of one party
13 wall, and a portion of the front wall of the building. That
14 was what was left.

15 This did not constituent a full raze, but a
16 partial demolition. Although, the retained front wall
17 represented just 16 percent of the existing structure.

18 That's also from 2014. DCR -- the zoning
19 administrator said that in some of its pleadings that -- it's
20 about 40 percent, or something, it's rule of thumb.

21 But it's a very loosely applied rule. And this --
22 these are cases where they didn't declare a zoning raze.

23 So, in cases that have had less even than what we
24 have here, the zoning administrator has said, this is not
25 complete demolition. It is not a raze, it is not a zoning

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1 raze. It is a partial demolition and an addition. So.

2 Now, there's one case that sort of goes the other
3 way. And I think it sort of shows that the concept of a
4 zoning raze is kind of an arbitrary label applied to a
5 desired result.

6 And on 511 Franklin Street, there was a fair
7 amount of the buildings left. It was -- oh, I guess it was
8 -- how much did they have?

9 It was a non-conforming four unit apartment
10 building, and it was going to be subdivided. Two lots
11 created, two new units.

12 And this is one of the pop-up building zones, this
13 building's there.

14 And the ZA's Office found that construction of a
15 new party wall to facilitate the subdivision would require
16 significant structural alteration to the existing building,
17 including removal of much of the roof and the existing second
18 floor.

19 The zoning administrator concluded that the degree
20 of work anticipated nevertheless did not qualify as a
21 construction raze because much of the party wall front wall,
22 and existing foundation would be maintained.

23 So, that's -- you know, that's more building
24 fabric than you have in some of these other partial
25 demolition cases.

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1 But the zoning administrator said nevertheless,
2 we're going to call this a zoning raze. So, here you have
3 more building fabric and it's a zoning raze, and you have
4 less building fabric and it's a partial demolition.

5 And of course, in this particular case, on 511
6 Franklin Street, once the zoning raze was declared, then the
7 grandfathered conditions associated with the pop-up rules
8 were eliminated.

9 And that seems to be the rule by which a zoning
10 raze is declared.

11 You know, it's -- will it -- it's declared when
12 it might help the owner avoid some zoning outcome, and when
13 the -- in other cases, where there's just a tiny bit of
14 building fabric left, but the owner wants to avoid a raze,
15 it's a partial demolition.

16 And we can say, this is clearly a partial
17 demolition. If 82 Franklin Street and a couple of these
18 others are partial demolitions, this is a partial demolition.
19 Okay.

20 COMMISSIONER MAY: Can I ask a question? Just to
21 be clear, in all these circumstances, the -- these were
22 proposed modifications to existing buildings?

23 MS. RICHARDS: Yes.

24 COMMISSIONER MAY: But the building -- I mean, it
25 -- what you were describing in terms of what was left, was

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1 what was proposed in the drawings, as opposed to they were
2 already demolished, and all that was left was this stuff?

3 MS. RICHARDS: One cannot tell. It's not clear
4 just from the letters themselves. And I didn't go into that.
5 I wanted to, like, you know.

6 COMMISSIONER MAY: Right, okay. All right, thank
7 you.

8 MS. RICHARDS: What you have to have to be a
9 partial demolition. Okay. So, and I just mentioned a few
10 others.

11 You know, 1012 Harvard Street. A partial
12 demolition, not a full raze, where you have 42 percent of
13 your original building walls.

14 Macomb Street. Four feet of the existing
15 perimeter walls above the adjacent existing grade is a
16 partial demolition.

17 2520 44th Street, retention of 45 or 50 percent
18 of the invisible exterior walls is a partial demolition.

19 Okay, so by these standards -- especially the ones
20 where you had 16 percent of the existing front facade
21 remaining -- we have here a partial demolition.

22 So, why doesn't the issue of a zoning raze ever
23 come up? You know, as -- it's not a defined term. It's not
24 in the zoning regulations, it's not in any other readily
25 identifiable zoning authority.

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1 You know, it's not in the planner's dictionary,
2 blah, blah, blah. So, it's -- and in addition to being an
3 undefined term, it's like, in the nature of secret law.

4 It's never been the subject of a policy statement,
5 or an informal interpretation, on the website, or any kind
6 of announcement. It just kind of crops up. So, it could
7 never have been applied anyway because it's secret law.

8 The -- so, that's -- our bottom line is that the
9 zoning raze concept is a label applied to a desired outcome.
10 There is no such thing.

11 And you -- I believe that it is our contention
12 that you are bound by the definitions of the construction
13 code -- which are in the record several places -- which
14 recognize a partial demolition and a complete raze, and there
15 are certain, you know, consequences that go along with a
16 complete raze.

17 So, partway through this case, DCRA or the zoning
18 administrator switched up and said, okay well, we're now
19 going to call this an -- a demolition by an act of God.

20 That doesn't really get you anywhere because
21 saying an act of God occurred doesn't really mean that
22 demolition in fact has occurred. There's just a purported
23 act of God. The times that act of God shows up
24 in the zoning context usually occurs when there's been an
25 event at a non-conforming building, and the owner may want

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1 to rebuild the non-conforming building.

2 And it can be rebuilt with the non-conformity if
3 the cost of replacing it as it was is about 75 percent its
4 value. It's a numeric calculation. The -- and of course,
5 there has to be a genuine act of God.

6 Now, this board had another case where act of God
7 was asserted because there was a partial demolition, and then
8 a complete collapse of a building during renovations and
9 changes.

10 And as it happened, it was determined that the
11 collapse -- well, the partial intentional demolition was --
12 happened because of extensive termite and water damage.

13 The -- and then the remainder of the demolition
14 just occurred because there wasn't enough left to kind of
15 keep the building together.

16 And this board determined that, well, although the
17 collapse might've been relatively sudden, there was -- the
18 termite damage occurred over a period of years, and so did
19 the water damage. And it was foreseeable and it was
20 presentable.

21 And in that case, I -- an act of God is described
22 as a sudden, unexpected unforeseeable cataclysm. And it's
23 -- should be notes here that in that case, like this one, the
24 majority of the damage occurred under a different owner.

25 I'm going to give you that case. Let's see,

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1 because it's not in my -- oh, okay. It's Stephanie Wallace.

2 Okay, 2008. And that was an instance where the
3 zoning administrator denied the permit to rebuild, and this
4 board affirmed it.

5 And there's some fairly extensive discussion on
6 what an act of God is, and whether or not the clean hands
7 applies. And also, the extent to which the new owner kind
8 of steps into the unclean hands of its predecessor.

9 So, this is not an act of God because there was
10 obviously intentional partial demolition and gross neglect,
11 which has been very well documented.

12 So, the ultimate collapse was the -- really, I
13 guess, foreseeable outcome of prior human actions. So
14 there's no act of God here.

15 And even though there was a collapse, there still
16 is enough left here so that under extensive zoning
17 administrator precedent, this is still just a partial
18 demolition.

19 So, based on all of that, we think that, you know,
20 what you have here was a partial demolition with an addition,
21 and therefore E 206 applies.

22 CHAIRPERSON HILL: Okay, thank you, Ms. Richards.
23 Ms. Ferster? So, we're back, and we're about 15 minutes now.
24 I don't know if you want to --- what is this feedback? Oh,
25 could you turn off your mic, Ms. Richards? I'm sorry.

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1 MS. RICHARDS: I'm sorry. I always forget.

2 CHAIRPERSON HILL: That's all right. Did -- you
3 served on this board at one time, is that what I was told?

4 MS. RICHARDS: Many years ago.

5 CHAIRPERSON HILL: Many years ago?

6 MS. RICHARDS: Was the ---

7 CHAIRPERSON HILL: I'm sorry, I can't hear you on
8 the microphone. Now I do want to hear.

9 MS. RICHARDS: Was when the memory of man was not
10 to the contrary. It's been a long time, sir.

11 CHAIRPERSON HILL: Wow, yeah. I'm sure you
12 remember still, so. Okay, Ms. Ferster, so what would you
13 like to do?

14 MS. FERSTER: Well, I do want to give the case
15 number -- the BZA case number for the case involving the
16 active determination that intentional lack of maintenance or
17 neglect doesn't constitute an act of God.

18 And that's Case Number 17747. And then, I would
19 like to give a closing statement after every -- just to wrap
20 up after -- you know, after all the opposing parties present.

21 CHAIRPERSON HILL: Okay, great. All right, so now
22 what we're going to do is we're going to get -- let DCRA and
23 the property owner have an opportunity to ask questions of
24 the testimony that was given.

25 I know that, again, in this case, it seems that

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1 the testimony has been focused, again, as I've understood,
2 on the E 206.1(a) and (c), in terms of, again, kind of like
3 the -- I mean, there are a variety of things you can ask
4 questions about, but I'm just saying that's what I was
5 hearing a lot of.

6 And so, Ms. Sorensen, do you have any questions
7 from anyone concerning the testimony that was given?

8 MS. LORD-SORENSEN: No.

9 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you
10 have any questions concerning the testimony that was given?

11 MR. SULLIVAN: I -- yes. Just one question for
12 Ms. Richards. Is your -- is it your position that in order
13 to -- for this to be a zoning raze that it would have to meet
14 the raze requirements of the building code?

15 MS. RICHARDS: My contention is that there is no
16 such thing as a zoning raze, and for a raze to occur, it must
17 meet construction code standards for a raze.

18 MR. SULLIVAN: And is it your position that's that
19 -- that that is prohibited if the property owner applied for
20 that raze under the construction code? Is there anything
21 prohibiting them from receiving that?

22 MS. RICHARDS: No, but I think it is -- certainly
23 one can apply for a raze from that --

24 MR. SULLIVAN: Thank you.

25 MS. RICHARDS: -- but I would like to add -- that

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1 this is an instance where the property owner was very eager.

2 One of the relevant emails states -- this is an
3 email from the owner's architect to the zoning administrator
4 on October 9.

5 Hi Matt. We're just waiting for your okay to
6 Ramon about what we discussed, that what we are doing is a
7 zoning raze in new construction, so that the solar panel
8 architectural element stuff doesn't apply.

9 And there was another one, an earlier email --

10 MR. SULLIVAN: I think my question was answered.

11 CHAIRPERSON HILL: Okay.

12 MS. RICHARDS: Okay.

13 CHAIRPERSON HILL: All right, Ms. Richards,
14 thanks. All right. So, let me see. All right, so now we
15 get to ask questions.

16 All right, so does the Board have any questions
17 of the -- I guess we kind of were asking questions as we were
18 going along, but does the board have any questions of the
19 appellant?

20 MEMBER JOHN: I think I have one question for Ms.
21 Richards.

22 So, you're saying that even though the current
23 owner did not cause the neglect and did not -- was not
24 responsible for the illegal partial demolition, that all of
25 that must be attributed to the current owner under the clean

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1 hands doctrine? Because I heard you mention that.

2 MS. RICHARDS: Well, let me find the particular
3 place in here -- let's see. The specific --

4 (Simultaneous speaking.)

5 MEMBER JOHN: And was that the Court of Appeals
6 case, or was it a BZA case?

7 MS. RICHARDS: BZA case. Let's see. Specifically
8 -- to findings of fact. Because there's some excellent
9 language here that I could not say better myself.

10 Okay. Let's see. Yes. In this, the instant
11 case, the ZA accurately interpreted the zoning regulations.

12 First, the structural damage must be foreseeable. Let's see.

13 Therefore, in determining whether structural
14 damage at issue was or was not foreseeable, this board must
15 consider the fact that the appellant purchased the property,
16 you know, without a termite inspection.

17 She acted at her peril. A situation cannot be
18 rectified by alleging that a casualty occurred. And of
19 course, here, the owner took with highly visible notice.
20 Let's see. The -- yep. So that's the key thing.

21 (Simultaneous speaking.)

22 MEMBER JOHN: So that's fine, Ms. Richards. I
23 think I get where you're going.

24 MS. RICHARDS: Okay.

25 MEMBER JOHN: And so, you know, as we always say

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1 here at the board, each case stands on its own. But I will
2 take a look at that case.

3 MS. RICHARDS: Okay.

4 MEMBER JOHN: Thank you.

5 CHAIRPERSON HILL: Okay, I just got a couple of
6 quick ones. Mr. Rueda, you live right next door, right? And
7 you're the property to the right of the -- if you're facing
8 the property, you're the property to the right, correct?

9 MR. RUEDA: Yes. I own the solar panels.

10 CHAIRPERSON HILL: Right. And so -- and how long
11 has that thing been out -- how long has this been going on?

12 MR. RUEDA: Construction started -- the owner --
13 sorry, the property changed hands in 2014.

14 CHAIRPERSON HILL: Changed hands? So before that,
15 it was --

16 MR. RUEDA: Previously changed hands, and so, I
17 don't remember exactly when demolition started. For me,
18 everything started the date that they legally removed the
19 roof and left the site exposed to the weather.

20 So, from March of '15 forward, I've been taking
21 on water based on the exposed section --

22 (Simultaneous speaking.)

23 CHAIRPERSON HILL: When -- you moved in before
24 they sold the property to the first developer, correct?

25 MR. RUEDA: I've been there since 1992.

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1 CHAIRPERSON HILL: Okay. And so, the first
2 developer -- okay. All right, okay. Just curious. Okay.
3 All right, I'm going to go ahead and turn to DCRA.

4 MR. RUEDA: Can I address one point? Ah, never
5 mind.

6 CHAIRPERSON HILL: Sure. No? Okay.

7 MR. RUEDA: Well, I just want to reiterate to the
8 Board that the provisions of E 206(c) were specifically
9 written to prevent solar permits from denying the ability of
10 a developer to build -- to erect something, right?

11 And that's why the language is written so
12 specifically to -- as to the size and the date that the
13 application was accepted as complete, because it understood,
14 right, that solar permits relied on solar studies based on
15 the available sun at the time.

16 So if I wanted to install, you know, a ten
17 kilowatt system, and applied for that permit and accepted it
18 as complete five days after, or even a day after somebody
19 else had applied next door to erect a ten story building, I
20 would only be allowed to rely on these objections --

21 (Simultaneous speaking.)

22 CHAIRPERSON HILL: No, I got it. Mr. Rueda, I
23 mean, well, unfortunately --

24 MR. RUEDA: So, but conversely --

25 CHAIRPERSON HILL: I've also -- I got you. No,

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1 I'm just saying, I've been here for four years now -- or five
2 years.

3 And so, I've been here for the solar thing, and
4 right, the people put -- I --wait. I was surprised that more
5 people didn't do what you did, okay? And so --

6 MR. RUEDA: What did I do? I invested in solar.

7 CHAIRPERSON HILL: No, that you invested in -- oh,
8 never mind. I'm saying that when you invested in the solar,
9 that it kept people from building up next to you to block the
10 solar.

11 That's what I thought was part of what the
12 regulation was being put in place to protect. No?

13 MR. RUEDA: No. I invested in solar because I was
14 now an RF-1, and now --

15 CHAIRPERSON HILL: Well, and now I just don't --
16 okay, never mind. I'm just -- I'm misspeaking. I'm --

17 MR. RUEDA: But you're challenging why I invested?
18 I don't understand.

19 CHAIRPERSON HILL: No, I'm not challenging why you
20 invested -- it -- I'm not making myself clear, so it's okay.
21 It's all right.

22 I'm not challenging why you invested in solar.
23 All right, so Mr. LeGrant, you can go ahead and -- or I'm
24 sorry, Ms. Lord-Sorensen, you can go ahead and give your
25 lecture.

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1 MS. LORD-SORENSEN: Excuse me, board. I just
2 wanted -- I just have a quick question.

3 So, earlier you mentioned that the testimony
4 provided by the appellant and the interveners pertains solely
5 to the solar panels, specifically 11-E DCMR 206.1.

6 So, is the board saying that the first -- the
7 other two issues are moot at this point? No?

8 CHAIRPERSON HILL: No.

9 MS. LORD-SORENSEN: Okay, just wondering.

10 CHAIRPERSON HILL: Sorry. I was just trying to
11 be helpful, but --

12 MS. FERSTER: And just to ---

13 CHAIRPERSON HILL: -- I'm not doing necessarily
14 a great job being helpful at this moment. I'm just -- I'm
15 muddling a bunch of stuff in my head, and I still think I'm
16 right, is what I was thinking about, but I can't explain it
17 properly, so I'm sorry, Ms. Ferster?

18 MS. FERSTER: Just to be clear, we did want to
19 focus our oral presentation on that issue, but our written
20 presentation is -- that you have -- are responding to also
21 deals with the building height issues.

22 CHAIRPERSON HILL: Okay. So then you have to talk
23 about everything? Okay.

24 MS. LORD-SORENSEN: Okay. Good afternoon,
25 Chairman Hill and members of the Board. We're here today

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1 because the appellant, ANC 1C, appealed the issue into the
2 building permit B-1806082.

3 This permit allowed the owner of 2910 18th Street,
4 Northwest, to keep the existing use two-family flat, remove
5 existing front wall down to four feet above the first floor,
6 build a three story building, cellar, and underpinning.

7 On or around March 13, 2019, appellant filed a
8 revised pre-hearing statement raising three issues. One, the
9 deal with the building height measuring point.

10 Specifically, they argued that the starting point
11 for the building height measuring point violated 11-B DCMR
12 308.2.

13 And as a result of the incorrect BHMP, the
14 proposed construction would consist of four stories, in
15 violation of 11-E 303.1, and a height of more than 35 feet,
16 in violation of 11-E 303.1.

17 The second issue that was raised was that the
18 proposed construction would expand the building envelope so
19 that it would significantly interfere with the solar
20 production -- excuse me, solar energy production next door,
21 in violation of 11-E DCMR Sections 206.1(a) and (c).

22 And the last issue raised in the revised
23 pre-hearing statement alleged that the proposed construction
24 failed to restore the illegally removed architectural
25 features, in violation of 11-E DCMR Section 206.1(a). Okay.

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1 So good afternoon, zoning administrator. So
2 first, we're going to address the building height issue that
3 was raised by the appellant.

4 So, the appellant alleges that the building height
5 is incorrect because the owner measured the building height
6 for more than six inches above the natural or existing grade.

7 So, first of all, do you know which zone 2910 18th
8 Street, Northwest is located?

9 MR. LEGRANT: Yes. It's located in the RF-1 Zone.

10 MS. LORD-SORENSEN: And is there a height
11 limitation in this zone?

12 MR. LEGRANT: There is. The applicable section,
13 E 303.1, limits the building height to 35 feet and three
14 stories.

15 MS. LORD-SORENSEN: Okay. And under those zoning
16 regulations, how is the building height measured?

17 MR. LEGRANT: The height is determined by
18 measuring the difference between the building height
19 measuring point, BHMP, located in an existing grade, to the
20 top of the building.

21 MS. LORD-SORENSEN: Okay. I'd like to direct your
22 attention to Architectural Plan A301. What's the starting
23 point on this elevation?

24 MR. LEGRANT: Right. So, consistent with the
25 requirement of how the BHMP is to be sided at the -- as you

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1 can see in that front elevation, the middle of the front of
2 the building is the centered -- is it's labeled BHMP. At the
3 center grade elevation, it is called out as 150.08.

4 MS. LORD-SORENSEN: Okay. And where does the --
5 where does it stop when you're measuring building height?

6 MR. LEGRANT: Yeah, then you take the -- that to
7 the roof level of the top of the building. In this case, the
8 height that is labeled as 34 feet, 11 inches.

9 MS. LORD-SORENSEN: And so, does this proposed
10 building height comply with the zoning regulations?

11 MR. LEGRANT: It does. Yes, it does.

12 MS. LORD-SORENSEN: Okay. Now, when you measure
13 building height, do you include parapets?

14 MR. LEGRANT: No, the zoning regulations
15 specifically permit that in a residential zone, the -- a
16 parapet or balustrade up to four feet in height that can be
17 excluded from the building height calculation.

18 MS. LORD-SORENSEN: Okay. Okay, next, appellant
19 argues that the lower level is a story. So this area here.
20 The lowest level of the building.

21 MR. LEGRANT: Yes.

22 MS. LORD-SORENSEN: Which would make it a four
23 story building. In your opinion, is this lowest level a
24 story?

25 MR. LEGRANT: It is not.

1 MS. LORD-SORENSEN: And why not?

2 MR. LEGRANT: Okay, so a cellar, as defined in the
3 zoning regulations, is not counted as a story. And if it
4 meets the definition of cellar, then -- if the lower level
5 is defined as a cellar, then it is not counted as a story.

6 MS. LORD-SORENSEN: Okay. Earlier, the board made
7 a determination that we're -- that this -- the plans will be
8 subject to pre 17-18. So, pre 17-18, do you know what the
9 definition of a cellar is?

10 MR. LEGRANT: Yes.

11 MS. LORD-SORENSEN: And what is that definition?

12 MR. LEGRANT: Definition is a -- at that portion
13 of a story, the ceiling of which is less than four feet above
14 the adjacent finished grade.

15 MS. LORD-SORENSEN: Okay. So, is this the grade
16 right here?

17 MR. LEGRANT: It is.

18 MS. LORD-SORENSEN: Okay. And where does it stop?
19 Does it stop -- is this the ceiling right here?

20 MR. LEGRANT: Right. The -- this section --
21 drawing that you're referring to, A402, shows the dimensions
22 of that lower level to the conformance with the cellar
23 definition, because the height from the grade to the ceiling
24 of that level is three foot, eight -- three feet, eight
25 inches.

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1 MS. LORD-SORENSEN: Okay. So since the lowest
2 level is less than four feet, is that counted as a story, or
3 no?

4 MR. LEGRANT: It is not.

5 MS. LORD-SORENSEN: Okay. So how many stories
6 does this building -- will this building have?

7 MR. LEGRANT: Three stories.

8 MS. LORD-SORENSEN: Okay. Next, the appellant
9 argues that you misinterpreted the purpose of 11-E DCMR
10 206.1(a) and (c) when you classified the proposed addition
11 as a new building.

12 So, in front of you, I've pulled up 11-E DCMR 206.
13 Could you please -- in your opinion, does 11-E DCMR 206.1
14 apply to the instant case?

15 MR. LEGRANT: No, it does not.

16 MS. LORD-SORENSEN: And why not?

17 MR. LEGRANT: Because the provision applies to
18 additions to existing buildings.

19 MS. LORD-SORENSEN: Okay. And so, which provision
20 are you looking at?

21 MR. LEGRANT: Yeah. So, and the -- what you
22 brought up on the screen is that Section E 206.1, and it's
23 highlighted. The title of that provision is rooftop or upper
24 floor additions.

25 MS. LORD-SORENSEN: Okay. And is there an

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1 addition that's being created here?

2 MR. LEGRANT: No, it is construction of a new
3 building.

4 MS. LORD-SORENSEN: Okay. I've just put on the
5 screen for you, Mr. LeGrant, two pictures taken from the rear
6 of 2910 18th Street. The image on the left was taken in
7 March 2016, and the image on the right was taken August of
8 2017. Can you see that?

9 MR. LEGRANT: Yes.

10 MS. LORD-SORENSEN: Okay. So, based on these
11 images, how did you formulate the opinion that there was no
12 addition?

13 MR. LEGRANT: Right.

14 MS. LORD-SORENSEN: There's bracing there, right?

15 MR. LEGRANT: Right. So, the previous building
16 that existed, of course, had its -- it had a roof, it had
17 floors, it had interior aspects -- interior portions of that
18 building. With the collapse, all those were removed.

19 The bracing that is shown in both of the
20 photographs was a result of -- to ensure that -- it's a
21 temporary bracing to ensure that the adjacent two properties'
22 party walls are not in danger of their own collapse because
23 the lack of any lateral shoring between those walls.

24 So, that bracing does not represent the final --
25 a permit building aspect.

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1 MS. LORD-SORENSEN: So since there's no building,
2 is this your opinion that you can't put an addition on
3 something that doesn't exist?

4 MR. LEGRANT: Correct.

5 MS. LORD-SORENSEN: And that's why 11-E DCMR 206.1
6 is inapplicable?

7 MR. LEGRANT: Correct. Because it applies to
8 additions, and there's not presently a building there to
9 build an addition to, it is not applicable.

10 MS. LORD-SORENSEN: Okay. Do you know whether a
11 raze permit was ever issued to the current property owner?

12 MR. LEGRANT: I am not aware that a raze permit
13 was issued for this property.

14 MS. LORD-SORENSEN: Okay. Appellant asserts also
15 that the original permit document submitted in March of 2018
16 showed no representation or reference to the illegally
17 removed architectural rooftop elements, and no plan to
18 restore them, or the missing cornice.

19 Do you know whether the proposed plans restored
20 the original character of the home?

21 MR. LEGRANT: Well, excuse me. Basically the
22 plans -- the owner shows a building exterior that resembles,
23 or closely resembles, the architectural details of -- on the
24 adjacent homes.

25 The mansard windows and the cornice are similar

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1 to the neighboring homes, but no, it's not a restoration of
2 those features because it's -- there's no requirement to do
3 so.

4 MS. LORD-SORENSEN: Board's indulgence. Okay.
5 I have no further questions for the zoning administrator, but
6 I did want to point out a couple of things.

7 First of all, DCRA has not conceded that there was
8 a demolition or raze. And we have no record of a raze permit
9 being issued to the current owner.

10 Also, I would like to clarify the record. In the
11 intervener's statement, entitled Rueda's Opposition in Reply
12 to Motion to Amend, and responses of DCRA and owner, which
13 is -- well, it was in their most recent filing.

14 So, the interveners, along with counsel, made a
15 misrepresentation to the board.

16 In their filing, they said -- they argue that --
17 they argued the collateral estoppel doctrine, saying that
18 this case was actually litigated before OAH and there was a
19 final order in this case. And that is not true.

20 Mr. Rueda, yes, there is an active case going on
21 before OAH. DCRA is a party to that case, but Mr. Rueda is
22 aware that we've never had any sort of evidentiary hearing
23 in the OAH matter. And so, this case has not been litigated.

24 Yes, there's a consolidation order, which just
25 consolidates the building permits before OAH, but this matter

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1 has not been litigated, and we are not estopped from bringing
2 this case.

3 There's been no final decision. So, I just wanted
4 to make sure that's clear in the record. Nothing further.

5 CHAIRPERSON HILL: Okay. Does the Board have
6 questions? Do you want to do questions of DCRA, or do you
7 want to do cross first? What do you guys want to do?

8 VICE CHAIRPERSON HART: Questions.

9 CHAIRPERSON HILL: Okay. Sure, go ahead.

10 VICE CHAIRPERSON HART: Well, there are a couple
11 of things that are -- I'm trying to kind of figure out about
12 all of this.

13 And I understand that the zoning administrator
14 just said a few minutes ago that this was because this has
15 -- there is no building there, this is a new construction.

16 But there was quite a bit of discussion about the
17 issue of a zoning raze, and the demolition, an act of God,
18 and I'd like to have some information from the zoning
19 administrator regarding how those terms are defined.

20 I think it would be helpful for us to kind of
21 understand that because I'm not really clear on kind of any
22 of those terms, and we've used those terms in -- so far by
23 the intervener and the appellant, and I'd just -- I just need
24 to understand that further.

25 And so -- and I think this may be something that's

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1 -- that you can write, as opposed to necessarily say right
2 now, unless you have that that you can provide to us.

3 But I really think that that's something that we
4 need to have a clear understanding on because I think some
5 of this is balanced on that.

6 Some of the discussion today has been -- has
7 balanced on that, and I just -- I don't know where it is, and
8 you know, it's just helpful for me to see that.

9 The -- there were quite a number of issues about
10 kind of -- and actually, Commissioner May brought up the
11 issue even today about some of the drawings being just --
12 it's just confusing to try to understand.

13 Like, the image that we have here is the elevation
14 -- you know, the self-elevation of the building, and it has
15 a -- some dimensions here that are kind of -- the area that's
16 down here in the bottom left of the drawing that show that
17 this is for nine -- four feet and -- 4.92 feet.

18 But as Commissioner May pointed out, that that's
19 actually a little different than what the section shows, and
20 it's just helpful for us to understand where all of this is
21 because in some of this case, I think there may be some
22 inches that we're talking about that may be somewhat
23 important to understand whether or not the building is taller
24 or not taller than 35 feet.

25 The intervener has described how he believes that

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1 the project is greater than 35 feet, and I am just not sure
2 how you all determine that Mr. LeGrant -- if there are -- if
3 there's some discrepancy as to what those actual numbers are.

4 And currently, I just don't know what to believe
5 because I feel that there's just conflicting information.

6 And so, it's -- but I know it's not upon you all
7 to draw -- make the drawings.

8 The drawings are submitted to you, but you all
9 have to figure out whether or not there is -- that the
10 drawings are consistent, and then if they accurately show
11 what's being constructed.

12 And right now, I'm just unclear of that. And if
13 you could just talk a little bit about how you deal with that
14 inconsistency?

15 Do you typically ask for updated drawings that
16 show all of this, or do you -- or what?

17 MR. LEGRANT: In the general course, then yes.
18 But if it's brought to my attention that plans are
19 inconsistent during the permit application review, we -- my
20 office asks the applicant of that application to clarify, and
21 if there's inconsistent numbers, that they resolve the
22 inconsistency.

23 And it's like, well, this drawing shows this, so
24 their drawing shows this to make those consistent.

25 VICE CHAIRPERSON HART: And that's helpful. So,

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1 I'm assuming that you'd be asking for this project, as well?
2 I know that there's a -- another building permit that's kind
3 of -- or at least an amended building permit that's out
4 there.

5 And I don't know the exact nature of that, and how
6 that kind of bears upon if there are some changes that are
7 inside of that that are relevant here or not relevant here.
8 Do you have a -- any sort of response for --

9 MR. LEGRANT: Well, yes, there is a -- another
10 permit.

11 Now that this inconsistency in the appeal permit
12 has been, you know, made -- brought to our attention, it'll
13 be incumbent upon me to go back to look at the revised permit
14 to see if that in fact has been resolved in that plan set.

15 You know, I -- my own initial thought that it had
16 been, but given that the inconsistencies pointed out, that
17 it would -- I would have to look at that to see if in fact
18 the revised permit itself is accurate now, or has to be fixed
19 to address an ongoing inconsistency.

20 VICE CHAIRPERSON HART: That's it for me for now.

21 MEMBER WHITE: I just had a couple of questions,
22 and I don't know if you can answer them now, or since Mr.
23 Hart has asked for a research paper, maybe that can be added
24 onto it.

25 For the zoning administrator, I just need

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1 clarification on how you determine the existing grade to
2 calculate the building height measuring point. I just want
3 to just get a little bit more information on that.

4 They're probably easy responses for you. And the
5 other question I had was how you determine the number of
6 stories for the property?

7 And just a quick question I have for you is
8 whether or not -- just to verify whether or not you consider
9 this new construction?

10 MR. LEGRANT: Okay, so I'll take them in reverse
11 order. Yes, it's new construction.

12 The number of stories is -- I believe I testified
13 to is -- as is usually the case, a lower level, and can be
14 classified as a cellar or basement, so that as a threshold
15 determination, oh, is it a cellar or not?

16 If it's deemed a cellar, it's by definition not
17 counted as a story. And then we simply look at the levels
18 above that.

19 Are they -- are the levels above that consistent
20 with the definition of a story in the zoning regulations?
21 And then they're added up, as to the number of stories of the
22 building.

23 Your first question is, you know, how was grade
24 determined? And if we end up submitting --

25 (Simultaneous speaking.)

1 MEMBER WHITE: Question was how did you determine
2 the existing grade to calculate the building height measuring
3 point?

4 MR. LEGRANT: Right. So, as the drawings that
5 have been -- the approved permit plans that have been shown
6 here as a depiction of grade, that my office typically relies
7 on the representation of that grade, unless, you know, other
8 information's presented to the contrary.

9 CHAIRPERSON HILL: Okay, before we actually -- we
10 start, someone's just requested to take a break, so we're
11 going to take a break. Okay? We're just going to take a
12 quick break. Thank you. Yeah, like ten minutes.

13 (Whereupon, the above-entitled matter went off the
14 record at 3:43 p.m. and resumed at 4:00 p.m.)

15 CHAIRPERSON HILL: Okay, Mr. Moy, we are back at
16 -- I guess, what time is it? Is it 6:30?

17 MEMBER WHITE: No, we don't say that.

18 CHAIRPERSON HILL: Yeah. Oh, it's 4:00. That's
19 what it said up there. Okay, all right. Okay, so do we have
20 any continuing questions for --

21 COMMISSIONER MAY: Yes.

22 CHAIRPERSON HILL: -- the zoning administrator?
23 Okay.

24 COMMISSIONER MAY: So, if we remember what the
25 last question was, it was, how do you -- how does the DCRA

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1 figure out what the building height measuring point is?

2 And basically, you rely on the information that's
3 submitted by the property owner or the permit applicant.
4 Right?

5 MR. LEGRANT: Correct.

6 COMMISSIONER MAY: So, but you also said unless
7 there is information to the contrary?

8 MR. LEGRANT: Correct. If in the course of any
9 review, if someone comes and, you know, if it's brought to
10 our attention, then through independent research by the
11 reviewer, or another party, like a neighboring resident,
12 says, wait a second, that information's wrong, then we
13 obviously -- we would drill down into that to see --

14 COMMISSIONER MAY: So, did you -- the point of
15 just asking this is did you look at that information?

16 I mean, you're aware of information like that in
17 this case because there is some information in the record
18 that indicates that the building height measuring point is
19 actually at 149.5 on the survey that was -- that's in the
20 record.

21 And then there's also the sort of photographic
22 analysis thing that I assume Mr. Rueda did. I have been
23 trying to find it. I'm not sure which exhibit it is. Maybe
24 he can tell us which exhibit it is.

25 But, it is -- it shows that, you know, this is the

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1 height on one side of the property in question, and this is
2 the height on the other one, and if you extrapolate between
3 them, it's somewhere in the 149s. It's not 150.8 -- 08.

4 MR. LEGRANT: Right, right. There was, I guess,
5 the safeguard inspection -- was the source of the
6 information. One second.

7 COMMISSIONER MAY: So, I'm not sure what you're
8 referring to, but there's a survey by AAH.

9 And then again, there's the -- there's a document
10 that I saw, and I have not been able to find again in the
11 record that -- 21F. Okay, I'll look at that again.

12 Which shows the heights on either side of the
13 property, and then extrapolates between them. So, you --
14 were you aware of any of that during the review?

15 In other words, does this qualify as sort of other
16 information that would affect your determination of building
17 height measuring point?

18 MR. LEGRANT: One moment. Let me look at the
19 exhibit.

20 COMMISSIONER MAY: Okay, so this survey from AAH
21 is 21F. I was looking for the one with the photographs.
22 Again, this is Tab F of the appellant's -- I don't know what
23 the --

24 PARTICIPANT: Exhibits.

25 MR. LEGRANT: Exhibits. Right.

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1 COMMISSIONER MAY: Exhibit 34. So, 21F is the
2 survey, and then 34.

3 MR. LEGRANT: Okay. Well, as I recall, this
4 information was brought up as part of the appeal and wasn't
5 brought up during the permit review.

6 COMMISSIONER MAY: I thought we had testimony from
7 Mr. Rueda that he provided the survey to you? Is that
8 incorrect?

9 MR. LEGRANT: I do not recall when -- at which
10 point --

11 COMMISSIONER MAY: Mr. Rueda --

12 MR. LEGRANT: -- he provided that information to
13 me.

14 COMMISSIONER MAY: Can you tell us if you provided
15 either these documents to the zoning administrator in advance
16 of this hearing?

17 MR. RUEDA: In advance of the hearing, yes. We
18 had to wait a while for the survey to come back in February
19 of this year.

20 So, we didn't have the survey when I originally
21 discussed this with Mr. LeGrant -- that the building height
22 measuring point was incorrect.

23 And I know that for -- because I've measured it,
24 you know, long before --

25 COMMISSIONER MAY: Right. So, if I can stick with

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1 Mr. Rueda for a second. So I'm looking at 34 again, and it's
2 showing the grade on one side of the property at 149.8, and
3 on the other side at 149.3.

4 And those spot elevations are based on the survey
5 that you had conducted?

6 MR. RUEDA: That's correct. The property owner's
7 survey did not survey at the face of -- or didn't include in
8 their drawings the elevation points at the face of building.

9 COMMISSIONER MAY: Okay. So, I mean, again --

10 MR. RUEDA: Other than the -- what I contend as
11 the misrepresented center grade.

12 COMMISSIONER MAY: So, if we interpolate from
13 that, it's more like 149.55, or something like that, which
14 is close to what's in the AAH survey.

15 So, you were not aware of any of that? Or you --
16 it didn't register?

17 MR. LEGRANT: Not during the permit review.

18 COMMISSIONER MAY: Okay. All right. So, I guess
19 my other question has to do with the act of God
20 determination.

21 Given that we heard testimony that -- about when
22 that has been used in the past, and what this board has said
23 about it, can you explain to me why you believe that the fact
24 that there is no longer a complete building there, is a
25 matter of an act of God, as opposed to bad acts on a part of

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1 a previous property owner, and then neglect by that same
2 property owner?

3 MR. LEGRANT: All right. So first of all, the
4 case that the appellant brought up in 2008 -- my -- I do
5 recall the case because I was the zoning administrator then.

6 I did not look at -- we did not look at that
7 particular case in the context of this appeal. That being
8 said, the issue here was is there a building to be added to?
9 And we asserted there is not.

10 How did that condition occur?

11 That condition -- I have no doubt that the actions
12 of the previous property owner contributed to the absence of
13 the building, but at the end of the day, the -- there was a
14 collapse, which we assert is something that was beyond the
15 control of the property owner.

16 And as such, the situation now is there's no
17 building there to build an addition to.

18 COMMISSIONER MAY: So, was -- at the time of that
19 collapse, was it owned by the previous property owner?

20 MR. LEGRANT: I believe it was.

21 COMMISSIONER MAY: Okay. So, you believe that the
22 fact that they demolished part of the building and left
23 elements of that structure that are not normally designed to
24 be exposed to the elements, and therefore, there was a tragic
25 collapse, you think that that was beyond their ability to

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1 control?

2 MR. LEGRANT: Yes.

3 COMMISSIONER MAY: Do you understand how that
4 might not seem very logical, given that they could have taken
5 steps to protect the structure that they had?

6 MR. LEGRANT: I understand that that is an issue
7 that is -- can be a contention.

8 COMMISSIONER MAY: Yeah, okay. Thank you.

9 VICE CHAIRPERSON HART: Okay, I'm going to follow
10 up on a question on that.

11 In the testimony, I think you had said -- and I
12 don't know if it was Ms. Lord-Sorensen, or Mr. LeGrant said
13 that there is no raze permit on the project. There -- you
14 don't have a raze permit for the project?

15 MR. LEGRANT: That's correct.

16 VICE CHAIRPERSON HART: But there was a statement,
17 and I want to say it was Ms. Lord-Sorensen said that there
18 is no raze permit that had been issued to the current owner.
19 Was there a raze permit issued to the previous owner?

20 MS. LORD-SORENSEN: Oh, I'm not familiar with
21 that. I was just talking around the context of the current
22 owner. They did not obtain -- as far as I know -- obtain a
23 raze permit.

24 VICE CHAIRPERSON HART: Okay. I just was getting
25 clearer on it because I just didn't know, and I was trying

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1 to make sure that there wasn't something that was -- that had
2 been issued previously that we were just unaware of.

3 MEMBER JOHN: So, I have -- I've been trying to
4 figure this out in my mind, and it's not working.

5 So, how did you get from an application for
6 alteration and repair and a permit that allowed alteration
7 and a pair -- and repair to a raze in a new building? I
8 can't -- or, a new building.

9 A new -- I think that's what I'm trying to say
10 because that's what the property owner is saying. This is
11 a new building because there was no building there.

12 So, it's not an alteration. And I don't -- I
13 think at some point, DCRA must have changed how it was
14 looking at the project because the initial permit was for
15 alteration and repair, if I'm correct.

16 MR. LEGRANT: The initial permit, yes, was for
17 alteration and repair.

18 MEMBER JOHN: So at some point, there was a
19 decision made that this was no longer alteration and repair?
20 And this is after the snowstorm and the building had
21 collapsed, if I'm correct.

22 So, why did we change, and if -- my view is that
23 a change was made in how this application was viewed.

24 And so, we move from a building that could have
25 an addition and an alteration to the place where there is no

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1 building. So, the property owner could now erect a new
2 building. And that's my confusion.

3 MR. LEGRANT: So, right. The initial analysis,
4 which for the permit for alteration and repair, presumed
5 there was an existing building to alter and repair.

6 And then, the determination was made by my office
7 that no, that building -- there is no building there to alter
8 or repair.

9 And that's the point I treated it as the
10 construction of a new building. So, the -- there was a
11 change, obviously, in the treatment of that application,
12 which of course resulted in the different regulatory
13 treatment.

14 MEMBER JOHN: So, in the short time I've been
15 here, we've talked about at what time a building or an
16 application for a permit is a raze and not an addition.

17 And I believe we've come up with a 40 percent
18 rule, and I can never remember it. But, in this case, we
19 have a whole wall standing, and two partition walls, and no
20 back.

21 So, why doesn't that fall under the 40 percent
22 rule?

23 MR. LEGRANT: All right. And so, right.

24 I have testified before this board in other cases
25 -- the board has -- in other appeal cases the board has ruled

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1 on as -- since the zoning regulations do not define the
2 distinction between a demolition raze through the -- my
3 administration and the regulations require me to distinguish
4 that.

5 So, I have not used the construction code
6 definition of raze because that is the complete removal of
7 the building, removal of subsurface utilities that are
8 stubbed out at the property line, which is a rare occurrence.

9 Therefore, I developed -- the last seven or eight
10 years, a two-prong test of what is a zoning raze?

11 If the footprint of the building has not changed,
12 then we require at least four feet of the enclosing perimeter
13 walls of that building be retained in order not to be deemed
14 a zoning raze.

15 If the building footprint is changed, then the 40
16 percent standard that you noted -- 40 percent of the enclosed
17 and exterior walls are the four sides of the building after
18 he retained.

19 Here, it's neither because the distinguishing
20 characteristic is the building collapsed. The building
21 collapsed, there's no present building there to retain.
22 That's the position that we are taking in this case.

23 So, although there were prior discussions in the
24 review, as should this be a -- deemed a zoning raze, or
25 classified as a zoning raze?

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1 The point that I came to is like, well, wait a
2 second. The building had collapsed. It was no longer
3 applicable, and I came to the conclusion that it's new --
4 it's new construction of a new building.

5 MEMBER JOHN: So, I looked at the guidelines, and
6 I don't know which exhibit it was, but it talked about what
7 a raze was -- a raze permit was. And it's really quite
8 extensive. And --

9 MR. LEGRANT: This is in DCRA's submission?

10 MEMBER JOHN: Yeah, in DCRA. I'm not sure who
11 submitted it.

12 MS. FERSTER: I think that would be one of our
13 exhibits. 65, the guidelines for raze permit.

14 MEMBER JOHN: Right. And it talks about the
15 difference between a demolition permit and a raze permit.

16 And neither of those things happened here under
17 the current owner. There was no demolition by the current
18 owner.

19 MR. LEGRANT: Right, so --

20 MEMBER JOHN: And no raze permit by the current
21 owner.

22 MR. LEGRANT: Right. So, under the construction
23 code -- and as I noted earlier, there is a specific permit
24 -- on a raze permit, okay?

25 One can also apply for a demolition permit for a

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1 partial removal of the building.

2 But what is very, very typical is -- and the
3 construction in those cases where there's an addition to an
4 existing building, there's oftentimes removal -- a partial
5 removal or a demolition of portions of that building that
6 will either be reconstructed or replaced.

7 And so, DCRA does not require a specific
8 demolition permit in the context of those applications. I
9 hope that makes sense.

10 CHAIRPERSON HILL: Okay. Anyone else?

11 I might have to review in a little bit with you
12 -- with DCRA in a second, but I'm going to go ahead and move
13 onto, does the appellant or the intervener have any questions
14 from DCRA's testimony?

15 MS. FERSTER: Yeah, I think we both have
16 questions, and I'll start, and then Mr. Guthrie will follow
17 along.

18 CHAIRPERSON HILL: Okay.

19 MS. FERSTER: So, I -- Mr. LeGrant, I just want
20 to get some clarity here.

21 So, Ms. Richards read to you the email from
22 September 25, 2018 to Mr. Washington from the owner's
23 architect, where she summarized a conversation with you.

24 And it says, we met with Mr. LeGrant last Thursday
25 and he confirmed that we are razed for zoning purposes.

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1 Then for zoning purposes, this is not an addition,
2 and therefore, E 206 does not apply, as it only applies to
3 addition. Matt agreed that we could do this.

4 So that seemed to have been your position during
5 the permitting process.

6 And now in your amended answer to the zoning
7 administrator -- to the board's questions, which would be
8 Exhibit 72, page 2, question 5 -- the answer, what is a
9 zoning raze, you say, the Office of Zoning administrator
10 generally finds that a raze has occurred if there is a change
11 in lot occupancy, and whether a minimum of 40 percent of the
12 pre-existing wall surface area was retained.

13 If more than 40 percent of the pre-existing wall
14 surface remains, the construction is deemed a demolition.

15 And then you go on and say, in this case, the two
16 pre-existing party walls of the row home exists, which
17 constitutes 50 percent of the pre-existing wall surface area.

18 Under a narrow -- narrowly tailored view, the
19 construction would be a demolition and not a raze.

20 And then you go on to say that the reason why you
21 feel that the zoning administrator's analysis is inapplicable
22 -- and I assume that was the discussion of zoning raze --
23 that you didn't feel that that was relevant because the
24 current state of the site was not the result of a raze or
25 demolition, but an act of God.

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1 And so, just for clarification, you are no longer
2 relying on the concept of a zoning raze for your reasons why
3 E 206.1 is inapplicable here?

4 MR. LEGRANT: That's correct.

5 MS. FERSTER: Okay. So -- and thank you for that
6 clarification. So your argument now seems to be, as I
7 understand you in your clarification, is that this is a new
8 construction because there's nothing there currently. And --
9 but there is something there, correct? There are, as this
10 statement points out, 50 percent of the preexisting walls
11 remain plus, as you also clarified, part of the facade.
12 Isn't that correct?

13 MR. LEGRANT: As I testified, no longer, this is
14 only raze. Yes, there are portions of the building there,
15 but in this particular case, the overall building is absent
16 because of the collapse. And that is -- with that state,
17 that's why it's, we treat it as a new construction and not
18 an addition to an existing building.

19 MS. FERSTER: Okay. And then variously you said,
20 it can't be an addition because in order to be an addition
21 you'd look at whether there's an existing building to be
22 added to. And if there's not a current building there, it
23 can't be added to, so what you have is current -- is new
24 construction. Is that an accurate paraphrase --

25 MR. LEGRANT: Yes.

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1 MS. FERSTER: -- of your position?

2 MR. LEGRANT: Yes.

3 MS. FERSTER: Okay. So let's turn to the
4 regulations themselves then because this is -- obviously,
5 this turns on the definition of an addition. And you
6 provided a definition of an addition that requires the
7 presence of a whole building. And I'm -- that definition of
8 addition is not in E 206.1, correct? E 206.1 just says the
9 word any addition.

10 MR. LEGRANT: Correct. The term addition is not
11 defined in that section nor in the zoning regulations
12 overall.

13 MS. FERSTER: Okay. So -- and when a term is in
14 the zoning regulations that's not defined, the zoning
15 regulations say that you turn to Webster's Dictionary,
16 correct?

17 MR. LEGRANT: That's correct.

18 MS. FERSTER: And we provided in our prehearing
19 statement a Webster's Dictionary definition that says
20 addition means adding to.

21 MR. LEGRANT: Yes, I -- yes.

22 MS. FERSTER: Okay. So is there some other, you
23 know, source that you were looking to for your definition of
24 addition as requiring a whole building to be present in order
25 for there to be considered an addition?

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1 MR. LEGRANT: Well, again, my interpretation has
2 been that you -- to have a building -- to have an addition
3 you have to add to something that's there and with the
4 determination that there's not a building there, the term
5 addition does no longer apply.

6 MS. FERSTER: But you then amended that in your
7 phrase. To have an addition there must be something there
8 and you've admitted that there is something there, it's just
9 not a whole building.

10 MR. LEGRANT: I agree there is portions there, but
11 the threshold that I come to is that there is not a building
12 there in which an addition is being added to.

13 MS. FERSTER: Okay. And you, in response to the
14 question from Commissioner John, you indicated that the
15 permit application, of course, was for an addition. A
16 request for an addition and an alteration. And that you
17 indicated that your regulatory -- you're, the change in your
18 regulatory treatment occurred during the course of your
19 review.

20 So I guess one of my questions is if you changed
21 your regulatory treatment during the course of your review
22 of the permit, why does the permit as issue, why is it still
23 called an addition?

24 MR. LEGRANT: Well the building permit
25 applications are taken in by DCRA's permit operations

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1 division. And they use terminology, I believe, from the
2 construction code. That terminology's not -- does not always
3 jive with the zoning regulations. So my attitude is
4 regardless of what is stated in a permit description or
5 permit category, we apply the zoning regulations
6 independently.

7 So if it's labeled this in a permit application
8 or project description that's fine, but what do the zoning
9 regulations tell us is -- as showing the plans, the
10 representations about the particular project? That's how we
11 regulate it and treat it.

12 MS. FERSTER: Okay. And can you, off the top of
13 your head, come up with some properties in which there was
14 a similar situation in which it would not constitute a raze
15 or -- and there were portions of the building remaining but
16 you would consider -- that you have made a determination that
17 what occurred, the new construction occurred, is not an
18 addition but new construction? Is there some examples that
19 you can provide for that?

20 MR. LEGRANT: I cannot think of another example
21 at this point.

22 MS. FERSTER: Okay. And -- okay. I have a couple
23 questions, also, about the whole act of God issue. So,
24 again, part of -- it seemed like in your response to -- in
25 your amended response, you relied very heavily on the fact

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1 that the reason why you don't believe that -- that the reason
2 why this is a new construction and not addition was because
3 the building was destroyed as an act of God. Is that -- how
4 does the act -- because the -- I guess, I'm not being clear.

5 But the, your -- the definition of addition that
6 you just provided me with doesn't seem to -- it doesn't seem
7 to hinge on whether there is an act of God. You said it's
8 not an addition if there's no building being added to. And
9 in your statement, in your amended response, you said it's
10 not an addition because the building collapsed as the result
11 of the act of God. So can you just clarify, is an act of God
12 essential to your definition of whether or not what happened
13 here is an addition or new construction?

14 MR. LEGRANT: Yes. The T here is how did the
15 present situation come about in which there's no building
16 there to be added to. That was a result of a building
17 collapse, which I believe was an act of God. So once we got
18 to that state, because I've testified that without a building
19 there to be added to, then the provision that speaks to
20 additions to buildings does no longer apply.

21 MS. FERSTER: Okay. So in order to classify this
22 permit as new construction and not an addition there must be
23 an act of God.

24 MR. LEGRANT: In this particular -- in this
25 particular case, there was a collapse that resulted in no

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1 building present there to be added to.

2 MS. FERSTER: And just to say it the opposite way,
3 if there were no act of God here, if, in fact, the removal
4 had been the result of just illegal demolition or neglect or
5 a no act of God that resulted in the loss of part of the
6 building, would that make this new construction?

7 MR. LEGRANT: Yeah, I would agree, yes. That in
8 the absence of an act of God then it would be treated
9 differently.

10 MS. FERSTER: Okay. Good. So the --

11 CHAIRPERSON HILL: So just out of curiosity
12 because I'm kind of following this line of questioning a
13 little bit, and can one of you all -- thanks so much. The --
14 right --so this is where I just get kind of confused. If
15 they had razed the building, right, I don't know how one gets
16 a raze permit. I mean, I know - I've forgotten a little bit.
17 But if the building were razed, then it would be a new
18 construction, correct?

19 MR. LEGRANT: Yes.

20 CHAIRPERSON HILL: Okay. And so it's a matter of
21 whether or not, it's a matter of whether or not you would get
22 the raze permit, right, in order to raze the building,
23 correct?

24 MR. LEGRANT: Well, as I just testified to, the
25 -- one could apply for and receive a raze permit on a

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1 construction code which then is a complete removal of the
2 building and then it becomes like a vacant lot.

3 CHAIRPERSON HILL: Right. But how do you get --
4 I mean, I'm just trying to -- I'm just kind of -- I don't
5 know if curious is even the right word. How do you get a
6 raze permit? How would one get a raze permit for this
7 property?

8 MR. LEGRANT: Okay. You -- there's a specific
9 permit application category that you make for -- provide that
10 application and the materials, which I do not know what the
11 construction code enumerates or the criteria that has to be
12 present to be presented in a raze application. That
13 material's presented to DCRA for review.

14 CHAIRPERSON HILL: And that goes through the ANC?

15 MR. LEGRANT: I believe --

16 CHAIRPERSON HILL: Do all raze permits go through
17 the ANC? You don't know Mr. Commissioner?

18 MR. LEGRANT: I do not know.

19 CHAIRPERSON HILL: Okay. Because I know, like,
20 -- well. I was involved in something that might have been
21 considered historic. And so, therefore, a lot of people got
22 a little excited about things getting razed. But you don't
23 know, right? So you don't know how a raze permit -- like
24 if this were -- it doesn't -- I mean, I'm just trying to --
25 anyway.

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1 MR. LEGRANT: I --

2 CHAIRPERSON HILL: I'm getting my answer. I
3 understand --

4 MR. LEGRANT: Okay.

5 CHAIRPERSON HILL: -- my answer and so it's okay.

6 Ms. Ferster?

7 MS. FERSTER: Okay. So -- then I can get this
8 issue of act of God is obviously a key issue here. And I'd
9 like to explore with you a little bit about the zoning -- how
10 the zoning regulations treat act of God. Now you heard Ms.
11 Richards' testimony about the BZA case involving Ms. Wallace,
12 I think it was, that you said you were familiar with. And
13 that case involved the question of whether or not --

14 CHAIRPERSON HILL: Mr. LeGrant, I'm sorry, yeah.
15 If you could just turn it on and off at like a feet back up
16 here. Thanks, sorry.

17 MS. FERSTER: Whether -- and that case turned on
18 whether or not a -- the building had been destroyed by an act
19 of God. And that is because the zoning regulations governing
20 nonconforming uses specifically used the term act of God.
21 Isn't that correct?

22 MR. LEGRANT: Yes. There's a provision in
23 Subtitle C, speaking to nonconforming structures, I believe,
24 that it -- just a little context there. If a person suffers
25 an act of God removal of a building, then they wish to

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1 rebuild it, then that section of zoning regulations specify
2 how certain percentages have to be retained and so forth.
3 That's for rebuilding a same building.

4 MS. FERSTER: Thank you. And so this
5 determination of what constitutes an act of God is an issue
6 that presumably comes up on a not -- an occasional basis in
7 terms of the interpretations of the Zoning Administrator as
8 well as cases before the BZA because obviously it came up in
9 the case 17747 that Ms. Richards mentioned. So there's a
10 body of law that defines what is an act of God. Isn't that
11 correct?

12 MR. LEGRANT: Well the few instances in which I've
13 been faced with the question of what is the act of God, one
14 of them was the appeal that you noted, was the -- was a
15 question of whether that applied in that particular
16 situation.

17 MS. FERSTER: And so it seems to me that just
18 trying to pull the principle that's been applied in
19 determining an act of God it, that case, at least, seemed to
20 make clear that this Board will not construe any collapse
21 that is the result of an owner's intentional acts or
22 omissions. That would be their neglect or unlawful removal
23 as an act of God if the collapse was not attributable
24 something like, you know, like tree falling down or lightning
25 or something like that. But actually was because of some

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1 structural problem that was the cause of the owner. That
2 seems to be the operative principle. Would you agree with
3 that?

4 MR. LEGRANT: Well the particulars of that case
5 11 years ago, I don't recall all the details. I believe that
6 -- and I'd have to go look back at that language of that
7 Board order as to the extent -- the facts of that case and
8 how relevant they would be in the subject case.

9 MS. FERSTER: Okay. And I guess my last couple
10 of questions before I -- well actually, I have to ask Mr.
11 Rueda if he wants me to ask a question. But -- I get in
12 trouble when I don't do that.

13 My last couple of questions have to do with the
14 testimony that Mr. Rueda provided. There was significant
15 exhibits that he appended to the reply document. Those would
16 be Exhibits 1 through 5 to his reply which I think are
17 Exhibits 73A. And they include something called a PIVS log.
18 Can you explain a little bit about what a PIVS log and
19 whether or not you have access to that?

20 MR. LEGRANT: Yeah. PIV -- okay. DCRA offers us
21 an information service, PIVS, generally known as PIVS, that
22 provides the public access to information about different
23 regulatory aspects including permit applications. So that
24 an individual can access and look at, for example, the, a
25 permit status.

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1 MS. FERSTER: Okay. Thank you. And when you
2 determined that this was an act of God that resulted in the
3 collapse of the building, before you made that determination
4 did you look at the PIVS log for this property?

5 MR. LEGRANT: No. The PIVS log just -- it's, what
6 do they call it? It's like a front end or it takes
7 information from, for example, DCRA's permit tracking system
8 is the Acela system. It takes -- it pulls that information
9 and puts it in a format in which people give for public
10 consumption. So no, I do not look, nor my staff, look at the
11 PIVS information. We rely on the information in the -- well
12 it's the permit tracking system itself is where we most have
13 interaction with.

14 MS. FERSTER: Okay. Well let me just back up a
15 minute. When exactly did you determine that the collapse --
16 that the act of God was the pivotal question that turned this
17 into new construction versus an addition?

18 MR. LEGRANT: One moment please. Okay. I am not
19 sure of the exact timeframe. I had an email exchange with
20 the property owner about that. But as to the -- I'm not
21 recalling the exact timeframe.

22 MS. FERSTER: Was it before the permit issued or
23 after?

24 MR. LEGRANT: I do not know.

25 MS. FERSTER: Okay. So then this information on

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1 --

2 CHAIRPERSON HILL: Ms. Ferster? Do you know how
3 many more you have?

4 MS. FERSTER: I think this might be my last one.

5 CHAIRPERSON HILL: Okay.

6 MS. FERSTER: So the information on this Exhibit
7 2, the PIVS log, that's new information to you in terms of
8 your consideration of this act of God issue?

9 MR. LEGRANT: May I look through the exhibit?
10 Again, if you -- describe the exhibit -- this is just the
11 number and everything? This is your --

12 MS. FERSTER: Yeah. Sorry. This is BZA Exhibit
13 73A and that's Exhibit 2 to the reply to your amended
14 statement.

15 MR. LEGRANT: And I guess maybe you could just
16 refer me -- this is a big chart of many -- lots of
17 information. What are we zooming into here? The whole thing
18 or the --

19 MS. FERSTER: Well this --

20 CHAIRPERSON HILL: Ms. Ferster, I'm sorry, just
21 what's your question about? I'm just trying to follow.

22 MS. FERSTER: I guess my bottom line question if
23 he -- first I want to know whether he was familiar with it
24 beforehand. And I guess my bottom --

25 CHAIRPERSON HILL: Familiar with what again?

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1 MS. FERSTER: The PIVS log and the documentation
2 of stop work orders and the legal constructions by the prior
3 owner. But I guess my bottom line question would be -- and
4 perhaps you can just answer that so we can move this along,
5 is you know, does this change -- this information about the
6 extent of the illegal work on the property by the prior
7 owner, does that change your view in any way that
8 construction is a result of the act of God or not?

9 MS. LORD-SORENSEN: I'll object to that question
10 as irrelevant. What was going on in the illegal construction
11 side versus what was going on in the Office of the Zoning
12 Administrator, excuse me.

13 COMMISSIONER MAY: I don't know. I think it
14 relates to the question of whether it's an act of God or not
15 or an act of negligence.

16 MS. LORD-SORENSEN: But the --

17 COMMISSIONER MAY: Why would it not be?

18 MS. LORD-SORENSEN: Commissioner May, the exhibit
19 that was presented to the Zoning Administrator has to deal
20 with the workflow and illegal construction which is a
21 separate division from the Office of the Zoning
22 Administrator, number one. And number two, the --

23 COMMISSIONER MAY: I understand that, but you
24 know, what we're talking about is the fact that the previous
25 owner had some level of control that the Zoning Administrator

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1 asserts, you know, that this -- that something happened that
2 was out of the owner's control. It just --

3 MS. LORD-SORENSEN: But Commissioner May, the
4 Zoning Administrator also testified that the information from
5 PIVS is on the front end and so that's not something that he
6 would have relied on when he looked at the plans.

7 COMMISSIONER MAY: I understand that, but she's
8 just asking a question now of him. Now that he sees it, does
9 it affect his view of whether this was an act of God or an
10 act of negligence? And I don't think it's an unreasonable
11 question. I -- but it's up to Mr. LeGrant on how he might
12 answer it.

13 MR. LEGRANT: Now that I see the PIVS logs and
14 I'll -- let me adjust what I just said. The description I
15 gave the PIVS log earlier was that for the permit processing
16 application. This is, as my counsel pointed out, a two page
17 listing of the legal construction stop work orders. Okay.
18 So the -- I -- the discrete question was I aware of this
19 before I made my determination on the act of God was no, I
20 was not. A lot of this history was 2015 and 2016.

21 MS. FERSTER: Okay. And then I have just one more
22 follow-up question since you're not familiar with that and
23 were not familiar with it. I'm going to hand you BZA Exhibit
24 73A, Exhibit 4, which is also an attachment to our prehearing
25 statement.

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1 And this is an email from Guillermo Rueda with,
2 which includes a report from his -- from Adtech, which is an
3 engineering firm, where the engineering firm pointed out that
4 the problems on the adjacent property are the result of
5 inadequate bracing and other, you know, problems relating to
6 how the work on the property had been done. So you were
7 aware of this before the permit was issued. Is that correct?

8 MR. LEGRANT: Let me look at the exhibit, hold on.
9 Okay. So just -- your Exhibit 73A, also known as Exhibit 4,
10 email from Mr. Rueda on October 8, 2015 to Melinda Bolling,
11 and it's cc'ed mostly individuals in the permit, the building
12 -- the Permit Operations Division in the illegal
13 construction. No, I was not aware of this email that it has
14 to do with, I guess, construction code issues.

15 CHAIRPERSON HILL: Okay. So, let's see. So Ms.
16 Ferster, so now Commissioner, do you have any questions?

17 MEMBER JOHN: Mr. Chairman, can you --

18 CHAIRPERSON HILL: Sure. Hold on. Hold on, wait
19 one second. Ms. John, you have a question?

20 MEMBER JOHN: Just one quick question to follow-up
21 on that line of questioning we just heard from Ms. Ferster.
22 So please explain to me, I've been having difficulty with
23 this all day, all afternoon, why should the current owner be
24 held responsible for the negligence of the previous owner?
25 Because there was a snowstorm. We all agree there was a

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1 snowstorm that caused whatever was there to collapse. Why
2 is that negligence -- what, to be attributed to the current
3 owner? So --

4 MS. FERSTER: Is that for us?

5 MEMBER JOHN: No. Because I think that's where
6 your argument seems to be going that the previous owner, the
7 previous owner's negligence, which caused a lot of harm to
8 Mr. Rueda. I mean, horrendous, I agree that that -- no one
9 wants to go through that. But why should the current owner
10 be held responsible for that negligence?

11 MS. FERSTER: So I can partially answer that from
12 a legal perspective and I think Mr. Rueda would like to as
13 well. But from a legal perspective, I think the case that
14 Ms. Richards cited, 17747, stated it very clearly. The
15 current owner bought this property knowing what went on, you
16 know, in the -- by the prior owner, intentionally. You know,
17 and they assumed that responsibility just like in Case 17747.

18 The current owner bought a property, did not
19 perform a termite inspection and was held -- and could not
20 take advantage of the act of God justification for the
21 collapse of the building because she should have performed
22 an inspection and determine there was permanent damage and
23 she bought at her own risk.

24 So that's what the case law is. The case law
25 does, indeed, hold current owners responsible. They cannot

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1 take advantage as a matter of equity when they blindly, you
2 know, or intentionally purchase property knowing that they
3 would, could potentially benefit from the illegal acts of
4 others. Let me let Mr. Rueda --

5 MEMBER JOHN: So can I just respond to that really
6 quickly? There was termite damage which caused the collapse
7 which should have been discovered during a pre-inspection
8 for, you know, damage, right? That's why you get an
9 inspector to inspect the building.

10 So this property owner bought this collapsed
11 building, you know, illegally demolished building, and then
12 there's a snowstorm. So the building did not collapse
13 because, solely because of the condition of the building.
14 If there was no snowstorm it would have still been there.
15 All things considered.

16 And so that's why I still cannot understand why
17 the current owner -- because what that does is to discourage
18 people from investing in properties like this. Why would I
19 want to buy a property like this if there's a snowstorm one
20 night and I'm held responsible for everything that's going
21 on --

22 MR. RUEDA: No, no.

23 MEMBER JOHN: -- before I purchase the property?

24 MS. FERSTER: I think he'd like --

25 MEMBER JOHN: That's what I need some explanation

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1 on.

2 MR. RUEDA: So thank you. I would definitely love
3 to respond to this. So first of all, let me point out that
4 the property was bought in full understanding of the
5 conditions of the property and that was exchanged in
6 discussions between myself and the --

7 CHAIRPERSON HILL: Wait. Hold on a second. Hold,
8 hold on. We're talking about a lot of things about the
9 current property owner and the current property owner hasn't
10 had a chance to speak yet.

11 MR. RUEDA: That's fine.

12 CHAIRPERSON HILL: We haven't -- no, I'm just
13 pointing out real quick, this has now gone on for hours and
14 hours before we've gotten to the property owner stuff. Ms.
15 John was kind of asking a question which was -- it was just
16 a simple question, why did you think that the current
17 property -- if I can -- I don't know if I'm going to do a
18 good job or not, but why do you think that the current
19 property owner should be held responsible for the previous
20 property owner's neglect? And you can give your opinion.
21 That's all she's asking for.

22 MR. RUEDA: The sequence of events that you are
23 charting is a little bit off. So the neglect that I
24 document, that we document in the prehearing statement and
25 in the different exhibits, including what's on the screen

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1 right now, is to say that the demolition that occurred, that
2 removed the building to the state that you see on the right
3 hand side here, that's the condition of the property before
4 the snowstorm.

5 Okay. That snowstorm was in January of 2016, well
6 before the new developer had purchased the property in '17.
7 Okay. So a year and a half, or actually almost two years if
8 you -- to be honest. So that condition, those conditions
9 were fully -- the property is in a state of violation and it
10 transfers as such. It doesn't -- the building doesn't
11 change, doesn't get a clean slate just by virtue of the fact
12 that it changed ownership.

13 CHAIRPERSON HILL: Okay. Ms. John, did you kind
14 of get your answer?

15 MEMBER JOHN: I got it.

16 CHAIRPERSON HILL: Okay. All right. Okay. So
17 Mr. -- or Commissioner, I'm sorry. Commissioner, you had
18 some questions for the BZA?

19 MR. GUTHRIE: Yeah, I do. Just a couple. I'm
20 still unclear, as I drive around town, I see a lot of row
21 houses that are being redeveloped. I see a lot of those row
22 houses that are basically gutted to the state that this row
23 house is in.

24 Are you telling me that the Zoning Administrator
25 at DCRA has the position that those gutted properties do not

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1 amount to an addition when you reconstruct inside but are new
2 structures and are governed solely by new structure rules?
3 Is that the position of the Agency and yourself?

4 MR. LEGRANT: I would say, no. The instant case
5 here we distinguished as being the lack of any existing
6 building being present because of the history that we've
7 talked about, I believe, and without particular cases to
8 speak to. But my general answer would be I think it's
9 distinguishable on those other cases that you're saying the
10 row house renovations and the cases where the row houses are
11 being gutted and reconstructed.

12 MR. GUTHRIE: Well I'm not just talking about ones
13 where they are gutted. I'm talking about ones where they buy
14 the shell, existing as a shell, and then fill the shell up.
15 Are those being treated as new construction as opposed to an
16 addition to an existing structure?

17 MR. LEGRANT: I would say generally, no.

18 MR. GUTHRIE: So you're saying that the only
19 reason that you treated this particular property as though
20 it was a new construction rather than an addition, which by
21 the way, means that it no longer has the solar protection
22 applicable or the architectural details applicable. The sole
23 reason is that there was a snowstorm that contributed to at
24 least a portion of the removal of the property. Is that
25 correct?

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1 MR. LEGRANT: I would phrase it that it's the
2 absence of an existing building because of the history,
3 including the building collapse, got to the state that it --
4 there's no longer a building there to build an addition to.

5 MR. GUTHRIE: But in my understanding, had there
6 not been the act of God portion of this, and it simply been
7 a shell with three walls, which is what this is. Three walls
8 are there. That if it were that case but there had not been
9 any portion of the demolition of the building as a result of
10 the act of God, you were saying that it wouldn't amount to
11 a new structure, it would be an addition. Now did I
12 misunderstand that?

13 MR. LEGRANT: No, you were correct.

14 MR. GUTHRIE: So then -- I'm sorry, I don't
15 understand. You're saying that the only reason that this is
16 being treated as a new structure is that a portion of this
17 building collapsed as a result of snowstorm that compromised
18 a portion, only a portion of the interior of this building.
19 And that prior to that point, there had been substantial,
20 unauthorized demolition.

21 CHAIRPERSON HILL: Commissioner Guthrie, I mean,
22 you're going over the same stuff and you're getting kind of
23 --

24 MR. GUTHRIE: Okay.

25 CHAIRPERSON HILL: -- like excited. I mean --

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1 MR. GUTHRIE: I just --

2 CHAIRPERSON HILL: I mean it's okay.

3 MR. GUTHRIE: I'm just frustrated that I don't --

4 CHAIRPERSON HILL: It's okay. We can tell you --

5 I mean, he's just saying the same thing over and over again.

6 MR. GUTHRIE: And that seems to be.

7 CHAIRPERSON HILL: And so -- no, but I mean,
8 that's his opinion. And so he's given you his opinion, we're
9 going to have to try to figure this out. We can move on from
10 the act of God thing. I mean, do you have another question
11 for him?

12 MR. GUTHRIE: Yes. You indicated that you were
13 not aware of the time or date on which you made the
14 determination that this was new construction. Is that
15 correct?

16 MR. LEGRANT: I do not -- I don't have the
17 timeframe before me of that decision point.

18 MR. GUTHRIE: Wouldn't it be correct that it would
19 necessarily have been some point before the issuance of the
20 building permit because DCRA was aware of the solar array and
21 unless this was new construction it would not have been able
22 to issue the building permit?

23 MR. LEGRANT: I would agree.

24 CHAIRPERSON HILL: Okay. All right. Thank you.

25 All right. So Mr. Sullivan, do you have any questions for

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1 the Zoning Administrator?

2 MR. SULLIVAN: Yes.

3 CHAIRPERSON HILL: Okay.

4 MR. SULLIVAN: Just a couple short ones. Mr.
5 LeGrant, this building or whatever was there before, to you
6 knowledge, was not a nonconforming structure. Is that
7 correct?

8 MR. LEGRANT: That's correct. I'm not aware of
9 it being nonconforming.

10 CHAIRPERSON HILL: I'm sorry, Mr. LeGrant, I was
11 -- not Mr. LeGrant, Mr. Sullivan, I got distracted for a
12 second. Could you repeat your question again?

13 MR. SULLIVAN: Yes. I asked him if this
14 structure, to his knowledge, was a nonconforming structure
15 prior to its collapse in 2015.

16 MR. LEGRANT: The answer is no, I was -- I'm not
17 aware of it being a nonconforming structure.

18 MR. SULLIVAN: And so what we're relying on
19 principally here when you're saying this is not an addition
20 to a building it's because there is no building there? Is
21 that correct?

22 MR. LEGRANT: I believe I've testified to that,
23 yes.

24 MR. SULLIVAN: Thank you. That's all I have.

25 CHAIRPERSON HILL: Okay. All right. Okay. So

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1 we're going to go to Appellant's rebuttal. Okay. I'm sorry
2 -- oh, gosh, sorry. I completely -- I thought we were
3 farther on down the line. So Mr. Sullivan, you're going to
4 go ahead -- a chance to go ahead and testify.

5 MR. SULLIVAN: I'll be brief.

6 CHAIRPERSON HILL: No, that's all right. I just
7 kind of -- please, go ahead.

8 MR. SULLIVAN: So I want to address the building
9 height and measuring point issue first and set that aside.
10 The revised permit that was issued last week includes two
11 things. One it includes a correction of the measurement
12 discrepancy that's been talked about here, which I don't
13 think was critical but it's been corrected.

14 And the other issue is -- or the other major
15 change in that was that the building was dropped another six
16 inches and I think Mr. Rueda alluded to that in one of his
17 changes that he mentioned. The reason why the owner did that
18 is -- well, there's two reasons. One, that six inches of
19 drop put the building measuring point below the point that
20 their surveyor says it needs to be. So I think we
21 effectively eliminated the battle of the surveyors and saved
22 the Board from that.

23 And the other reason we did that is because I'm
24 also concerned about the issue of a wall check a year from
25 now, two years from now. And will the elevation change at

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1 that point? So this gave us some room, a margin of error if
2 you will.

3 We haven't asked that that be incorporated because
4 I don't think it's for the property owner to ask that it be
5 incorporated in the appeal. Mechanically, I think that the
6 Appellant would have to do that and we certainly have no
7 issue with that. So if they wanted to ask that it be
8 incorporated into this appeal we would consent to that. But
9 I don't think that I'm in the position of asking for that.
10 So that's why we did not bring that in today. So that's --
11 I think that solves the building measuring point issue.

12 Regarding whether or not this is an addition or
13 not, and I think that's the issue. I think that issue
14 resolves both of the issues in E 206. Is the proposed work
15 an addition to a building? If it is an addition, then E 206
16 may apply. I think it would apply to solar panels. It's
17 arguable whether it'll apply to the architectural elements
18 or not because those were gone a few years ago and nobody
19 appealed the fact that they were taken away. And I don't
20 think you can appeal it now.

21 If it's not an addition to a building, then E 206
22 would apply. I think everybody agrees on that. In order to
23 be an addition to a building, you must first have a building.
24 I think this case is simpler than what we're making it sound
25 so far. The definition of building is a structure requiring

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1 permanent placement on the ground that has one or more floors
2 and a roof supported by columns or walls. You've seen from
3 the photos we don't have a building here.

4 I'm going to depart from the Zoning
5 Administrator's position here as well. I don't think it
6 matters why there's no building here. I don't think the act
7 of God thing matters. I think it's a red herring. However,
8 it was removed, it doesn't exist today. And he's just
9 looking at this building permit application.

10 When the property owner filed an application for
11 a building permit and proposed this work, it was not in the
12 Zoning Administrator's purview to go back in time and see
13 what happened to lead to the current situation. The current
14 situation is there's no building. Under the definition of
15 building under the zoning regulations there's no building.

16 Whether it was an act of God or it was illegal --
17 now if there was an enforcement action pending, there's not,
18 and it's been four years since the previous owner took
19 whatever actions that may have contributed to the collapse
20 of the building and led to the fact that there is no
21 building. It was not appealed and you can't appeal it now.
22 As far as I know, it hasn't been enforced. It's not under
23 an enforcement action. Nobody forced them to put the
24 building back. It's gone.

25 So I actually think that the difference here

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1 between going down the route of arguing what is and is not
2 a zoning raze is the fact that you have two separate events.
3 If we were coming to the Zoning Administrator with a building
4 proposing to demo it, then he would have before him a
5 decision whether or not it was a zoning raze or not.
6 Instead, we're just coming before him with a building. And
7 the act that took the building down was a completely separate
8 event in time and character. And that happened four years
9 ago. So I think that's where the line's drawn.

10 Regarding the fact that there is a zoning raze
11 interpretation, I think that's very important for policy
12 reasons and it protects nonconforming structures. It has to
13 do -- it has an impact on if there's a decision here on what
14 is a zoning raze and not, it impacts a lot of policy
15 decisions. Up until 2015 those policy decisions always went
16 one way towards preserving a building. And so I think that
17 would have a big impact.

18 But I don't think that's before the Board. I
19 absolutely agree with the Zoning Administrator on that point.
20 He's looking at this in time, there's no building there now.
21 If you don't have a building then you can't have an addition
22 to a building. That's all I have. Thank you.

23 CHAIRPERSON HILL: Okay. Does anybody have any
24 questions for the property owner?

25 VICE CHAIR HART: The definition that you read was

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1 from -- for a building that's from the zoning regulations?

2 MR. SULLIVAN: Yes.

3 VICE CHAIR HART: And so that's fairly
4 straightforward what a building is and what is, it is not?

5 MR. SULLIVAN: I think so, yes.

6 VICE CHAIR HART: A structure requiring permanent
7 placement on the ground that has one or more roofs -- excuse
8 me, one or more floors and a roof supported by columns or
9 walls?

10 MR. SULLIVAN: Correct.

11 VICE CHAIR HART: I mean, there's some other
12 things to it but that's just talking about the building
13 itself.

14 MR. SULLIVAN: Yes.

15 VICE CHAIR HART: I think that's it. Thank you.

16 MEMBER JOHN: So I have a question. I'm going to
17 try to see if I can ask it. So let's say there's a building
18 and a property owner applies for a partial demolition and the
19 zoning administrator goes through his 40 percent analysis and
20 finds that there's 40 percent of the building remaining. It
21 could be the front of the building. I mean, I think I've
22 seen those, but I don't know if they're additions or new
23 buildings.

24 So what would the zoning administrator's decision
25 in that case be? It could be an addition because it's met

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1 the 40 percent. I think what I've heard the zoning
2 administrator say is that in this case, we're starting from
3 a different place because we have this act of God. So I'm
4 not sure why it's not relevant because that's your response.
5 But I think if it meets the 40 percent then it could be an
6 addition even if it doesn't qualify as a building.

7 Let me start over. So there's been a permit for
8 a partial demolition, as often happens. And there's the 40
9 percent that's left, right. And so the property owner asks
10 for an addition and that's permitted because it meets Mr.
11 LeGrant's test. So in this case though there is 40 percent
12 if there's a wall standing. So the only difference I see
13 between the two is you start from a different place which is
14 the act of God that partially demolishes the building. So --

15 MR. SULLIVAN: Okay.

16 MEMBER JOHN: -- there's a question buried in
17 there somewhere.

18 MR. SULLIVAN: Yeah, no. I think I understand it.
19 And so of course the zoning administrator's position is he's
20 just looking at the current situation with no building and
21 not inquiring as to how it got to that point. But if I can
22 give some more information about that 40 percent test because
23 it's -- that's the general rule. There's a lot of specifics
24 to it.

25 And whenever we're involved in a project we advise

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1 the client to always get a determination based on a
2 demolition plan before you do any demolition to make sure
3 that your building is being preserved and you're -- and the
4 reason why you want the building preserved is usually to
5 preserve some rights that go with that.

6 In the definition that was mentioned in the
7 Intervener's discussion over here was that if you're changing
8 the lot occupancy, the 40 foot -- the 40 percent rule
9 applies. If you're not changing the lot occupancy, the rule
10 changes and it has to do with the retention of walls. And
11 if you're retaining walls all the way around the building to
12 a height of four feet and not changing the lot occupancy then
13 that's not a raise.

14 So conversely, if you are changing -- if you're
15 not changing the lot occupancy and the walls come down and
16 you don't have four feet of walls then it is a zoning raise
17 and you lose your entitlements to that and it's a new
18 building. I hope I answered it. That's one way to look at
19 it, but it's not as simple as just the 40 percent.

20 But, and also the issue of party walls. The party
21 walls are not removable so under certain analysis of the
22 zoning raise rule you can't raise a building, I guess. If
23 you were changing the lot occupancy. I --

24 MEMBER JOHN: Okay. Thank you. Yeah, I mean, so
25 I was counting the wall in the front and the two party walls.

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1 And --

2 MR. SULLIVAN: We are proposing to remove the wall
3 in the front down to -- right now it's a point that's four
4 feet. So that's part of the approved permit. There's
5 further demolition which is permitted.

6 MEMBER JOHN: Thank you.

7 VICE CHAIR HART: And you had said that there's
8 some -- there is a revised permit that has already been
9 approved? There's a revised permit that -- yeah, that has
10 been approved already.

11 MR. SULLIVAN: It's been approved, yes.

12 VICE CHAIR HART: And it addresses some of the
13 questions that we had regarding some of the dimensions?

14 MR. SULLIVAN: It corrected the dimension that I'm
15 -- and I didn't fully understand the discussion.

16 VICE CHAIR HART: Yeah.

17 MR. SULLIVAN: But my client told me that it did
18 address that discrepancy and then we lowered the building for
19 good measure to make sure that we meet all surveyors' grade
20 elevation determinations.

21 VICE CHAIR HART: Okay. Thank you.

22 CHAIRPERSON HILL: Okay. Anyone else? All right.
23 DCRA, do you have any questions for the property owner?

24 MS. LORD-SORENSEN: No.

25 CHAIRPERSON HILL: Ms. Ferster, do you have any

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1 questions for the property owner?

2 MS. FERSTER: So Mr. Sullivan is just a lawyer so
3 I don't -- it wouldn't be appropriate for me to ask him
4 questions.

5 CHAIRPERSON HILL: Okay.

6 MS. FERSTER: A witness.

7 CHAIRPERSON HILL: No, I know, I got to tell you
8 I never understood that one exactly but that's okay. I mean,
9 because like when there was another attorney that used to
10 represent the zoning administrator and they'd ask questions
11 here. But okay. So all right. Then in that case, let's
12 see. I have a little bit of a review for me. Mr. Rueda, can
13 you throw up that slide that you had of the front with the
14 buildings in it. Just the elevations, yeah, thanks. No.
15 The drawing.

16 MR. RUEDA: The ones to the bottom, seven and
17 eight.

18 CHAIRPERSON HILL: No. Yeah, the one more down.
19 One more down. Thank you. So Mr. LeGrant, I'm just trying
20 to get a little summary, get my head around because it's the
21 last time I'll get to talk to you, at least about this. The
22 -- so assuming that this is pre whatever it is, '18, then,
23 you know, the cellar is a cellar. So it's not going to count
24 as a story. Okay. And then they're going up by right the
25 35 feet, correct?

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1 MR. LEGRANT: The -- well you can have a -- up to
2 a 35 foot tall building as a matter of right, yes.

3 CHAIRPERSON HILL: But you don't get that third
4 story?

5 MR. LEGRANT: You can have three stories and since
6 a cellar's not counted as a --

7 CHAIRPERSON HILL: Yeah.

8 MR. LEGRANT: -- story. You can have three
9 stories on top of cellar.

10 CHAIRPERSON HILL: As a matter of right?

11 MR. LEGRANT: Yes.

12 CHAIRPERSON HILL: Okay. So -- you'd have to meet
13 the requirements of 206?

14 MR. LEGRANT: Well if it's an addition to an
15 existing building, yes.

16 CHAIRMAN HILL: Okay. If it's an addition to an
17 existing building. If it were raised, right, and it's not
18 an addition to an existing building then by right you could
19 do this and not have to worry about 206?

20 MR. RUEDA: No.

21 MR. LEGRANT: It's --

22 CHAIRPERSON HILL: I wasn't asking you, but
23 thanks. That's okay, Mr. Rueda.

24 MR. LEGRANT: If I may?

25 CHAIRPERSON HILL: Sure.

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1 MR. LEGRANT: The new construction, as I've
2 testified, the provision of E 206, which applies to
3 additions, does not apply to new construction so in the
4 scenario you've laid out if there was a raise which would get
5 to the same state as we have asserted that there's no
6 building there and you build to construct a new building then
7 it's my position that E 206 would not apply.

8 CHAIRPERSON HILL: Okay. So then -- all right.
9 Okay. So I know that Mr. Hart had asked for a couple of
10 things. I mean, I don't where we're going to get to today
11 at the end. And I know we still have to go through rebuttal
12 and conclusions. And so as I understand the order in terms
13 of the rebuttal and conclusions we're going to go rebuttal
14 with the Appellant, rebuttal with the Intervener, then
15 closings are going to go Appellant, Intervener, DCRA and
16 property owner. Okay. So that's the order in that. There
17 was a request, I guess, from Vice Chair Hart in terms of kind
18 of some kind of write-up, if you could Mr. LeGrant about like
19 act of God, zoning raise and demolition and what you think
20 those differences are.

21 MR. LEGRANT: Yes.

22 CHAIRPERSON HILL: Okay. And so --

23 MS. LORD-SORENSEN: Excuse me Chairman Hill. We
24 do --

25 CHAIRPERSON HILL: Sure.

1 MS. LORD-SORENSEN: -- have a -- we do address
2 raise versus demolition in the amended response. We don't --

3 CHAIRPERSON HILL: Oh, that's right. So are --
4 do you have what you need for that?

5 VICE CHAIR HART: I mean, I think I've heard much
6 more since I've asked the question so I'm not as -- I'm a
7 little clearer on this as before I -- before the -- at the
8 beginning of the hearing, so I don't think I need it, no.

9 CHAIRPERSON HILL: Okay. All right. So if you're
10 not going to get anything more then. So then I'm going to
11 go back to Mr. LeGrant. So act of God, right, okay. And
12 again, you know, this -- we've heard a lot of different
13 testimony here in terms of like what -- since it's not an
14 addition. I'm sorry. Since it's new construction, right,
15 that's why 206 is not applying, right.

16 And so, and the reason why it's new construction
17 so far that you've gone through is that, again, it was, you
18 know -- and it's such a -- I mean, something happened to the
19 building. Okay. So that it's no longer there, right. And
20 so you determined that because of just the way you -- I mean,
21 and I am kind of curious so I'm sorry if I'm not articulating
22 this well, when and how did you determine that the building
23 was no longer a building because of things that happened?

24 MR. LEGRANT: Right. So in my analysis I had to
25 distinguish this as was it a demolition which is a partial

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1 removal of existing building that then the building would
2 still be there and then subject to E 206? Was it a --

3 CHAIRPERSON HILL: I mean, subject to E 206
4 because the addition would have taken place?

5 MR. LEGRANT: Correct.

6 CHAIRPERSON HILL: Yes. Okay.

7 MR. LEGRANT: Or was it a zoning raise. We all,
8 I think, accept there was no -- I'm not aware of any raise
9 permit under the construction code. Okay. So whether it was
10 a zoning raise. Or was it something else. And as we've
11 asserted, it's distinguishable because of the history of the
12 building collapse that resulted in there's no building there
13 to which an addition can be placed upon. So I did
14 -- when I came to that point it was like the question -- you
15 don't -- I didn't have to do a zoning raise analysis, okay,
16 because the building -- the status of that property, prior
17 to this permit application, was that no building was present.

18 CHAIRPERSON HILL: So and I'm just curious because
19 -- so the Applicant, the building owner came to you and with
20 this -- I'm just trying to understand where exactly you
21 determined that it's no longer, that it's no longer a
22 building. I mean, you -- this gets brought to you because
23 an application gets brought to you, correct?

24 MR. LEGRANT: Right. The application is before
25 us --

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1 CHAIRPERSON HILL: Right.

2 MR. LEGRANT: -- for review.

3 CHAIRPERSON HILL: In this way, in this format?
4 Meaning with the whatever's been most updated, I suppose?

5 MR. LEGRANT: Yes.

6 CHAIRPERSON HILL: Okay. Okay. I'm fine then.
7 All right. Anybody else for anybody? Okay. Well if you
8 think about it as we go through, you can please ask any
9 questions. So we're going to go ahead and turn to rebuttal
10 from the ANC.

11 MS. FERSTER: Could we have five minutes to
12 regroup so --

13 CHAIRPERSON HILL: Sure.

14 MS. FERSTER: -- we can talk a little bit about
15 our rebuttal?

16 CHAIRPERSON HILL: Sure. Let's take a five minute
17 break.

18 (Whereupon, the above-entitled matter went off the
19 record at 5:13 p.m. and resumed at 5:23 p.m.)

20 CHAIRPERSON HILL: Okay. All right. So let's go
21 ahead and get started again. Oh, sorry. Okay. So you guys
22 can go ahead and start your rebuttal, ANC and the Intervener.
23 Can I do 15 minutes each for you guys? Okay. All right.
24 Okay. So go ahead and just start the --

25 MS. FERSTER: Okay. I believe the ANC doesn't

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1 have any rebuttal but Mr. Rueda has a brief statement and Ms.
2 Richards as well.

3 CHAIRPERSON HILL: Okay. Sure. In terms of, in
4 terms of -- now you guys are doing rebuttals, correct?

5 MS. FERSTER: Rebuttal, yeah.

6 CHAIRPERSON HILL: Okay. All right. Okay.

7 MS. RICHARDS: Yes. This is addressed to the
8 issue of when the zoning administrator decided that this, no
9 building existed because that was addressed several times in
10 this case. And as late as September 25, 2018, after whatever
11 was, had happened to the building had already happened, after
12 the snowstorm, et cetera, the zoning administrator's office
13 still was addressing this project as an addition.

14 And so clearly the snowstorm was irrelevant to
15 that determination and I'll just read briefly from one of the
16 emails. This is from the owner's architect to the zoning --
17 a zoning technician. We met with Mr. LeGrant last Thursday
18 and he confirmed that if we are raised for zoning purposes
19 then this is an addition -- I'm sorry, not an addition and
20 therefore, E 206 does not apply. Matt agrees we could do
21 this so we are submitting this revision. Please see attached
22 sheets, I bubbled the changes.

23 We are removing a little more of the front façade
24 down to two feet. We would still like to avoid having to get
25 a raise permit and Mr. LeGrant agrees we could be deemed a

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1 zoning raise without necessarily being a raise for building
2 code purposes. Let us know if you have any questions.

3 So it was -- certainly it was quite clear in --
4 from the message from zoning administrator's office at that
5 point was that hey, we're still looking at an addition. And
6 an addition does not have to be to an entire building as
7 defined here. An addition has to be -- simply has to be to,
8 like, what is there. Anything that's really short of a
9 raised building on a vacant lot is pretty much an addition.

10 As has been amply demonstrated by a lot of the
11 testimony from both sides as to the condition of structures,
12 partial structures, that have been deemed additions. So I
13 thought it was important to get both the dates into the
14 record.

15 CHAIRPERSON HILL: Okay.

16 MR. RUEDA: The first point I guess I'd like to
17 rebut is the idea that the architectural elements are
18 irrelevant. On June 26th, the zoning administrator
19 determined that they were relevant and that they should be
20 restored and that's in the record on DCRA's own website
21 tracking all the comments from the review of the project. And
22 then, quite frankly, I'd be surprised if I didn't include it
23 in the record somewhere, but I just don't know where it is
24 right now.

25 So regarding that, we feel that the architectural

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1 elements are relevant and have not been, have not been
2 addressed. But secondary to that is the idea that Mr.
3 Sullivan brings up in his testimony or, I guess, it was
4 testimony, but whatever he described, that he differs from
5 the zoning administrator and feels that however the building
6 was removed is irrelevant.

7 And to a certain degree that's true because you --
8 he says you cannot look back in time but, in fact, you must
9 because we secured a solar permit that insured that because
10 we secured that permit first, prior to any raise or building
11 permit application, that our solar condition was protected
12 from any addition, from any addition that was added to the
13 condition that we permitted our solar panels on.

14 And I think that 206 clearly outlines that. Both
15 in its 206.2 and the special exceptions of 5203. And I think
16 that you can't ignore the permit that we secured for our
17 solar. It -- whether or not the building was removed or
18 whatever, there was a proposed addition to that condition.
19 And similar to any description of existing grade or natural
20 grade now, excuse me, which refers back in time five years,
21 I think you can make a similar argument that it has not been
22 addressed because this hasn't come up before, obviously.

23 But I think there's a similar situation where you
24 can look at our solar permit, not only the time that where
25 we secured it when there was nothing next door. And then if

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1 you looked back another year or two you would have seen that
2 the building that was there was no different in terms of
3 solar impact, right. So even if you looked back, it doesn't
4 change the scenario. So our permit is the placeholder, is
5 the moment in time that you look forward from.

6 Not that you can't look backward from when they
7 applied for a permit. In fact, the precedent, and this is
8 long established by talking to Max, you know, to Max Tondro,
9 that this -- that whoever is there first has precedent. If
10 they had applied for a new building, or whatever they applied
11 for, two days, a day, an hour before my property was accepted
12 for a solar permit, right, then I would have to -- I would
13 not be able to rely on the solar condition based on their
14 application that was accepted as complete.

15 Their application for permit came two years after
16 our property was functional for a solar, since it was
17 permitted, excuse me, right, which -- so it's a little bit
18 less than two years. But, nevertheless, I can't state this
19 any more strongly that the concept of addition has been so
20 narrowly defined by both DCRA and the owner that it defies
21 logic because the solar condition is a new part of the code
22 that is not borne out by all of these things that they're
23 talking about. Because the solar condition is relevant
24 because we applied for a permit and it is protected.

25 And they are adding to the condition and it will

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1 block 35 percent of our solar energy production. I don't
2 know what else to say. I have other rebuttal points, but in
3 the interest of your birthday I'm going to eliminate those.

4 CHAIRPERSON HILL: That's nice. I hate to say
5 it's actually Monday so you can go ahead and keep going if
6 you want to.

7 MR. RUEDA: Sure. So, as I was saying --

8 CHAIRPERSON HILL: Okay. That's all right. Thank
9 you so much, Mr. Rueda. They just had the cake today. So
10 Commissioner?

11 MR. GUTHRIE: Nope.

12 CHAIRPERSON HILL: Oh, that it. Okay. Ms.
13 Ferster?

14 MS. FERSTER: For closing statement?

15 CHAIRPERSON HILL: No, I thought -- if you're done
16 with your rebuttal that's okay. Then -- okay, the rebuttal
17 done. Okay. So then now the closings, right, with the
18 Appellant, Intervener, then DCRA, then property owner. So
19 you guys get to go first with your closing.

20 MS. FERSTER: So just to --

21 CHAIRPERSON HILL: Actually, before you do your
22 closing, just because I have a question again. So, Mr.
23 LeGrant, like, this keeps coming up a couple of times. And
24 I don't -- I'm not -- I don't want to debate the issue, I'm
25 just trying to understand, right. Again, the -- so I'm

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1 going to keep having him say the same thing over and over
2 again. If this were a raise and this were new construction,
3 I'm just saying, right, I'm not arguing whether this is or
4 isn't, then 206 doesn't apply?

5 MR. LEGRANT: I would agree it would not apply.

6 CHAIRPERSON HILL: Why wouldn't it apply?

7 MR. LEGRANT: It applies --

8 CHAIRPERSON HILL: Only with additions?

9 MR. LEGRANT: Only with additions.

10 CHAIRPERSON HILL: Okay.

11 MR. LEGRANT: The title of the provision is
12 additions to roof tops and additions.

13 CHAIRPERSON HILL: Okay. No, I understand. I
14 mean, Mr. Rueda, that's -- we're not arguing whether or not
15 -- well actually I don't even know what -- I just wanted to
16 get that part clear because I think that's something that
17 maybe is something that the zoning commission might be
18 looking at or interested in. And so that's why I kind of
19 mentioned that, that's all.

20 MR. RUEDA: This is the very definition of a
21 rooftop addition.

22 CHAIRPERSON HILL: No, I'm -- as I understand the
23 discussion, if it's a new construction then 206 doesn't --
24 this might be a problem that needs to get -- be addressed.
25 Okay?

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1 MR. RUEDA: But it's addressed. I already
2 explained how it's addressed. I'm not trying to interrupt
3 you but --

4 CHAIRPERSON HILL: That's okay.

5 MR. RUEDA: -- you have to, you have to look at
6 the regulations as a whole. You can't just isolate on the
7 fact that if it's a raise then it's a new building. If it's
8 a raise that was applied for before the date of my permit
9 then maybe those arguments could be made, right.
10 But you have so narrowed the definition of addition, right,
11 as to preclude the ability for my solar to be protected
12 because it is an addition and that raise was not applied to,
13 for before the date that my permit was accepted as complete.

14 CHAIRPERSON HILL: I understand what you're
15 saying. I think that they're different points and that's why
16 I'm just trying to understand in terms of -- you might
17 disagree with me, but I'm just, again, talking about the
18 raise. I mean, if it's an addition, yes, then you're
19 covered. And we're trying to determine whether or not this
20 is or isn't an addition.

21 And I'm just talking about -- I'm not even talking
22 about your property, just some other place. If there was a
23 raise, then this doesn't apply, according to the zoning
24 administrator. And so that's where I'm a little bit
25 confused. But, so --

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1 MR. RUEDA: But even in other cases the date of
2 the permit is relevant based on the zoning regulations. It's
3 stated in E 206.1(C)(2), I think. It's either one or two.
4 It's very relevant. You just have to read the regulation.

5 CHAIRPERSON HILL: I'm reading the regulation.

6 MR. RUEDA: Okay.

7 CHAIRPERSON HILL: I've got it right here.

8 MR. RUEDA: Well, I'm not saying you're not, but
9 I'm just saying that for me it's very obvious.

10 CHAIRPERSON HILL: Okay. All right. Okay. All
11 right. So now back to the conclusion. I'm sorry to -- I
12 just wanted to get that, my question answered.

13 MS. FERSTER: Just as a preliminary matter and I'm
14 -- and now that I know it's not your birthday perhaps it's
15 not so important but -- and I do not want to deprive you of
16 the opportunity of hearing more from us tonight. But I did
17 want to say that we, you know, obviously, the zoning
18 administrator's going to submit a document that we're going
19 to want to respond to.

20 And I would offer, if you wanted, didn't want to
21 stay and listen to my closing, I would offer to provide my
22 closing in writing in response, as a sort of combined
23 response to the zoning administrator's document. But if you
24 want hear from me today --

25 CHAIRPERSON HILL: Sure, that's good. We didn't

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1 ask anything -- we, I thought we were going to ask some
2 things from the zoning administrator, it turns out we're not.

3 MS. FERSTER: Oh, okay.

4 CHAIRPERSON HILL: So we don't have anything new
5 coming. So you mine as well -- I'd rather hear the
6 conclusions, anyway, in person --

7 MS. FERSTER: Okay.

8 CHAIRPERSON HILL: -- because it's easier for me
9 to remember.

10 MS. FERSTER: All right. Okay.

11 CHAIRPERSON HILL: But thank you for the offer.

12 MS. FERSTER: So just to sum up what I think we've
13 learned today, some important things about what is and what
14 is not at issue. So we know that there was no raise on this
15 property. There was no zoning raise, there was no
16 construction raise. So any hypothetical questions about
17 whether E 206.1 applies in the context of a raise are not
18 this case because we don't have a raise here. We don't have
19 a zoning raise and the zoning administrator's no longer
20 arguing that. And we don't have an actual raise. We have
21 a partial demolition.

22 So the key question for purposes of the issue that
23 you haven't decided, you know, is this an addition or not?
24 Is this an addition? And the zoning administrator has made
25 clear that it's the existence of an act of God that makes

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1 this a new construction rather than addition because the
2 zoning administrator has conceded that if this were a
3 structure that was a shell or a, you know, part, you know,
4 just a -- one of those, you know, wholly demolished shells
5 that you see that don't have a roof, you know, walls. If
6 there were no question about an act of God, he would consider
7 this an addition.

8 So from the zoning administrator perspective, it's
9 the fact that an act of God occurred that makes a difference
10 between an addition versus new construction. Now we don't
11 agree with that. We agree with the owner. We agree with the
12 owner that the whole question of act of God is legally
13 irrelevant to the question of whether or not this is an
14 addition. And the BZA, in an appeal case -- so what you're
15 looking at is what are the zoning regulations and, you know,
16 the interpretations of the zoning regulations. How do they
17 apply to the facts of this case?

18 And you have a word, addition, in E 206.1, that
19 is undefined in the zoning regulations. So you turn to the
20 Merriam-Webster definition of addition. And it says an
21 addition is something you're adding to. And Mr. Rueda has
22 demonstrated that wholly independent of how you measure the
23 building height and whether or not this is a matter of right
24 building in terms of building height, they are adding to what
25 was previously here before. They are adding to height, you

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1 know, between, you know, two or more feet of height depending
2 on, you know, the sloped roof and how, you know, at what
3 point you're measured. And that will clearly and
4 substantially interfere with his solar array.

5 So going to then the owner's definition of
6 addition, you know. And as I said, we agree with the owner
7 that act of God has no legal relevance in the context of
8 addition. And the zoning administrator, by the way, has
9 confirmed that the only zoning regulation in which an act of
10 God is legally relevant is in the context of non-determining,
11 whether there's been a -- you can reconstruct a nonconforming
12 use due to an act of God. So and the zoning administrator
13 has conceded that this is not a nonconforming structure here.
14 So that regulatory concept, an act of God, has no
15 applicability here.

16 And we agree, again, with the owner that has no
17 applicability in whether or not there is new construction
18 versus an addition. So the line of inquiry from Commissioner
19 John is sort of irrelevant, you know. It doesn't matter.
20 The only issue before you is, is this an addition under the
21 zoning regulations and the interpretations of the zoning
22 regulations, the guidelines for interpreting zoning
23 regulations. And as Mr. Rueda has said, it is. It's higher
24 and adding to what was previously there.

25 And I want to respond to Mr. Sullivan's definition

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1 of an addition because he added to it. He added a non-
2 regulatory term. He said an addition is an addition and then
3 he said to a building. If there's no building there, there's
4 no addition. It can't be an addition. And that's his view
5 but it is wholly untethered to any regulatory definition of
6 addition. And yes, he -- there is a regulatory definition
7 of building and perhaps the structure that exists now does
8 not meet that.

9 It may not qualify as a building, it may only be
10 a structure because the roof is gone and 50 percent of the
11 walls are gone. But it is a structure and if you add to a
12 structure, it's not new construction. It is an addition.
13 And that's what the building permit says here.

14 So the definition that Mr. Sullivan provided to
15 you is, again, it's untethered to any regulation. It's
16 untethered to the Merriam-Webster dictionary definition of
17 addition and as the zoning administrator himself has said,
18 he does not apply that definition. He applies, he views an
19 addition as being any type -- that occurs any time you're
20 adding, even to a structure, unless there's an act of God.

21 So I think the case is very clear here that this
22 is an addition and 206.1 does apply. And I think that's all
23 I will say in terms of my closing. We have addressed all the
24 issues in terms of building height measuring point in our
25 briefs. And I'll rest on the papers on those points.

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1 CHAIRPERSON HILL: Okay. Thank you Ms. Ferster.
2 Commissioner?

3 MR. GUTHRIE: Yes, just very briefly. It seems
4 to me that where you are trying to figure out what the
5 meaning is to addition, you should consider whether there is
6 any policy basis for suggesting that new structures, as
7 opposed to additions to a shell, should somehow compromise
8 the ability of neighbors to have the benefit of the solar
9 arrays that they had previously established, consistent with
10 the rules.

11 When you look at that regulation it says addition.
12 It doesn't say addition, not including new construction,
13 which would be the way that you would say it if that's what
14 you wanted to do. There's no indication that that was the
15 intent behind this policy to allow anything with new
16 construction but nothing with modification of preexisting.

17 And for the zoning administrator, who is the
18 person who is supposed to be taking care of enforcing the
19 regulations and the policies behind those regulations, to
20 take such convoluted approach to try and keep it from being
21 applied in this particular case is simply beyond me.

22 The District of Columbia wants people to put up solar
23 arrays. To do that you can't leave people in the position
24 that Mr. Rueda is going to be in which is if you affirm this
25 building permit, he's going to have wasted that investment.

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1 That's not the point of that statute. And there's no way
2 that the argument that every other case of rebuilding from
3 inside the walls is different from this because there was an
4 act of God.

5 That's another way of the administrator trying to
6 somehow allow development that isn't consistent with the
7 policies and rules that have been set down. And I am baffled
8 by it. And I would hope that you do not follow his lead.
9 Thank you.

10 CHAIRPERSON HILL: Okay. DCRA, you get to go
11 next.

12 MS. LORD-SORENSEN: Again, good afternoon,
13 Chairman Hill and members of the Board. As I mentioned
14 earlier, there are three issues for the Board to consider.
15 The three issues, the building height measuring point and
16 whether or not the proposed construction is in compliance
17 with the zoning regs. Two, whether the proposed construction
18 violates 11 E DCMR 206.1. And third, whether or not the
19 construction fails to restore the legally removed
20 architectural features.

21 Earlier today you heard testimony from the zoning
22 administrator. We -- he testified that the property, 2910
23 18th Street NW, is located in a RF 1 Zone where the height
24 limitation is 35 feet and three stories. We presented to the
25 Board an architectural plan that showed that the building

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1 height was less than 35 feet and, therefore, compliant, in
2 compliance with the zoning regulations.

3 In addition, we also addressed the lowest level
4 of the particular property. The zoning administrator
5 testified that the lowest level was, in fact, a cellar. And
6 according to the zoning regulations, a cellar is not a story
7 and therefore, is not included when you calculate the number
8 of stories in this particular zone.

9 We know that it's a cellar because it meets the
10 pre-'17, '18 definition of a cellar. And the definition says
11 pretty much anything from grade to the ceiling that does not
12 exceed four feet. And when we presented the architectural
13 plan to the Board, the height differential was less than four
14 feet and, therefore, the lowest level was a cellar.

15 The big issue that the Appellant as well as the
16 Interveners have been concerned about has to deal with
17 whether or not this was, this will be a new building or
18 they're just simply adding to it. So the regulation at issue
19 is 11 E DCMR 206.1.

20 Now when you look at the title of this particular
21 regulation, it is called rooftop or upper floor additions.
22 This Board saw a photograph of 2910 18th Street from 2016 and
23 2017. And we also heard from the property owner the
24 definition of a building. And, in part, the definition of
25 a building includes a permanent placement on the ground with

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1 floors, walls and other structures.

2 When we presented images of 2910 18th Street there
3 was just bracing. There were no walls or anything there.
4 It doesn't meet the definition of a building. More so, when
5 we look at, when we look at this we have to think about what
6 was presented to the zoning administrator at that time. When
7 the zoning administrator reviewed the plans, there was
8 nothing there. It was just the bracing. And so when the
9 zoning administrator looked at what was present at the
10 property and read the regulation, 11E 206.1, there's nothing
11 there.

12 So they're not putting a rooftop because -- on
13 anything, because there's no building. No building exists
14 at the property. So the zoning administrator correctly
15 determined that 11 E 206.1 did not apply in this case because
16 he determined that this is -- this will be a new building
17 constructed at this particular location.

18 And last but not least, the issue was the
19 architectural rooftop elements. And we presented a plan
20 showing that the property owner plans to reconstruct -- I
21 believe it's the mansard, the windows and other architectural
22 elements that were previously eliminated. So based on the
23 documentation that's been presented to the Board, the
24 testimony that you heard from the zoning administrator, DCRA
25 asks that you dismiss this appeal and uphold the zoning

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1 administrator's decision to issue this building permit.

2 CHAIRPERSON HILL: Okay. Great. Thank you. Now
3 I'm going to turn to the property owner.

4 MR. SULLIVAN: Thank you. First on the issue of
5 the solar permit, this -- the securing a permit for solar
6 panels, the date is not relevant because timing's not the
7 issue here. It's not timing, it's whether or not this is a
8 new building or an addition.

9 And if it's not an addition then the solar panel
10 law doesn't apply and it doesn't matter when he got that
11 permit. So securing a solar panel permit may protect you
12 from additions but it doesn't infringe on a neighbor's
13 property right to raise and build a new building adjacent to
14 your property.

15 It seems like -- well, first of all, the Appellant
16 has the burden of proof, of course. And their argument in
17 the end seems to be that the terms addition and new building
18 are not mutually exclusive. That you can have an addition
19 and a new building all at the same time. Or addition doesn't
20 mean addition to a building, it means addition to a
21 condition. A condition could be nothing. You could have
22 empty land. That has never been interpretation of what
23 addition means.

24 And, in fact, I think their expert submitted a
25 letter that talked about that, 511 Franklin, I think it was.

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1 And so if they're here proposing that the term addition means
2 something other than what everybody understands it to mean,
3 they would have to come with more proof in order to meet
4 their burden of proof. Thank you.

5 CHAIRPERSON HILL: Okay. Great. All right. Well
6 thank you all very much. Just a couple of things. Does the
7 Board have anything else they'd like to ask for from anyone?
8 Okay.

9 So then I did want to make just one comment to the
10 Commissioner for the ANC. I mean, I've seen you here before
11 and, like, you've come down for things and I hope -- I guess
12 I just kind of want to say to people that come from the ANC,
13 that this is something that we take very seriously. We
14 really try very hard to look at the regulation and try to
15 understand and do our best.

16 And I also do, you know, think that the DC
17 government -- this is just my opinion. I just want to share
18 so you don't just that -- like, you know, DC government, the
19 zoning administrator, they're also trying to do what they
20 think they should do and this process is how we get to
21 determine whether or not they've made an error. But I don't
22 think, for whatever it's worth, I don't think there's any
23 kind of collusion or anything going on. I just think that
24 if they made an error, then we're going to figure it out
25 right now. I don't know if I -- is that the right word?

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1 Okay. So anyway, for whatever it's worth. I just wanted to
2 share that.

3 Then the next thing that I did want to mention
4 was, it's Hillary Lovick here from OAG. This is her last day
5 with us and it's been a pleasure working with you. You've
6 been very helpful in keeping, at least I know myself, on the
7 straight and narrow. And absolutely wish you the best in
8 your new role. Would anyone else like to say anything?

9 VICE CHAIR HART: Yeah. Would just also like to
10 wish you well and I'm glad that you're keeping the Chairman
11 in line here, so that's very helpful. I'm kidding. I -- in
12 all seriousness, you have been a pleasure to work with and
13 I'll be sorry to see you go. And good luck in the future.

14 MEMBER JOHN: And Hillary, I would just like to
15 say that in the brief time I've been here, I have just found
16 you to be a very, very dedicated and smart and sharp
17 millennial, which I know you don't -- and so I wish you all
18 the best in your new, your new -- I want to say project. And
19 as someone famous once said, parting is such sweet sorrow.

20 MEMBER WHITE: Hillary, I wish you the best as
21 well. You know, ladies and gentlemen, she's extremely
22 bright, young lady. And has allowed us to -- or has at least
23 helped us, I know me, helps us to really be knowledgeable and
24 thoughtful. She frames the legal issues very, very well.
25 So when you also have a fulltime job and you have someone

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1 framing things for you that way, it really helps you to do
2 your job efficiently. And we take it very seriously. But
3 I wish you the best of luck. You'll do well.

4 COMMISSIONER MAY: So I'm not going to repeat all
5 the other stuff. I agree with all that. I agree with all
6 my commissioner -- fellow Board members, rather. I will
7 convey that thanks to zoning commission, since I happen to
8 be here on your last day, for everything that you've done for
9 us and I would just say that, you know, among the many
10 attorneys that we've had the pleasure of working with over
11 the years, it's really been a lot of fun. So I don't get to
12 say that too much about working with lawyers, but in this
13 case that's absolutely true. You've been very helpful, but
14 also a pleasure over, you know, in the biggest sense to work
15 with, so thank you.

16 CHAIRPERSON HILL: No offense to the lawyers in
17 the audience. Mr. Moy, can you help us kind of come up with
18 some -- oh, no wait. Oh, yeah, there's nothing coming -- so
19 we're not asking for anything. So I assume we're not going
20 to decide today. It seems like that's what -- I know people
21 want some time to chew on this. The next time that
22 Commissioner May is with is, I believe, on July 31st. Is
23 that correct?

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

25 CHAIRPERSON HILL: So why don't we go ahead and

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1 set this for decision on July 31st. And we can deliberate
2 at that time. Okay. Is that good with everybody? Okay.
3 All right. Thank you all very much. You guys have a nice
4 evening.

5 MR. RUEDA: Where's our cake?

6 CHAIRPERSON HILL: You -- it's coming. All right.
7 Let's see. Mr. Moy, is there anything else left before the
8 Board?

9 MR. MOY: Nothing from the staff, sir.

10 CHAIRPERSON HILL: All right. We stand adjourned.
11 Thank you.

12 (Whereupon, the above-entitled matter went off the
13 record at 5:55 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 06-19-19

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.



Court Reporter

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