Mr. Chairman and Members of the Committee,

We write to respond to two claims made by DCRA Director Bolling in her testimony before the Committee on March 8.

**Public Access to Online Construction Permit Documents**

Director Bolling testified that all permit application drawings and other documents for the past three fiscal years are now available online. That statement is untrue.

DCRA does have a relatively new online portal, [https://records.dcra.dc.gov/e-records/](), providing **limited** access to an **incomplete** database of construction permit documents. The shortcomings in this system include the following:

- **No pending applications**: The database includes no records for any permit application that has not resulted in issuance of a permit. In other words, there is **no** public access to drawings or other documents for applications currently under DCRA review.

This gap matters for at least one important reason. Since the adoption of the 2016 zoning regulations, DCRA has consistently argued that the 60-day clock for appealing a permit to BZA starts running not on the date of issuance, but instead on the date of the Zoning Administrator (ZA) determination that the application complies with the zoning regulations.

For example, in its motion to dismiss BZA 19374 as untimely, DCRA argued explicitly that the 60-day clock began to run with the issuance of the ZA’s

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1 ANC 6C authorized this testimony at its duly noticed, regularly scheduled monthly meeting on March 14, 2018, with a quorum of 6 out of 6 commissioners and the public present, by a vote of 6-0.
determination letter on March 21, 2016—and that the period for appeal had expired long before the permit’s issuance on July 18, 2016.2

- **Incomplete records:** Even for applications where DCRA has issued a permit, the records available online are incomplete. ANC 6C checked the file for permit B1706219 and found several crucial documents, including DCRA reviewer notes, missing in their entirety. (We know these documents exist because we have copies of them in connection with our pending BZA appeal.)

- **No ability to download or print:** When documents are available, DCRA’s interface presents them in a proprietary viewer with no option to print documents or download them as PDFs.

It is true that DCRA’s E-Records database marks an improvement on the agency’s earlier longstanding failure to make any permit documents available online. However, the current offering falls well short of what District law requires. More importantly, as a practical matter citizens who need to obtain complete (and usable) copies of permit drawings and other documents remain at the mercy of DCRA’s notoriously unresponsive staff.

For example, on March 13 a member of ANC 6C emailed Christopher Bailey, the acting Director of the Permit Operations Division, to request the documents for pending application B1805207. Mr. Bailey opened and read that email the same day (as proven by the electronic “read receipt”) but did not respond. Mr. Bailey likewise failed to respond to a March 20 followup email. The commissioner received the records in question only after escalating the matter to Director Bolling on March 23.

This is not satisfactory, both because a) DCRA staff should at least respond to such requests instead of ignoring them and b) regardless of whether he or she is an ANC commissioner, a District resident should not have to resort to asking an agency director for assistance in addressing such a routine request.

**DCRA’s Falsely Inflated Statistics for BZA Appeals**

As we stated in our March 8 testimony for the DCRA performance oversight hearing,

> DCRA has once again claimed to the Council that in FY16 it prevailed in 100% of the appeals taken against the ZA. See DCRA Written Responses to 2018 Oversight Questions #37(a) at p. 57. (No figures are provided for FY17 or FY18.) In doing so, DCRA repeats the same false claim it made last year. As ANC 6C noted in its written March 16, 2017 oversight testimony,

> [w]e also note that in claiming that DCRA had a spotless 14-0 record before the BZA last year [i.e., in 2016], Director Bolling gave false

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2 See DCRA Motion to Dismiss at 3-4 (BZA 19374, Exh. 50), available at https://app.dcoz.dc.gov/Content/Search/ViewCaseReport.aspx?case_id=19374
Likewise false is DCRA’s written response (Question 39(a), page 81) claiming 100% “successful defenses of appeals of ZA decisions before the Board of Zoning Adjustment.” These statements are the equivalent of saying that “DCRA won every case in which it prevailed,” because they intentionally omit cases in which DCRA’s position was so meritless that the agency relented and revoked the improper permits.

In her March 8 testimony, Director Bolling adamantly refused to acknowledge the untruthfulness of this 100% figure. Instead, she doubled down on her claim that the ZA won every single BZA appeal in FY16: “In FY16, we had 100%. [Commissioner] Eckenwiler is wrong if he said anything less than 100%.”

Director Bolling’s claim is, as before, disingenuous at best and flatly untrue at worst. As we have explained in the past, her statistics deliberately ignore cases in which the ZA admitted error in a pending appeal. (This is presumably because surrender or revocation of a permit renders a BZA appeal moot, leading to dismissal instead of a decision on the merits.)

In showing that the ZA’s record in FY16 was not flawless, it makes no difference whether one uses the date of permit issuance or the date of BZA disposition for purposes of deciding which fiscal year a given appeal belongs to. Specifically, for BZA appeal 19207, all of the following events occurred in FY16:

- the issuance of permit B1512716 (October 1, 2015);
- the filing of ANC 6C’s appeal to BZA (November 23, 2015);
- the permit holder’s surrender of the permit as demanded by DCRA (January 7, 2016); and
- the hearing at which BZA dismissed the appeal as moot (April 12, 2016).

To be clear, the important issue here is not DCRA’s precise batting average before BZA. As we have explained in the past, even the true rate of successful permit defenses provides a false picture of the quality of the ZA’s work. Many meritorious complaints never ripen into BZA appeals in the first place; many others that do are dismissed on procedural grounds, such as untimeliness, unrelated to the merits.

Instead, the point is Director Bolling’s lack of candor before the Council in claiming repeatedly that the ZA’s record for FY16 was literally perfect. The only way to justify the Director’s insistent claim is to ignore BZA 19207 and any other FY16 case like it in which DCRA knew the ZA had issued a permit in error and opted to void the permit rather than face the inevitable adverse BZA decision.

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We urge the Council to demand that DCRA describe

- its criteria for assigning a particular BZA appeal to a given fiscal/statistical year;
- whether its statistics include only cases decided on the merits, or instead also include cases
  - dismissed as untimely filed,
  - dismissed as moot owing to DCRA’s revocation (or proposed revocation) of the permit at issue, or
  - dismissed as moot owing to the permit holder’s cancellation or surrender of the permit;
- the BZA case number, broken out by fiscal/statistical year, of each appeal used in calculating DCRA’s success rate before BZA for FY16 and later years.

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We thank you for the opportunity to provide testimony and welcome any follow up questions the Committee may have.