

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 2, 2000

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The Public Hearing convened in Room 220 South, 441
4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at
1:00 p.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT N. SOCKWELL	Vice Chairperson
ANN RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

Sheri Pruitt	Secretary, BZA
Beverly Bailey	Office of Zoning
Paul Hart	Office of Zoning
John Nyarku	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

(1:11 p.m.)

CHAIRPERSON REID: The hearing will please come to order. Good afternoon, ladies and gentlemen.

This is the February 2, Year 2000, Public Hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Robert Sockwell and Carol Mitten and Ann Shaw.

BOARD MEMBER RENSHAW: Renshaw.

CHAIRPERSON REID: Ann Renshaw. Carol Mitten is representing the Zoning Commission, and Ann Renshaw is our latest member of the Board, joining us for the first time today. We welcome here. Glad to have you with us.

Copies of today's hearing agenda are available to you. They are located to my left near the door.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. When coming forward to speak to the Board, please give both cards to the reporter sitting to my right.

The order of procedure for special exception to variance cases is: 1. statement of witnesses of the applicant; 2. government reports, including Office of Planning, Department of Public Works, etcetera; 3. report of the Advisory Neighborhood Commission; 4. parties or persons in support; 5. parties or

1 persons in opposition; 6. closing remarks by the applicant.

2 The order of procedure for appeal applications will
3 be as follows: 1. Statement and witnesses of the appellant; 2.
4 the Zoning Administrator or other government official; 3. the
5 owner, lessee or operator of the property involved, not the
6 appellant; 4. the ANC within which the property is located; 5. the
7 intervenor's case; 6. rebuttal and closing statements by the
8 appellant.

9 Cross-examination of witnesses is permitted by the
10 applicant or parties. The ANC within which the property is
11 located is automatically a party in the case.

12 The record will be closed at the conclusion of each
13 case except for any material specifically requested by the Board,
14 and the staff will specify at the end of the hearing exactly what
15 is expected.

16 Decisions of the Board in these contested cases
17 must be based exclusively on the public record. To avoid any
18 appearance to the contrary, the Board requests that persons
19 present not engage members of the Board in conversation.

20 Please turn off all beepers and cell phones at this
21 time so as not to disrupt these proceedings.

22 The Board will make every effort to conclude the
23 public hearing as near as possible at six o'clock p.m. If the
24 afternoon cases are not completed at six o'clock p.m., the Board
25 will assess whether it can complete the pending case or cases

1 remaining on the agenda.

2 At this time the Board will consider any
3 preliminary matters. Preliminary matters are those which relate
4 to whether a case will or should be heard today, such as requests
5 for postponement, continuance or withdrawal, or whether proper and
6 adequate notice of the hearing has been given.

7 If you are not prepared to go forward with the case
8 today or if you believe that the Board should not proceed, now is
9 the time to raise such a matter.

10 Are there any preliminary matters?

11 MS. ZARTMAN: My name is Barbara Zartman, and I'm
12 here in connection with Case 1683 to request a postponement to
13 your first meeting in May so that some matters may be resolved in
14 connection with the use of this property.

15 CHAIRPERSON REID: Okay. Is there anyone else here
16 involved with this case? Please come forward. This is 16483.

17 MR. MARK: Ms. Reid, my name is Gene Mark, and I
18 represent Georgia Warner, the owner of the property.

19 We do not have a problem with agreeing to a
20 continuance. That's fine.

21 CHAIRPERSON REID: Is that date all right with you
22 as well?

23 MR. MARK: What was the date again?

24 CHAIRPERSON REID: What was the date?

25 MS. ZARTMAN: It's the first Wednesday in May. I

1 believe it's the Third.

2 MS. PRUITT: No, it's actually -- Yes, May Third,
3 and that would be in the afternoon.

4 MR. MARK: That's fine, yes.

5 CHAIRPERSON REID: All right. Are there any
6 others? Mr. Johnson?

7 MR. JOHNSON: Yes, Madam Chair, Michael Johnson,
8 Zoning Administrator, DCRA.

9 We also have no problem with the continuance date
10 of May 3 being set.

11 CHAIRPERSON REID: Okay. So all parties agree?
12 All right. This will serve as notice. It will not be advertised
13 for the public record.

14 MS. PRUITT: Correct.

15 CHAIRPERSON REID: So please make note that we will
16 reconvene for your particular hearing on May 3 in the afternoon
17 session. Thank you very much.

18 MS. ZARTMAN: Thank you very much, Madam Chair, and
19 welcome to Ms. Renshaw.

20 MR. MARK: Thank you.

21 CHAIRPERSON REID: Thank you. Are there any other
22 preliminary matters? Does staff have any preliminary matters?

23 MS. PRUITT: Yes, Madam Chair. There is a letter
24 in your file dated February 2. It concerns the second case, and
25 it's really a request for a waiver in the filing, and that was due

1 to the snow day last week. It should have been in Wednesday of
2 last week. Of course, District government was closed. So they
3 couldn't. So it's more of a technicality.

4 CHAIRPERSON REID: Well, that's a good reason, if
5 we've heard any. I have no problem with it, unless any of the
6 other Board members object. Okay, then we would grant him the
7 waiver.

8 MR. BROWN: Madam Chair, Patrick Brown, counsel for
9 the property owner in that case.

10 I appreciate the waiver on the filing. There was
11 one other matter. My client, by letter dated November 16 and
12 filed that same day, sought intervenor status in the case, and I
13 think from the beginning we ought to, if possible, resolve that
14 issue.

15 My clients are, in fact, the property owner and the
16 party building the house in question. So I think they meet all
17 the criteria for being an intervenor.

18 CHAIRPERSON REID: I have no problem with having
19 your client, Mr. --

20 MR. BROWN: The corporate name is Forest Hills LLC.

21 CHAIRPERSON REID: Okay, Forest Hills, LLC will be
22 granted the status of intervenor, unless there are any objections
23 from other Board members. So granted.

24 MR. CLARK: Madam Chairman, my name is George
25 Clark, and I am one of the appellants and lawyer for the other

1 appellants in this case. I, obviously, have no problem with
2 intervenor status. I don't know where that puts them in the order
3 of proof, since they are the property owner, since I think it goes
4 appellants, city, owner, ANC. I just don't know if, as
5 intervenors, where they go.

6 CHAIRPERSON REID: I'm sorry. What was your
7 question?

8 MR. CLARK: My question is if -- where they are in
9 the order of proof. They are the owners. So the question is does
10 the proof go appellants, city, owners, ANC, or does it go
11 appellant, city, ANC, intervenor?

12 CHAIRPERSON REID: You mean the order of the
13 sequence of the hearing?

14 MR. CLARK: Yes.

15 CHAIRPERSON REID: The sequence of the hearing will
16 remain the same, which is the appellant, then the government
17 officials, the owner --

18 MR. CLARK: Madam Chair, all I mean is they're both
19 the owner and an intervenor.

20 CHAIRPERSON REID: Oh, okay. Well, the ANC and
21 then the intervenor, since the intervenor and the owner are one
22 and the same.

23 MR. BROWN: Then we'll proceed under the owner
24 portion of the case. Correct, Madam Chair?

25 CHAIRPERSON REID: The owner is the intervenor.

1 Right?

2 MR. BROWN: Yes. So we would like to proceed --

3 CHAIRPERSON REID: So do you want to go before or
4 after the ANC?

5 MR. BROWN: Before.

6 CHAIRPERSON REID: All right. I have no problem
7 with that. Then we will have the owner, then the ANC, and then
8 rebuttal.

9 MR. CLARK: No problem here.

10 CHAIRPERSON REID: All right.

11 MR. BROWN: Madam Chair -- and it goes beyond
12 strictly a preliminary matter, but equally as important to the
13 hearing of this case are several matters which I believe go to the
14 Board's handling of the case.

15 First, at great length in my brief we've raised the
16 timeliness of the filing of the appeal issue, which an untimely
17 appeal, in fact, divests the Board of jurisdiction of the case.
18 So as a preliminary jurisdictional matter, I think that matter
19 should be addressed before we get to the cases in chief.

20 Also, the issues of estoppel and laches are
21 defenses which again would be a bar to the appellant's case.

22 Then finally, the issue of, while the Board's rules
23 don't provide for summary judgment, in my view, this is a case
24 where a summary disposition of the case based on the only issue
25 that's relevant, which is compliance with the zoning regulations,

1 would be an appropriate handling of the matter.

2 One of my great concerns -- and I think, will
3 become apparent to the Board -- is that the appellants in their
4 brief and, I suspect, in their presentation seek to put the Zoning
5 Administrator, the city government, my clients, and the zoning
6 regulations on trial. That's not what we're here to decide, and I
7 think that would be a diversion and a waste of the Board's time.

8 So I think what I'm suggesting is that we, one,
9 deal with the jurisdictional issues which have to do with whether
10 we're going to go forward at all; the defenses, which are in
11 similar vein; and then look strictly to the compliance with the
12 zoning regulations which, I think, will keep, one, the hearing in
13 proper order, allow focus on the critical issues, and avoid a
14 lengthy, unproductive hearing.

15 So that I would ask, certainly, that we proceed on
16 the timeliness issue, again because, as I view it, that matter
17 divests the Board of jurisdiction.

18 CHAIRPERSON REID: Go ahead.

19 MR. CLARK: Madam Chair, on timeliness I suspect
20 that could be disposed of on summary judgment. Obviously, Mr.
21 Brown recognizes its burden to try, as he cannot do to prove
22 laches; and I might remind him that, in fact, it is the duty of
23 this Board to interpret the zoning regulations of the District of
24 Columbia, and the word of the DCRA is not the final word on that.

25 Indeed, that will be one of the issues that this Board faces

1 today.

2 Maybe I can try to answer the timeliness question
3 very quickly, and you'll see from Exhibit 1 in our prehearing
4 submission that Armando Lourenco wrote a letter to Cathy
5 Patterson, not to me but to Cathy Patterson, on September 10,
6 1999, in which he said that DCRA has now made up its mind what's
7 going to happen at this property, and we think it's okay.

8 At the time, there was an application that had been
9 filed on August 25, 1999, for a new permit. Indeed, that permit
10 was not granted until September 17, 1999. Afterwards -- and I
11 think everybody who deals with DCRA knows you can't walk down and
12 pick up a permit the day that it's issued, that in fact at the
13 beginning of October is when that permit was available.

14 Mr. Sloame, who is one of the appellants and who
15 will testify under oath to this effect, will tell you that, in
16 fact, he went down and picked it up. In fact, we filed our appeal
17 on November 3, 1999.

18 Now we have the Beans case in the District of
19 Columbia, and I can highlight and hand it up to the Board if it
20 wants, but what it certainly says is that presumptively, if you're
21 within two months of the action, you are on time.

22 Here, there was no action before September 10.
23 There was no permit before September 17. There was no permit
24 available until October. An appeal was filed on November 3. I
25 think that's summary judgment, and I think this appeal is on time.

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CHAIRPERSON REID: I think that --

MR. BROWN: Could I briefly respond, Madam Chair?

CHAIRPERSON REID: Yes, you can, but I just wanted to interject something very quickly.

I think we're talking about two permits.

MR. BROWN: Yes, we are, Madam Chair.

CHAIRPERSON REID: Are we not?

MR. CLARK: We are, and let me comment on that, if I may, because in fact in the end of July 1999 the city told us that indeed a stop order was being issued and that they recognized the building is illegal, and they were going to consider what to do to put it in compliance with the law, and that they thought that a new application might be filed.

We perhaps were naive enough to believe that it was an application that would be in conformance with the zoning regulations. Nevertheless, in fact, the city had this under consideration from July until the beginning of September as to what it was going to do.

We were calling DCRA every day and saying, hey, have you decided, and they kept saying, no.

MR. BROWN: Madam Chair, I think that, one, the point on two permits is valid for one reason, in particular. The first permit involves issues in this case, specifically side yard, for which there was no involvement with respect to the second

1 permit coming again more than three -- almost three and a half
2 months later.

3 So those issues, certainly with respect to the side
4 yard in the first permit which were known and clearly discussed in
5 all the correspondence and conversations that were had
6 subsequently, there cannot be any doubt that those side yard
7 issues raised in both -- in the appeal itself but reverting back
8 to the first permit fall, you know, now six months or five-plus
9 months beyond the notice period.

10 With respect to the second permit, the
11 reasonableness standard imposed is: Once the appellants, Mr.
12 Clark and his neighbors, had notice of the city's decision -- and
13 in this case, they had repeated notice directly and indirectly
14 that, in fact, a decision had been made. Mr. Jordan, Mr.
15 Lourenco, as is spelled out in both our briefs and exhibits, were
16 telling the appellants that the house subject to the revised
17 permit -- that in effect, the revised permit had been filed and
18 that that permit was going to be approved and that there were no
19 zoning violations.

20 That was communicated to Mr. Clark by voice mail by
21 Mr. Johnson. It was also communicated directly to Council Member
22 Patterson who then communicated it to Mr. Clark based on his
23 follow-up letters indicating, as I've laid out in the brief, that
24 he was aware of that decision and, further, he was aware that time
25 was of the essence, that he needed to take action.

1 So that, at the time period -- and we're looking in
2 the first and second week of September -- the appellants knew that
3 the Zoning Administrator had approved the second permit, that in
4 fact had been told in no uncertain terms that there were no zoning
5 violations, and the matter would proceed forward, that the
6 construction would continue.

7 So that at that point -- and again, there's a
8 flurry of correspondence involving the appellants directly and
9 indirectly in that first and second week of September. I think
10 the Board has adhered previously to kind of a starting point of a
11 thirty-day rule, not a 60-day rule.

12 In this case, again going the long involvement of
13 the appellants in this case from the very beginning in June when
14 they had plans, they provided plans by my clients, taking that
15 into consideration and all the facts and the repeated notices they
16 had which they were quite upset about, that in fact there was no
17 zoning violation. The second permit would be approved, and in
18 fact was approved shortly after that on the 17th of September, and
19 that my clients -- and this is a critical issue -- continued
20 construction of the house.

21 So that by November 3, which then becomes critical
22 for laches and estoppel purposes, this house was substantially
23 progressed to the point where it was completely framed, under
24 roof, before they had any inkling, other than threats from the
25 appellants, that there was, in fact, going to be an appeal, a

1 challenge of that.

2 So again, not only did the appellants not act in a
3 timely manner with extraordinary levels of knowledge, but they
4 also allowed my clients to proceed to their substantial detriment.

5 So I think the Board has everything before it necessary to rule
6 favorably that the appeal is untimely.

7 MR. CLARK: Madam Chair, let me say a number of
8 things. The first thing is -- and Mr. Sloame, who has now sat
9 down next to me, will testify under oath to this fact -- that when
10 he went to the city at the end of July --and let me backtrack,
11 because Mr. Cohen didn't give us the plans.

12 Mr. Cohen gave us renderings of what the house
13 would look like. He didn't give us plans, and we had to ask for
14 those.

15 Secondly, when Mr. Sloame went down to DCRA, he was
16 told by Mr. Bello that he had been misled by the application.
17 That's an exact quote, and he had been misled with respect to the
18 number of stories and to the footprint.

19 At that point, it was said that this was going to
20 be under consideration for what to do. In fact, it was at DCRA
21 for a long time. Now Mr. Cohen, who is Forest Hills who is Mr.
22 Brown's client, says, man, I acted fast. Well, he forgets to tell
23 us that, when he found out at the end of July that there was a
24 stop order, he didn't even file an application for a new permit
25 until August 25.

1 In the meantime, he put down footings. He started
2 to build the house. He did all these things without even a permit
3 application on file, not a --

4 CHAIRPERSON REID: Wait, wait. You said that when
5 he went down to the permit office, he was told by who that there
6 was --

7 MR. CLARK: Mr. Bello, who is the -- Mr. Bello is
8 the one who had approved the permit, in the first place.

9 CHAIRPERSON REID: Mr. Bello said that -- Repeat
10 what you said.

11 MR. CLARK: He said he was misled.

12 CHAIRPERSON REID: Do you have that in writing?

13 MR. CLARK: I've got it from the man who heard him
14 say it. I don't have it in writing. I would have expected --

15 MR. BROWN: Madam Chair, I --

16 MR. CLARK: If I can go on, Mr. Brown, please.

17 MR. BROWN: No, I object. I think the Chair raises
18 a good point, and it's riddled throughout the appellant's brief,
19 misled, false and misleading, undisclosed, and freely putting
20 words into Mr. Bello who is a zoning technician, Mr. Nunley who is
21 the Chief of the Zoning Review Branch.

22 MR. CLARK: Let's call him hear and have him
23 testify, if that's what Mr. Brown says.

24 CHAIRPERSON REID: Listen. Let's not belabor this
25 issue. At this juncture, obviously, I don't think that the Board

1 has enough information to be able to make a decision as to
2 timeliness. As such, it would probably be much better, more
3 prudent, to hear this case and then we will make a determination
4 as to the timeliness; because with this preliminary banter going
5 back and forth, I don't know about the other Board members, it at
6 best to me is confusing.

7 So we would like to -- I would suggest that we
8 proceed with the case, and then once we have gotten adequate
9 information and we've asked questions to our satisfaction, then we
10 can make determination, number one, whether or not it is timely
11 and/or, two, the decision on the case.

12 MS. PRUITT: Madam Chair, I would endorse your
13 recommendation. I mean, it's clear from just what we've heard so
14 far that, at a minimum, we need testimony on the timeliness issue.

15 And since there is so much interplay between those issues and the
16 merits of the case that I think your recommendation is right on
17 point.

18 CHAIRPERSON REID: Mr. Sockwell?

19 MR. SOCKWELL: No.

20 MS. RENSCHAW: I agree.

21 CHAIRPERSON REID: All right.

22 MR. BROWN: Madam Chair, I understand. I would ask
23 the Board's assistance. As you've seen, you've had a preview of
24 -- there's a high emotional level in this case, and I'm greatly
25 concerned by what I consider basis allegations of misled, lied,

1 whatever. And throughout the hearing, I would request the Board
2 to exclude that kind of unsubstantiated discussions.

3 One, it's not productive. It's not relevant. It's
4 unpleasant. Two, it's meant to, quite frankly, as I put in my
5 brief, divert the Board's attention from the critical issue,
6 underlying critical issue of whether, in fact, the zoning
7 regulations were complied with. That's the issue before us from a
8 substantive manner.

9 Obviously, that will be important when we're
10 talking about timeliness, because there are different versions of
11 history, and this misled and other banter back and forth, I don't
12 think, is going to help the Board get to its decision making role,
13 both on the procedural, jurisdictional issue or the substantive
14 issues.

15 My clients aren't on trial. Mr. Lourenco and the
16 Department of Consumer and Regulatory Affairs, I don't think,
17 should be on trial, and the zoning regulations and whether they
18 are a good thing or a bad thing, whether they are outdated or not,
19 are not on trial.

20 So if we keep the focus, I think, we'll serve our
21 goals and objectives.

22 CHAIRPERSON REID: Mr. Brown, your point is well
23 taken, and I do agree with you. Nonetheless, unfortunately,
24 unlike other types of hearings of the BZA, hearsay is permitted.
25 So as such, we cannot make a ruling here today to the appellant

1 that they cannot allege that someone said something.

2 We understand that, nor can we make a ruling or
3 dictate to them that they cannot within their case, putting on
4 their case, proffer to us allegations. However, as you well know,
5 and I'm certain that the attorney for the intervenor, Mr. -- I'm
6 sorry.

7 MR. CLARK: Clark.

8 CHAIRPERSON REID: -- Mr. Clark, that Mr. Clark and
9 you both know that, despite the contentious aspect of this
10 particular hearing, that we would expect that both sides conduct
11 themselves with the semblance of respect and decorum in this
12 matter today, with some degree of dignity, and that we will not
13 stoop to levels of name calling and immaturity, that we will keep
14 it on a high level, and we will get through it. You make your
15 case. You make your case, and then we are the ones who will then
16 decide the outcome of it, ultimately.

17 So it's very important to impress us in the manner
18 in which -- not in just your case, but the manner in which your
19 case is put on to us. That will go a long way in our
20 deliberations, our impression of you in putting on your case.

21 MR. CLARK: Madam Chair, I appreciate that. I've
22 been trying cases 27 years. I've never had a Judge criticize the
23 way I tried one yet.

24 CHAIRPERSON REID: Thank you. Mr. Sockwell.

25 VICE CHAIRPERSON SOCKWELL: Mr. Brown, just to

1 respond to something you said. You are quite correct that,
2 whether or not the zoning regulations are outdated is not on trial
3 here.

4 CHAIRPERSON REID: All right. Thank you very much.

5
6 Board members, what I had thought about doing, and
7 you can tell me how you feel about it, was I think that this
8 particular appeal is going to be a rather lengthy case today, and
9 that we have a short case which I think would be a pretty short
10 case, and that is the one, 16485 where application of John and
11 Nancy Krooth are coming back to further clarify a previous case,
12 just basically to ask a few questions, and then to allow them to
13 go forward and then take up this appeal case, if you have no
14 objection to that.

15 MS. MITTEN: Is there some reason why you are
16 excluding 16539?

17 CHAIRPERSON REID: I'm not. I'm not excluding
18 that. I don't know -- I don't have a feel for how long that would
19 be. Come forward, please. If that's a short one, too, then just
20 in deference to the people sitting here, perhaps they can go
21 forward, if you all don't mind, and then we'll just do your case
22 for the remainder of the afternoon.

23 BOARD MEMBER RENSHAW: Madam Chair, do you need a
24 motion to take these cases out of sequence?

25 CHAIRPERSON REID: No. We can do it by consensus.

1 Come forward, please.

2 MR. GUZY: Madam Chair, my name is Gary Guzy. I'm
3 the --

4 CHAIRPERSON REID: Sir, you have to speak from the
5 mike.

6 MR. GUZY: I'm sorry. Madam Chair, members of the
7 Board, my name is Gary Guzy. I'm the property owner in case
8 Number 16539. It's a modest addition to an existing home. We are
9 unaware of any opposition to it, and we would greatly appreciate
10 the opportunity to have that case taken before what is probably a
11 far more interesting one.

12 CHAIRPERSON REID: As an accommodation, if we can
13 possibly do that and get you out of here earlier, if there is no
14 objection from Mr. Brown or Mr. Clark, then --

15 MR. BROWN: No objection.

16 MR. CLARK: I would ordinarily have no objection.
17 I have two ANC commissioners who are here to testify who, in fact,
18 tell me they may have some difficulty if we're delayed. I
19 understand the situation, and I've been put on the back of the
20 docket enough in cases that I understand that, so that you don't
21 have to sit around for a long case. But I do have concerns about
22 two ANC commissioners who won't be able to testify -- at least one
23 who won't be able to testify if we're delayed.

24 CHAIRPERSON REID: Can they -- Would they be
25 around? How long before they could leave, because we're thinking

1 about around two o'clock to be able to take the case. Okay, then
2 I think that we can probably dispense with the other two cases and
3 then give you the rest of the afternoon to put on your case. I
4 mean, not the rest of the afternoon, really, not literally.

5 MS. PRUITT: Madam Chair, I just want to be sure he
6 understands that if you're testifying as the ANC, that would be
7 after the applicant puts on its case, which can be up to an hour,
8 and cross-examination. So your testimony would not come directly
9 at two.

10 MR. CLARK: Would there be any opportunity to
11 change that sequence?

12 MS. PRUITT: That's what needs to be discussed.

13 CHAIRPERSON REID: What time do you have to leave?
14 Two-thirty? How long do you need to put on your case? The
15 appellant -- how long do you need?

16 MR. CLARK: I think we'll probably go more than a
17 half-hour, but I certainly have no problem if Mr. Kogan goes
18 before us.

19 MS. PRUITT: Excuse me, sir. Do you have a written
20 statement, and do you have more than a written statement that you
21 would like to add, because, of course, with this Board can read
22 that.

23 CHAIRPERSON REID: We have your written statement,
24 the one that you submitted with the resolution. You would like
25 the opportunity to speak?

1 CHAIRPERSON REID: Well, okay. Let's try this.
2 Why not allow these two cases to go first, and then -- this is
3 unprecedented, but I have no problem with allowing you to say a
4 few words, whatever you wanted to say, on record and then let the
5 appellant put on his case, if there is no objection with the
6 order.

7 MR. BROWN: I have no objection, Madam Chair.

8 CHAIRPERSON REID: Then that's basically to
9 accommodate and facilitate getting all three cases heard and
10 facilitated as quickly as possible today. Thank you.

11 Let's call the first case. That will be the Krooth
12 case.

13 MS. PRUITT: You wanted to do Mr. Krooth first or
14 follow the agenda as it's written.

15 CHAIRPERSON REID: Okay. No, I'm sorry. Let's go
16 in order except for we are going to put the appeal at the end.

17 MS. PRUITT: The first application of the afternoon
18 is 16539, application of Gary Guzy and Sharon Sprague, pursuant to
19 11 DCMR 3103.2, for a variance from a side yard requirement under
20 Subsection 405.9 for the construction of a porch onto the front of
21 an existing single-family dwelling house in an R-1-B District at
22 3211 Newark Street, N.W. (Square 2073, Lot 10).

23 All those planning to testify, would you please
24 stand and raise your right hand. Do you swear or affirm that the
25 testimony you give today will be the truth?

1 (WITNESSES SWORN.)

2 CHAIRPERSON REID: Go ahead.

3 MR. GUZY: My name is Gary Guzy. I'm the property
4 owner, along with my wife, Sharon Sprague, at the property in
5 question.

6 CHAIRPERSON REID: Okay. Mr. Guzy, you don't have
7 any opposition, that you know of?

8 MR. GUZY: We are unaware of any opposition. In
9 fact, there are some letters of support from the most closely
10 affected neighbors.

11 CHAIRPERSON REID: Two of your neighbors who live
12 very close to your property?

13 MR. GUZY: The adjacent side neighbors.

14 CHAIRPERSON REID: And you don't have any
15 opposition. So, therefore, we have read your submission, and we
16 are very familiar with the aspects of your case. So if you would
17 like, you could basically just give us the highlights and show us
18 how you meet your burden of proof, and then we can get done with
19 your case fairly quickly.

20 MR. GUZY: We'll be brief, and we greatly
21 appreciate the Chair and the Board's indulgence in rescheduling
22 the order of the agenda to accommodate us.

23 This, as I mentioned before, is a very modest
24 addition to extend the side yard set-back line of an existing
25 porch out to the front by 12 feet. There's ample space between

1 that side extension and the neighboring adjacent property owner.

2 We've worked very hard to design this property
3 carefully, consistent with the historic nature of the
4 neighborhood, have worked with the Historic Preservation Review
5 Board and our local architectural review board to gain their
6 approval to accomplish that, have worked closely in cooperation
7 with our neighbors to ensure that there is no impact whatsoever on
8 any of their property uses or values, and this seems like a
9 solution for us that's a very modest one, consistent with both the
10 character of the neighborhood and the uses of the area.

11 We have invited our architect here, Chris Snowber,
12 who is the person most familiar with the design of it, who would
13 be pleased to present it to you, in particular one view which
14 shows the minimal impact of the addition and to answer any
15 questions that the Chair of the Board may have.

16 CHAIRPERSON REID: All right.

17 MR. SNOWBER: My name is Chris Snowber. I'm a
18 principal of Hamilton, Snowber Architects. We are the architects
19 for the project.

20 I believe you all have sets of drawings in front of
21 you. So I can refer to these drawings, but I don't know -- Gary
22 is holding up -- I think you have four sheets altogether. One
23 sheet shows the context of the neighborhood, which is on Newark
24 Street in Cleveland Park.

25 It shows the context of the neighborhood, which is

1 largely Victorian houses built in the late 1800s. This is a
2 unique house on the block that was built in the late Twenties. It
3 is different in style from the rest of the houses. It's a Dutch
4 Colonial, and it is set significantly further back. It's set 38
5 feet back from the front property set-back line.

6 The other houses immediately adjacent and, in fact,
7 typically along Newark Street are all set directly to the building
8 set-back line, which is 15 feet back.

9 CHAIRPERSON REID: Just let me ask you a question.
10 Did you give us a copy of the Sanborne map to show us the
11 neighborhood, so that we can get some perspective as to that house
12 in regard to the other houses in the neighborhood?

13 MR. SNOWBER: No, other than the document. You
14 have a drawing. It's down below here.

15 CHAIRPERSON REID: Do we have that?

16 MS. PRUITT: We are making copies for you now.

17 CHAIRPERSON REID: Okay. They are going to get
18 copies for us. So go ahead while they are doing that.

19 MR. SNOWBER: That is taken from Sanborne's,
20 actually. I took that off of that, and it's a drawing. It's not
21 the original Sanborne's, but it shows the other properties on the
22 street.

23 CHAIRPERSON REID: It was taken from Sanborne?

24 MR. SNOWBER: This sketch right here.

25 MS. PRUITT: I'm sorry, sir. You need to move the

1 mike around you so we can make sure we pick you up.

2 CHAIRPERSON REID: Do we have that? That's A-4?

3 MR. SNOWBER: This is on Sheet A-4. Correct.

4 CHAIRPERSON REID: This doesn't give us -- This is
5 just -- It's not adequate.

6 MR. SNOWBER: I do, however, show the two adjacent
7 properties on Sheet A-3. In the lower lefthand corner, it shows
8 our property and the two adjacent properties and how they come to
9 this building set-back line and ours is set 38 feet back.

10 CHAIRPERSON REID: The set-back of this particular
11 house in comparison to the two neighboring properties, we can see,
12 but what about the other properties?

13 MR. SNOWBER: Perhaps you can tell from the
14 photographs. It's fairly common. Certainly on the north side of
15 Newark Street, the houses follow that continuous line in every
16 instance on that side of Newark Street.

17 CHAIRPERSON REID: You mean the continuous line
18 that would be exclusive of the subject property?

19 MR. SNOWBER: Exactly right.

20 CHAIRPERSON REID: The subject property is the only
21 property that has a set-back that far? Is that what you're
22 saying?

23 MR. SNOWBER: Correct. Yes, and it post-dates the
24 rest of the construction on the street by about 30 to 40 years.

25 CHAIRPERSON REID: What year was it constructed?

1 MR. SNOWBER: About 1928.

2 CHAIRPERSON REID: Thank you. go ahead.

3 MR. SNOWBER: Anyhow, so the building came much
4 later and is a more modest house than the other houses on the
5 street, and of a different architectural style.

6 The owners are attempting to -- Being a small house
7 and having very little area to grow, there are two goals that we
8 wanted to do. One was enclose a small porch that exists on the
9 west side of the property, and then having done that, extend the
10 existing porch that we had just filled in to provide some exterior
11 space that extends out to the street and creates a porch somewhat
12 like some of the other porches on the street.

13 This is why we have to seek a variance. It's not
14 having anything to do with filling in the room. It's only the
15 extension of the porch that requires the variance. The reason it
16 requires the variance is that, as you can see, the existing
17 property is 50 feet. The building is approximately 40 feet and
18 has about a seven-foot side yard on one, three feet on the other.

19 Both of them are less than zoning requirements current.

20 So we're requesting relief, because we only have a
21 three-foot set-back. We're required to have an eight-foot.
22 There's five feet of our new porch that we are proposing that
23 would be into the required side yard.

24 In considering the issues, the property is
25 considerably -- is narrower and smaller than other properties on

1 the street. The property has very few other places to grow. It's
2 also tight in the rear of the property to the property line in the
3 back. Obviously, we have the same side yard issues if we tried to
4 go to the other side as well. So this is one of the few areas
5 that we could grow.

6 Architecturally, the design that we propose looks
7 in harmony with the rest of the house. In fact, it carries out
8 the architectural style of the front of the house. It carries the
9 same two columns that exist on the side of the porch. We are now
10 basically relocating to the front to create the new porch.

11 We do not affect adversely the light, air, privacy
12 or basically intrude in any way on the neighbors to either side.
13 That's our statement, but it also is the statement of the two
14 neighbors. The letters we had are the two neighbors immediately
15 to the west and immediately to the east of our property.

16 As Mr. Guzy said, we have the support of the
17 neighborhood architectural review -- the Cleveland Park Historical
18 Review Commission, as well as the HPRB.

19 CHAIRPERSON REID: What about the ANC? Did you
20 talk to the ANC?

21 MR. SNOWBER: We contacted the staff. We did not
22 understand that there was any opposition or we couldn't even get a
23 response in terms of when there was going to be a meeting to hear
24 this. As I understood, they would be notified from the BZA and,
25 if they had any response, they would have made a response.

1 CHAIRPERSON REID: Right. We didn't -- They were
2 notified. That's ANC-3C?

3 MR. SNOWBER: That's correct.

4 CHAIRPERSON REID: They were notified 12/23. We've
5 not heard anything back from them, and that's usually presumptive
6 of the fact that they do not have any opposition, because if they
7 did, they would let us know.

8 That concludes your --

9 MR. GUZY: That's all we have to say, yes.

10 CHAIRPERSON REID: All right. Board members, did
11 you have questions?

12 BOARD MEMBER RENSHAW: Just to ask, did you poll
13 your neighbors across the street?

14 MR. GUZY: Yes.

15 BOARD MEMBER RENSHAW: And how did they vote?

16 MR. GUZY: Yes, we've actually talked to all of our
17 neighbors across the street. They are all very supportive,
18 actually, of the addition. We didn't provide letters, because of
19 the combination of travel schedules and snow that intervened, but
20 I think the fact that there is no opposition really demonstrates
21 their support. But I've had recent conversations with all of
22 them, and we shared our plans with them, and they are all very
23 supportive.

24 BOARD MEMBER RENSHAW: Did you call the ANC Chair
25 and ask if she received the notice?

1 MR. GUZY: I did not. I'm certain my wife did not.

2 I don't believe that --

3 MR. SNOWBER: Actually, Gary's wife did call to try
4 to establish when there was a meeting, and she got no response.
5 It was the kind of thing where she left a message a few times on
6 an answering machine and did not get any response about when the
7 meeting was actually going to occur, which was sort of our
8 request. So we tried. I don't think we got anywhere.

9 VICE CHAIRPERSON SOCKWELL: Gentlemen, just to
10 clarify a couple of things so that the Board members are also
11 aware of this.

12 Your minimum lot for the zone that you are in for
13 an R-1-B is 5,000 square feet with a minimum width of 50 feet.
14 Your existing lot is 6300 square feet, which is larger than
15 minimum, considerably, even though it is smaller than the other
16 lots within the same block, and you do have the minimum 50 foot
17 width across the front of the lot with a somewhat wider width as
18 shown at an angle along the rear, but the basis of the property is
19 50 feet.

20 You're allowed a 40 percent lot coverage for
21 residency occupancy. You've provided 25 with your proposal. So
22 you're far below the maximum lot coverage that would be allowed.

23 As we all know, the five-foot minimum side yard
24 requirement of Section 405.8 is what you would be up against if
25 the existing side porch were at five or somewhat greater than five

1 feet, but because it is not, you are here before us.

2 Your rear yard requirement has been met, and your
3 front yard issues are not those that would make your property
4 particularly encumbered, although you have the conditions that you
5 have. But the existing side porch and the distance of 25 feet
6 from your property line to the adjacent structure on the west
7 gives rise to believe that light and air to the adjacent property
8 would not be affected significantly, and you do have a letter of
9 support from that property owner as well as the property owner on
10 the non-affected side.

11 So at least to that degree, it appears that the
12 most affected neighbors are in concert with your proposal.

13 MR. GUZY: That's all correct.

14 CHAIRPERSON REID: Okay. Then we go now to --
15 There is no ANC report, but there was a letter from Historic
16 Preservation Review Board. Did you provide us that letter? I
17 didn't have a copy in my file. If you do have a copy, it would be
18 good to submit that for the record.

19 MR. SNOWBER: I don't believe I have a copy with
20 me. I have -- I got a verbal report from the HPRB from Steve
21 Callcott.

22 CHAIRPERSON REID: Usually, they give you something
23 in writing.

24 MR. SNOWBER: In fact, I asked -- Now I'm
25 remembering. I asked for a copy of it, and what he sent me was --

1 I'm afraid I don't have it with me -- was just the -- sort of the
2 minutes of the hearing kind of a thing, and it just said Item
3 whatever the item was, and it says it was a consent item or it was
4 approved by the Board. There was no note of the discussion.

5 CHAIRPERSON REID: We can leave the record open for
6 you to submit that, please.

7 MR. GUZY: We appreciate that.

8 CHAIRPERSON REID: Okay. Persons or parties in
9 support of the application? There are no persons appearing here
10 today. However, we do have two letters from neighboring
11 neighbors. One is from George Frampton, who says in pertinent
12 part, "The construction, I believe, will enhance the appearance of
13 the property, will not adversely affect my property in any way;"
14 and Sharon Sprague who says that --

15 MR. SNOWBER: Sharon Sprague is Gary's wife. She's
16 the co-property owner.

17 CHAIRPERSON REID: I'm sorry. I picked this up.
18 The other letter of support --

19 MR. SNOWBER: I'm sure she's very supportive.

20 CHAIRPERSON REID: I grabbed the wrong letter.
21 Basically, the residents next-door, and that they have no
22 objection to the granting of the variance, and that it would
23 enhance the appearance of the property. So that's good.

24 There is no one here in opposition? We have no
25 letters of opposition. So closing remarks by the applicant.

1 MR. GUZY: That's really our entire presentation.
2 We appreciate the Board's consideration of this matter.

3 CHAIRPERSON REID: All right. Would you like a
4 summary order, a bench decision, which means you get an answer or
5 a response today?

6 MR. GUZY: We would very much appreciate that.

7 CHAIRPERSON REID: Okay. Board members, I would
8 move that we approve this application. I feel that they have
9 adequately demonstrated to us that they meet their burden of proof
10 in regard to unusual and irregular, unique lot and that it was
11 built prior to our regulations and that it is set back much
12 further than the other properties on that particular block, that
13 the lot shape appears to be regular, and that granting the
14 application does not appear to have any adverse impact on anyone
15 else as far as traffic, noise, parking, light or the like is
16 concerned; and I don't think it impairs the integrity of the
17 zoning regulations or map.

18 ZONING COMMISSIONER MITTEN: Madam Chair, Mr.
19 Sockwell raised the same issues that came up in my mind in the
20 sense that -- and I'll admit that this is my first case of this
21 type. I'm from the Zoning Commission -- the issue of the size of
22 the lot is more than the minimum required in the zone. The width
23 of the lot is the minimum required in the zone and, even though
24 abutting properties are wider, other lots on the south side of
25 Newark Street are -- some of them are 50 feet wide, we have some

1 guidance about what the minimum width of a side yard should be for
2 properties that are sort of preexisting and so on.

3 I just -- So far I'm not convinced that this is
4 exceptional, which I believe is the burden. So I don't know if --
5 Maybe I'm interested in what Mr. Sockwell has to say about it,
6 since he's thought about the same things that I have.

7 CHAIRPERSON REID: My understanding from Mr.
8 Sockwell was that they were -- he felt that they were within the
9 scope of the zoning regulations. Matter of fact, they were
10 excessively within the scope of the zoning regulations. So that
11 was not a problem.

12 ZONING COMMISSIONER MITTEN: That's my point.
13 What's exceptional?

14 VICE CHAIRPERSON SOCKWELL: It's a burden of proof
15 issue.

16 CHAIRPERSON REID: The unique is -- The burden is
17 unique, unusual, exceptional, and going to uniqueness, the fact
18 that this property is the only one that has a set-back as far from
19 the property line as opposed to the rest of the neighborhood.
20 That would make that unique.

21 ZONING COMMISSIONER MITTEN: All right. But
22 there's nothing precluding them from adding at the front of their
23 house up to the set-back line.

24 MR. GUZY: If I may, Madam Chair. That was one of
25 the options that was discussed with our local architectural review

1 committee, and there was a significant concern about changing the
2 character of the existing house, the architectural character of
3 it. That would totally transform the front of it, and we came up
4 with this as a solution to give us a modest sort of conversation
5 with this enormous front yard and the house and to be of the
6 character of other houses in the area, which all have front
7 porches, but not to change fundamentally the sort of stark
8 appearance of the front of the house and the historic nature of
9 it.

10 So we had that discussion very much with the
11 architectural review committee, and they agreed with that
12 assessment.

13 ZONING COMMISSIONER MITTEN: So would you say that
14 in your case one of the exceptional conditions is the fact that
15 you're an atypical property in a historic district and, therefore,
16 somewhat inhibited from taking advantage of other portions of your
17 lot that you might be able to otherwise?

18 MR. GUZY: I think that's an accurate statement.

19 ZONING COMMISSIONER MITTEN: Okay, great. That's
20 super.

21 VICE CHAIRPERSON SOCKWELL: In addition, with
22 regard to the position of the existing porch and the position
23 relative to that of the proposed addition, the condition that
24 exists and their ability to utilize the existing foundation as a
25 point to tie in the addition are facts of the existing building

1 which are not being altered per se.

2 The existing projection into the side yard will not
3 be increased, just the length of the projection into the side
4 yard. As a connected item to extend an existing condition, I
5 believe that this is a more rational addition to the building than
6 would be one that sort of tucked further into the front of the
7 house as opposed to continuing an existing visual element forward.

8 It seems to me that that would be the more rational
9 way of approaching it and would not create a somewhat sawtoothed
10 appearance; and since they are reusing the columns and other
11 architectural features are being incorporated that would be very
12 comparable in character, that this would be the most appropriate
13 direction for them to have taken.

14 CHAIRPERSON REID: Is there a second?

15 ZONING COMMISSIONER MITTEN: Second.

16 CHAIRPERSON REID: Did you have any comments?

17 BOARD MEMBER RENSHAW: No.

18 CHAIRPERSON REID: All in favor? Opposed?

19 MS. PRUITT: Madam Chair, staff would record the
20 vote as four to zero to approve. Motion made by Ms. Reid and
21 seconded by Ms. Mitten. Summary order?

22 CHAIRPERSON REID: Summary order. You will receive
23 your order in approximately two weeks, and in the interim be sure
24 to submit the letter or whatever the document is from the Historic
25 Preservation Review Board. Thank you.

1 MR. GUZY: Thank you very much. We appreciate your
2 consideration.

3 VICE CHAIRPERSON SOCKWELL: Mr. Snowber, one last
4 thing. Was that the Historic Preservation Review Board or was
5 that the Cleveland Park Historical Society?

6 CHAIRPERSON REID: Both.

7 VICE CHAIRPERSON SOCKWELL: It's both?

8 MR. SNOWBER: We went to a hearing of the Cleveland
9 Park Historical Society. They had a response, and made some
10 slight revisions to them, and then it went before the Historic
11 Preservation Review Board, and then they made a vote.

12 VICE CHAIRPERSON SOCKWELL: Thank you.

13 MR. GUZY; Maybe just to clarify, I think our
14 initial hearing was with the local architectural review board,
15 which --

16 MR. SNOWBER: It's called the architectural review
17 committee or something of the Cleveland Park Historical Society.

18 VICE CHAIRPERSON SOCKWELL: Thank you.

19 MS. PRUITT: Madam Chair, the next case on the
20 agenda is Application 16485, application of John and Nancy Krooth,
21 pursuant to 11 DCMR 3108.1 (New Section 3104.1), for a special
22 exception for an addition to an existing structure under
23 Subsection 400.7(b) from the setback requirements for penthouses
24 in an R-3 District at 1700 35th Street, N.W. (Square 1296, Lot
25 16).

1 All those planning to testify, would you please
2 stand and raise your hands? Do you swear or affirm the testimony
3 you give will be the truth?

4 (WITNESS SWORN.)

5 CHAIRPERSON REID: Let me ask for the record, since
6 this is basically a rehearing -- a continuation, then are we going
7 to just deal with the aspect of the uncertainty or the questions
8 that we asked you to come back to answer or is it in the same
9 sequence?

10 MS. PRUITT: This is basically -- The Board
11 requested that this be reopened. So it's really your call as to
12 what you actually ask of Mr. Krooth, because we didn't give him
13 anything specifically when you asked to reopen it. It was my
14 understanding it was a clarification of the issues.

15 It's up to you, and I understand that Ms. Renshaw
16 and Ms. Mitten have not read the -- can sit on this and will read
17 the record for the rest of this, so that they will have the whole
18 body of information. So you may get some additional redundant
19 information questions.

20 CHAIRPERSON REID: Mr. Krooth, then my feeling
21 about this is that we've had your hearing. So, basically, this
22 afternoon you can respond to the questions and also I read your
23 submission which did clarify to a great degree a lot of the issues
24 that were posed subsequent to your hearing. If you want to just
25 give us the information, just summarize for us the answers to the

1 issues that you're here for today.

2 MR. KROOTH: Sure. I'll be glad to. When I heard
3 about the reconsideration hearing, I did take a second look and
4 try to anticipate what the issues were. Mr. Sockwell had raised a
5 couple of them, and so I tried to address that.

6 In fact, I've given you two alternatives on the
7 revised submission that I gave to you, and I'm hoping that you
8 will grant me the alternative one, which is the alternative which
9 I had presented to my neighbors and got their approval for.

10 Basically, I have requested the stairwell, and
11 then on either side there's some additional area, and I think the
12 issue was what is that area to be used for.

13 I had labeled that as a future elevator area, and
14 that, obviously, was incorrect and misleading. I had no intention
15 of building an elevator then or in the future. I was just
16 concerned that I am 60 years old. My parents both had strokes,
17 and there might be a requirement. But it said future, and I knew
18 that if I needed an elevator, I would have to come back before
19 this Board or whatever applicable authority and required to get a
20 building permit.

21 To make it crystal clear, in t he resubmission I
22 omitted that, and I specifically labeled these two areas as
23 storage areas, which was always my intention for the area here.

24 There is the stairwell, and then on the righthand
25 side there is a four-foot -- actually, three and a half foot --

1 wide area which would be a small closet, which my wife would be
2 able to use the tools and the equipment and the materials that she
3 uses in a roof garden to store up on the same level.

4 On the lefthand side, there's a larger storage
5 area, and this would also be used for the same purposes, so the
6 tools, equipment and materials. In addition to that, we have
7 lounge chairs, four of them, and a table and four chairs and some
8 other chairs and tables that are outside in the wintertime, and
9 they are getting ruined by this weather. So we would bring them
10 in and store them in that area.

11 In addition to that, we also have about 15 to 20,
12 maybe a little more than that, terra cotta pots. About half of
13 them are with annuals, and they also get very damaged by
14 continuing weather like this. We would also store them in there.

15 My house does not have an attic and does not have a
16 basement, and we do have some area in the garage on the wall to
17 store tools. Basically, besides the closets in the bedroom and
18 the kitchen, we have two small closets in the hallway, and we are
19 going to be losing about 40 percent of them by building these
20 stairs to the roof.

21 Our situation is so critical for storage, in fact,
22 we have for the past years rented storage space in one of these
23 storage places, and each time I need to get something from a
24 record or something like that it takes me a couple of hours to go
25 down there, and then the storage bin is so full I have to pull

1 everything out to find the records.

2 So we might, if there was any space remaining in
3 that storage area, take some of these records and bring them to
4 the house, so I wouldn't have that problem. But basically, that's
5 what I tried to address in the issue.

6 If there's another question or some other
7 clarification, I'd be glad to answer it.

8 CHAIRPERSON REID: I have none. Mr. Sockwell,
9 would you like him to clarify for you what--

10 VICE CHAIRPERSON SOCKWELL: I have a couple of
11 questions. I think the first question, of course, was that when
12 we spoke at the previous hearing, you had stated an intention to
13 put elevators in the building. As you are well aware, at the
14 penthouse there was no plan for an elevator to penetrate the
15 floors --

16 MR. KROOTH: No, there was not.

17 VICE CHAIRPERSON SOCKWELL: -- and shown as future
18 elevator area. While we are more than considerate of the problems
19 that you and your wife are experiencing, leaving the folding stair
20 down in the corridor all the time, and you tell me she had fallen
21 down that stair once, and you were always bouncing off of it, it
22 did concern me that there was no plan for an elevator and that
23 both sides of the stair could not possibly accommodate elevators
24 for a single family residence of that type.

25 The use of penthouses in this case is not such as

1 the use of a residential unit as a penthouse in an apartment
2 building or what-not, which is just labeled penthouse but is
3 really a floor. The issue of what can and cannot be or should and
4 should not be allowed as a variance to the ordinance is very
5 important to us all.

6 I do believe that it is not inconsistent to attempt
7 to accommodate your need for vertical transportation that's much
8 more comfortable and safe than that which you are using now, and I
9 am more than willing to see the penthouse extension to allow a
10 more useful stair to accommodate your needs in that respect.

11 I did want to ask you one particular question.
12 That is, when did you build the roof deck?

13 MR. KROOTH: When did I build the roof deck itself?

14 VICE CHAIRPERSON SOCKWELL: Yes.

15 MR. KROOTH: I'm not sure what you mean by building
16 a roof deck.

17 VICE CHAIRPERSON SOCKWELL: Well, it has a floor on
18 it, and it has an extended wall up above the parapet wall of the
19 roof.

20 MR. KROOTH: Yes. It was done at the time of the
21 penthouse.

22 VICE CHAIRPERSON SOCKWELL: Was that roof deck
23 built with a building permit from the city?

24 MR. KROOTH: Yes, it was.

25 VICE CHAIRPERSON SOCKWELL: And could you produce a

1 copy of that for us?

2 MR. KROOTH: Yes, sir.

3 VICE CHAIRPERSON SOCKWELL: Okay.

4 MR. KROOTH: When you say the building permit
5 itself, do you mean the --

6 VICE CHAIRPERSON SOCKWELL: A copy of the permit
7 for the roof deck, not the penthouse, the roof deck.

8 MR. KROOTH: I don't have a building permit per se.
9 I did go down to the -- I lost it. It's been two and a half
10 years now. I used to have the permit. It was attached to my
11 window and so forth, but I did go down to the District of Columbia
12 to try to -- to take a look at the building permit and the plans
13 for the building permit, and what I did is I copied the plan for
14 the building permit, and I have it right here for you, sir.

15 This was the one that was approved back in July
16 1997. I remember specifically when I went down to get the permit
17 for the penthouse and so forth, I was talking to the -- You have
18 the different bodies of people that you go to, the different
19 inspectors, and whichever the one was applicable, he pointed out
20 to me that in order to have the roof deck that I would have to
21 have a guard rail that surrounds the roof deck and that it would
22 have to be a guard rail which is approved by the BOCA code.

23 I said to him, well, my architect didn't put it on
24 here, is it all right if I draw it on here. And he said, yes, you
25 can draw it on here. So I, with his help, drew on two prototypes

1 of a guard rail, guard rail one that would ride on top of the
2 parapet, and a guard rail two if it wasn't on top of the parapet
3 that was inside of the parapet. I put them on the building plans
4 right over here, as you can see.

5 He said to me that provided you have the guard rail
6 surrounding the area you have the roof deck, you're permitted to
7 do that. So this was incorporated within the plans, Mr. Sockwell.

8 VICE CHAIRPERSON SOCKWELL: So the issued building
9 permit that we have on record makes no mention of the roof deck or
10 the parapet wall.

11 MR. KROOTH: Well, I think that the permit refers
12 to the plans that were approved, sir, and this is the plans that
13 were approved. These are copied directly from the D.C.
14 Department, which I did a couple of weeks ago.

15 VICE CHAIRPERSON SOCKWELL: It's very interesting,
16 because anytime anything is added that was not part of the
17 original application, it is then input, as everything else is, by
18 hand onto the application, so that you don't have a problem with
19 an inspection that would take place for the construction work that
20 has been approved.

21 MR. KROOTH: I can only tell you what I did, sir.
22 You know, I made the application. I brought the plans in. The
23 issue was raised of the deck. We addressed the issue. We put it
24 right on here, sir.

25 VICE CHAIRPERSON SOCKWELL: Yes. I would refer you

1 back to the original file for the original case, and there is no
2 annotation on the cost of construction to take into consideration
3 the roof deck or parapet wall as well, which leads me not quite to
4 understand what happened to it that they were so negligent that
5 they actually left all reference to it in cost and all reference
6 to it in approval off of the permit.

7 MR. KROOTH: Well, I think the cost was an estimate
8 of the job, and actually the cost of the roof deck -- this is not
9 an elaborate roof deck. Basically, it is just --

10 VICE CHAIRPERSON SOCKWELL: Twelve, 15, \$2,000 at
11 most, I would think, based on normal construction.

12 MR. KROOTH: If it was that. You know, you go to
13 Hechinger's and you buy these little pre-made panels and just lay
14 them right down. You pick them right up, and that's what it is.

15 VICE CHAIRPERSON SOCKWELL: I understand. Well, I
16 just wanted to get your opinion of exactly what had taken place
17 with regard to all of this, and I think you've given us your
18 feelings on it. Thank you.

19 MR. KROOTH: Yes, sir.

20 CHAIRPERSON REID: All right.

21 ZONING COMMISSIONER MITTEN: Madam Chair, I just
22 have a couple of quick questions that are probably redundant with
23 what was said in the original hearing, but it would be immensely
24 helpful if I could just ask a few questions.

25 CHAIRPERSON REID: Okay.

1 ZONING COMMISSIONER MITTEN: I'm just going to use
2 alternative number 2, just to point out. That's attached to your
3 January 12, 2000, letter.

4 This is the outline of the existing penthouse?

5 MR. KROOTH: Yes, that's correct.

6 ZONING COMMISSIONER MITTEN: What's all in here?

7 MR. KROOTH: Well, you see, when I built the
8 penthouse, the pull-down stairs were on the righthand side over
9 there. That was the only place in my house I could put the
10 stairs. In order to get from the stairs outside, because of the
11 mechanical equipment, the only place I could put the doors are
12 where they've shown it over there at the edge.

13 So that, basically, is the corridor that leads from
14 the staircase to the outside.

15 ZONING COMMISSIONER MITTEN: Its' a corridor?

16 MR. KROOTH: A corridor, a hallway, a corridor.

17 ZONING COMMISSIONER MITTEN: So you don't have
18 anything in here? You don't have any --

19 MR. KROOTH: No, at this particular time, I do have
20 a table with some plants from the outside that I brought in during
21 the wintertime, just a small table.

22 ZONING COMMISSIONER MITTEN: Are there windows
23 anywhere in here?

24 MR. KROOTH: Yes, ma'am. There are windows there.

25 ZONING COMMISSIONER MITTEN: Maybe you could just -

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MR. KROOTH: There's a double glass sliding door that --

ZONING COMMISSIONER MITTEN: That would be here?

MR. KROOTH: -- and a window next to it, to bring light into it.

ZONING COMMISSIONER MITTEN: This here?

MR. KROOTH: Yes, that's it. That's to bring light into the area there.

ZONING COMMISSIONER MITTEN: Okay. Then is this the new stair that you propose to build?

MR. KROOTH: Yes. That's a new stairwell there.

ZONING COMMISSIONER MITTEN: So the -- Well, let me now flip back to alternative number one. So the new expanded penthouse -- would that be all this?

MR. KROOTH: Yes, that's correct. No, not the expanded area.

ZONING COMMISSIONER MITTEN: Well, I mean, the totality of the penthouse would be all this area here?

MR. KROOTH: Yes. I think the D.C. Code says you can't have greater than one-third of the roof deck in a penthouse area.

ZONING COMMISSIONER MITTEN: Okay. And this is not exactly to scale, this drawing. So you're representing to us that this does not exceed the one-third. Is that right?

1 MR. KROOTH: Yes, that's right. Absolutely.

2 ZONING COMMISSIONER MITTEN: Okay. Then you'll
3 just leave the pull-down stairs there?

4 MR. KROOTH: No. I'll probably just block them
5 off, eliminate them.

6 ZONING COMMISSIONER MITTEN: Thank you.

7 MR. KROOTH: Sure.

8 CHAIRPERSON REID: Excuse me one second. In that
9 this is not a routine hearing per se, what we tried to garner was
10 whether or not you had adequately addressed the issues that were
11 raised by Board Member Sockwell, and I think you have. We're just
12 trying to determine what we still needed.

13 I think that I have no problem with your
14 submission, and I think we approved it. However, the issue of the
15 building permit - - you would have to go and get the building
16 permit for the roof deck and submit that prior to the order being
17 issued. Is that a problem?

18 MR. KROOTH: Well, I have the plans here. Do you
19 want me to get the --

20 CHAIRPERSON REID: Mr. Sockwell?

21 MR. KROOTH: Would you explain to me what you want,
22 sir?

23 VICE CHAIRPERSON SOCKWELL: What I would like to
24 see is something that lets us know that the roof deck did have a
25 building permit, and there should be a record. This was done

1 recently enough that there should be a copy of the building
2 permit.

3 Although I'm sure you're being quite forthright
4 with us on the fact that what's drawn on there by hand was
5 approved, I don't have anything that says that it was issued as a
6 constructable element, because the issue of putting habitable
7 space with the weight of planters and all of the other aspects
8 onto that roof without those things having been reviewed by the
9 structural engineer at the District and, therefore, approved is
10 one of life safety for you and your wife, and you would certainly
11 be much more harmed if your roof collapsed into the floor below
12 than you would likely be harmed if you slipped on your new stair.

13
14 I think that the importance of the fact that roofs
15 are not designed for the loading that you're putting on there
16 normally, and the fact that there is nothing that shows me that
17 it's been confirmed that your roof is safe under the situation is
18 very important to us, because we want to make sure that you are
19 safe.

20 You're 60 years old now, and you've admitted that
21 you don't expect to be the young man you used to be for the rest
22 of your life. I believe that, if you can prove to yourself that
23 that roof is safe or prove to the Board that the roof is safe for
24 you to occupy it that way, we would feel a lot better about it. I
25 think that we don't have anything to show us this.

1 MR. KROOTH: On the plans itself, there is a
2 notation here that my architect did, who is a structural engineer,
3 and he refers to the roof live load at 30 psf, and the second
4 floor road, and he did look into this issue.

5 VICE CHAIRPERSON SOCKWELL: 30 psf is not very much
6 of a load. I think you would have about 80 for the lower floors.
7 You have at least 40 or 50, maybe even 60, but what you're
8 looking at is a rafter or roof joist that's generally a smaller
9 size than that of the joists that would hold the rest of the
10 house, because the rest of the house has to support partitions,
11 beds, and all the other issues that are part of your lifestyle.

12 MR. KROOTH: What I'm saying to you, sir, is that
13 he was a structural engineer, and I was very concerned about this
14 issue, and he did address the issue when he designed the plans and
15 put his stamp on it.

16 VICE CHAIRPERSON SOCKWELL: So he's an architect
17 and a structural engineer?

18 MR. KROOTH: Absolutely. Absolutely.

19 VICE CHAIRPERSON SOCKWELL: Did he put his
20 structural engineer stamp on? He did?

21 MR. KROOTH: His stamp is on there.

22 VICE CHAIRPERSON SOCKWELL: Okay.

23 MR. KROOTH: And it was reviewed by the -- Over
24 here it has reviewed by the Structural Department, the issue of
25 the party over here.

1 So it has all been structurally reviewed and so
2 forth when I got the permit. The permit itself is going to be a
3 permit to build the penthouse according to these plans.

4 VICE CHAIRPERSON SOCKWELL: I understand.

5 MR. KROOTH: And these are the plans that I
6 submitted --

7 VICE CHAIRPERSON SOCKWELL: Actually, that's not
8 true. You've said that the permit was for everything, that you
9 worked it out with the structural person at the District, because
10 it wasn't on the drawings initially. If that's the case, it is
11 also possible that your architect did not know that you were
12 making those modifications to his drawings, which require his
13 liability insurance; and those things were done by you in his
14 absence.

15 Don't you think that that puts your architect and
16 structural engineer at some risk, should there be some future
17 failure, because you're going to sue him?

18 MR. KROOTH: No, sir, because the whole purpose of
19 the penthouse was to have access to the roof deck. The only thing
20 that was missing from this plan here was the guardrail. The
21 structural engineer addressed this issue, because I was very
22 concerned about it.

23 VICE CHAIRPERSON SOCKWELL; So you're saying --
24 Well, first you told me that the roof deck was built at the same
25 time that the penthouse was built.

1 MR. KROOTH: Yes, I'm saying that. Yes.

2 VICE CHAIRPERSON SOCKWELL: So now you're saying
3 that the roof deck existed before the penthouse was built, but the
4 guardrail was built with the penthouse.

5 MR. KROOTH: No, sir. We had always gone up on the
6 roof by using a form of -- type of pull-down stairs that wasn't
7 enclosed, and we had used the roof deck prior to this. It is true
8 that we had done that.

9 VICE CHAIRPERSON SOCKWELL: So you had a roof hatch
10 with a stair.

11 MR. KROOTH: A roof hatch. That's good. Now we've
12 put it in here. I went to the architect. Obviously, I wanted to
13 make sure that the new structure was structurally sound. I mean,
14 that is a major concern, and this architect, who is a structural
15 engineer as well as an architect, came out to the house several
16 times and designed it accordingly.

17 He was well aware we were using a roof deck,
18 because that was the whole purpose of putting the penthouse up
19 there. The only thing that was missing from this plan was the
20 guardrail.

21 VICE CHAIRPERSON SOCKWELL: Okay. So your
22 architect and structural engineer really wasn't part of the roof
23 deck issue. The roof deck predated him, and was built with a
24 permit or was built prior to him coming on board for the penthouse
25 construction.

1 MR. KROOTH: No, I'm --

2 VICE CHAIRPERSON SOCKWELL: And I can understand
3 that. I mean, I'm aware of what you're saying now. So the
4 penthouse and the parapet were what were the recent construction.
5 That's fine. I don't have anymore questions. Thank you.

6 CHAIRPERSON REID: Okay. Mr. Sockwell, are we
7 still needing a building permit? What do we need?

8 VICE CHAIRPERSON SOCKWELL: Well, I think that the
9 parapet wall is less a concern. It is a concern for life safety,
10 but the parapet wall was disconnected from the roof deck issue
11 now.

12 The penthouse issue is to stand on its own. I'll
13 let the penthouse issue stand on its own from this point.

14 CHAIRPERSON REID: All right. So does that
15 conclude the --

16 BOARD MEMBER RENSHAW: Just a question, Madam
17 Chair. I'd like to know if you have passed your drawings
18 regarding access to the roof by the Fire Marshall's office? In
19 other words, a concern about how you bring down a victim from the
20 roof area through the house onto the street, if you have to do
21 that, if that has to be done?

22 MR. KROOTH: Are we talking about under the present
23 situation or the former situation?

24 BOARD MEMBER RENSHAW: Present situation.

25 MR. KROOTH: Did I talk to --

1 BOARD MEMBER RENSHAW: Did you have that reviewed
2 by fire officials having to do with safety involving excavation of
3 someone from the roof?

4 MR. KROOTH: I can only tell you that, when I went
5 down there, they have different agencies that you have to go to,
6 and I think the fire is one of those agencies, and I got it
7 approved by each one of those agencies. Yes, I did.

8 BOARD MEMBER RENSHAW: All right, sir.

9 MR. KROOTH: I don't remember the specific
10 conversation.

11 BOARD MEMBER RENSHAW: That stamp would be on the
12 records? In other words, a signature and a stamp?

13 MR. KROOTH: Yes, the checkmark. They're all
14 checked on it. Yes, ma'am.

15 CHAIRPERSON REID: Okay, Mr. Krooth, I think that
16 we have been able to sufficiently explore the issues and to
17 clarify them to the satisfaction of this Board. I think you were
18 saying that that space that you show on your drawings would be
19 either for elevator or storage.

20 MR. KROOTH: Well, not for elevator, just some
21 storage.

22 CHAIRPERSON REID: For storage? Okay.

23 MR. KROOTH: Yes. If it needs an elevator, I come
24 back before you and get all the permits.

25 CHAIRPERSON REID: Right. Well, for storage, if

1 that's the case, we have no problem with that. Mr. Sockwell,
2 there's no problem with that. So we don't have to take a vote
3 except -- or do we need a vote to modify the order?

4 MS. PRUITT: Yes, you do.

5 CHAIRPERSON REID: The order has not been issued.

6 MS. PRUITT: You can issue a decision yet today,
7 because you don't have a quorum of people who had heard the whole
8 case. Ms. Mitten and Ms. Renshaw have to read the beginning of
9 the case. They are only hearing a part of it. So once it's all
10 been read, if Mr. Gilreath or whoever else sat on it and you have
11 a proxy, you could; but at this point you don't have enough votes,
12 since you wanted to reissue the order.

13 MR. KROOTH: Could I talk to Ms. Mitten very
14 briefly?

15 CHAIRPERSON REID: Mr. Krooth, just one second.
16 Let me just say this. In view of the fact that we know this is a
17 time sensitive issue, and to be ensnarled with red tape, to me,
18 does not well serve the public, if in fact we needed to have a
19 proxy today, I fail to understand why we didn't get one from Mr.
20 Gilreath so that we could take care of this matter today.

21 ZONING COMMISSIONER MITTEN: Madam Chair, maybe I
22 could make a suggestion. If Mr. Sockwell were willing to withdraw
23 his motion for reconsideration, the original decision could stand.

24 CHAIRPERSON REID: But it would have to be modified
25 still with the issue of the storage.

1 MS. PRUITT: I understand what you're trying to do.

2 CHAIRPERSON REID: I have it. Why don't we table
3 it and call Mr. Gilreath to get his proxy, explain to him what has
4 happened. It's just a phone call, and then we can come back and
5 take up the vote. I don't think that Mr. Gilreath has a problem
6 with it.

7 MS. PRUITT: I think Mr. Gilreath voted in the
8 affirmative the first time around.

9 CHAIRPERSON REID: Yes. Let's do that, and we can
10 dispose of this today, and then we can proceed. So if you would -
11 - We want to go ahead with the next case, and let them make the
12 telephone call to Mr. Gilreath. If you could just hold for a
13 little while until we get that proxy, I think that you have --
14 Well, let me put a motion on the floor. Go ahead, let Mr.
15 Sockwell put the motion. I'll second it, and then we won't vote
16 until we get the proxy.

17 VICE CHAIRPERSON SOCKWELL: I move that we modify
18 the approval of Case Number 16485, application of John and Nancy
19 Krooth, that we move to modify the order to remove the reference
20 to elevator from the two areas adjacent to the stair and change
21 those indication to storage, and that we will approve otherwise as
22 was stated in the previous order.

23 CHAIRPERSON REID: I'll second it. Thank you.

24 MR. KROOTH: Thank you all very much.

25 CHAIRPERSON REID: Thank you for coming back today.

1
2 MR. KROOTH: It really means a lot to us, I must
3 tell you.

4 CHAIRPERSON REID: Well, thank you for coming back
5 today and indulging us.

6 MR. KROOTH: Shall I just wait over here then?

7 CHAIRPERSON REID: Yes. Thank you very much.

8 Okay, let's call the next case, and then I will
9 maybe, when Mr. Gilreath responds, we will take a vote, and then
10 that will dispense with that particular case. Thank you.

11 MS. PRUITT: The last case on the agenda for this
12 afternoon is 16533, appeal of George and Mary Clark, Stuart Sloame
13 and Ellen Seeherman and James and Emily Baker, pursuant to 3100
14 and 3101, from an administrative decision of Lloyd Jordan,
15 Director of Department of Consumer and Regulatory Affairs, made on
16 July 7, 1999, and September 17, 1999, to the effect that Forest
17 Hills, LLC., did not comply with the height requirements of the
18 regulations for a private residence.

19 The appellant alleges that the permits were issued
20 in error based on the existing grade of the property, inadequate
21 side yard, and that the property does not conform to the height
22 requirements in an R-1-A District at 4512 28th Street, N.W.
23 (Square 2251, Lot 29.)

24 All those planning to testify, would you please
25 stand and raise your right hand.

1 Do you swear or affirm that the testimony you are
2 going to give today is the truth?

3 (WITNESSES SWORN.)

4 MS. PRUITT: Thank you. Please be seated.

5 I believe, Madam Chair, you are going to take the
6 ANC person out of sequence because of the time.

7 CHAIRPERSON REID: Right, but Mr.
8 Johnson --

9 MS. PRUITT: Mr. Lourenco is here.

10 CHAIRPERSON REID: Mr. Lourenco, can you come
11 forward. Does Mr. Johnson have to also speak? Is Mr. Johnson
12 also going to testify today or did he have to leave? Okay. So
13 basically, you will. All right, thank you. Oh, there he is.

14 MR. KOGAN: Madam Chairman, thank you for the
15 opportunity to appear today to testify for the ANC and also for
16 rearranging the agenda so that I could get back to my ordinary
17 business, my normal business, that is.

18 My name is Phil Kogan. I'm here today representing
19 ANC-3F. I have a written statement that I've provided to each of
20 the members, and I believe also in your packet is a copy of the
21 ANC report and resolution that was approved by the ANC.

22 I'm here today representing the ANC in the case
23 16533 involving the two permits that were issued, one on June 7,
24 1999, and one on September 17, 1999, relative to the property at
25 4512 28th Street.

1 On January 10, 2000, ANC-3F voted unanimously, six
2 in favor, zero opposed and zero abstaining, to support a
3 resolution that found the following:

4 One, the DCRA incorrectly issued building permit
5 Number B424294 on June 17, 1999, to Forest Hills, LLC.,
6 authorizing the demolition of the structure, the existing
7 structure at 4512 28th Street, construction of three floors and
8 the addition of a new one-story garage on the existing foundation.

9 Two, the DCRA issued a revised building permit,
10 B426784, on September 17, 1999, to allow a change to the finished
11 grade of the project and acknowledged that the structure as
12 previously approved was, in fact, four stories.

13 Three, the DCRA's revised permit was issued
14 following construction of a four-story structure.

15 Four, the DCRA's revised permit was issued to
16 enable Forest Hills, LLC., to avoid the three-story height
17 limitation of 11 DCMR Section 400.1.

18 Five, the revised permit does not change the fact
19 that the structure, built in accordance with the initial incorrect
20 permit, is in fact a four-story structure.

21 The ANC also found that the DCRA has not adequately
22 addressed two issues: One, whether the structure at 4512 28th
23 Street as currently built improperly extends beyond the
24 preexisting footprint; and two, whether the side yards of that
25 structure comply with the minimum requirements for distance from

1 the adjacent properties. Those are two related issues.

2 The issue of ensuring that construction of tear-
3 down properties is in compliance with the zoning regulations and
4 character of the surrounding community is of great importance to
5 our ANC, and that's reflected in our report and our letter to you.

6 As residents of the District of Columbia, the ANC
7 and our neighbors believe that it is our neighborhoods which make
8 the District such an attractive place to live, and what makes our
9 neighborhoods great is their people and their character, including
10 our existing homes.

11 Tear-down/rebuild development can undermine our
12 neighborhoods, and that is why we must be vigilant about this type
13 of development. I want to be clear. ANC-3F and our Forest Hills
14 and North Cleveland Park neighborhoods do not oppose development
15 in our neighborhood. We do not oppose tear-down/rebuild projects,
16 but we do feel very strongly that tear-down/rebuild projects must
17 be carefully reviewed and scrutinized to ensure that they comply
18 with those District laws and regulations that are designed to
19 protect our neighborhoods.

20 The ANC finds that Mr. Clark and his neighbors have
21 made strong and compelling arguments that this is not the case in
22 this situation. This case has raised very serious questions about
23 DCRA's behavior and the manner in which both permits for this
24 tear-down/rebuild project were handled.

25 In fact, it sends a chill up the spine of

1 homeowners to see the DCRA acting as carelessly as it has in the
2 permitting process. As we pointed out in our resolution and
3 report, the DCRA, in violation of the DCMR, failed to notify the
4 ANC of any Forest Hills, LLC., application to demolish and
5 existing structure, construct a new structure, and perform other
6 work at 4512 28th Street, nor did DCRA notify the ANC of any
7 application to regrade this site following construction.

8 DCRA, by violating the DCMR, thereby denied timely
9 notice to our ANC and precluded review by the ANC and the
10 neighborhood prior to any violation occurring. It is now clear
11 that the June 7, 1999, permit for demolition and construction at
12 4512 28th Street was incorrectly issued by DCRA, and Mr. Pat Brown
13 now acknowledges that the permit was issued on the basis of a,
14 quote, "mistake" in the application.

15 Given that the application for the permit requested
16 authority to build a four-story house, and that zoning rules allow
17 structures of only three stories, there should be little doubt
18 that this permit never should have been issued. But it is DCRA's
19 actions after the permit was issued to which the ANC and our
20 neighbors take very strong exception.

21 Upon hearing the complaints from Mr. Clark and his
22 neighbors and receiving inquiries from Council member Kathy
23 Patterson about the matter, DCRA officials and Forest Hills, LLC.,
24 principals landed upon what we see to be in our minds a convoluted
25 scheme to allow the developer to throw some soil up onto the side

1 of the building and to call this a berm created by a regrading and
2 thereby somehow miraculously, if not mischievously, recreate what
3 had been a one-story basement into what DCRA would now have us
4 believe is a cellar.

5 In this clever maneuver, DCRA perhaps hoped it
6 could avoid the consequences of its own error in issuing the
7 original permit. ANC-3F finds this kind of behavior unacceptable
8 from public officials, paid with our tax dollars to enforce the
9 law.

10 The BZA needs to send a strong message to DCRA that
11 the District of Columbia does, in fact, respect the rule of law
12 and that this kind of misbehavior cannot be tolerated.

13 CHAIRPERSON REID: Let me ask you something.
14 Excuse me. In this particular allegation that you are making, is
15 this something that you are alleging as a result of what was
16 perceived? It was something that -- Let me just ask you, do you
17 know this for a fact or is it something that appeared to be some
18 collusion or something?

19 In other words, is this conjecture?

20 MR. KOGAN: The agreement between the developer and
21 the agency?

22 CHAIRPERSON REID: Yes. I mean, in the first
23 place, we really shouldn't even have allowed this, but since we
24 are here, what I want to find out is, is this conjecture? Is
25 this, oh, you know, I think that maybe this is what happened, or

1 are you - do you know for a fact that there was such an act
2 actually occurred?

3 MR. KOGAN: I'm not sure which act you're referring
4 to.

5 CHAIRPERSON REID: You just said that you thought
6 there was -- you used words like convolution, scheme. Is this
7 conjecture? This is what you basically came -- In other words,
8 you came to this conclusion, because you thought like perhaps this
9 happened or in your own mind, someone's mind --

10 MR. KOGAN: I think that conclusion -- and I think
11 that conclusion was shared among a number of the Commissioners --
12 arose when we went to look at the property. I know that you deal
13 with a lot of cases here, but if any of you could, I would
14 encourage you to look at the property, and particularly the berm.

15 In this statement I'm referring to the berm.

16 CHAIRPERSON REID: Okay, but do you have any proof,
17 can you substantiate the allegation that there was some perceived
18 collusion or some convoluted scheme or was that a figment of
19 someone's imagination?

20 MR. KOGAN: The convoluted scheme refers to the
21 process of piling the soil against the side of the building.

22 CHAIRPERSON REID: I understand that.

23 MR. KOGAN: And calling that a berm, and a
24 regrading.

25 CHAIRPERSON REID: I understand that.

1 MR. KOGAN: I can strike that phrase from the
2 record.

3 CHAIRPERSON REID: That was an interpretation of
4 what happened? This is very important that you as the ANC --
5 you're the Chairperson?

6 MR. KOGAN: No. No, I'm Treasurer, but I was --

7 CHAIRPERSON REID: You're here to represent the
8 ANC?

9 MR. KOGAN: I was designated in the resolution to
10 represent the ANC.

11 BOARD MEMBER RENSHAW: I think, Madam Chair--

12 CHAIRPERSON REID: Excuse me. Let me finish,
13 please. Just wait one second.

14 It's very important that -- We understand that, you
15 know, you can come here, appear, what have you, but it's very
16 important for these proceedings that we try to be as accurate and
17 as factual as possible. I think that it's irresponsible to come
18 in here and to make statements that cannot be substantiated.

19 Whatever you thought or felt or conjecture, then
20 that's one thing; but when you come in before this Board, then
21 what you present to us should have the highest level of reality
22 and truthfulness possible.

23 MR. KOGAN: Can I amend my --

24 CHAIRPERSON REID: And I don't think that that's
25 the case here.

1 MR. KOGAN: Can I amend my written statement then,
2 take that offending phrase out?

3 BOARD MEMBER RENSHAW: Madam Chair.

4 CHAIRPERSON REID: I think that would be prudent.
5 I do. Who is that? Ms. Renshaw?

6 BOARD MEMBER RENSHAW: Yes. I just want to say
7 concerning the statement that Mr. Kogan has made, I think he has
8 license to describe it as he sees it, and we have to take his
9 description of it in that light.

10 CHAIRPERSON REID: I don't agree with that. Mr.
11 Sockwell?

12 VICE CHAIRPERSON SOCKWELL: Personally, I think
13 that Mr. Kogan should actually be very cautious of the use of
14 terms, because what you want to do is reference the record as you
15 saw it and that, without knowledge of the ANC, X was done and Y
16 was done, and it appeared that this did not meet the requirements
17 of the law for the issuance of said permit or something. But
18 don't use words that are inflammatory without substantial back-up
19 for those words. That's what she's saying.

20 Madam Chair has been very cautious to inform all of
21 our applicants and representatives and appellants and what-not to
22 use words and phrases and statements that are substantially
23 without libelous potential.

24 BOARD MEMBER RENSHAW: Madam Chair, just to point
25 out that the zoning office is going to conduct additional

1 informational sessions for ANC Commissioners, and I am sure that
2 this issue will be discussed very thoroughly, and we take it as a
3 learning experience. Thank you.

4 CHAIRPERSON REID: We? We?

5 BOARD MEMBER RENSHAW: ANC people take this as a
6 learning experience.

7 CHAIRPERSON REID: Well, I think that what we need
8 to do here is decide which hat we're wearing today. Today you are
9 sitting as a member of the Board of Zoning Adjustment.

10 BOARD MEMBER RENSHAW: Exactly. I am.

11 CHAIRPERSON REID: So the ANC hat has to come off.

12 BOARD MEMBER RENSHAW: The ANC hat has been left in
13 the coatroom, but in any case, I just want to point out that there
14 will be sessions coming up, and the Zoning office will be reaching
15 out to ANC officials, and all of these points, as the Chair has
16 brought forth today, will be discussed, and this is a learning
17 experience for everyone.

18 CHAIRPERSON REID: Thank you, Ms. Renshaw. All
19 right, continue.

20 MR. KOGAN: Okay. I think where I had left off was
21 that, with this regrading that was authorized in the second
22 permit, in the September permit, the DCRA allowed this heaping of
23 soil on the side of the building, is what I saw and what I still
24 think of it as, to be labeled a regrading which would thereby
25 recreate what had been a one-story basement into what DCRA would

1 now have us see as a cellar.

2 In this manner, DCRA perhaps hoped it could avoid
3 the consequences of its initial error in issuing the original
4 permit. But ANC-3F finds that this kind of behavior is not
5 acceptable from public officials paid without tax dollars to
6 enforce the law.

7 We again ask BZA to send a strong message to DCRA
8 that the District of Columbia does, in fact, respect the rule of
9 law and that this kind of misbehavior cannot be tolerated.

10 As we stated in our resolution, the appeal of
11 George Clark and his neighbors has merit in that DCRA incorrectly
12 issued a building permit which enabled Forest Hills, LLC., to
13 construct a four-story structure, and DCRA then acted in such a
14 manner as to avoid and evade the three-story limit in the DCMR.

15 The BZA should uphold the appeal of George Clark
16 and should direct DCRA to ensure that Forest Hills, LLC., modifies
17 its structure so that it complies with the height limitation of 11
18 DCMR Section 400.1.

19 The ANC is also very concerned that DCRA's response
20 to complaints about this project to Mr. Clark, his neighbors,
21 Council Member Patterson, was wholly inadequate. We've heard talk
22 from DCRA officials about the new DCRA, but frankly, we haven't
23 seen much evidence of this.

24 For this reason, as we state in our resolution and
25 our report, the BZA should direct DCRA to do what should have been

1 done in the first place in this case, to contract with an
2 independent surveyor and to obtain an impartial third party survey
3 that would establish two interrelated facts, as I mentioned at the
4 beginning of my remarks: Whether or not the structure recently
5 built at 4512 28th Street extends past the preexisting footprint;
6 and whether or not the walls of the structure at 4512 28th Street
7 are within the minimum allowable distance from adjacent
8 properties.

9 We also request that the BZA direct DCRA to report
10 back on the results of this third party survey and on DCRA's
11 determination of whether or not these results indicate that the
12 structure at 4512 28th Street fails to meet the requirements of
13 the zoning regulations and, if it does, the steps that DCRA
14 proposes to take to address such violations.

15 Once again, I'd like to thank you, Madam Chairman,
16 for the opportunity to present my remarks.

17 CHAIRPERSON REID: Have you met with the appellant?

18 I'm sorry, with the intervenor or his attorney to try to
19 reconcile or to mitigate some of these differences or to try to
20 come to any meeting of the minds?

21 MR. KOGAN: We had Mr. Brown and the developers at
22 two meetings of the ANC, and I believe one of those was in
23 November of '99, and the other one was in January. We had some
24 extensive discussions there, and we had some other communications
25 on the phone regarding the matter.

1 CHAIRPERSON REID: And you could come to no
2 resolution or no compromises or no greater understanding as to
3 what occurred?

4 MR. KOGAN: Well, I think we became very aware of
5 the differences, as Mr. Brown mentioned to me when we got here
6 today. I think we understand where the differences are, but
7 there was no compromise that was reached. That's correct.

8 ZONING COMMISSIONER MITTEN: Madam Chair, I think
9 it would be helpful, since the timeliness issue is going to be the
10 first issue that we decide, for your part, the ANC, can you
11 provide us some kind of a timeline or sequence of your
12 participation -- I don't mean right now. I mean for later -- of
13 when you first became aware of it and at what meetings it was
14 discussed, and in what context, what actions were taken and so
15 forth, so that we can put all the information that we get
16 regarding when things occurred in making our decision regarding
17 timeliness.

18 MR. KOGAN: Yes, we can make that available.

19 ZONING COMMISSIONER MITTEN: Thank you.

20 MR. HART: Excuse me, Madam Chair.

21 CHAIRPERSON REID: Yes, Mr. Hart?

22 MR. HART: Excuse me. I hope this is an opportune
23 time to break in on the prior case, 16485, John and Nancy Krooth.

24 I spoke to Mr. Gilreath, and he is in accordance
25 with the vote of the Board, basing it largely on originally he was

1 in favor of the application. So he has voted to approve.

2 CHAIRPERSON REID: All right. Well, then -- Oh, we
3 already voted. Okay. No, no, we did not vote. We were waiting
4 for his proxy. Okay.

5 All in favor? Opposed? Thank you, Mr. Hart.

6 MR. HART: Staff would record the vote as three to
7 zero to two, Ms. Reid, Mr. Sockwell, and Mr. Gilreath; Ms. Mitten
8 and Ms. Renshaw not voting, not having heard the case.

9 CHAIRPERSON REID: All right. So, Mr. Kogan will
10 provide a timeline for us. We will leave the record open to
11 receive that. Thank you.

12 All right. So we go now to the applicant -- the
13 appellant, sorry.

14 MR. CLARK: Madam Chair, if I can proceed in kind
15 of an opening statement, I was sworn as part of this, since I am
16 one of the appellants as well here in this matter.

17 CHAIRPERSON REID: Everyone was sworn.

18 MR. CLARK: I'm just saying I'm not only here as
19 lawyer but also as appellant. That's all I'm saying.

20 CHAIRPERSON REID: Oh, okay.

21 MR. CLARK: Because I am one of the parties.

22 CHAIRPERSON REID: You are wearing two hats.

23 MR. CLARK: I'm wearing two hats today.

24 CHAIRPERSON REID: Three.

25 MR. CLARK: Maybe even more. I don't know, but I

1 know I got at least two. I may have three, I don't know.

2 CHAIRPERSON REID: Okay. Let me make sure we're
3 getting this right as far as the administrative procedures are
4 concerned. You are the attorney and also the appellant, because
5 usually the attorneys don't testify.

6 MR. CLARK: Well, I understand that. If you want,
7 I can have my neighbor, who is also a lawyer, do some questioning,
8 but it's really not -- What I want to do is kind of make an
9 opening statement to say what I think the legal issues are here,
10 and I'll refer you to a couple of photographs that we have in the
11 course of that, and maybe a couple of other photographs. That's
12 all I really wanted, to make sure those photographs are noted as
13 to what the property looks like.

14 CHAIRPERSON REID: But then you won't be
15 testifying?

16 MR. CLARK: Well, depending on the issues that come
17 up, I may. I'm certainly knowledgeable some on the tremendous
18 effort that was made here to call this problem to the city's
19 attention, and the continuous pursuit of it from July until
20 filing. But what I'd like to do, if it's appropriate for the
21 Chair, just to kind of a brief legal background as to what we
22 think.

23 CHAIRPERSON REID: Okay, Mr. Clark, please indulge
24 me for just a couple of minutes, because this is a highly
25 contested case, and we need to make sure that we're moving

1 correctly procedurally.

2 Let me then direct a question to corp. counsel. Is
3 that permissible for him to act in the capacity of both attorney -
4 - as the attorney and also to testify in this matter?

5 MS. SANSONE: Madam Chair, if Mr. Clark wishes to
6 present testimony, then he would be subject to cross-examination.

7 MR. CLARK: That's correct.

8 MS. SANSONE: That would be permissible, if that's
9 the manner in which he wishes to proceed. That would be
10 acceptable.

11 CHAIRPERSON REID: Mr. Brown, are you okay with
12 that?

13 MR. BROWN: I'm okay with that, subject to him
14 being subject to the same rules --

15 CHAIRPERSON REID: To cross-examination? Okay,
16 sure. All right. Go ahead.

17 MR. CLARK: Mr. Brown and I have already discussed
18 in advance of today's session that we would, in fact, not have any
19 objection to the admission of the prehearing exhibits which both
20 sides submitted. I think that's right. So I don't think there's
21 any question about the admissibility of any of those exhibits. Am
22 I right?

23 MR. BROWN: Yes. I mean, I think, largely, our
24 exhibits are his exhibits, and vice versa.

25 CHAIRPERSON REID: Very well.

1 MR. CLARK: So I don't mean to have anybody
2 thinking maybe there's some controversy over that. That's not the
3 point of what I'm saying.

4 DCRA, back when it approved the permit for the
5 original construction of this property, had in front of it an
6 application, an application which is one of our exhibits here
7 today, and it's in our prehearing submission, and it's Exhibit 4.

8 That's also got the permit and the application in it.

9 What it said was that the developer would demolish
10 the existing single family dwelling to foundation, basement to
11 remain, construct three floors in addition to existing footprint,
12 and then new one-story garage.

13 I think we can all agree that they've decided not
14 to build the new one-story garage. So I don't think anybody is
15 too particularly concerned about that right now.

16 Back in June, people started to notice activity at
17 the site. A number of very old trees were starting to be taken
18 down. One morning I ran into Mr. Cohen outside. He was talking
19 to one of my other neighbors about this, and we all started to
20 talk. It was apparent he was the developer, and we said, well,
21 why don't we get together, why don't we talk about this.

22 I remember one thing that Mr. Cohen asked me at
23 the time when I handed him my business card. He said, are all of
24 you guys, pointing to all of us around there, lawyers? I said,
25 no, this one isn't over here, who was one neighbor. But maybe

1 that just has something to say about concerns about what was to
2 happen later on.

3 In any event, we had a meeting. We had a meeting
4 that night. Mr. Cohen brought the renderings along of the
5 property, which are Exhibit 5. We asked to have copies of those.

6 My wife went upstairs and made them.

7 One of the other things we had was Exhibit 3. What
8 she did was copy a little bit of a corner from the plans that show
9 the plat. Now the first page of Exhibit 3 is a little different
10 than the way Mr. Cohen gave it to us, because the first page of
11 Exhibit 3 shows actually in the cross-hatching what was the
12 existing footprint at 4512.

13 CHAIRPERSON REID: Wait a minute.

14 MR. CLARK: I'll wait until you find Exhibit 3. I
15 have another copy, Madam Chair, if you don't have it.

16 CHAIRPERSON REID: Got it.

17 MR. CLARK: Okay. In Exhibit 3, that first page is
18 one of the copies that we made that night, but the cross-hatching
19 I added for purposes of the exhibit here, because the cross-
20 hatching shows what the existing footprint was of this property,
21 and it doesn't take a whole lot to look at this to know that this
22 property, which was built in 1956, occupied by Sylvia Samenow and
23 her husband across the street from me, and we used to live around
24 the corner -- we knew them a long time -- that this property, in
25 fact, was a nonconforming structure.

1 It had side yards of less than eight feet. In
2 fact, it's nonconforming, because it's less than 7500 square feet,
3 and in an R-1-A zone it has to be at least 7500 square feet.

4 We asked Mr. Cohen could you build this as of
5 right. He said yes. We said, well, we think it's going to look a
6 little big on the block, and why don't we talk about some way that
7 we can talk to each other to try to reach some kind of agreement
8 maybe as to what it ought to look like.

9 Well, other than my going across the street to talk
10 to Mr. Cohen -- in their papers, they say that was on July 28 or
11 July 27; I don't know, it may or may not have been -- and suggest
12 to him some things that he could do where he just kind of looked
13 at me and didn't even respond, nothing took place with respect to
14 that except that we decided we'd better to start to look at the
15 zoning, which we did.

16 You got to remember that the permit application
17 which we had in front of us says in Box 17, Exhibit 4 -- it says
18 proposed number of stories of building, three. That's the
19 application by the builder. It says three stories.

20 Now we had renderings. We didn't have the plans,
21 but even if we have the plans, every architectural plan I've ever
22 seen says don't rely on looking at the plan to figure out what the
23 exact measurement is. But in any event, I'm going to let Mr.
24 Sloame talk about what took place with respect to DCRA
25 immediately, because he had contact.

1 What did happen was this. We went to DCRA, and
2 they agreed that this was a four-story house, and they said we're
3 issuing a stop order. And they said, it's not built on the
4 existing footprint, which is what the application says, and we all
5 know it wasn't the existing footprint.

6 So now what happens? What happens, and Mr. Sloame
7 will talk about this in more detail, but there is a detailed
8 review that goes on at DCRA, and it goes on from whether it's late
9 August -- or late July or early August, I don't think really makes
10 any difference, because it's clear that until Mr. Lourenco, who is
11 here, writes his letter on September 10th, there is no decision.

12 There is no decision as to what's going to happen
13 at this property.

14 CHAIRPERSON REID: Okay. As you speak, give us
15 dates, because, remember, we also are considering the issue of
16 timeliness. Now you went to DCRA when?

17 MR. CLARK: Mr. Sloame, I think, will testify that
18 he went there in late August -- I mean the first week of August.
19 You will find that, I think, Mr. Brown says that it may have been
20 in the last week of July, but one week or the other. We're only
21 talking about one week different from the other week.

22 In any event, we went to DCRA in either the last
23 week of July or the first week of August. They said they were
24 issuing a stop order, because it wasn't an authorized building.
25 Now we got a stop order.

1 Mr. Brown would have you say that now we're
2 supposed to appeal. We've got a stop order, and we're supposed
3 to appeal. Where are we on that? But in fact, what took place,
4 and Mr. Sloame will describe the conversations he had with DCRA
5 because he had them in there, is that they said that they were
6 going to look at this whole thing and make it comply with the law.

7 Well, now as I said earlier, maybe we were naive,
8 but we thought that make it comply with the law meant it made it
9 three stories. But in any event, there was an internal review
10 going on.

11 Well, although there was a stop order, it didn't
12 last very long. Now Mr. --

13 CHAIRPERSON REID: When was the stop order issued?

14 MR. CLARK: Well, that's a good question, because
15 there is no written stop order. Mr. Brown's brief says that the
16 date of the oral stop order was July 28th.

17 CHAIRPERSON REID: Wait. Wait, excuse me, please.

18 I have to get clarification for this. Okay?

19 Mr. Sockwell, would you please help to clarify
20 something. There is such a thing as an oral stop order?

21 VICE CHAIRPERSON SOCKWELL: It should be given in
22 writing.

23 CHAIRPERSON REID: I've never heard of one.

24 VICE CHAIRPERSON SOCKWELL: To issue a stop work
25 order usually means that the inspector comes out and writes up

1 something.

2 MR. CLARK: Now it may be that what happened was
3 they heard that one was going to issue, but it didn't actually
4 come out, because in fact there was then, according to Mr. Brown's
5 papers, a conversation between the developer's permit expediter
6 and Mr. Bello at DCRA. Now we weren't party to that. We didn't
7 know anything about it.

8 CHAIRPERSON REID: But wait a minute. There was a
9 stop work order issued?

10 MR. CLARK: MR. Brown, I think, agrees with that,
11 that there was one.

12 CHAIRPERSON REID: How do we know that?

13 MR. CLARK: He says in his brief.

14 CHAIRPERSON REID: How do we know that there was
15 one?

16 ZONING COMMISSIONER MITTEN: Madam Chair.

17 MR. CLARK: And Mr. Bello told Mr Sloame. He will
18 testify to that.

19 ZONING COMMISSIONER MITTEN: Maybe we could elicit
20 from Mr. Clark what his perception of the stop work order was. We
21 can ask Mr. Lourenco what their perspective on the stop work order
22 was, and then we can ask the folks -- the intervenor, instead of
23 kind of doing this round robin thing.

24 CHAIRPERSON REID: And get some clarification on
25 it. Okay.

1 MR. CLARK: They stopped work. I can tell you
2 that.

3 CHAIRPERSON REID: They stopped work, and you said
4 that was in response to what you are alleging was a verbal, but
5 we'll get a clarification on how that stop order actually came
6 into place and when, because you said it was oral, and we don't
7 know when.

8 MR. CLARK: Well, all I can say is that Mr. Bello
9 told Mr. Sloame that he was going to issue a stop order, and work
10 stopped. Now I can't be responsible for how it worked internally,
11 but that's what happened, as a matter of fact.

12 CHAIRPERSON REID: Work stopped when?

13 MR. CLARK: Work stopped, according to Mr. Brown,
14 on July 27th or July 28th, but it started again the next day. So
15 we didn't have a long delay here.

16 ZONING COMMISSIONER MITTEN: So you don't disagree
17 about Mr. Brown's representation of when work stopped and
18 restarted?

19 MR. CLARK: I think, in fact, it was August,
20 because I think that Mr. Sloame met with Mr. Bellow in the first
21 week of August, but it's either the last week of July or the first
22 week of August. I don't think there's any disagreement about
23 that.

24 CHAIRPERSON REID: Okay. So the work stopped, and
25 then it started back the next day?

1 MR. CLARK: That's right. So when the work started
2 again, all the neighbors said what's going on.

3 CHAIRPERSON REID: Yes, I'm asking that, too.

4 MR. CLARK: So we started to call DCRA.

5 CHAIRPERSON REID: How did that happen?

6 MR. CLARK: We called DCRA. We tried to talk to
7 anybody who would answer the phone, and what we were told --

8 CHAIRPERSON REID: MR. Bello?

9 MR. CLARK: Well, Mr. Sloame will talk about his
10 conversation and meeting with Mr. Bellow. Maybe if you want to go
11 through the detail of what took place then, why don't I have Mr.
12 Sloame tell us?

13 CHAIRPERSON REID: Please.

14 MR. CLARK: That seems to be a whole lot easier, if
15 we want to stop at that point, and then I may go back to legal
16 argument later.

17 CHAIRPERSON REID: Sure. Sure.

18 MR. CLARK: Mr. Sloame has already been sworn in.
19 I'm going to just ask him a couple of questions along the way
20 here, but he will give us a little bit of an --

21 CHAIRPERSON REID: Now you put on your lawyer's
22 hat.

23 MR. CLARK: You got to have the other lawyers under
24 control, and I'm going to ask Mr. Sloame where he lives and what
25 his professional background is.

1 BOARD MEMBER RENSHAW; Madam Chair, may I just ask,
2 in light of the appellant taking over right at this point, whether
3 you would tell in your testimony whether or not you were promised
4 any written stop order, whether you expected, whether the DCRA
5 official - I take it, that is Mr. Bello -- said that he would
6 issue a written stop order, if you want to include that response
7 in your remarks.

8 MR. SLOAME: I will include that response in my
9 testimony.

10 CHAIRPERSON REID: Then why don't you tell us where
11 you live vis a vis this property and what your professional
12 background is.

13 MR. SLOAME: My name is Stuart Sloame. I live at
14 4508 28th Street, N.W., which is the house immediately to the
15 south of the subject property, 4512. It is adjoining my house.

16 I am an attorney by profession. I've been
17 practicing law ever since graduating from Columbia Law School in
18 1964, so for about 35 years, with the exception of time out for
19 government service. Between 1981 and 1985 I served in the
20 Department of Housing and Urban Development as the Deputy
21 Assistant Secretary for Community Planning and Development.

22 Thereafter, between 1985 and 1989, I served as the
23 Deputy General Counsel of the United States Department of Housing
24 and Urban Development.

25 Now I'd like to proceed with testimony regarding

1 the chronology of what was involved here, what the neighbors did,
2 and what the responses of the DCRA were.

3 As Mr. Clark testified, we met with the developer,
4 Mr. Cohen, sometime in July of 1999. Thereafter, my recollection
5 is that it was about August 3rd, 4th or 5th of 1999, I went down
6 to the DCRA, obtained copies of the original permit application
7 and the application itself -- the permit itself, excuse me.

8 I then walked those over to the zoning desk where I
9 met with Mr. Toye Bello, a zoning technician, I believe. When I
10 spoke with him, he then went to the back room and pulled out the
11 plans that had been submitted.

12 He said he was the person in DCRA who had issued
13 the original permit, and that when he saw the application, he
14 agreed that he was misled with respect to the number of stories
15 and the footprint, and --

16 CHAIRPERSON REID: Excuse me, Mr. Sloame. Did he
17 say how he was misled?

18 MR. SLOAME: Yes. He said he was misled, because
19 the application indicated three stories, but in fact the
20 renderings, the plans that he had, showed four stories.

21 ZONING COMMISSIONER MITTEN: Can I ask you just a
22 point of clarification. At that juncture, did you and he discuss,
23 given that he had the permit application in hand and he had the
24 plans in hand, what was -- what happened on his end, given that he
25 had -- Okay, go ahead.

1 MR. SLOAME: I'm about to get to that in the next
2 sentence.

3 ZONING COMMISSIONER MITTEN: Pardon me for
4 interrupting. I'm sorry.

5 CHAIRPERSON REID: Excuse me. Yes?

6 MR. BROWN: And I hate to interrupt, but it goes
7 back to the point the Chair made previously with Mr. Kogan. The
8 concept of misled, particularly putting words into somebody's
9 mouth who isn't here, Mr. Bello --

10 MR. CLARK: Mr. Brown, that's testimony as to what
11 took place. Don't say it's putting words into somebody's mouth.

12 MR. SLOAME: I'm testifying. Madam Chairman, I am
13 testifying that those were the exact words of Mr. Bellow.

14 CHAIRPERSON REID: Okay, Mr. Sloame, I understand
15 that. Mr. Brown has the right to object.

16 MR. SLOAME: He has the right to cross-examine.

17 CHAIRPERSON REID: And he has the right to cross-
18 examine.

19 MR. SLOAME: But I think at this point it would be
20 --

21 CHAIRPERSON REID: However, my understanding was
22 that Mr. Sloame was going to continue in his testimony. Let's
23 let him get out all of the facts, all of the testimony, and then
24 we can take it from that point. But I think that everyone keeps
25 interrupting him. Let us all just try to listen to what he has to

1 say. Hold questions until after he gets it out.

2 MR. SLOAME: To repeat, the words Mr. Bello used,
3 quote, he was "misled by the application" at the time he issued
4 the permit. He then told me that he was going to call in the
5 builder and discuss it with him.

6 On or about August 11 -- and he said I should call
7 him. On or about August 11 I had a telephone conversation --

8 MR. CLARK: Did he say he would issue a stop order
9 at that point?

10 MR. SLOAME: No. At that point he did not. He was
11 going to call in the builder and discuss it with him. On August
12 11, after several unsuccessful attempts to reach Mr. Bellow,
13 leaving messages, so on, I finally reached him on August 11th, and
14 we had a telephone conversation.

15 He indicated or he stated that he spoke to Robert
16 Shelton, the construction inspector for this particular area, and
17 he issued a stop order or a stop order was issued. He then met
18 with the builder and with the architect, and he lifted the stop
19 order with the proviso that the builder would submit revised plans
20 which would backfill the front of the property, and that after he
21 looked at the revised plans, which he said -- and I asked him when
22 are they supposed to come. He said, well, he didn't give the
23 builder and the architect any specific date, but a reasonable
24 time, and he promised to call me after he reviewed these plans.

25 I said I wasn't happy with the idea that a berm or

1 backfill of dirt could convert a zoning violation -- or
2 preliminary to zoning violation, and I asked him at that point,
3 Mr. Bello, what right of appeal do I have from the ultimate
4 decision in this case by the DCRA, if we don't agree with it.

5 His response was, well, you can go to my superior,
6 Mr. Nunley, and then I said, well, what happens if Mr. Nunley
7 agrees with the decision, whenever that comes. He said, well,
8 then you go to the Zoning Administrator, Mr. Johnson.

9 At no point -- and I repeat, at no point did Mr.
10 Bello mention any appeal to the Board of Zoning Adjustments.

11 On about August 13th I wrote a memo to my neighbors
12 and described what was happening, and on August 20th I wrote a
13 letter addressed to Mr. Cohen. I wrote a letter to Mr. Cohen,
14 which you have before you as Exhibit 6, and this is signed by the
15 appellants, Mr. Clark, myself, and the other appellants here.

16 In the letter I indicated or stated to Mr. Cohen --
17 and I personally hand delivered this letter to him sometime after
18 the date August 20, 1999, and I said to him, I pointed out that
19 the letter -- we believe, we neighbors believe, that the
20 construction was unlawful under Title 11, Section 400 of the
21 municipal regulations, and that we have advised the Department of
22 Consumer and Regulatory Affairs.

23 I mentioned in t he second paragraph the bases for
24 our position, that the permit was improper in that the addition to
25 the existing footprint was nonconforming with respect to -- at

1 least with respect to the width of the side yards, and that the
2 plans indicated a complete structure of four stories, contrary to
3 the regulations and to the language of the permit.

4 Now I also added that, after we had reviewed the
5 renderings that he had provided to us, we had contacted the DCRA,
6 which issued the stop order, and based upon the discrepancy
7 between the permit issued upon his application and what he, in
8 fact, was attempting to build.

9 The stop order, I went on, was lifted on the
10 understanding that the builder was going to revise his plans to
11 conform to regulations, and I added that, quote, "despite the fact
12 that, to the best of our knowledge, the Division has not approved
13 any such plans, you are continuing construction pursuant to the
14 original plans. Accordingly, your continued unlawful construction
15 is at your own risk."

16 That is the letter dated August 20th. At that
17 time, there was no construction of a fourth floor. At that time
18 the house had been demolished, and there may have been some
19 framing at best of the first floor; and that is the most that
20 happened.

21 Mr. Cohen was on notice that the neighbors
22 considered there to be a zoning violation and would be taking
23 action about it, and gave him specific reasons for the action,
24 citing specific sections of the Code that we thought was violated,
25 and this was well before the construction of the fourth floor.

1 Thereafter, on August 31 I had another telephone
2 conversation with Mr. Bello, again after several unsuccessful
3 attempts, leaving messages. I believe I was able to get him very,
4 very early in the morning before he met with people at the desk,
5 the counter.

6 Mr. Bello informed me that the builder had
7 submitted revised plans calling for the berm -- that is that dirt
8 to be piled up against the building -- and he was going to meet --
9 he, Mr. Bello, was going to meet with Mr. Johnson and Mr. Nunley
10 that week to make a decision with respect to the revised plans.

11 He said to me when I discussed with him -- I
12 pointed out that this idea of putting up the dirt didn't seem to
13 be an appropriate way of conforming to zoning regulations about
14 three stories. He said to me, and I'm going to quote him
15 verbatim, "As long as there are only three 'floors' as defined in
16 the zoning regulations, they could have as many 'cellar' floors as
17 they want."

18 I said -- I was shocked and surprised at this, and
19 I said to him I would like to give you a hypothetical. If you're
20 saying they can have as many cellar floors as they want so long as
21 there are only -- as many cellars as they want or cellar floors
22 as they want, as long as there were only three floors technically,
23 I asked him if a builder were to construct a ten-story building
24 and would put up a berm in the front to cover up seven of those
25 stories so that only three stories were exposed, I said to him --

1 I asked Mr. Bello is that pursuant to the zoning regulations. His
2 answer was yes.

3 MR. BROWN: Madam Chair, and this goes back to my
4 earlier caution or concern before we began. This hypothetical --
5 and Mr. Sockwell's point is --

6 VICE CHAIRPERSON SOCKWELL: Is this an objection?

7 MR. BROWN: Yes, it is. But I'm trying to be
8 polite and let Mr. Sloame finish, but again we're going further
9 and further afield of our mission here today --

10 CHAIRPERSON REID: Well, Mr. Brown --

11 MR. BROWN: -- to consider hypotheticals.

12 CHAIRPERSON REID: Well, overrule any objection,
13 because I think that Mr. Sloame is quoting from a conversation
14 that occurred. That's factual. He's sworn, he's under oath that
15 this is factual, but also the more that he testifies, the more it
16 serves me.

17 I don't understand. Why isn't Mr. Bello here,
18 because it seems that much of this case is revolving around Mr.
19 Bello, who is the key person, who is not here for us to be able to
20 question him.

21 MR. CLARK: We don't have a right of subpoena, as
22 far as I know. I asked about that and was told I couldn't.

23 CHAIRPERSON REID: Well, he's a key person. He's a
24 key person. Did you all request that he come?

25 MR. CLARK: I did not request that he come, but I

1 was told I couldn't subpoena him. I figured he wouldn't come.
2 But regardless, I mean, what the city did with respect to
3 violating the regulations -- I mean, we have a record that that's
4 here, whether Mr. Bello is here or not. I mean, I have no problem
5 if he comes.

6 ZONING COMMISSIONER MITTEN: Madam Chair, I had
7 asked Ms. Pruitt a few minutes ago could we get Mr. Bello here,
8 and Mr. Johnson, can you speak to his availability to this Board?

9 MR. JOHNSON: Yes, I can speak to his availability,
10 and I can also --

11 CHAIRPERSON REID: Mr. Johnson, just for the
12 record, just identify yourself.

13 MR. JOHNSON: I'm sorry. Thank you.

14 CHAIRPERSON REID: And your position.

15 MR. JOHNSON: For the record, I'm Michael D.
16 Johnson.

17 CHAIRPERSON REID: Were you here -- Excuse me.
18 Were you here when they did the swearing in?

19 MR. JOHNSON: I believe I was.

20 CHAIRPERSON REID: No, I think you were out of the
21 room.

22 MR. JOHNSON: And I stepped out.

23 CHAIRPERSON REID: Stand, please.

24 MS. PRUITT: You swear or affirm the testimony you
25 are going to give is the truth?

1 (WITNESS SWORN.)

2 MS. PRUITT: Thank you. Would you please proceed.

3
4 MR. JOHNSON: I'm Michael D. Johnson, Zoning
5 Administrator for the District of Columbia.

6 With respect to the availability of Mr. Bello, he
7 is not available at this time. However, I did speak with him on
8 the phone after kind of hearing the direction the debate was
9 taking today.

10 For the record, Mr. Bello did tell me that Mr.
11 Sloame is taking the context of their discussion out of context.
12 When I queried him further about what he meant about that, he
13 indicated that it is true, Mr. Sloame did come down to meet with
14 him as a basically customary service that staff does provide to
15 anyone that inquires.

16 At the time Mr. Sloame had inquired about whether
17 or not the building was a new building, and that was the basis of
18 his assertion or the basis for his needing to meet with staff to
19 find out what the rules and regulations that applied.

20 Mr. Bello further went on to say that, as a result
21 of that initial meeting and the assertion by Mr. Sloame that it
22 was a new building, research determined that it was not a new
23 building. It was basically an existing building that was
24 basically being razed, but the same footprint was to maintain,
25 thus taking it out of the same requirements that would be met for

1 a new building.

2 That was basically Mr. Bello's statement with
3 regard to that.

4 The second point I'd like to share is that, if it
5 is necessary or if it is at the direction of the Board or Madam
6 Chairwoman, I believe that we could raise Mr. Bello for a phone
7 conference. That might be able to help with matters today before
8 the Board.

9 CHAIRPERSON REID: That will be kind of difficult
10 to have a phone conversation. However, I think you've given some
11 light to this discussion with Mr. Bello. Okay. Thank you.

12 MR. BROWN: Can I ask -- because I think it's
13 important that Mr. Johnson has had the opportunity the talk to Mr.
14 Bello.

15 CHAIRPERSON REID: To ask him?

16 MR. BROWN: To ask him to amplify his discussion
17 with Mr. Bello.

18 CHAIRPERSON REID: Well, you can do that, MR.
19 Brown, at the time that we bring Mr. Johnson up, and you can ask
20 him on your cross, but not at this time.

21 MR. BROWN: And I understand your point, but I
22 think we have reached a critical junction here, and I think it's
23 important. The question I was going to ask --

24 MR. CLARK: I object to Mr. Brown trying to conduct
25 his case without even the witness who is on the stand. Can't we

1 do this in some logical order? He was concerned about having this
2 hearing being a mess, but the only person making a mess --

3 CHAIRPERSON REID: I've already stated that Mr.
4 Brown can question Mr. Johnson at the appropriate time.

5 MR. CLARK: I understand, but he's now starting to
6 ask him a question.

7 MR. SLOAME: May I continue my testimony, Madam
8 Chair?

9 CHAIRPERSON REID: Yes. Mr. Johnson, you can sit
10 back, and we will bring you back up at the appropriate time.
11 Thank you.

12 MR. JOHNSON: Thank you, Madam Chair.

13 MR. SLOAME: Continuing my testimony, I should
14 point out, just in case I didn't make the point clear earlier in
15 my testimony, in my initial meeting with Mr. Bello on or about
16 August 4, 1999, when we discussed the subject building, he had in
17 front of him the application which calls for demolishing existing
18 building. He had in front of him the permit, and he had in front
19 of him the plans.

20 We discussed this exact point, that a building, the
21 existing house, was being demolished, that it was a nonconforming
22 house, and this was what was -- a permit was issued to construct
23 this building, and that was the context of the discussion.

24 So there was no issue about whether this was a new
25 building. At all times it was clear that this was a tear-down

1 situation, and the permit says tear down building, doesn't it?

2 MR. CLARK: Demolish.

3 MR. SLOAME: Demolish building. We also had a
4 discussion with respect to the enlarged footprint, as well as the
5 height.

6 Picking up where I left off with the hypothetical
7 and with the verbatim account of the words that Mr. Bello used,
8 after he finished saying that -- that is that the hypothetical
9 ten-story building with the seven-story berm in front of it would
10 not be in violation of the zoning law -- I then said to him, if
11 that's approved, you may have to tell that to a Judge.

12 CHAIRPERSON REID: Who said that?

13 MR. SLOAME: I said that. I said to Mr. Bello
14 after he made his statement in response to the hypothetical that
15 it would be not in violation of the zoning regulations, I said, if
16 this permit --

17 CHAIRPERSON REID: I got you.

18 MR. SLOAME: -- revised permit is granted, you may
19 have to make that statement before a Judge.

20 All right. On September 6 Mr. Clark wrote a letter
21 to the neighbors discussing the situation. On September 7 I had a
22 discussion on the phone with Councilperson Patterson's office with
23 respect to a discussion that a aide to Ms. Patterson, woman by the
24 name of Michelle, had with Mr. Johnson.

25 Thereafter, I contacted the BZA. At this point,

1 you should bear in mind that there was no decision made.

2 MR. CLARK: Could you go back to -- I think we got
3 broken up on the sequence here. When you went down -- When you
4 talked to Mr. Bello and he said that the stop order was lifted and
5 they were going to apply for a new permit, did he tell you
6 anything about what was going to be done? Did he mention Mr.
7 Chan?

8 MR. SLOAME: Yes. He said -- I said, how did this
9 happen, this berm? He said, well, Mike -- I think his name was
10 Michael Chan --

11 MR. CLARK: Robert.

12 MR. SLOAME: -- Robert Chan who is the Chief -- I
13 believe he used the term Chief Mechanical Engineer of the DCRA was
14 the one had suggested the use of this berm. In fact, the revised
15 permit says as per Robert Chan, which is Exhibit Number -- the
16 revised permit is Number 16.

17 CHAIRPERSON REID: Mr. Bello said that Mr. Chan
18 advised the use of the berm? Is that what you just said?

19 MR. SLOAME: He said that they passed it through
20 Mr. Chan. He told me -- I don't know if it's accurate or not, but
21 he told me that Mr. Chan was the mechanical engineer. I didn't
22 know what bearing that had, but his name does appear on the
23 revised permit, as per Robert Chan. So, obviously, he had
24 something to do with the decision on the berm.

25 I was led to believe by Mr. Bello very clearly that

1 this was at the suggestion of the DCRA, to put up this berm to
2 cover up all but less than four feet of the existing basement,
3 because as Mr. Bello explained to me and as the zoning regulations
4 provide, if what is exposed is less than four feet, it is
5 considered a cellar and not counted as a story. If more than four
6 feet is exposed, it is considered a basement which is counted as a
7 story.

8 What we saw in the original renderings was the full
9 above-ground basement, which was well in excess of four feet.
10 This is an above-ground basement, similar to the one I have,
11 because both of our houses are built on a hill. The hill is about
12 15 high at that point. So that is why you have an above-ground
13 basement.

14 MR. CLARK: As of August 31 --

15 CHAIRPERSON REID: Excuse me. You're using cellar
16 and basement interchangeably?

17 MR. SLOAME: No, not at all. That is the point of
18 this whole case. Cellar and basement are not interchangeable.

19 CHAIRPERSON REID: That's where I'm a little --
20 Clarify that. I understand that they are not the same, but what
21 I'm asking you is: The berm aspect of it was proffered as the
22 determining factor as to whether or not that would be considered a
23 story or a basement or cellar.

24 MR. SLOAME: The way it works is under the zoning
25 regulations, if you have a basement and less than four feet are

1 exposed to the street, then it is considered for purposes of the
2 zoning regulations to be a cellar, and a cellar is not counted as
3 a story for purposes of determining how many stories there are in
4 a building.

5 The Code provides -- The regulations provide for a
6 maximum of three stories. So what you have here on the original
7 renderings are an above-ground basement plus three floors on top
8 of it, making four stories. That's why the initial permit was
9 incorrectly issued, because it was issued on the basis of plans
10 which indicated four stories, in spite of the fact that the
11 application for the permit indicated only three stories.

12 That's the basis upon which Mr. Bello said to me
13 that the application was misleading. He was misled, and that's
14 why he issued the first permit, in the first place. And those
15 were his words, misled.

16 CHAIRPERSON REID: Yes. Mr. Sockwell?

17 VICE CHAIRPERSON SOCKWELL: Madam Chair, to just
18 clarify one thing about the zoning review process, all of the
19 zoning technicians are well aware of the difference in definition
20 between basement and cellar. That is a rule of their daily work.

21 So if a building is presented to them that says
22 basement, first, second and third floor, then it would be assumed
23 that that building would be a four-story building, not a three-
24 story building. That would be the absolute basic assumption of
25 the zoning department or division technician, that it is four

1 floors.

2 If it is a cellar, it would be labeled a cellar.
3 It was not labeled a cellar on the drawings. So it should have
4 been observed to be basement, first, second and third floors.

5 MR. SLOAME: But in addition to that, if you look
6 at the application, the application says three stories. It
7 doesn't say four stories.

8 CHAIRPERSON REID: Okay, wait a minute. Let me
9 just try to get clear. In real estate what we regard to be a
10 basement is what is below grade, and we would not consider -- and,
11 Ms. Mitten, maybe you can shed some light on this, being an
12 appraiser. We do not consider the basement to be a story.

13 VICE CHAIRPERSON SOCKWELL: Madam Chair, let me
14 interrupt you. Only because cellar and basement are defined
15 specifically within this city's zoning ordinance. It has been the
16 definition in the ordinance since 1958. Nothing is new.

17 MR. CLARK: Mr. Sockwell, if it's helpful, I have
18 copies that I can hand up to the Board members.

19 VICE CHAIRPERSON SOCKWELL: I'm sorry. We have the
20 zoning ordinance in front of us.

21 CHAIRPERSON REID: Thank you, Mr. Sockwell.
22 However, my question was: The basement is considered a story.
23 Okay. And --

24 VICE CHAIRPERSON SOCKWELL: The definition of
25 basement for D.C. zoning ordinance is any floor whose ceiling is

1 more than four feet above grade, and that a lower level that's
2 partially submerged can be either a cellar, if its ceiling is
3 below four feet, four feet or below, or if it's above four feet,
4 then it becomes a basement; and as a basement, it becomes a story,
5 and the portion that is above grade is considered in building
6 height in those zoning districts where building height is measured
7 that way.

8 In this case you have a limitation on stories. So
9 the term story, rather than the height, would have been the
10 guiding principle for the limitation in the size of the house
11 vertically.

12 CHAIRPERSON REID: Thank you. Mr. Johnson, did you

13 --

14 MR. JOHNSON: Madam Chair and members of the Board,
15 I thought that it might be helpful to -- being that Mr. Bello's
16 name is being bantered around so much, that I thought it would be
17 helpful to this body to have him appear.

18 I am currently in the process of having staff to
19 work out the logistics to have his appearance here.

20 CHAIRPERSON REID: Thank you.

21 MR. JOHNSON: As soon as possible. So I thought
22 that would be helpful.

23 CHAIRPERSON REID: Very helpful.

24 MR. JOHNSON: Point two, I just wanted to just
25 share -- Mr. Sockwell is correct with his definition of a

1 basement. Just one point that I wanted to underscore, and that is
2 it does reference finish grade. I think that is a germane issue,
3 a germane point of the dispute today. I just wanted to share that
4 with the Board.

5 CHAIRPERSON REID: Wait, wait, wait. Now that
6 introduces something else.

7 VICE CHAIRPERSON SOCKWELL; Mr. Johnson, the
8 original finished grade of the original house from the original
9 plans was 108 feet. The original basement floor elevation was
10 106.

11 ZONING COMMISSIONER MITTEN: Madam Chair, are we
12 going to save Mr. Johnson for later, the questioning of Mr.
13 Johnson? We had sort of put him off, and I would encourage us to
14 do that again so that we could kind of proceed with the
15 appellant's case.

16 CHAIRPERSON REID: Well, yes. That is true.
17 However, Mr. Johnson just raised a definition, and Mr. Sockwell
18 and he had some points of clarification. I think that when he
19 said finished grade, then -- so the finished grade is what would
20 be considered a story, and if it's not finished, are you saying
21 it's not?

22 MR. JOHNSON: No, I'm not saying that at all.

23 VICE CHAIRPERSON SOCKWELL; He said it correctly.
24 He's setting reference points. That's all, and we will discuss
25 those, I think, in detail later.

1 CHAIRPERSON REID: We'll get it straightened out
2 when you come back. Thank you so much for having Mr. Bello come
3 forward, because without him it is very difficult to be able to
4 get our arms around what's happening here.

5 Okay, Mr. Sloame.

6 MR. SLOAME: Thank you, Madam Chairperson. I had
7 completed my testimony with respect to the August 31 conversation
8 I had with Mr. Bello on the phone, and thereafter I'm going to
9 indicate what steps the neighbors did to pursue its interest in
10 this matter.

11 On August 25, 1999, Mr. Clark wrote a letter to Mr.
12 Nunley, the Chief of Zoning Review Branch here, and that is next
13 to the brief as Exhibit 7. In it Mr. Clark says, "I am writing
14 today because construction is continuing on the site. The builder
15 has been working rapidly this week, even in inclement weather. We
16 believe that the situation is reaching a critical stage. As we
17 understand it, the builder does not have approved plans for a
18 four-story house, although he continues to believe and is now
19 advertising as if he does."

20 At this point on August 25th -- and if you look at
21 the attachment to the letter, you will see the advertisements just
22 listed, 4512 28th Street, with a rendering of what is obviously a
23 four-story building and, in fact, in the language it said -- You
24 see it? It's an attachment to Exhibit 7.

25 MR. CLARK: It's the last page to Exhibit Seven.

1 CHAIRPERSON REID: I see it. You mean, the "Just
2 Listed"?

3 MR. SLOAME: Yes, exactly. If you read, you can
4 see there the four stories, and you could also read where it says
5 fit for an ambassador. Stunning new six bedroom, five bathroom
6 home on beautiful street in great neighborhood with four finished
7 floors.

8 At that point on August 25th --

9 CHAIRPERSON REID: All right. Sorry.

10 MR. SLOAME: As of the date of that letter, August
11 25th, the fourth floor had not been constructed.

12 CHAIRPERSON REID: So that wasn't there?

13 MR. SLOAME: The fourth floor was not there at that
14 time.

15 CHAIRPERSON REID: So what's shown here as "Just
16 listed" --

17 MR. SLOAME: It is almost a duplicate of the
18 original renderings which the builder had showed to us back in
19 July and which were also plans that accompanied the application
20 for the permit.

21 MR. CLARK: It was the house that was going to be
22 built. It wasn't built.

23 MR. SLOAME: On September 2 Mr. Clark writes
24 another letter, which is Exhibit 8 to the brief, and this time he
25 writes again to Mr. Nunley. It refers to -- He said in the second

1 paragraph that he wanted to get back to -- "you ought to get back
2 to me because the issues at this property have been pending for
3 sometime. When we first spoke, there were no walls up. The
4 builder now is ready to put up the fourth story on the house and,
5 as we understand it, he does not have approved plans for that
6 construction, and unless he builds something dramatically
7 different than he is currently building, he cannot have approval
8 under the zoning code, because four stories are not allowed."

9 So again we're talking to the -- pleading with the
10 city to do something and make a decision. At this point, there is
11 no decision. There is no revised permit. We're still operating
12 under that original permit, and for which a stop order had been
13 issued and then lifted on the basis of the builder and architect
14 submitting some revised plans which were yet to be approved and
15 for which a second revised permit was yet to be issued.

16 Then the next thing was on the same day, September
17 2, 1999, Exhibit 9, Mr. Clark writes to Mr. Michael Johnson. He
18 says that "A number of neighbors have been trying to work with the
19 Zoning Division about a four-story house which is being
20 constructed at the above location in an R-1-A zone which permits
21 only three stories. This week none of us have been able to get a
22 call returned to discover the actual status of the Division's
23 approval process.

24 "Councilperson's Patterson's office tells us that
25 their calls are not being returned either. Meantime, construction

1 of the illegal house continues, as is shown in my letters of
2 August 25 and September 2. This is not a hard issue. Can you
3 help us?"

4 Again, there is an attachment which shows another
5 listing, which -- the middle rendering of that exhibit -- again
6 says four finished floors. That's the middle one, is the subject
7 one. Okay, that's Exhibit 9.

8 On Exhibit 10 is another letter from Mr. Clark,
9 once again to Mr. Michael Johnson. Then on September 8th, which
10 is Exhibit 11, Cathy Patterson, the Councilperson, writes a letter
11 to Lloyd Jordan, Director, Department of Consumer and Regulatory
12 Affairs: "Dear Mr. Jordan" or "Dear Lloyd." She encloses the
13 correspondence that Mr. Clark had, and she said that -- In it she
14 says, "In a conversation with my staff on September 7, 1999,
15 Armando Lourenco stated that one issue the neighbors believe is a
16 violation appears not to be, the height of the house. It is my
17 understanding that Mr. Lourenco said if the grade is raised, the
18 house height is measured from the grade. If this is the case, Mr.
19 Clark's September 2, 1999, letter is accurate, 'that a builder
20 could put up a ten-story house in an R-1-A zone as long as he puts
21 a seven-story berm in front of it.' Mr. Lourenco was still in the
22 process of reviewing the plans and permits to make the
23 determination about the size of the side yard, and if the actual
24 structure matches the permits on file. Meanwhile, work on the
25 house continues. Time is of the essence. When will the

1 Department make a final decision on the points raised by Mr.
2 Clark? When can Mr. Clark expect to receive a written reply to
3 his letters? Thank you for your attention to this issue. I look
4 forward to your response."

5 Then handwritten on the bottom she said, "P.S. And
6 when will you return my calls?"

7 There's another letter on which is Exhibit 12.
8 Again Mr. Clark writes to Mr. Johnson asking him to have a
9 meeting. He says, "While I'm most desirous of having a meeting to
10 hear the Department's explanation, we also need to have some
11 evidence of a decision from the Department so that we can file an
12 appeal with the Board of Zoning Adjustment to overturn this
13 arbitrary and capricious decision. As Mr. Bello of your office
14 has admitted, your position would allow the construction of ten
15 story dwellings in R-1-A zones. You can be certain that there
16 will be developers asking for approval of five-story homes with
17 two-story berms, especially on tear-down properties, within
18 months, if not days. The zoning laws will be rendered
19 meaningless."

20 The next document is a letter from Cathy Patterson,
21 again on September 13th, to Lloyd Jordan. This is Exhibit 13.
22 She writes: "In a telephone conversation Thursday, September 9,
23 you assured me that I would receive from you the following morning
24 by hand delivery your written opinion that the structure under
25 construction at 4512 28th Street is in compliance with all

1 relevant requirements, including height and footprint. Instead, I
2 received by FAX at close of business Friday a lengthy letter from
3 Armando Lourenco on your staff stating in conclusion that 'None of
4 these considerations amount to a violation of the applicable
5 regulations that would warrant any enforcement action on our
6 part.' I presume, therefore, that Mr. Lourenco speaks on your
7 behalf."

8 That letter of Mr. Lourenco, as we already
9 mentioned, was Exhibit 1 to the brief. That's the letter,
10 September 10th, to Council Member Patterson, Exhibit 1.

11 At the bottom of the first page he says, "The
12 structure as it now stands, and if nothing was done to remedy it,
13 is technically a four-story building." At this point there still
14 was no permit issued.

15 The next letter is Exhibit 15 on September 14th.
16 Mr. Clark writes again to Mr. Jordan saying at the bottom of the
17 first page, "According to Mr. Lourenco's September 10, 1999,
18 letter, there is no approved permit application to revise the
19 profile of the existing berm. His recommended course is to allow
20 the builder to finish the house and then see if the builder does
21 something which your department will find acceptable. Quite
22 frankly, we are simply dumbfounded at this complete abdication of
23 responsibility by the DCRA. Under your plan, the builder will
24 finish the home and then discover it can't fix the problems. You
25 will then be forced to approve the illegal structure. Please

1 provide me with a copy of the revised application. There are many
2 questions. Are the four basement windows to be covered? Is the
3 existing garage now to be underground?"

4 I should point out to the Commission that at all
5 times we had been talking about the conversion of a basement to a
6 cellar by throwing dirt against the side of the building to make
7 less than four feet exposed. What I have not pointed out is that
8 on the other side of the central door is a full garage for which
9 there was never any thought or idea of putting up any dirt. I
10 refer you to Exhibit 32.

11 MR. CLARK: This is a new photograph which I just
12 have here this afternoon. So I'll hand it up here.

13 MS. PRUITT: You'll submit for the record?

14 MR. CLARK: I will. I'll give you 33 as well here,
15 which is going to be coming very shortly here. I have copies.

16 MS. SLOAME: As you can see from the photograph,
17 the dirt is being piled up, as you look at the picture on the left
18 side of the door over here, and the windows in fact were made
19 smaller. Of course, had the dirt been piled up using the original
20 larger windows, the dirt would have hit the glass. So they were
21 reframed, as you can see the wood here, to reframe the window to
22 make it smaller so that the dirt could come up to the level of the
23 bottom of the window sill, and there then would be less than four
24 feet between there and the ceiling.

25 You will notice that nothing has been done with

1 respect to the garage. That's still a full story. I mean, the
2 cars have to go in.

3 Then on September -- Finally, in frustration, and
4 we still have not seen the revised permit, I called up the BZA,
5 and they FAX'ed to me on September 22nd an appeal form and a copy
6 of the regulations.

7 Thereafter, Mr. Clark and I and the neighbors had
8 some discussions. Mr. Clark wrote a memo to the neighbors
9 disclosing the -- Oh, we finally found out about the permit.

10 MR. CLARK: And when were you first able to get the
11 permit?

12 MR. SLOAME: That was sometime in the first week of
13 October. I went down, and I finally was able to get it. Previous
14 attempts had been unsuccessful. We weren't able to get it. So I
15 went down there. I copied it. Then we had this discussion with
16 the neighbors.

17 On October 24 Mr. Clark FAX'ed to me a rough draft
18 of the completed appeal form. On October 25 Mr. Clark wrote a
19 letter to a zoning attorney. We are -- Neither one of us are
20 zoning attorneys. He wrote a letter to a zoning attorney
21 enclosing a copy of the draft form, and he got the comments back.

22 Finally, on November 3 I filed the appeal.

23 CHAIRPERSON REID: Thank you very much. Board
24 members, you have questions? All right.

25 ZONING COMMISSIONER MITTEN: Could I just -- There

1 were a lot of -- You were very scrupulous about the dates. Is it
2 possible -- I know that every time you referred to a letter, we
3 have that documentation. Is it possible to, you know, give us a
4 bullet kind of timeline as you were testifying just in writing to
5 help us follow what you were saying a little better?

6 MR. CLARK: If you'd like that, we can do that.

7 ZONING COMMISSIONER MITTEN: That would be very
8 helpful.

9 CHAIRPERSON REID: Before we have cross-
10 examination, we would like to take a five-minute recess, five to
11 ten minutes.

12 (Whereupon, the foregoing matter went off the
13 record at 4:05 p.m. and went back on the record at 4:17 p.m.)

14 CHAIRPERSON REID: Let us resume.

15 MR. CLARK: Madam Chair, may I have permission to
16 ask a question, which is not related to all these notice
17 questions, but might I have permission to ask it before Mr. Brown
18 has cross-examination? Thank you.

19 Mr. Sloame, could you tell us, sir, what impact, if
20 any, 4512 has had on your home?

21 MR. SLOAME: I do have --

22 MR. CLARK: Mr. Sloame has asked me if I have a
23 picture of the two houses together, and it's not the greatest
24 picture. I had given to Ms. Pruitt already what I've marked as
25 Exhibit 28, and Mr. Brown.

1 MS. PRUITT: You have them right there. I'm sorry,
2 they are right in front of you.

3 CHAIRPERSON REID: This is 28?

4 MR. CLARK: Yes, ma'am.

5 BOARD MEMBER RENSHAW: Mr. Sloame, are you across
6 the street or next door?

7 MR. SLOAME: Right next door. If you look at
8 Exhibit 28, this is 4512, and this is a little piece of my house
9 right here. It's now dwarfed by 4512. The original house was the
10 same level as my house.

11 In answer to your question, Mr. Clark, as you can
12 see from Exhibit 28, all you can see is the garage and two windows
13 above it on the lefthand side. I'm pointing to it.

14 CHAIRPERSON REID: Mr. Sloame, isn't the subject
15 property on a higher slope, much higher slope than your house,
16 generally?

17 MR. SLOAME: No, because we both have the garage
18 about the same, and then if you were to see the rest of my house,
19 you would see the same -- almost exactly the same slope, 15 feet
20 high with the same exposed basement. Unfortunately, this picture
21 doesn't show it.

22 CHAIRPERSON REID: So this is a picture of just
23 your garage.

24 MR. SLOAME: Garage and a bedroom window above and
25 an attic bedroom on top.

1 CHAIRPERSON REID: Is your house in this picture?

2 MR. SLOAME: Pardon me?

3 CHAIRPERSON REID: Is this your house?

4 MR. SLOAME: Yes. This is the side of my house.
5 It extends over here.

6 CHAIRPERSON REID: But you said that the other part
7 of your house had a similar slope to the subject property.

8 MR. SLOAME: Right.

9 CHAIRPERSON REID: So is the other part of your
10 house up higher?

11 MR. SLOAME: -- same elevation. The garage and the
12 basements are one. In other words, if you took a line -- See the
13 top of the garage, you know, that brownish line, right over here?

14 CHAIRPERSON REID: I see that, but --

15 MR. SLOAME: If you extended this over --

16 CHAIRPERSON REID: But it would have given more
17 context if you had shown your house --

18 MR. SLOAME: Yes. Unfortunately, we don't have it.

19 CHAIRPERSON REID: -- as well, because this is --

20 MR. CLARK: Madam Chair, with that house so close
21 to the street, quite frankly, it's hard to get -- even with a wide
22 angle lens, to get it in.

23 MR. SLOAME: Well, I mean, I can testify that my
24 basement and the garage are the same level. So if you just would
25 extend that brown line over, it would be my basement. As in 4512,

1 to access my front door I have to go upstairs, external stairs
2 unless I go through the basement -- through the garage, rather.

3 CHAIRPERSON REID: All right.

4 MR. SLOAME: So in answer to your question, Mr.
5 Clark, all three of the bedrooms in my house are on the north side
6 facing 4512, and with the old house prior to the new construction,
7 the one that had been demolished, no one in 4512 could look into
8 any of the three bedroom windows on that side of the house,
9 because they were on the same level, and there was a brick wall in
10 between, a retaining wall in between the two houses.

11 Now with this huge house towering over mine, you
12 can see right into my bedrooms. In addition, I have a patio on
13 the back which, prior to the cutting down of the trees and prior
14 to the construction of this very, very high house, was very, very
15 private. It's a part of Washington that is heavily treed, lots of
16 leaves.

17 I have a hot tub in my patio, and I must tell you
18 that my practice has been ever since I bought that hot tub when I
19 had a hip problem and I was in a lot of pain, my practice always
20 has been to enter the hot tub in my birthday suit. I had the
21 privacy then.

22 I don't have that privacy now. You can look right
23 into my patio, right on top of my -- right down into my hot tub.

24 MR. CLARK: Madam Chair, I note that in Exhibit 20
25 in the second page there is another photograph which is a little

1 dark, but I think you can see Mr. Sloame's house, and you can see
2 over -- I'll wait until you find it. It's Exhibit 20, the second
3 page.

4 CHAIRPERSON REID: Oh, Exhibit 20.

5 MR. CLARK: In the book, and it's the top photo.
6 You can see Mr. Sloame's house on the left. The point about the
7 level, you can see the railing in his house on the left. If you
8 go over to the right, you can see the sunlight where the level is
9 for the front door on the house on the right on the same level.

10 CHAIRPERSON REID: What picture are you looking at?

11 MR. CLARK: Exhibit 20, the second page, the top
12 picture.

13 CHAIRPERSON REID: Exhibit 20?

14 MR. CLARK: Two-zero.

15 CHAIRPERSON REID: Okay. This page? Okay.

16 MR. SLOAME: What we're saying is that our doors
17 are on the same level. Our basements are the same level.

18 CHAIRPERSON REID: Okay. The second picture on
19 that page at the bottom, whose house is that?

20 MR. CLARK: That's the subject property.

21 CHAIRPERSON REID: The subject property. This is
22 your house --

23 MR. CLARK: On the top.

24 BOARD MEMBER RENSHAW: On the left on the top is
25 Mr. Sloame's house.

1 MR. SLOAME: The one in the shadows.

2 MR. CLARK: Those are two houses in that picture.

3 CHAIRPERSON REID: But also -- I see this part of
4 your house, but where is the rest of your house?

5 MR. SLOAME: It's blacked out. It continues -- You
6 see where the railing is?

7 CHAIRPERSON REID: Again, that does not give me the
8 proper context. I'm still trying to see your house --

9 MR. SLOAME: We'll be happy to provide you with a
10 photograph of my house.

11 CHAIRPERSON REID: Absolutely. Other than that, it
12 does not give proper context to the point you're trying to make.

13 MR. SLOAME: Absolutely right.

14 CHAIRPERSON REID: Thank you.

15 MR. SLOAME: We'll get that together with the
16 timeline that Ms. Mitten asked for.

17 BOARD MEMBER RENSHAW: However, let me just say
18 here I've done a site visit to that block, and I understand what
19 you're talking about. I know what your house is like. All right?

20 MR. SLOAME: Thank you.

21 MR. CLARK: That's all my questions for Mr. Sloame.

22 CHAIRPERSON REID: Thank you. All right, Mr.
23 Brown. Board members, did you have questions before we have the
24 cross-examination? Okay.

25 MR. BROWN: Madam Chair, am I free to proceed?

1 CHAIRPERSON REID: No. I said Mr. Brown.

2 MR. BROWN: Okay. Just a few questions for Mr.
3 Sloame. Mr. Sloame, going through -- and you took us through, I
4 think, in detail the chronology. It was August 11th that you were
5 informed that the project could go forward?

6 MR. SLOAME: No. I was informed by Mr. Bello that
7 he had spoken with Mr. Shelton, the construction inspector, and
8 that a stop order had been issued, and that he met with the
9 builder and architect, and after that the stop order was lifted,
10 and the builder was going to submit revised plans which would
11 include backfilling the front.

12 MR. BROWN: That would bring the property into
13 compliance?

14 MR. SLOAME: He didn't tell me that. He said that
15 was -- Presumably, the revised plans were to bring the property
16 into compliance.

17 MR. BROWN: Then on August 20th you wrote to Mr.
18 Cohen -- Correct? -- citing in specifics the alleged violations?

19 MR. SLOAME: Yes.

20 MR. BROWN: On August 31st construction was still
21 going forward. Correct?

22 MR. SLOAME: The fourth floor had not been--

23 MR. BROWN: But construction was still ongoing?

24 MR. SLOAME: Yes.

25 MR. BROWN: And on the 31st of August you were

1 informed by Mr. Bello that revised plans had been submitted?

2 MR. SLOAME: Yes. Or he was going to be meeting
3 with Johnson and Nunley.

4 MR. BROWN: So that at that point -- and then
5 shortly after you went through the various correspondence,
6 including the 7th of September where you were told, you and Mr.
7 Clark were told -- Let me back up.

8 I'm assuming that all the correspondence that was
9 either to or from Mr. Clark, you were seeing?

10 MR. SLOAME: Yes.

11 MR. BROWN: So at that point on the 7th of
12 September you were made aware from one source that the revised
13 plans were going to be approved and that there were no violations?

14 MR. SLOAME: I'm going to turn to an exhibit.
15 Which exhibit number is that?

16 MR. BROWN: It's your 10.

17 MR. SLOAME: Our September 8th letter?

18 MR. BROWN: Well, the September 8th letter, which
19 is your Exhibit 10. Mr. Clark references a phone call he received
20 from Cathy Patterson's office saying that the Zoning Administrator
21 had approved the project. So you were made aware of that
22 information on the 7th or 8th of September?

23 MR. SLOAME: Well, I believe that references -- I
24 don't remember when Mr. Clark shared this letter with me.
25 Sometimes it takes a couple of days before we go to each other's

1 homes and exchange correspondence. But what I believe this is
2 referring to is not the formal revised permit which, as you know,
3 was not issued until September 15th and which we didn't see until
4 early October.

5 MR. BROWN: That's not the question I was asking.
6 But you were made aware that the Zoning Administrator had made the
7 decision to approve the permit in and around the September 7th or
8 8th date?

9 MR. SLOAME: Well, I was -- All I can say is that I
10 was given at some point a copy of this letter. Whether it was
11 correctly characterized as approval of construction and what the
12 word approval in the context of the letter, I can't speak to.
13 You'll have to ask Mr. Clark what he meant by that. All I can
14 testify is that within a short period of time after September 8th
15 I was given a copy of the letter.

16 MR. BROWN: Perhaps I should -- and Mr. Clark has
17 testified. Can I --

18 CHAIRPERSON REID: Yes, definitely.

19 MR. BROWN: Can I pose this same question to you,
20 Mr. Clark, since you were the recipient of the phone message from
21 Cathy Patterson's office on September 7th. Correct?

22 MR. CLARK: Yes.

23 MR. BROWN: Okay. Then you drafted the letter of
24 September 8th which is Exhibit 10?

25 MR. CLARK: That's correct.

1 MR. BROWN: At that time, your understanding was
2 that the Zoning Administrator had reached a decision to approve
3 the revised permit?

4 MR. CLARK: That's right. My understanding was
5 that, if there had been a decision to approve going forward -- and
6 when that meant a permit might come out, I have no idea, but that
7 that was reached on September 7th, was not reached any earlier
8 than that.

9 MR. BROWN: But you were aware that a decision had
10 been made. You were made aware of it?

11 MR. CLARK: I was made aware from the Council
12 Member's office. I never heard from DCRA, even though I had been
13 calling them every day for a month.

14 MR. BROWN: And you had no reason to doubt Ms.
15 Patterson's --

16 MR. CLARK: That was the only way I could get any
17 information, was from Ms. Patterson.

18 MR. BROWN: I think that's all I have.

19 CHAIRPERSON REID: I have a question. What comes
20 to my mind is, in this particular situation a major concern to you
21 is your privacy, obviously, and that certainly is an adverse
22 impact on your property, understandably so.

23 I think that you testified that there does exist a
24 brick wall between your house and the intervenor's house, the
25 owner of the subject property's house.

1 MR. SLOAME: A low wall which is probably about
2 four or five feet high, I guess. It's hard, because it's on a
3 slope. So you would have to measure it at each point.

4 CHAIRPERSON REID: What I'm trying to get at is I
5 wonder if that wall were extended higher, would that afford you
6 the privacy, the same privacy that you had enjoyed before.

7 MR. SLOAME: I don't think so. First of all, what
8 we have on top of the wall is shrubbery that's growing on top, and
9 it's the shrubbery which -- together with the wall, that serves to
10 obscure the view. In order for me to get the kind of privacy that
11 I enjoyed under the old house, the wall would have to be raised 40
12 feet approximately.

13 CHAIRPERSON REID: Oh, okay. Okay. So that would
14 be impractical.

15 MR. SLOAME: I think so. I should add one more
16 point, that I'm concerned from a fire and safety standpoint about
17 the existence, and I understand why the District has a three-story
18 limitation with eight-foot side yards, at least under the new
19 Code, a minimum of five feet for nonconformance.

20 From what I understand, the purpose of it is in
21 part in the event of fire, so that there would be room for the
22 firemen to come to put a ladder to rescue people. We have now a
23 situation where the side yard is five feet, barely five feet, and
24 we have -- instead of a one-floor living space as in the previous
25 building, we've got three floors of living space which would

1 require -- Under the old house, someone could jump out the window
2 and be saved. They wouldn't hurt themselves very much, maybe
3 sprain an ankle at most.

4 Now you're talking about three floors, almost 50
5 feet high where ladders would have to be put. I don't see how a
6 ladder could be put into this narrow space between that wall and
7 the five feet from the side of the house. So I understand why the
8 zoning laws were changed. That's a real concern of mine.

9 CHAIRPERSON REID: You know, I'm just trying to
10 think of another way of getting at this, the resolution of this
11 problem. If memory serves me correctly, we had a similar problem
12 some years back, and I think that there was some compromises made
13 in regard to that side of the subject property's house.

14 I don't know if they eliminated the windows above a
15 certain level or something like that. I just can't remember, but
16 I know that there was an accommodation made in order to be able to
17 remedy the problem.

18 What I'm trying to do is to get you guys to try to
19 think outside of the box for some possible resolution to this
20 problem that could be amenable to everyone concerned. And you
21 don't have to answer right now, but you know, at least generate
22 some thought along those lines. Thank you.

23 BOARD MEMBER RENSHAW: Mr. Sloame, I'd like to ask,
24 do you own the wall that is between your properties or is that
25 owned by the intervenor?

1 MR. SLOAME: I own the wall.

2 BOARD MEMBER RENSHAW: You own the wall. And
3 again, how tall is the wall?

4 MR. SLOAME: I'm going to estimate that it's
5 approximately the height of this --

6 BOARD MEMBER RENSHAW: Would that be eight feet?

7 MR. SLOAME: No.

8 BOARD MEMBER RENSHAW: Because you can go up to a
9 maximum, I think, of eight feet for a side -- Eight feet for side
10 yard fences. Seven feet for side yard fences.

11 MR. SLOAME: Probably close to seven feet.

12 BOARD MEMBER RENSHAW: All right. So you're at the
13 maximum, and there is not much more you can do with any kind of a
14 wall between your properties and stay within the law?

15 MR. SLOAME: That's correct.

16 BOARD MEMBER RENSHAW: All right.

17 VICE CHAIRPERSON SOCKWELL: Mr. Sloame, you're
18 aware that in a single family R-1 residence district that a house
19 can be built to a height of 40 feet, regardless of the number of
20 stories.

21 MR. SLOAME: Yes. Well, excuse me. My
22 understanding is it could be built to a height of 40 feet, so long
23 as it's not more than three stories.

24 VICE CHAIRPERSON SOCKWELL: Yes, but I'm saying,
25 regardless of number of stories, it could be a one-story 40-foot

1 high house.

2 MR. SLOAME: Yes.

3 VICE CHAIRPERSON SOCKWELL: Which means that the
4 house could exist at its current height as a two-story house and
5 would still cause the same changes in both your view and the
6 amount of building that you would be subjected to.

7 MR. SLOAME: Yes.

8 VICE CHAIRPERSON SOCKWELL: Okay. I just want you
9 to be aware that the number of stories and the actual bulk of the
10 building are not necessarily relevant to one another.

11 MR. SLOAME: As a practical matter, however--

12 VICE CHAIRPERSON SOCKWELL: As a practical matter,
13 money would make the difference.

14 MR. SLOAME: -- no builder is going to build with
15 20-foot high ceilings.

16 VICE CHAIRPERSON SOCKWELL: Well, that's not quite
17 true. I have a client who is putting \$40 million into a single
18 family residence.

19 MR. SLOAME: How big is the size of the lot?

20 VICE CHAIRPERSON SOCKWELL: 566,000 square feet.

21 MR. SLOAME: This is 7500 square feet.

22 VICE CHAIRPERSON SOCKWELL: But he's not using but
23 three percent of the lot.

24 MR. SLOAME: I think, with all due respect, I think
25 it would be a stretch to suggest --

1 VICE CHAIRPERSON SOCKWELL: But I'm saying that
2 people with various kinds of cathedral ceilings and what-not and
3 with a fair amount of money to spend could produce a property of
4 that size, depending upon what their needs are. It's not
5 necessarily based on practicality when you get over a certain
6 amount.

7 MR. SLOAME: I agree.

8 CHAIRPERSON REID: Okay, thank you very much.

9 MR. BROWN: Can I ask Mr. Sloame one follow-up
10 question, just to clarity.

11 You indicated that you obtained from the BZA the
12 forms necessary and got guidance from staff on filing an appeal.
13 That was in September?

14 MR. SLOAME: It was September 23 -- 22 -- I got the
15 FAX'ed forms.

16 MR. BROWN: That's all I have.

17 CHAIRPERSON REID: Thank you. All right, the
18 Zoning Administrator testimony, please.

19 MR. CLARK: We might have more in our case, Madam
20 Chair.

21 CHAIRPERSON REID: Wait. After you present your
22 case, then we have cross-examination. I thought that you had
23 finished.

24 MR. CLARK: No, I thought that we had cross-exam of
25 each witness as we did it.

1 CHAIRPERSON REID: Oh, no. Once you have presented
2 your case, then we have cross-examination, and also you have now
3 had about -- how much time in the presentation? Over an hour in
4 your presentation, not including the cross-examination.

5 MR. CLARK: The clock showed 22 minutes left when
6 we took the break.

7 MS. PRUITT: Because I thought that their case was
8 over, I set it back to 60. So they have 22 minutes left, because
9 cross-examination does not count against their case, and we were
10 stopping it when questions came up, as best as we could to only
11 allow testimony to be counted against time.

12 CHAIRPERSON REID: Well, didn't they start about
13 2:30?

14 MS. PRUITT: But there was a lot of interchanging
15 of questions between their testimony.

16 CHAIRPERSON REID: Did you stop the clock?

17 MS. PRUITT: Yes. So they still have -- I'm glad
18 you were able to remember the 22 minutes, so we can set it back to
19 that.

20 CHAIRPERSON REID: Okay. Go ahead and proceed
21 then. I'm sorry. I didn't realize that you were not finished
22 with your case.

23 MR. CLARK: I understand that. I'm going to call,
24 if I may, Emily Baker.

25 MR. BROWN: Madam Chair, just strictly logistical.

1 We're now getting on toward five o'clock, and we'll take at least
2 the balance of this hour and into the next to finish their case.
3 Could I get some sense of the Board's schedule and pleasure and
4 convenience, because I think it's almost assured now that we're
5 going to go beyond 6:00 P.M.

6 CHAIRPERSON REID: You would like to do an
7 assessment at this time?

8 MR. BROWN: Well, I mean, I guess I think, if in
9 fact we don't think at this point we're going to go beyond 6:00
10 P.M. --

11 CHAIRPERSON REID: No, I think that it's a foregone
12 conclusion that we will go beyond 6:00 P.M. Typically, we take an
13 assessment at six o'clock. However, if you have some reason to
14 want to do it now, we can.

15 MR. BROWN: Well, the problem is I'm afraid of --
16 since I come at the end and Mr. Lourenco and the Zoning
17 Administrator's case, that somehow we not front end all our time
18 in the appellant's case and then get caught short at the end, that
19 if we think we're going to have to fit into a shorter period of
20 time, that we allocate that time. I'm being cautious.

21 CHAIRPERSON REID: All right. Then let's do this,
22 Mr. Brown. Let us take an assessment of the time and to see if,
23 in fact, it's doable to complete the case today, giving you your
24 adequate amount of time that you're entitled to to put on the
25 intervenor/owner's case as well as the testimony from the Zoning

1 Administrator's office, and the cross-examination, if we should
2 perhaps do the second part on another day or what time we feel
3 that we can get through today.

4 Do the Board members have any constraints for this
5 afternoon, this evening, to complete the case?

6 BOARD MEMBER RENSHAW: Yes, I do. I really should
7 be leaving here by six o'clock. I think it would be a good idea
8 for the Board to consider the intervenor's case another day when
9 we can be fresh on it.

10 MR. BROWN: I don't know what the Board's schedule
11 is for other dates. I understand your concern, Ms. Renshaw. That
12 does -- and that's why I'm asking the question. It does impose a
13 hardship on my client.

14 CHAIRPERSON REID: I understand that, Mr. Brown,
15 but let me continue. We still have a quorum, and Ms. Renshaw
16 would be able to read the record if she has to leave at six
17 o'clock. I am here for the long run. So I'm going to complete
18 it, if the other Board members --

19 ZONING COMMISSIONER MITTEN: Well, I don't want to
20 be here past eight. I mean, if we're close to finishing at eight
21 --

22 CHAIRPERSON REID: You think we can wrap it by
23 eight o'clock?

24 MR. CLARK: Absolutely, Madam Chair.

25 CHAIRPERSON REID: What about the reporter? How is

1 your time? Okay, then we can continue. Mr. Johnson?

2 MR. JOHNSON: Thank you, Madam Chairman. With all
3 due respect, I think it's important that I let the Board know that
4 Mr. Toye Bello who was summoned here somewhat unscheduled will
5 have to leave by 5:30 today.

6 In addition, I have a public meeting that I have to
7 attend at 6:00 P.M. which normally, negotiating traffic, I usually
8 leave 45 minutes in advance. I will wait later, but there are two
9 other previous commitments that staff has as well.

10 CHAIRPERSON REID: Okay. Let me see.

11 MR. CLARK: We'll finish in our 23 minutes.

12 CHAIRPERSON REID: Mr. Clark, do you need -- Even
13 though you have been allotted that time, do you need -- Is it
14 possible to expedite?

15 MR. CLARK: I will expedite as much as possible,
16 but with the issues that Mr. Brown has raised about timeliness and
17 about pursuit of this, I mean, I've got a whole street full of
18 neighbors who have been pursuing this, and I think that I've got
19 to put it in, because it's Mr. Brown's defense.

20 CHAIRPERSON REID: Well, that will come after
21 you've made your presentation. Then after the Zoning
22 Administrator --

23 MR. CLARK: I'm sorry. I don't understand. I
24 mean, Mr. Brown is saying that I filed unreasonably late, and I'm
25 saying what took place. He thinks -- I'm just trying to put that

1 in. I want Mr. Bello to say something today, too. I mean, I'd
2 like him to be on.

3 CHAIRPERSON REID: We want to get Mr. Bello to
4 speak, definitely. So --

5 MR. CLARK: I've had people who have been here
6 since one o'clock as well waiting to testify.

7 CHAIRPERSON REID: Right.

8 ZONING COMMISSIONER MITTEN: Is it -- I mean, in
9 the interest of accommodating everybody in the best possible way -
10 - I mean, I know we've had a lot of shuffling going on -- is it
11 possible to reserve your 23 minutes and have the folks from DCRA
12 come now and then you get to go back on? I mean, I know it's a
13 lot of shuffling.

14 MR. CLARK: Well, I know that I'm going to lose my
15 witnesses, too. I mean, this witness is very brief.

16 CHAIRPERSON REID: Okay. Well, let's just try to
17 do the best we can. How many more witnesses do you have?

18 MR. CLARK: Well, one more, and then I have some
19 pictures I just want to show you, which I've already handed to Ms.
20 Pruitt.

21 CHAIRPERSON REID: Okay. This is the last witness
22 you have?

23 MR. CLARK: No, Mr. Magee also as well.

24 CHAIRPERSON REID: Okay, two.

25 MR. CLARK: I haven't asked Mr. Magee what his

1 availability is, if he could --

2 CHAIRPERSON REID: All right, let's just try to get
3 through, and then I'll have the Zoning Administrator come up with
4 Mr. Bello and try to get that part of it done and get to the
5 intervenor around six o'clock.

6 MR. BROWN: That's fine.

7 CHAIRPERSON REID: And then have you complete your
8 case, and then rebuttal from the applicant, and we're out of here.

9
10 MR. BROWN: Thank you, Madam Chair.

11 CHAIRPERSON REID: From the appellant. Okay.

12 MR. CLARK: Ms. Baker, could you please state your
13 name and address?

14 MS. BAKER: My name is Emily Lind Baker, and I live
15 at 4531 28th Street, N.W.

16 MR. CLARK: Where is that with respect to 4512?

17 MS. BAKER: It's across the street. It's next to
18 the Clark's house and across the street. The street curves, as
19 may or may not be clear from those pictures. So I'm at a slight
20 angle to the 4512 property.

21 MR. CLARK: Back in August of 1999, can you tell us
22 what, if anything, you were doing to try to find out what the city
23 was doing with respect to 4512?

24 MS. BAKER: I was participating in the effort that
25 a number of the neighbors were to get information from various

1 branches of the -- or offices of DCRA about what was happening. I
2 was calling Inspector Neals who was very responsive in returning
3 my calls, and trying to be in daily or every other day touch with
4 him about what the progress was of this question of whether a new
5 permit was being issued.

6 I got the same response from him that Mr. Sloame
7 was getting from Mr. Bello, that no decision -- as I checked with
8 him virtually daily, that no decision had been reached. Then
9 there was a silence, and then I also heard from Mr. Clark that he
10 had gotten the message of Council Member Patterson's office.

11 MR. CLARK: What had you heard as of September 2nd?

12 MS. BAKER: On September 2nd, that was the last day
13 I talked to Inspector Neals, and he told me that no decision had
14 been reached.

15 MR. CLARK: Did you also talk to the ANC during
16 August of '99?

17 MS. BAKER: Yes. I called the ANC office. The
18 person who returned my call was Douglas Mitchell, who is an ANC
19 Commissioner and, since our Commissioner was out of town at that
20 point, I talked to him several times about getting our item on the
21 ANC agenda.

22 MR. CLARK: Did you talk to Council Member
23 Patterson's office during August as well?

24 MS. BAKER: I did. Yes, several times. I talked
25 to Michelle Cole, and I believe I talked to someone else whose

1 name I don't recall.

2 MR. CLARK: Joanne Ginsberg?

3 MS. BAKER: Yes, I think so.

4 MR. CLARK: Did you observe work taking place at
5 4512 on the weekends?

6 MS. BAKER: Yes.

7 MR. CLARK: Did you ever have to call the police to
8 try to get the work stopped?

9 MS. BAKER: Yes. There was work on Saturdays
10 which, of course, is permitted. There was also work on Sundays,
11 which is not permitted, and since I like to sleep late and I'm
12 very irritated when I'm awakened early, to be awakened at seven on
13 Sunday morning was not pleasing to me; and I called several times
14 on Sunday at that time and also later.

15 There was also an occasion when work was being
16 performed on a holiday that I objected to.

17 MR. CLARK: Did you observe work in inclement
18 weather?

19 MS. BAKER: Yes. There was work every day.

20 MR. CLARK: There was a hurricane in August. Were
21 they working then?

22 MS. BAKER: I was actually not here during the
23 hurricane.

24 MR. CLARK: I don't have any other questions for
25 Ms. Baker.

1 CHAIRPERSON REID: Thank you. Next witness,
2 please.

3 MR. CLARK: Mr. Magee.

4 CHAIRPERSON REID: Thank you.

5 MR. BROWN: Madam Chair, I'm not going to have any
6 cross-examination.

7 CHAIRPERSON REID: I was going to wait until they
8 both spoke, and then allow you to do your cross-examination. But
9 you have none for her? Okay. That's fine.

10 MR. CLARK: Mr. Magee, could you please tell us
11 your full name and where you live?

12 MR. MAGEE: James Walton Magee. I live at 4334
13 Klingle Street, N.W.

14 MR. CLARK: How long have you lived in Washington?

15 MR. MAGEE: I'm a seventh generation Washingtonian.

16 MR. CLARK: I guess it's now February. Last month
17 was there a meeting with the Mayor, and was the height at which
18 issues were raised about DCRA approving construction on so called
19 tear-down properties in violation of the zoning regulations?

20 MR. MAGEE: Yes, there was.

21 MR. BROWN: Excuse me, Madam Chair. I think this
22 goes pretty far afield. I actually known Mr. Magee. He lives in
23 Wesley Heights, but discussions about, you know, other things
24 don't have anything to do with this property, and I think we've
25 got a time crunch, and I think, in all due respect to Mr. Magee,

1 that it's not relevant.

2 Now he may have other testimony.

3 MR. CLARK: We might have finished by now, but I
4 will say this, and that is that this commission is obligated to
5 consider the issues raised by the ANC. One of the ANC issues
6 which has been raised and which this commission must address is,
7 in fact, the tear-down property issue. It's in the resolution.
8 It's something that must be addressed. You can act on it as you
9 will, but I'm offering testimony on that issue.

10 CHAIRPERSON REID: Overruled. Mr. Magee, did you
11 give your address?

12 MR. MAGEE: Yes, I gave my address.

13 CHAIRPERSON REID: I'm sorry. I was probably
14 reading something. But go ahead.

15 MR. CLARK: I'm going to hand Mr. Magee an exhibit
16 which I haven't premarked as the number but which I think is going
17 to turn out to be 41, and I'll hand copies up to Ms. Pruitt as
18 well and to Mr. Brown.

19 Sir, is that, in fact, a letter which the Mayor's
20 office sent after the meeting in Wesley Heights?

21 MR. MAGEE: Yes, I believe it is.

22 MR. CLARK: Are you personally familiar with any of
23 the sites mentioned in the letter?

24 MR. MAGEE: Yes, I am.

25 MR. CLARK: Has the city admitted zoning violations

1 at any of those sites?

2 MR. MAGEE: A number of them.

3 MR. CLARK: Were you promised a response from Lloyd
4 Jordan as to those violations?

5 MR. MAGEE: Yes, we were.

6 MR. CLARK: Have you received one?

7 MR. MAGEE: No.

8 MR. CLARK: Has construction continued even while
9 stop orders have been in effect?

10 MR. MAGEE: Yes, it has.

11 MR. CLARK: Let me hand you, which I'll mark then
12 as Exhibit 42, and could you tell us what that is?

13 MR. MAGEE: This is a listing of some of the
14 affected properties in Wesley Heights.

15 MR. CLARK: Mr. Magee, has there been any impact on
16 the character of your Wesley Heights neighborhood as a result of
17 these projects which the city has not stopped, even though it has
18 admitted that they violate the zoning laws?

19 MR. MAGEE: Yes. They violate the streetscapes.
20 If our neighborhood were a historic district, which it nearly was,
21 these would be landmark properties, and the change to these
22 properties represents an attempt to alter the scale of the
23 neighborhood.

24 MR. CLARK: Is it fair to say that one of these
25 properties in the neighborhood is referred to as "the hotel"?

1 MR. MAGEE: Several of them are.

2 MR. CLARK: I have no other questions for Mr. Magee
3 at this point.

4 CHAIRPERSON REID: Where did this list come from?

5 MR. CLARK: The second list -- I mean the first
6 list is from the Mayor's office. The second list -- Why don't you
7 tell us who prepared that, Mr. Magee?

8 MR. MAGEE: I'm not sure who prepared this, but
9 this is --

10 MR. CLARK: I can tell you who gave it to me. It
11 was Bill Timmonds who is also one of the neighbors in Wesley
12 Heights who has been upset about this.

13 MR. MAGEE: This is either part of Mr. Timmonds'
14 letter to the Mayor regarding these properties or it is from the
15 President of the Wesley Heights Historic Society as preparation
16 and explanation of some of the affected properties.

17 There are some ten affected properties.

18 MR. CLARK: I have no other questions of Mr. Magee.

19 ZONING COMMISSIONER MITTEN: Madam Chair, I have a
20 quick question. What action has been taken regarding the
21 properties where the violations have been admitted?

22 MR. MAGEE: None. There have been no true
23 corrections made in any of the cases.

24 ZONING COMMISSIONER MITTEN: Thank you.

25 MR. CLARK: Mr. Brown, I don't know if -- I'm

1 sorry.

2 CHAIRPERSON REID: Well, all right. You gave us
3 this list, these two properties that have violations. Right? Now
4 maybe I missed something when I was reading, but how does this
5 relate to the subject property?

6 MR. CLARK: It relates to the subject property
7 because of the issue that we have raised and that the ANC has
8 raised, and that is the refusal of DCRA to enforce the zoning
9 regulations, especially in the case of tear-down and reconstruct
10 properties, and it's changing the character of a lot of
11 neighborhoods in Washington, D.C.

12 I can tell you that I've been contacted by people
13 all over the city about this.

14 CHAIRPERSON REID: Well, it seems to me they would
15 also have included in this list the subject property.

16 MR. CLARK: It's not in Wesley Heights. This is a
17 Wesley Heights issue. Those issues -- These properties are all in
18 Wesley Heights. There was a meeting in Wesley Heights with the
19 Mayor.

20 CHAIRPERSON REID: So what is it doing here then?
21 Is this trying to draw a correlation between what's happening in
22 Wesley Heights and what's happening here on 28th Street?

23 MR. CLARK: Just as the ANC has done. That's
24 correct.

25 VICE CHAIRPERSON SOCKWELL: Would we want to also

1 bring in Fairfax County and Arlington and maybe Carillo, Texas, or
2 would you like to -- The witness is not in the subject
3 neighborhood, sir.

4 MR. CLARK: I understand, sir.

5 VICE CHAIRPERSON SOCKWELL: And relative to issues
6 that are city-wide, we may have something to discuss, but we're
7 not here to talk about city-wide issues. We're talking about a
8 specific piece of property, and only a specific piece of property
9 and the affected neighbors to that specific piece of property.

10 What happens in Wesley Heights may be the case for
11 other hearings, but it is not germane here.

12 MR. CLARK: I will only point out this, Mr.
13 Sockwell, and you can consult corporation counsel on --

14 VICE CHAIRPERSON SOCKWELL: I'm not asking to
15 consult corporation counsel. I am telling you, Mr. Clark, it is
16 not germane here today.

17 MR. CLARK: I understand, Mr. Sockwell, but I can
18 tell you this, that failure to address --

19 VICE CHAIRPERSON SOCKWELL: Please. We're not
20 failing to do anything. We're not failing to do anything. Would
21 you prefer that we discuss Wesley Heights or would you prefer that
22 we hear this case and deal with this issue?

23 MR. CLARK: Sir, I'm finished with --

24 VICE CHAIRPERSON SOCKWELL: I asked you a question.
25 I expect an answer.

1 MR. CLARK: I would prefer to deal with this issue.
2 I'm finished, sir.

3 VICE CHAIRPERSON SOCKWELL: Thank you.

4 CHAIRPERSON REID: Okay, thank you very much. All
5 right now, the Zoning Administrator. You are done. I'm sorry,
6 Mr. Brown, did you have cross-examination?

7 MR. BROWN: No, Madam Chair, no cross-examination.
8 Nothing relevant to this case.

9 MR. CLARK: I have the photos which I handed up
10 before, but why don't we get the Zoning people on, and then I'll
11 show the photos. That makes more sense.

12 CHAIRPERSON REID: Okay. Just don't forget.
13 Remind us, just in case as we get onto it.

14 MR. CLARK: I will.

15 CHAIRPERSON REID: Now you need to let them come
16 up, Mr. Johnson, Mr. Bello, Mr. Lourenco.

17 Mr. Bello, I want to particularly thank you for
18 coming over today, to drop whatever you were doing to accommodate
19 us. We much appreciate that.

20 Now, Mr. Clark, at this point, if you would then
21 take your seat back and allow them only at the table.

22 MR. CLARK: Well, I thought Mr. Brown had -- I
23 thought it was just convenient. I mean, if you want me to --

24 CHAIRPERSON REID: I think he came up for the
25 cross-examination segment.

1 MR. CLARK: I'm happy to go back.

2 CHAIRPERSON REID: Thank you.

3 MR. LOURENCO: Madam Chair, good afternoon, members
4 of the Board, good afternoon. I'd like to take this opportunity
5 to welcome the new member of the Board, who happens to be my ANC
6 Chair. That's secondary.

7 I have a question. Because of the time
8 constraints, would the Board like to start by asking the questions
9 that are pertinent to Mr. Bello before I get into my description
10 of what I think happened.

11 CHAIRPERSON REID: Will you be able to stay later?

12 MR. LOURENCO: I'll stay until midnight.

13 CHAIRPERSON REID: That's great. Then let's allow
14 Mr. Bello to testify or, if you don't have any testimony, just
15 basically to answer questions that we have.

16 MS. PRUITT: Excuse me, Madam Chair. Mr. Bello
17 needs to be sworn in.

18 CHAIRPERSON REID: Mr. Lourenco, have you been
19 sworn?

20 MR. LOURENCO: Yes.

21 MS. PRUITT: Do you swear that the testimony you
22 will give today is the truth?

23 (WITNESS SWORN.)

24 CHAIRPERSON REID: Okay. Now, Mr. Bello, here's
25 the first question I'd like for you to answer for me. Is there

1 any such thing as a verbal stop order -- stop work order?

2 MR. BELLO: There's no such thing.

3 CHAIRPERSON REID: Okay. Did you verbally say to
4 Mr. Sloame that there was a stop work order, there would be a stop
5 work order for 4512 28th Street, N.W.?

6 MR. BELLO: Well, procedurally, if a violation is
7 found through the proper channels, a stop work order could be
8 issued.

9 CHAIRPERSON REID: Just answer this question, yes
10 or no. Did you tell him that there would be one?

11 MR. BELLO: Not specifically, no.

12 CHAIRPERSON REID: Okay. Was there a stop work
13 order -- Well, if there was no stop work order, then there could
14 not be a rescission of the stop work order. You weren't here, but
15 through testimony today it was stipulated that there was an oral
16 stop work order, and then the next day it was withdrawn.

17 So I guess the essence of my question to you then
18 is was the work ever stopped?

19 MR. BELLO: Not to my knowledge, ma'am, no.

20 CHAIRPERSON REID: Okay. I'm reading from my
21 notes.

22 ZONING COMMISSIONER MITTEN: Maybe just to get the
23 ball rolling a little bit, you know, there was a series of
24 contacts made with your office, and I think you were the point
25 person in your office, and there was an issue regarding what the

1 application in this case said as to the number of stories and what
2 the plans showed.

3 We heard some testimony earlier that, once the
4 discrepancy between what was on the application and what was on
5 the plans was called to your attention, that you took some action.

6 Do you recall this, and can you tell us what action you took?

7 MR. BELLO: Well, Mr. Sloame's initial issue was
8 not with the number of stories as it was with the setback of the
9 subject property and the fact that it was a new construction.
10 When I took a look at the application, the application indicated
11 the proposal was for alteration or repair, and that prompted me to
12 tell Mr. Sloame that I will take another look at the plans and, if
13 I found an issue with it, then we would move to the next step of
14 enforcement, if one was necessary.

15 ZONING COMMISSIONER MITTEN: Okay. Then was it
16 when you took another look at the plans that you noticed that
17 there was this discrepancy in the number of stories?

18 MR. BELLO: Well, given the elevation shown on the
19 plans and the number of stories indicated on the application,
20 there was a discrepancy there. But as is usual for all
21 applications, that may be because of lack of understanding of how
22 the number of stories is arrived at by the applicant. So I called
23 the applicant in.

24 ZONING COMMISSIONER MITTEN: Then just maybe keep
25 going then. Then what happened as a consequence of you meeting

1 with the applicant?

2 MR. BELLO: Well, I kept in contact with Mr.
3 Sloame, just to apprise him of what the situation was as it
4 evolved. I also informed him what remedy was possible in order to
5 bring the application in concert with the plans that had been
6 submitted.

7 ZONING COMMISSIONER MITTEN: So I'm inferring from
8 what you just said that there was a discrepancy and then some
9 action needed to be taken to remedy the discrepancy.

10 MR. BELLO: That's correct.

11 ZONING COMMISSIONER MITTEN: Was the permit --
12 Given that you understand the discrepancy, was the permit that was
13 issued improper because of the discrepancy?

14 MR. BELLO: Well, insofar as the number of stories
15 was concerned, yes.

16 ZONING COMMISSIONER MITTEN: Well, so the number of
17 stories was four. Is that correct?

18 MR. BELLO: Given the definition of the number of
19 stories, of what constitutes a story, yews.

20 ZONING COMMISSIONER MITTEN: Okay. And then this
21 is R-1-B.

22 MR. BELLO: This is R-1-B -- R-1-A.

23 ZONING COMMISSIONER MITTEN: I'm sorry. Right.
24 Three stories are permitted.

25 MR. BELLO: Yes.

1 ZONING COMMISSIONER MITTEN: Four stories were on
2 the plan. So I'm going to say again, was the permit improper?
3 It's kind of a yes or no, really.

4 MR. BELLO: Well, it's really a little bit more
5 intricate than that, because from a definition standpoint, a
6 basement counts towards a story, while a cellar does not. And in
7 this case, they had a basement and three stories, and the
8 difference between a cellar and a basement is simply the
9 measurement between finished grade and the first floor level of a
10 proposal.

11 ZONING COMMISSIONER MITTEN: Right. And I
12 understand all that, and they had on their plans for the first
13 permit a basement and three stories in an R-1-A zone. So was the
14 permit improper?

15 MR. BELLO: Well, yes.

16 ZONING COMMISSIONER MITTEN: Okay.

17 MR. BELLO: In that context.

18 ZONING COMMISSIONER MITTEN: Okay, great. So given
19 that the permit was improper, what did you do?

20 MR. BELLO: Well, it was one of two things. The
21 applicant is given an opportunity to remedy the situation or, if
22 they wanted to keep it the way it was, then they will be referred
23 to the BZA.

24 ZONING COMMISSIONER MITTEN: And in the meantime,
25 do they just keep building or there's no sort of just stopping

1 perhaps while some resolution is -- I mean, there's two courses of
2 action they could take. They both require some time, and if the
3 permit is improper, would it be appropriate for them to continue
4 construction under an improper permit?

5 MR. BELLO: Well, as long as the applicant
6 indicated by action that they were going to be responsive to what
7 the remedy was, then it wouldn't be unusual to not necessarily
8 stop them.

9 ZONING COMMISSIONER MITTEN: What action did they
10 take that showed that they were going to be responsive?

11 MR. BELLO: By changing the finished grade.

12 ZONING COMMISSIONER MITTEN: Well, okay. The
13 meeting that -- We heard testimony that the meeting with you that
14 sort of brought this all to a head was August 11th.

15 MR. BELLO: Well, I don't have a date. So I don't
16 know.

17 ZONING COMMISSIONER MITTEN: Okay. Well, just
18 trust me on it. We're trusting the folks who testified to that
19 date.

20 The date that the application was made for the
21 second permit that would resolve the issue regarding the grade --
22 that was made the 25th of August.

23 MR. BELLO: That's correct.

24 ZONING COMMISSIONER MITTEN: So that amount of time
25 is allowed to elapse before you do anything about resolving the

1 issue of the permit? I mean, was there something going on in the
2 meantime that indicated what action they were going to take? I
3 mean, how did you know they wouldn't go to BZA, and then at that
4 point you wouldn't know what BZA was going to decide.

5 I'm just trying to understand. Wouldn't it have
6 been appropriate to issue a stop work order, given that the permit
7 that authorized the construction wasn't properly issued?

8 MR. BELLO: Well, the necessity for that would only
9 have been triggered by the applicant's either inability or
10 willingness to comply.

11 ZONING COMMISSIONER MITTEN: Do you have
12 regulations regarding when stop work orders should be issued?

13 MR. BELLO: No, I don't. It's not the purview of
14 the zoning regulations.

15 ZONING COMMISSIONER MITTEN: You don't have any
16 regulations, DCRA regulations?

17 MR. BELLO: Well, you probably do, but I don't have
18 that. I don't know that.

19 ZONING COMMISSIONER MITTEN: Would you have the
20 authority to issue a stop work order?

21 MR. BELLO: Through the Zoning Administrator's
22 office and through the Construction Inspection Branch.

23 ZONING COMMISSIONER MITTEN: So that's something
24 you would have to run by some people?

25 MR. BELLO: Absolutely.

1 ZONING COMMISSIONER MITTEN: Okay.

2 BOARD MEMBER RENSHAW: Who would you run that
3 through?

4 CHAIRPERSON REID: Okay. Let me get back to --
5 There was testimony today to the effect that subsequent discussion
6 about the issuance of the permit that was incorrect. Did you at
7 anytime state that it was done, because you were initially misled?

8 MR. BELLO: Absolutely not.

9 CHAIRPERSON REID: You never made a statement that
10 you were misled and that's the reason why it was issued?

11 MR. BELLO: Absolutely not.

12 CHAIRPERSON REID: All right. The other thing is:
13 Did you state that -- In testimony today it was alleged that you
14 stated that you would lift the stop order if the builder would
15 submit revised plans; but since there was no stop order issued, in
16 the first place, I guess that's moot. Okay.

17 Mr. Sockwell?

18 VICE CHAIRPERSON SOCKWELL: Mr. Bello, in t he
19 normal circumstance of a partial demolition of an existing
20 property, the applicant can take the building down to a certain
21 point and build back up again, as long as he's within conformance
22 on the construction.

23 MR. BELLO: That's correct.

24 VICE CHAIRPERSON SOCKWELL: In this case, the
25 applicant demolished the roof and first floor flooring down to the

1 subfloor, which would constitute the framing above the ceiling of
2 the basement.

3 In the original house the basement was considered
4 to be a floor, because the original house was a two-story house,
5 the first floor of which was actually the basement.

6 MR. BELLO: That is correct.

7 VICE CHAIRPERSON SOCKWELL: In the actual
8 construction of the new work, the basement was left essentially
9 intact as a frame, as a box, and the permit said construct three
10 floors, which would under most circumstances mean construct floors
11 over the existing floor, and the existing floor was already a
12 floor by zoning's definition of the original house.

13 So it would have to have become a four-story house
14 under the circumstances, would it not?

15 MR. BELLO: That's correct, yes.

16 VICE CHAIRPERSON SOCKWELL: Thank you. And
17 therefore, to correct the problem of being out of conformance with
18 the ordinance by berming up would have altered a condition that
19 was established in 1956 when the original house was built, because
20 that portion of the original house was still intact, would you
21 assume?

22 MR. BELLO: Yes, that's correct.

23 VICE CHAIRPERSON SOCKWELL: Yes. Had they
24 demolished to the slab on grade, they would be starting virtually
25 from scratch with a foundation, and building three floors from

1 that point would have created a three-story house.

2 MR. BELLO: That is correct.

3 VICE CHAIRPERSON SOCKWELL: And I have one more
4 question to raise to you, because you are considered to be one of
5 the more expert people in the Zoning Division.

6 The sections 20 -- and I know you won't know them
7 by heart, because I don't know them by heart -- Sections 2001.1-5
8 discuss nonconforming structures devoted to conforming uses. The
9 only issue that really allows the demolition of a nonconforming
10 structure that's written into the Code states that, if it is
11 demolished by fire or other natural occurrences to beyond 75
12 percent of its value, then that which is built to replace it must
13 conform to the zoning ordinance.

14 MR. BELLO: That's correct.

15 VICE CHAIRPERSON SOCKWELL: There is nothing that I
16 know of in the ordinance that states that, if one voluntarily
17 demolishes said property to a point of 75 percent, 50 percent of
18 25 percent of its original value, that it could be expanded and
19 altered in any way other than that which would be consistent with
20 the current zoning ordinance.

21 MR. BELLO: Right.

22 VICE CHAIRPERSON SOCKWELL: Okay. Then I really
23 don't have anymore questions for you. Thank you.

24 CHAIRPERSON REID: All right.

25 BOARD MEMBER RENSHAW: Madam Chair, just a few

1 questions at this end.

2 Mr. Bello, what is your title, please?

3 MR. BELLO: I'm a zoning technician in the Zoning
4 Review Branch.

5 BOARD MEMBER RENSHAW: Zoning technician in the
6 Zoning Review Branch. How many of them are there, in other words,
7 like you?

8 MR. BELLO: One other.

9 BOARD MEMBER RENSHAW: One other? All right. Are
10 you responsible for sending out inspectors on properties where
11 there has been a complaint? Who sends the inspectors?

12 MR. BELLO: Well, it's centrally generated, but I
13 can be in on that decision, yes.

14 BOARD MEMBER RENSHAW: Did you send any inspectors
15 out to this site when the complaints came into your office?

16 MR. BELLO: If my recollection serves me right, I
17 probably looked at the plans first and then, yes, generated some
18 sort of an inspection through the Construction Inspection Branch.

19 BOARD MEMBER RENSHAW: How many?

20 MR. BELLO: I don't recollect, but probably once or
21 twice I spoke to Mr. Ford about it.

22 BOARD MEMBER RENSHAW: Once or twice? When this
23 case seemed to generate quite a few letters coming into the
24 office, there seems to be a steady stream of protests on behalf of
25 the neighbors, and you only sent inspectors out once or twice?

1 MR. BELLO: Well, I don't think that Mr. Sloame
2 would suggest that I wasn't responsive to his--

3 BOARD MEMBER RENSHAW: I'm not saying you weren't
4 responsive. I'm just trying to get at the procedure of the office
5 in reacting to a neighborhood complaint, a neighborhood problem.
6 In other words, what did DCRA do to try to, shall we say, satisfy
7 the neighbors?

8 MR. LOURENCO: Can I interject here, please? Mr.
9 Bello is not the only person with authority to generate such an
10 inspection. This case is probably, of all the cases that we're
11 handling now in our office, the one that has been monitored the
12 closest in all the cases that are now being handled in my office.

13 There are hundreds of them.

14 The Zoning Administrator has done an inspection
15 himself. I did two inspections to the site. I have been to the
16 site, not inspecting, but I have been to the site four or five
17 times already. So I don't see you can infer by the number of
18 times that Mr. Bello would request an inspector to go out, how
19 much attention DCRA has been paying to the scrutiny of this case.

20 BOARD MEMBER RENSHAW: Very good. Well, it's good
21 to have your analysis of it, Mr. Lourenco. But that brings to
22 mind another question.

23 Obviously, when you talked to the neighbors, there
24 has been a complaint issued to your office, you're talking to
25 them, do you keep minutes of your conversations? Do you write up

1 any reviews, Mr. Lourenco, when you talk to Mr. Bello, when you
2 have had some discussion? Is there anything in writing in your
3 department that you could share with the BZA that would glean --
4 would help us glean how you arrived at the decisions you arrived
5 at?

6 MR. LOURENCO: The record contains two letters that
7 were sent by our department, one signed by me, one signed by Lloyd
8 Jordan, to Council Member Patterson who took a special interest in
9 this case at some point.

10 There are, obviously, the records of the permits
11 that were issued. This site has presently three permits that are
12 valid that are out there. There is plenty of information on the
13 plans that accompany those permits.

14 I think the record is very extensively documented,
15 and I really would like to focus on the record and on the case.

16 BOARD MEMBER RENSHAW: You said that there were
17 three permits for this property?

18 MR. LOURENCO: Yes. Yes, ma'am.

19 BOARD MEMBER RENSHAW: I have two. What is the
20 other one?

21 MR. LOURENCO: There's the initial permit issued in
22 June 7th. There is the revision to that permit issued in
23 September 17th, and there's a third one to revise the access
24 stairways in the front and to construct some retaining walls.

25 BOARD MEMBER RENSHAW: We don't have a copy of that

1 one, of the third permit.

2 MR. LOURENCO: I have a copy of the permit with me,
3 but not the drawings, just the permit, and it's not a certified
4 copy. If you want, I can produce a certified copy.

5 BOARD MEMBER RENSHAW: Yes. All right.

6 MR. BROWN: If it would help, Ms. Renshaw, Exhibit
7 22 to our opposition statement includes that.

8 MR. CLARK: It was issued in December of '99.

9 MR. BROWN: December 9th.

10 VICE CHAIRPERSON SOCKWELL: Let me ask one
11 question, Mr. Lourenco. I had noticed, and I'm glad that --

12 CHAIRPERSON REID: Excuse me, Mr. Sockwell. Let's
13 save Mr. Lourenco, and use this time for Mr. Bello, and Mr.
14 Johnson has to leave. Then we can question Mr. Lourenco.

15 Are there any other questions for Mr. Bello?

16 ZONING COMMISSIONER MITTEN: I have one further
17 question, Madam Chair. Consistent with what Ms. Renshaw asked,
18 and notwithstanding the answer that Mr. Lourenco gave, Mr. Bello,
19 do you keep notes of conversations that you have with applicants
20 or folks that come down and complain about something that's going
21 on, conversations that you have with other folks in your office,
22 just like notes that would give us some insight?

23 There's a timeliness issue here, and then there is
24 also, you know, just the issue of what was said when and so forth.

25 Do you have notes?

1 MR. BELLO: No, I don't.

2 ZONING COMMISSIONER MITTEN: There are no notes
3 that are maintained in your file regarding any conversations that
4 you have with other staff members, applicants or folks that come
5 to the office to complain about matters?

6 MR. BELLO: No, I don't, because a lot of the
7 information that we share is said verbally, and the correspondence
8 that comes out of the office comes through the Zoning
9 Administrator's office.

10 ZONING COMMISSIONER MITTEN: Thank you.

11 CHAIRPERSON REID: MR. Brown, did you have
12 questions for Mr. Bello?

13 MR. BROWN: Yes.

14 CHAIRPERSON REID: Then I would allow Mr. Clark to
15 cross-examine as well.

16 MR. BROWN: Mr. Bello, you indicated that there was
17 no attempt -- I want to clarify this -- no attempt on the part of
18 the building permit applicant to mislead you in their application
19 or their plans that were submitted? I just want to verify that.

20 MR. BELLO: Yes, I stated such.

21 CHAIRPERSON REID: Mr. Bello, can you speak louder
22 into the mike, please?

23 MR. BELLO: Yes, I stated such.

24 MR. BROWN: When you identified that there was a
25 discrepancy and you were in contact with the building permit

1 applicant, the property owner -- correct?

2 MR. BELLO: That's correct.

3 MR. BROWN: -- and you discussed their options as
4 far as what you considered needed remedial work?

5 MR. BELLO: That's correct. I stated the issue of
6 noncompliance, as I saw it, relative to the building permit
7 application as filed, and the plans that they filed, and I told
8 them to come on in to discuss the possible remedies for them.

9 MR. BROWN: And the remedy you discussed with them
10 was?

11 MR. BELLO: Well, it was either to berm the
12 property in order to make the basement a cellar, which would then
13 remove it from being counted as a story, or if they wanted to keep
14 the proposal the way that they had it, that then I would have to
15 embark on issuing a stop work order and issue a BZA memo. But the
16 only way they could keep it the way they had it was to go seek
17 redress before the BZA.

18 MR. BROWN: And when you met with the property
19 owner, they indicated to you that they were going to make the
20 suggested changes to finished grade?

21 MR. BELLO: That's correct.

22 MR. BROWN: And you were satisfied based on that
23 commitment that that would bring the property into compliance?

24 MR. BELLO: That's correct.

25 MR. BROWN: And that subsequently the applicant

1 filed the revised building permit showing the revised grade?

2 MR. BELLO: That is correct.

3 MR. BROWN: And then that permit was in due course
4 reviewed and approved by your office?

5 MR. BELLO: That's correct, sir.

6 MR. BROWN: If permit number two, the revised one -
7 - If that permit as it relates to the front elevation had been the
8 original permit, would that permit have been issued in the normal
9 course as in compliance?

10 MR. BELLO: Yes, it would.

11 MR. BROWN: So that the revised permit, again,
12 achieved the only obligation which was compliance with the zoning
13 regulations?

14 MR. BELLO: That's correct.

15 MR. BROWN: Going to the question and the issue
16 that Mr. Sockwell raised, this was a partial demolition, in your
17 view.

18 MR. BELLO: According to the plans presented, yes.
19 It wasn't a complete demolition.

20 MR. BROWN: And as a result of that, you judged the
21 compliance with the zoning regulations, because this was an
22 addition to an existing structure?

23 MR. BELLO: That is correct.

24 MR. BROWN: In particular, as to the question of
25 the side yard, for a side yard of a pre-1958 building for which

1 you are making an addition, is there a rule other than the eight-
2 foot side yard setback?

3 MR. BELLO: You are allowed to extend a
4 nonconforming side yard insofar as you have five feet or more in
5 existence.

6 MR. BROWN: And in this case the existing house had
7 a five-foot or greater side yard. Correct?

8 MR. BELLO: As reflected on the surveyor's plans,
9 yes.

10 MR. BROWN: Did you see the wall check?

11 MR. BELLO: Yes, I did.

12 MR. BROWN: And that also reflected the five or
13 greater foot side yard on either side?

14 MR. BELLO: It did.

15 MR. BROWN: I think that's it.

16 CHAIRPERSON REID: Thank you.

17 BOARD MEMBER RENSHAW: Question, Madam Chair. For
18 Mr. Bello, I'd like to know how often cellars have been created by
19 berming, how many times in the District? Then I have a follow-up
20 question.

21 MR. BELLO: How many times?

22 BOARD MEMBER RENSHAW: Yes. Do you know?

23 MR. BELLO: Well, it's really a function of what
24 the definition of a cellar is as opposed to a basement. And the
25 pertinent language is that the measurement determines what

1 constitutes a cellar or basement is from finished grade to the
2 first floor level.

3 BOARD MEMBER RENSHAW: Go ahead, and then I'll come
4 back.

5 VICE CHAIRPERSON SOCKWELL: Is it, to your
6 knowledge, in residential construction or, to your knowledge, in
7 commercial construction C zones -- is it something that you have
8 seen done often to change an existing building of one type to a
9 building of another type? In other words, would you say that it
10 is a regular practice of the zoning office to allow one to berm up
11 against an existing building to make one story disappear for the
12 purpose of adding additional stories?

13 MR. BELLO: That's done regularly.

14 VICE CHAIRPERSON SOCKWELL: It is done regularly?

15 MR. BELLO: Regularly.

16 VICE CHAIRPERSON SOCKWELL: With existing
17 buildings? So I can regularly take a two-story or three-story or
18 four-story building and convert it to a five or six or seven-story
19 building by berming up against the walls, as long as I change the
20 finished grade to that which I want it to be?

21 MR. BELLO: As an example, in commercial zones, if
22 you have an existing basement floor that counts toward you gross
23 floor area which is perhaps 25,000 square feet, you can make the
24 25,000 square feet disappear by changing that basement to a
25 cellar.

1 CHAIRPERSON REID: This is done routinely, and it's
2 not illegal?

3 MR. BELLO: It is not.

4 BOARD MEMBER RENSHAW: Question, Madam Chair. In
5 the September 20, 1999, letter from Lloyd Jordan, the Director of
6 DCRA, to Council Member Cathy Patterson he writes that the
7 regulations do allow property owners to regrade their lots as they
8 see fit, including raising the finished grade. This has been a
9 practice allowed by the Zoning Administrator for years. How many
10 years? Is the practice written down? Is it a regulation? Is it
11 just someone's whim that this is one way that we're going to get
12 around, you know, calling a basement a basement, not a cellar?

13 The choice of words here is peculiar. Go ahead.

14 MR. LOURENCO: If I may answer, I guess that
15 practice goes at least as far back as 1958, because that's the
16 date of the regulation. The regulations are moot in relation to
17 limitations on regrading.

18 We have to understand that. We can be speculating
19 here about burying seven floors under a hill, but there is a
20 practicality limit to that. I have with me -- I took pictures
21 this morning of this house, because I wanted to make sure of where
22 it stood right now and whether I could stand here and say there is
23 no violation.

24 You're going to be surprised by my answer when I
25 get to that point. But the issue here is that there is a

1 practicality limit. There is only certain things one can regulate
2 and should regulate.

3 If I build a hill that's seven story high, I'm
4 going to have a problem getting to the front door of my house.
5 Some houses that are built on hills in this same Forest Hills area
6 have 20, 30, 35 steps to the front door, and guess what? That's
7 the point from where you measure the height of that house.

8 As you go down the street, and you don't even need
9 to leave the block where this house is -- as you go down the
10 street, you see houses where the first floor is way up there.

11 Now in this particular case, the case at hand here,
12 we are not talking about changing the natural grade to that
13 extent. We're talking about changing the natural grade probably
14 by one or two feet.

15 The question of what in the zoning regulations
16 limits my ability to regrade my lot, I do not think there is any
17 provision anywhere. There are other regulations that regulate
18 that, because by changing the grade I'm changing the natural flow
19 of the water.

20 There are storm water management and soil erosion
21 provisions that would prevent me from building that hill. If my
22 lot is so big that I can build a hill seven story high with a
23 slope that is acceptable to the soil erosion folks to their
24 regulations, sure, I can do that.

25 It's not the case here, and I think we should try

1 to -- rather than -- and my office, and I want to state that for
2 the record -- my office, Lloyd Jordan committed to making a
3 proposal to send to the Zoning Commission to try to address this
4 issue, because I'm not saying this issue is not a problem for the
5 neighbors, but I think what we should be focusing on here is this
6 case, what it is that the zoning regulations state, how we are
7 applying them; because we in the Zoning Division -- and I say we
8 for the record; again when the first permit was issued, I was the
9 Acting Zoning Administrator, and then Michael Johnson inherited
10 this whole issue. So that's why we are both here sharing the
11 table.

12 We are not saying that there aren't problems that
13 need to be addressed, especially with these issues of infill
14 development, which I believe this is what it is. There's a lot of
15 properties in the District that are underdeveloped for what the
16 zoning regulations allow, and that is an issue that neighbors are
17 going to raise over and over again.

18 This isn't the only issue in the city where the
19 same type of problems has been raised, but we cannot in the Zoning
20 Division change the zoning regulations. We can only enforce the
21 zoning regulations.

22 We believe in this case we did it correctly. We
23 believe in this case everything is by the book, because if it
24 wasn't by the book -- You just heard what Mr. Bello said. If it
25 wasn't by the book, the applicants would get a stop work order and

1 a letter to come here before you, plead his case to get a variance
2 order, special exception or whatever was necessary.

3 So I guess it may sound very surprising to you, but
4 I do not see anything in the zoning regulations that would allow
5 me to tell an owner you cannot change the grade of your property.

6 VICE CHAIRPERSON SOCKWELL: Mr. Lourenco--

7 CHAIRPERSON REID: Okay. Let me jump in here, Mr.
8 Sockwell, because I'm watching the time, but you can ask him after
9 we finish with Mr. Bello and allow him to go, and Mr. Johnson has
10 to leave also.

11 Mr. Clark, you --

12 MR. CLARK: I have questions for Mr. Bello.

13 CHAIRPERSON REID: No questions?

14 MR. CLARK: I do have some.

15 CHAIRPERSON REID: All right.

16 MR. BROWN: Madam Chair, can I ask one follow-up
17 question to Mr. Bello, since he was the technician in charge?

18 CHAIRPERSON REID: Quickly.

19 MR. BROWN: Going through this permit application -
20 - Excuse me. First, did this lot comply with the lot area
21 requirement? Did you find it in compliance?

22 MR. BELLO: That it was in compliance? I'm not
23 sure what the lot size was, but that wasn't relevant to that
24 review process.

25 MR. BROWN: Okay. Did you find it in compliance

1 with the side yard requirements?

2 VICE CHAIRPERSON SOCKWELL; Mr. Brown, you're
3 asking Mr. Bello questions that he doesn't have direct access to
4 information to support, and I think that you should be cognizant
5 of the fact that he doesn't have his records directly in front of
6 him, and he deals with any number of cases during the day.

7 You cannot force him to remember like that. He's
8 not clairvoyant.

9 MR. BROWN: Point well taken, Mr. Sockwell. I
10 guess the question is: At any point that you continuously
11 scrutinized this case at several times, permit one, two and three,
12 do you recall -- Other than the one issue that was corrected, do
13 you ever recall seeing a violation of the zoning regulations?

14 MR. BELLO: There wasn't any.

15 MR. BROWN: Thank you.

16 CHAIRPERSON REID: Thank you. Mr. Clark?

17 MR. CLARK: Mr. Bello, didn't the four-story issue
18 come up because Mr. Sloame raised it with you?

19 MR. BELLO: No. I actually brought it to Mr.
20 Sloame's attention.

21 MR. CLARK: Okay. And when you brought it to Mr.
22 Sloame's attention, you told him, as a matter of fact, that you
23 were going to contact Robert Shelton about it, didn't you?

24 MR. BELLO: As a matter of procedure, if there was
25 a need for on-field verification, then in fact I would contact the

1 Construction Inspection Branch. That's correct.

2 MR. CLARK: My question -- I understand. My
3 question is, in this instance didn't you tell Mr. Sloame you were
4 going to contact Mr. Shelton about this?

5 MR. BELLO: Possibly. I can't recollect
6 definitely.

7 MR. CLARK: And didn't you tell him that Mr.
8 Shelton was going to go out there and that he was going to issue a
9 stop work order?

10 MR. BELLO: No, I didn't.

11 MR. CLARK: Now whose suggestion was it to put the
12 berm in front of the property? Yours?

13 MR. BELLO: As a remedy, yes.

14 MR. CLARK: And why did you make that suggestion?

15 MR. BELLO: Because it's allowed as a matter of
16 right.

17 MR. CLARK: Well, was one of the other things that
18 would have been allowed to make this only a three-story house by
19 having the existing basement plus two stories on top of it? Did
20 you ever suggest that?

21 MR. BELLO: If you would rephrase your question --
22 I don't understand.

23 MR. CLARK: Okay. At the time -- You met with
24 somebody from the developer. Right? Do you remember who it was
25 you met with?

1 MR. BELLO: I met with perhaps the builder and the
2 permit expediter.

3 MR. CLARK: Okay. Can you tell me who you mean by
4 the builder? Mr. Cohen and Mr. Berman are here, and I just wonder
5 who you mean.

6 MR. BELLO: The gentleman here.

7 MR. CLARK: That's Mr. Cohen. You met with him.
8 Right? When you met with him, was there any suggestion made that
9 why don't we just have three stories?

10 MR. BELLO: No. Well, part of my job also involves
11 advising applicants about the ability to come into compliance. In
12 terms of this issue, I laid down what their options were.

13 MR. CLARK: And one of the options you laid down
14 wasn't just to make it three stories, was it?

15 MR. BELLO: Well, in this context berming it up
16 would make it three stories, which would bring it into compliance
17 which would only be my focus.

18 MR. CLARK: Sir, when you were meeting with Mr.
19 Cohen and his permit expediter, didn't they come in to meet with
20 you, because they had heard that a stop order was going to issue?

21 MR. BELLO: No. The permit expediter, who is a
22 regular at the permit center, was informed that there possibly
23 might be a problem with the application that he had run through
24 the division, and that he needed to bring that in and bring it
25 into compliance.

1 MR. CLARK: Okay. So indeed there was a discussion
2 with the permit expediter that there was a problem, and that's why
3 they came in?

4 MR. BELLO: That's correct.

5 MR. CLARK: All right. Now did Mr. Cohen or the
6 permit expediter ever tell you how come they wrote down three
7 stories on the application instead of four?

8 MR. BELLO: I wouldn't find that to be unusual,
9 because again the definition of what constitutes a story may be
10 lost on the average applicant.

11 MR. CLARK: Well, the average applicant here had a
12 certified architect licensed and registered in the District of
13 Columbia to submit plans, didn't he?

14 CHAIRPERSON REID: You're not allowed to give
15 extraneous testimony as you are questioning a witness. Just pose
16 your questions to the witness without your interjecting your own
17 testimony.

18 MR. CLARK: I'm cross-examining.

19 CHAIRPERSON REID: I know what you're doing. I
20 understand clearly. I'm just cautioning you that you must keep
21 your questions germane to his testimony and not interject your own
22 testimony while you're doing your cross-examination.

23 MR. CLARK: Let me ask Mr. Bello. Do you know
24 whether the applicant here had an architect?

25 MR. BELLO: It would have had one, yes.

1 MR. CLARK: And did you check whether that
2 architect happened to be licensed and registered in the District
3 of Columbia?

4 MR. BELLO: I'm not required to check that.

5 MR. CLARK: In fact, on the plans it says that he's
6 licensed, doesn't it?

7 MR. BELLO: I'm sure that it did.

8 MR. CLARK: Yes, I know we both agree on that. And
9 did you ever ask how come the architect got it wrong? I
10 understand that, if I walked in for a building application, that I
11 might get it wrong, because I'm not a zoning lawyer. I'm
12 certainly not an architect.

13 My question is did you ever ask him how come he got
14 it wrong?

15 MR. BELLO: Well, I mean, I've been in zoning ten
16 years, and I mean no slight to architects. Very few architects
17 have good working knowledge of the zoning regulations.

18 MR. CLARK: Do you know, in fact, whether the plans
19 in this case that were submitted to you for our approval back in
20 April of 1999 said they were in compliance with the D.C. zoning
21 regulations?

22 MR. BELLO: By issuance of the building permit,
23 yes.

24 MR. CLARK: And so that was the representation made
25 by the builder?

1 MR. BELLO: What was?

2 MR. CLARK: Now I've got in front of me, and you
3 don't have the benefit of it, and I don't know if Mr. Brown has an
4 extra copy of his brief, but I'm referring to page 5 of Mr.
5 Brown's brief where he has his little chronology. If you've got
6 it there, just to help follow -- Pat, do you have a copy you
7 could show Mr. Bello there at page 5?

8 Thank you. Mr. Bello, this is just so you have the
9 benefit of knowing where I'm asking my questions from. If you
10 see, it says there July 27, 1999, intervenor -- that's the
11 builder, Mr. Cohen here -- is informed by its permit expediter
12 that a stop work order was issued. No record of any stop work
13 order is ever produced.

14 Do you know whether, in fact, that happened?

15 MR. BELLO: No stop work order, to my knowledge,
16 was issued. I can't speak for the expediter for that.

17 MR. CLARK: Okay, I understand. Now two lines
18 later, two dates later, it says July 28, 1999. That's the next
19 day. It said, in response to the reported stop work order,
20 intervenor meets with Mr. Toye Bello, zoning technician, to review
21 side yard and height issues.

22 Now in fact, did they come in, in response to a
23 stop work -- a reported stop work order?

24 MR. BELLO: To my knowledge, that's not what they
25 were responding to. They were responding to my request to revisit

1 the application.

2 MR. CLARK: And you called them and made that
3 request?

4 MR. BELLO: Through the expediter.

5 MR. CLARK: Who is this expediter by name, if you
6 know, sir?

7 MR. BELLO: I believe it is Rick Ganglow.

8 MR. CLARK: And you deal with him on a regular
9 basis. Right?

10 MR. BELLO: That's correct.

11 MR. CLARK: What did you tell him about why you
12 were bringing him in?

13 MR. BELLO: Well, as a matter of procedure, when
14 there's a complaint about any application, I do an overview of the
15 application; and if there is an issue of noncompliance, then my
16 natural next step will be to see about contacting the applicants
17 and making remedies or moving forward with enforcements from
18 there.

19 MR. CLARK: Okay. Now the last line of that same
20 section we're looking at, July 28, 1999, the last sentence, it
21 says, Mr. Bello advises intervenor that it is permitted to
22 continue construction at the site while the revised building
23 permit application is submitted and approved by DCRA.

24 Did you do that?

25 MR. BELLO: Well, I mean, insofar as the applicant

1 demonstrates their willingness to come into compliance, yes, I may
2 have told him that, in order not to be unusually punitive of the
3 situation, then as long as they demonstrate that they are going to
4 come into compliance, then there will be no necessity to stop
5 their work.

6 MR. CLARK: Now did you call Mr. Sloame and tell
7 him that's what you were doing?

8 MR. BELLO: I had several contacts with Mr. Sloame,
9 and I kept him abreast of every development along the way.

10 MR. CLARK: I understand, sir, but could you answer
11 my question. Did you tell him that you had told Mr. Cohen that he
12 could continue to build?

13 MR. BELLO: I don't recollect that specifically,
14 but I might have.

15 MR. CLARK: But you don't know?

16 MR. BELLO: I don't recollect specifically.

17 MR. CLARK: You don't remember that you did do it,
18 do you?

19 CHAIRPERSON REID: He answered your question. Move
20 to the next question.

21 MR. CLARK: Now I see this is July 28, 1999. You
22 were satisfied that he was making good faith efforts towards
23 coming into compliance. Right?

24 MR. BELLO: That's correct.
25

1
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(6:00 p.m.)

1
2 MR. CLARK: And so he filed the application, what,
3 a day later, two days later, a week later?

4 MR. BELLO: This was in August?

5 MR. CLARK: No, this is July 28, 1999, sir.

6 MR. BELLO: Are you talking about the revision
7 permit or the original permit?

8 MR. CLARK: I'm sorry. Obviously, we're past the
9 original permit. I mean, you said now that he's showing steps
10 that he's doing all this stuff, and he's coming into compliance
11 right away. Didn't he wait a month before he filed his
12 application, August 25, 1999?

13 MR. BELLO: Well, if the date is there, then yes.

14 MR. CLARK: Well, let me try to make this easy for
15 you. I think I've got it in an exhibit here. I can show it to
16 you.

17 ZONING COMMISSIONER MITTEN: It's Number 16, if
18 that will help you find it.

19 MR. CLARK: I appreciate the help on that.

20 Mr. Bello, you've got Exhibit 16 in front of you.
21 Does that show that the date of the application is August 25,
22 1999?

23 MR. BELLO: Yes, it does.

24 MR. CLARK: Okay. Now that's four weeks in between
25 the date of your meeting. What happened in that four weeks to

1 demonstrate to you that there was a good faith effort towards
2 compliance?

3 MR. BELLO: Well, I ascribe that time to the time
4 it would take the architect to present the revised plans.

5 MR. CLARK: And how extensive were those revised
6 plans that the architect presented?

7 MR. BELLO: Well, there were probably discussions
8 over that time as to what would be acceptable before final plans
9 were presented.

10 MR. CLARK: You say there was probably. Do you
11 remember whether there were or not?

12 MR. BELLO: I'm sure that there was, because their
13 permit expediter was in constant contact with me.

14 MR. CLARK: And did you ever see any revised plans?
15 Just if you remember, one way or the other?

16 MR. BELLO: Relative to the final approval of the
17 revision permit or prior to that?

18 MR. CLARK: Well, I suppose you probably couldn't
19 approve --

20 VICE CHAIRPERSON SOCKWELL: Excuse me just a
21 second. Madam Chair, I would like to clarify one thing with
22 regard to Exhibit 16. The date shown as an application date,
23 8/25/99, is not a date that can be held as a certain date for the
24 application. It is what is placed on the last page of the
25 application by a technician in the permit office that determines

1 most effectively the date at which anything is filed.

2 The applicant -- and I don't have that page in my
3 booklet. So I just want to make sure that we are clear that that
4 can be substantiated.

5 MR. CLARK: It is the same date.

6 CHAIRPERSON REID: What is the date at the top?

7 VICE CHAIRPERSON SOCKWELL: It's one that the
8 applicant puts in. It could be put in a month --

9 CHAIRPERSON REID: Not the 8/25; the 9/17.

10 VICE CHAIRPERSON SOCKWELL: The 9/17 is the date
11 that the permit was recorded as having been issued, I do believe.

12

13 MR. CLARK: I believe that's correct. And that is
14 the date of the permit, in fact.

15 Mr. Bello, looking at Exhibit 16, it's also -- A
16 more complete copy of the application, I think, is Exhibit 8 to
17 MR. Brown's submission. But just at that first page in Exhibit
18 16, you see a box 14 where it says existing number of stories of
19 building? Box 14, you see it?

20 MR. BELLO: Yes.

21 MR. CLARK: And you see it says three, and then
22 there's a 1/2 that's crossed out. You see that?

23 MR. BELLO: Yes.

24 MR. CLARK: Did you cross out that 1/2?

25 MR. BELLO: No, I don't believe I did.

1 MR. CLARK: Do you know who did?

2 MR. BELLO: Probably the expediter.

3 MR. CLARK: And why did he do that, if you know?

4 The question is why did the expediter cross of the 1/2, if Mr.
5 Bello knows?

6 MR. BELLO: Probably because it doesn't correspond
7 to the plans that he presented.

8 MR. CLARK: Did you tell him that?

9 MR. BELLO: Possibly, yes.

10 MR. CLARK: What do you mean, possibly? Did you or
11 didn't you?

12 MR. BELLO: I don't recollect specifically that I
13 would have told him that, but part of my review job would be to
14 look at the application in connection with the plans that he was
15 presenting and, if I didn't see three and a half floors, then I
16 would tell him to correct it. Further, there's no such thing as a
17 half-floor.

18 MR. CLARK: Okay. Now look at Box 17. You see
19 that? Same thing, three with the one-half crossed off. That says
20 proposed number of stories of building. Right?

21 MR. BELLO: Yes.

22 MR. CLARK: Now it couldn't be three and a half and
23 be legal in that zone, could it?

24 MR. BELLO: No, it couldn't be three and a half and
25 be legal. That's correct.

1 MR. CLARK: And so did you tell him to cross that
2 off?

3 MR. BELLO: Possibly, again.

4 MR. CLARK: Do you remember whether you did, sir?

5 MR. BELLO: No, I don't recall.

6 MR. CLARK: It's likely you did, isn't it?

7 MR. BELLO: It is likely that I did, because again
8 there is -- they didn't present plans with three and a half
9 floors, and there wasn't any such thing as a half-floor.

10 MR. CLARK: Now did you go to Mr. Sloame and tell
11 him that I've been presented plans for three and a half floors, do
12 you want to come in and comment on this? Did you advise him of
13 that when you were keeping him informed of everything that took
14 place?

15 MR. BELLO: Well, I mean, you have to understand
16 that, even though I was being responsive to Mr. Sloame's concern,
17 the issue here was not one of public redress. So I couldn't
18 possibly hold the applicant's application up until Mr. Sloame
19 cleared it for review.

20 MR. CLARK: Well, you never even told him, did you?

21 VICE CHAIRPERSON SOCKWELL: Mr. Clark, let me
22 interrupt again, if I may, Madam Chair.

23 In looking at the application, the alteration to
24 the application actually appears to be twofold. It looks like it
25 originally said two and a half stories and was changed to say

1 three, rather than three and a half changed to say three.

2 It certainly appears from the way it was written
3 that it was two and a half, and then the two was curliqued to make
4 a three.

5 MR. CLARK: Well, let me ask you about that. Do
6 you remember that? Do you think -- Did they come in and call that
7 four-story house two and half stories?

8 MR. BELLO: Do I think that they could come in and
9 call --

10 MR. CLARK: No, not would they. Did they?

11 MR. BELLO: No, I don't remember.

12 MR. CLARK: So, no, but you don't remember?

13 CHAIRPERSON REID: How many more questions do you
14 have, Mr. Clark?

15 MR. CLARK: I have questions on two sections here
16 that I'd like to ask Mr. Bello about.

17 First of all, are you familiar with 12 DCMR Section
18 105.2 that deals with what happens when a structure is demolished
19 and the restoration of established grades? I can show it to you,
20 sir.

21 MR. LOURENCO: Madam Chair, I don't know if this is
22 appropriate to make this comment at this point, but this section
23 is in a portion of the regulations that Mr. Bello does not deal
24 with, does not enforce.

25 CHAIRPERSON REID: Then the answer to the question

1 is no.

2 MR. CLARK: So you've never had occasion to see
3 whether -- to look at this to see whether, when there is a
4 demolition, that restoration of established grades is required?

5 CHAIRPERSON REID: He answered the question
6 already, MR. Clark. Move to the next question.

7 MR. CLARK: I asked whether he had ever looked at
8 it, but thank you, Madam Chair. I will move on.

9 MR. BELLO: No.

10 MR. CLARK: That is, sir, have you ever looked at
11 Section 223 of 11 DCMR?

12 MR. BELLO: More than likely, yes.

13 MR. CLARK: Just to try to help you out, I'll hand
14 you another copy. Now this property, 4512, was less than the
15 7500 square feet that's required to build a house in an R-1-A
16 zone, wasn't it?

17 MR. BELLO: Yes.

18 MR. CLARK: And in fact, it was a nonconforming
19 structure, because its side yards were less than eight feet.
20 Isn't that correct?

21 MR. BELLO: With regard to that aspect, yes.

22 MR. CLARK: All right. Now my question is, sir,
23 why section 223.1, which says that an addition to a one-family
24 dwelling which does not comply with the lot size or side yard
25 requirements shall be permitted only if approved by the Board of

1 Zoning Adjustment?

2 MR. BELLO: Which of the 223? 223.1 is what you're
3 referring to?

4 MR. CLARK: I was reading in 223.1, yes, sir, and I
5 was putting in the words rather than the sections there with
6 respect to lots size and side yard requirements. You've never
7 read this section before, have you, sir?

8 MR. BELLO: Well, because this is a recent -- This
9 is -- I'm sure that I've read it. This is a recent amendment to
10 the zoning code, relatively. But it's saying an addition to one-
11 family dwelling or flat in those residential districts where a
12 flat is permitted. A flat is not permitted in this district.

13 MR. CLARK: Well, let me ask you, sir, was this a
14 one-family dwelling?

15 MR. BELLO: Yes, sir, a single family dwelling.

16 MR. CLARK: Okay. And if it's a one-family
17 dwelling, then why didn't you require compliance with 223.1 before
18 you issued the permit?

19 MR. BELLO: Because this is not a district in which
20 a flat is allowed.

21 MR. CLARK: So you're saying that it says -- that
22 this reads "an addition to a one-family dwelling and flat." Is
23 that the way you're reading it? Could he answer the question?

24 MR. BELLO: Yes, the way I'm reading it is that
25 this applies to those districts in which a flat is permitted, and

1 a flat is not permitted in the R-1-A zone.

2 VICE CHAIRPERSON SOCKWELL: Excuse me. Since we are
3 on this section, I will read from paragraph 4 of page 1446 dated
4 March 13, 1998.

5 "The Zoning Commission received comments from
6 Arcadia Residential and Commercial Design Services, the law firm
7 of Jackson and Campbell, Lindsey Williams and ANC-3C. After
8 reviewing and discussing the comments received and the testimony
9 presented during the public hearing, the Commission determined
10 that the term single family dwelling should be changed to one-
11 family dwelling to conform to the zoning regulations."

12 MR. CLARK: Thank you, sir. Is this a one-family
13 dwelling?

14 MR. BELLO: It is a one-family dwelling, yes.

15 CHAIRPERSON REID: Thank you, Mr. Clark. We are
16 going to move Mr. Johnson. Mr. Johnson, did you prepare testimony
17 that could be -- that Mr. Lourenco could present for you?

18 MR. JOHNSON: I'm sorry. I didn't hear the
19 question.

20 CHAIRPERSON REID: Did you prepare any testimony
21 for today?

22 MR. JOHNSON: No, Madam Chair, I did not.

23 CHAIRPERSON REID: Were you just here to answer
24 questions or did you have a particular statement to make?

25 MR. JOHNSON: I did not have a particular statement

1 to make. However, I wanted to make myself available for these
2 proceedings.

3 CHAIRPERSON REID: Okay. The questions that would
4 be proffered could be perhaps answered by Mr. Lourenco?

5 MR. JOHNSON: No doubt.

6 CHAIRPERSON REID: All right. Then thank you very
7 much. I apologize for your having spent almost an entire day here
8 and your time running out that you could not participate, but I
9 certainly appreciate your indulgence. Since Mr. Lourenco can
10 stay, we would address whatever questions we have with regard to
11 the DCRA or the Zoning Administrator's office directly to him.

12 MR. JOHNSON: That would be fine, and I would just
13 like --

14 CHAIRPERSON REID: Is there any objection to this
15 by any of the parties here?

16 MR. CLARK: If Mr. Johnson doesn't want to say
17 anything, that's fine by me.

18 CHAIRPERSON REID: All right. Thank you, Mr.
19 Johnson. Board members?

20 VICE CHAIRPERSON SOCKWELL: Mr. Johnson, thank you
21 very much for securing Mr. Bello for us this evening. He may not
22 thank you, but we do.

23 MR. JOHNSON: Thank you all, and have a good
24 evening.

25 ZONING COMMISSIONER MITTEN: Madam Chair, if I

1 could help to maybe clarify that Mr. Clark's question is on point
2 for the subject property, if Mr. Bello would -- I don't think
3 we're done. There's still a question on the table.

4 On page 1447 of the second page of the handout, it
5 says this is an amendment or a new section 223, additions to one-
6 family dwellings or flats (R-1). Okay? And the clause that says
7 "in those residential districts where a flat is permitted"
8 modifies the word flat, not one-family dwelling. So -- Okay?

9 MR. BELLO: Okay, okay.

10 MR. CLARK: So perhaps if I could go back, Mr.
11 Bello, why wasn't this section applicable? Why did you issue a
12 permit, even though, according to 223.1, the developer was
13 required to come to the BZA first?

14 MR. BELLO: Well, I feel that it complies with this
15 other section. Why do you feel that it doesn't comply?

16 MR. CLARK: Well, I guess my question, sir, as I
17 read it -- and it says that an addition shall be permitted if
18 approved by the Board of Zoning Adjustment. Are you the Board of
19 Zoning Adjustment ?

20 MR. BELLO: No. My question -- My answer to you is
21 that I think that it complies with all these other relevant
22 sections. It complies with minimum lot size requirement. It
23 complies with width of lot. It complies with side yard
24 requirement in terms of its protection offered under the
25 grandfather clause.

1 MR. CLARK: Oh, so your testimony is, sir, that in
2 fact this lot is more than 7500 square feet?

3 MR. BELLO: That is correct.

4 MR. CLARK: All right. Now let's look at Exhibit 3
5 in front of you.

6 MR. BELLO: Here's the lot. The lot is 7500, I
7 think.

8 MR. CLARK: It's not 7500 square feet, is it, sir?

9 MR. BELLO: Well, but also if you refer to DCMR
10 401.2, it says except as provided in 401.3, in the case of an
11 unimproved lot. This lot already has an improvement in single
12 ownership as of '57, which has an area of lot less than that
13 specified under 401.3.

14 MR. CLARK: So you're saying that I can build on a
15 lot of less than 7500 square feet as of right?

16 MR. BELLO: If it's vacant, you need redress before
17 the BZA, but this is not a vacant lot. You look under 401.1.
18 401.1 says except as provided in Chapters 20-25 of this title, in
19 the case of a building located on May 12, 1958, on a lot or area
20 with a lot or both less than is prescribed under 401.3 for which
21 the district in which it is located the building may not be
22 enlarged or replaced by a new building unless it complies with all
23 other provisions of the title.

24 MR. CLARK: And this one didn't, did it?

25 MR. BELLO: It does.

1 MR. CLARK: Oh, so you're telling me that the side
2 yard -- Is your understanding of a nonconforming structure is
3 that, if it was built prior to this zoning code, that it is
4 conforming today?

5 MR. BELLO: Well, with respect to nonconformity of
6 side yard, if you have five feet or more you can increase in that
7 nonconforming aspect.

8 MR. CLARK: I understand what you're saying about
9 Section 405.8, but my question is completely different, sir. My
10 question is: Isn't it true that, in fact, this structure -- this
11 place did not conform with either the minimum lot size or the side
12 yard requirement in the current code today?

13 MR. BELLO: Well, it does not comply with the
14 minimum lot size, but that's hardly relevant to the review issue,
15 because it's already improved.

16 MR. CLARK: Now was this a -- This was a partial
17 demolition, in your view?

18 MR. BELLO: That's correct.

19 MR. CLARK: I want to know, how far down do I have
20 to go to have this demolition partial? If I've got one brick
21 left, is it a partial demolition?

22 MR. BELLO: Well, total demolition. Obviously,
23 there was one-floor framing left in this building.

24 MR. CLARK: What do you mean by framing?

25 MR. BELLO: The entire basement which really

1 projected beyond the finished grade was left standing.

2 MR. CLARK: The entire basement? Did you ever look
3 and see what happened inside that basement, sir?

4 MR. BELLO: Inside?

5 MR. CLARK: Or outside?

6 MR. BELLO: Well, the frame of the basement was
7 left untouched and was not razed, according to the raze plans
8 presented.

9 CHAIRPERSON REID: How many more questions do you
10 have?

11 MR. CLARK: Well, I've got a witness now who's
12 testified as to some facts I have some pictures about.

13 CHAIRPERSON REID: All right. Then does that
14 conclude your cross-examination?

15 MR. CLARK: I hope that it will. I think my points
16 have otherwise been made.

17 VICE CHAIRPERSON SOCKWELL; Mr. Clark, while you're
18 looking for something, let me ask you this question.

19 Section 223, you are applying to this case. Right?

20 MR. CLARK: Yes, sir.

21 VICE CHAIRPERSON SOCKWELL: And Section 223.1 does
22 apply strictly to those residential districts where a flat is
23 permitted.

24 MR. CLARK: I think that's in the disjunctive. I
25 think that, in fact, it applies in the R-1 zone, and this is R-1-

1 A.

2 VICE CHAIRPERSON SOCKWELL: Well, it says an
3 addition to a one-family dwelling or flat in those residential
4 districts where a flat is permitted, and it does qualify by saying
5 in those residential districts where a flat is permitted.

6 ZONING COMMISSIONER MITTEN: Mr. Sockwell, that's
7 what we were trying to --

8 VICE CHAIRPERSON SOCKWELL: I understand that, but
9 I had to look at it carefully, because this package was not in my
10 code, and I have just about everything, but I have a mark that
11 says it needed a revision piece, and I didn't have it. So I had
12 to look through. But flat appears first in R-4, and regardless of
13 what Section 223 says, flat appears as a matter of right in R-4,
14 and it doesn't seem to appear anywhere else before R-4.

15 I wanted to make sure that the application of
16 Section 223 is correct, because it has to be modified by those
17 other portions of the Code, and there are sometimes typographical
18 and other unusual aspects that we have to put up with.

19 MR. CLARK: Let me tell you how I read it. How I
20 read that section is very simple.

21 VICE CHAIRPERSON SOCKWELL: I'm listening.

22 MR. CLARK: That is, it says if you have a single
23 family dwelling or single family house, okay, if you got that
24 situation or if it's a flat in a district in which a flat is
25 involved, that's the way that reads. It's either/or. That's why

1 you have to do it.

2 ZONING COMMISSIONER MITTEN: Mr. Sockwell, because
3 -- I'm just going to fall back on the fact that I was an English
4 major in college.

5 VICE CHAIRPERSON SOCKWELL: Yes, and you have to
6 look for the commas, and I understand that. I just want to make
7 sure.

8 ZONING COMMISSIONER MITTEN: The commas.

9 VICE CHAIRPERSON SOCKWELL: I mean, I'm not naive
10 to that, but I have to read these things -- In this code you have
11 to read everything two or three times, just to make sure you
12 understand it when they are very important issues.

13 MR. CLARK: And I think I read it a lot more than
14 two or three before I decided, in fact, that I was right about
15 that, because that was my initial reading.

16 VICE CHAIRPERSON SOCKWELL: And this is the first
17 time I've seen this one. They leave out commas all the time in
18 this code.

19 CHAIRPERSON REID: All right.

20 MR. BROWN: Madam Chair, could I interject. On
21 this issue, Mr. Bello has testified that Section 223 is not
22 applicable. So while I understand the concern about the language,
23 if it's not applicable, I think we could move on.

24 MR. CLARK: I'm not going to ask anymore about 223,
25 but I'll remind Mr. Brown that Mr. Bello is hardly the final word

1 on the meaning of the zoning regulations and, in fact, the BZA is
2 the final word on the meaning of the zoning regulations. That's
3 what the law is.

4 CHAIRPERSON REID: Clarify for me the aspect of it
5 not being applicable. I mean, I'm sorry, staff have been talking
6 to me. Why is not?

7 MR. BROWN: Because the property --

8 ZONING COMMISSIONER MITTEN: Perhaps Mr. Bello
9 could convey it to her.

10 BOARD MEMBER RENSHAW: Madam Chair, I have got to
11 leave at this point, and I really hate to break away from this
12 very intense hearing today. It is fascinating, and it is very
13 important, and I will catch up with all of your remarks in the
14 record. But I do want to reserve my right to vote after reading
15 the rest of the record that will be left over.

16 CHAIRPERSON REID: By all means, Ms. Renshaw.

17 BOARD MEMBER RENSHAW: But before I go, I want to
18 just ask Mr. Lourenco. He said that he took pictures at the site
19 today, and he had something to tell us. I'm afraid I can't leave
20 until I find out what you have to tell us.

21 CHAIRPERSON REID: Okay, but let us -- If you have
22 a moment, let us wrap this up. Mr. Bello, do you have a response
23 to the question?

24 MR. BELLO: Yes, ma'am, because I believe the
25 sections in the code, that deals with lots that already have

1 improvements upon them.

2 CHAIRPERSON REID: Okay. So you think that it
3 differs if the lot is a vacant lot rather than a lot that has an
4 improvement, and the fact that this was -- the first floor was
5 framed, in your opinion, would then define that particular
6 property as having been improved or not being vacant?

7 MR. BELLO: Well, the property would already be
8 improved, and also if your addition is not in any nonconforming
9 aspects or enlarging any nonconforming aspect. In this case, the
10 only nonconforming aspects of the property that was enlarged a --
11 there was a side yard setback requirement, and that's provided for
12 under a different section.

13 CHAIRPERSON REID: Okay. Mr. Clark, while you're
14 doing that, you gave us these pictures.

15 MR. CLARK: That's what I want to ask Mr. Bello
16 about, but I've only got one more copy. So I was going to stand
17 over and hand them next to him, if I can.

18 CHAIRPERSON REID: Well, we have these you gave
19 staff. So we have this.

20 MR. CLARK: Those are for you.

21 CHAIRPERSON REID: Yes, but what I'm saying is that
22 we have our copies.

23 MR. CLARK: I just wanted the witness to be able to
24 see one. That's all. I want to ask him about them.

25 CHAIRPERSON REID: All right.

1 MR. CLARK: Why don't -- Can you get me on that now
2 or not? I don't want to lose Mr. Bello.

3 Mr. Bello, I think the picture you've got now in
4 front of you there, I have marked as Exhibit 41. Do you know if,
5 in fact, that's -- I think that you're now -- Mr. Lourenco is
6 looking at what has been marked as Exhibit 42, and those are two
7 different views of the same spot.

8 It's your testimony that, in fact, the entire
9 foundation remained as it was before? Do those pictures show
10 that?

11 MR. BELLO: Well, my review is based on presented
12 plans and field verification by wall check, and the wall check
13 that was approved indicated that that remained.

14 MR. CLARK: So did you ever see this change to the
15 foundation before you, sitting here today?

16 MR. BELLO: Not by picture.

17 MR. CLARK: Well, has it ever been described to you
18 before today?

19 MR. BELLO: Again, my review process again hinges
20 on field verification by the construction inspection branch.

21 MR. CLARK: And did you ask the construction branch
22 to go out and see whether there had been any changes to the
23 foundation?

24 MR. BELLO: This part of the information is
25 provided on the wall test.

1 MR. CLARK: Well, let me show you what's been
2 marked as Exhibit 43, and let me ask if that shows no change to
3 the foundation. Doesn't it show 2 x 4's on top of the I-beam down
4 there? Doesn't it show the basement floor destroyed in several
5 places? I just want to know when it's a demolition, Mr. Bello.
6 That's all. What has to be left?

7 VICE CHAIRPERSON SOCKWELL: Mr. Clark, if I might -

8 -

9 MR. CLARK: I will stop.

10 VICE CHAIRPERSON SOCKWELL: No. I just want to say
11 that a review of the three photographs that you've provided shows
12 that in one instance the floor has been penetrated for new
13 plumbing lines to be installed, which would be normal to a
14 renovation.

15 In one instance probably the supporting structure
16 for the original joists was replaced with a steel structure,
17 because it had to support something new up above, which probably
18 this photograph shows only the final condition of but does not
19 show that the floor joists were resupported temporarily during the
20 removal of the original supporting structure and the installation
21 of the new steel structure, because what you see right now is a
22 steel beam that probably was not the same height as the original
23 multiple wood joists that existed prior to this.

24 Therefore, there has to be a spacer installed to
25 bring them back up to the level where they will pick up the floor

1 joists above. If you notice carefully, looking into the picture,
2 there are half-joists running up to this thing, and then the other
3 joists look like they go over it and stop. It's too long a span,
4 but the joists appear to be original wood. They are a variety of
5 colors. They're stained. They show the effects of moisture,
6 things like that.

7 MR. CLARK: I have a number of other pictures about
8 that.

9 VICE CHAIRPERSON SOCKWELL: Oh, I'm sure you
10 probably do.

11 MR. CLARK: But isn't the point, sir -- didn't you
12 say that the floor joists were left as it was? Didn't you say the
13 basement was left as it was?

14 VICE CHAIRPERSON SOCKWELL: As long as the basement
15 was left intact, it would probably be similar to leaving a roof
16 intact. You can take the structure out from underneath, leave the
17 roof there, and in effect still have the roof. These things are
18 not so specific that you can't make changes and still be within
19 the requirements of the law.

20 You have to know a little bit more about how these
21 things are done as a professional.

22 ZONING COMMISSIONER MITTEN: Mr. Sockwell, with all
23 due respect, those are answers that Mr. Bello should give, if
24 that's the correct answer.

25 VICE CHAIRPERSON SOCKWELL: Yes, but you all have

1 to be as Board members able to see what exists, and one of the
2 things that I'm here for is to show you things that you would not
3 normally be able to see, and from my experience to be able to give
4 you some sort of read on what is in a context that I can help you
5 with. Where you can help me, that's exactly what I expect to get
6 back.

7 CHAIRPERSON REID: That's absolutely correct. All
8 of us bring to this Board a different set of credentials, of
9 expertise, of professionalism, and wherever we can bolster this
10 Board or embellish it with that expertise, it's what we need to
11 do.

12 ZONING COMMISSIONER MITTEN: Madam Chair, I
13 couldn't agree more. I just would hope that that would not
14 circumvent someone who has a legitimate question in cross-
15 examination from getting the answer from the person that they
16 posed the question to.

17 CHAIRPERSON REID: I understand that. I don't
18 think that Mr. Sockwell jeopardized that. I think that it was a
19 technical question that could be answered by --

20 VICE CHAIRPERSON SOCKWELL: And remember, Mr. Bello
21 is neither an architect, an engineer nor a contractor.

22 ZONING COMMISSIONER MITTEN: Then that's the answer
23 that he should give when a question like that is posed. That's
24 all I'm saying.

25 VICE CHAIRPERSON SOCKWELL: Well, Mr. Bello, would

1 you give that answer so that Ms. Mitten will be satisfied? Thank
2 you.

3 MR. BELLO: Well, again my review procedure is
4 based on the field verification by construction inspection, which
5 is reported back in a wall test report, and the wall test report
6 that was approved by me reflected the existence of that basement.

7 MR. CLARK: And the wall test report in this case,
8 sir, wasn't even done until after the -- until -- When was it? --
9 August 27, 1999. Right? Never mind, sir. I'll withdraw that
10 question.

11 Let me ask you, sir, what is --

12 CHAIRPERSON REID: Mr. Clark, you said about 20
13 minutes ago that you had a couple of more questions.

14 MR. CLARK: We asked about the pictures, and I had
15 asked as a preliminary to that how much demolition is it before
16 it's a demolition. I want to ask him that question.

17 CHAIRPERSON REID: Okay. I heard you ask that
18 question, and then we had some more discussion.

19 MR. CLARK: When is it only a partial demolition,
20 Mr. Bello? How much has to be left to make it a partial
21 demolition?

22 CHAIRPERSON REID: Do you have expertise?

23 MR. BELLO: No, it isn't.

24 CHAIRPERSON REID: All right then.

25 MR. CLARK: I have no other questions.

1 CHAIRPERSON REID: Thank you very much. All right.
2 At this point let's do another status. Staff members, I'm sorry,
3 I neglected to ask you about your time. I did everybody else, but
4 I forgot. Do any of you have to leave?

5 MS. PRUITT: I have cleared my schedule.

6 CHAIRPERSON REID: All right. Then Mr. Lourenco.
7 Mr. Bello, thank you so much for having accommodated us today.

8 MR. LOURENCO: Madam Chair, members of the Board, I
9 have a -- When I started here, I had more or less structured
10 presentation on this that's all out of whack right now. I would
11 start by dealing with the photos that Board Member Renshaw wants
12 to take a look at.

13 These were pictures I took this morning. I
14 actually came here. I thought this hearing was at nine o'clock,
15 and so I ended up with time on my hands. I took pictures of the
16 property in question, which is -- they are stapled together now.
17 I'll give them to you.

18 I also took pictures of the house, two houses north
19 of this property, and three houses north of this property. Those
20 are 4536 and 4542 28th Street, because I think they make some of
21 the points that I want to make.

22 First, let me tell you that --

23 CHAIRPERSON REID: How many sets did you give us?

24 MR. LOURENCO: I only have one set. I wasn't
25 prepared to make it.

1 MS. PRUITT: I'm sorry, Madam Chair. I thought
2 these were three individual sets.

3 MR. LOURENCO: No. Those are -- Each little
4 package is one building.

5 CHAIRPERSON REID: Thank you. All right, Mr.
6 Lourenco. We have the pictures.

7 MR. LOURENCO: Okay. I went back today to make
8 sure I knew exactly what the situation was I was talking about. I
9 didn't enter the structure. I just checked it from the outside,
10 because I believe all the issues that are being raised are
11 exterior issues.

12 MS. PRUITT: Excuse me, Mr. Lourenco. Before you
13 proceed, do you have another copy that we can maybe try to make
14 copies so that both the appellant and --

15 MR. LOURENCO: I can provide copies, because those
16 are --

17 MS. PRUITT: We're going to try to Xerox them now
18 so that they would have them while you're talking.

19 MR. LOURENCO: They probably won't come out very
20 well, but I can get you some more copies, not right now, I mean.

21 I went to the property today to take a look at the
22 solution that was in place in relation to the berming at the front
23 of the building. I noticed that in the same block that these two
24 other houses, 4536 and 4542 -- 4542 is very interesting, because
25 that fairly large house, sizeable house that you see there really

1 has a main room in the front that has maybe 30-foot high ceiling.

2 That whole box that is there has no floor from the bottom to the
3 top at the front.

4 From the sidewalk to the front door of 4542 there
5 is at least 33 steps. The other house, which is one house closer
6 to the house in question, which is 4536, has 28 steps to the
7 podium that's at the top and, as you can see from the picture,
8 obviously, that's the point from where the number of stories is
9 counted; because it certainly has three stories above that podium.

10 Then there's another house which is lower, and then
11 there is this 4512. So we're talking about the same block, the
12 same neighborhood. We also have to understand the topography of
13 the area.

14 This lot is awkward shaped. It looks like the last
15 slice of a pizza with a little bit of cheese at the top, and so
16 it's not an easy lot to work with. I visited the site for the
17 first time on the 7th of September before I wrote my letter that's
18 on the record to Council Member Patterson.

19 There was some -- a good portion of the structure
20 was up by then, but the roof wasn't on. They were still placing
21 some parts of the roof framing, and the thing that impressed me
22 the most is that not only that this lot is sloped at the front,
23 fairly sloped at the front, it continues like that all the way to
24 the back.

25 If you stand at the rear of the lot, your feet are

1 almost at the level of the third floor of the current house. So
2 this is the reality that's there. This is the house that is built
3 on a terrace that was created on a very steep slope.

4 Now all of this, obviously -- I understand that the
5 -- I think I understand the way the neighbors feel about this.
6 I'm not sure if the neighbor immediately across the street from
7 this house is here, but certainly if I had a house that sits, say,
8 50 feet back from the street and maybe 20 feet below the street --
9 when you stand on the street you're well at the level of the top
10 floor of the house.

11 If I had a house there and across the street they
12 had a slope that continues to go up fairly steep and somebody put
13 a house with three full stories, well, where before I was used to
14 seeing a one-level Rambler, I probably would be here before you
15 with the same arguments.

16 This being said, that doesn't mean --

17 MR. CLARK: Just for the record, that's me.

18 MR. LOURENCO: Oh, I had no idea.

19 So as I said, I understand that. As I said before,
20 this is not the only case where infill development has been
21 raising issues in the neighborhood. There I can point a couple
22 more of cases, at least two or three, where these issues have come
23 up. However, the duty of my office, when we review an application
24 submitted by an applicant, is to apply as best we can the zoning
25 regulations in the particular case.

1 We do not have the authority to change the zoning
2 regulations. We only interpret them for purposes of enforcement.

3 In the particular case of this project, there was an initial
4 permit issued in June 7th -- on June 7th. That permit, upon
5 further review, was determined to have -- and we received
6 correspondence from the neighbors raising issues about side yard,
7 number of stories, height. There were several issues being raised
8 at that point.

9 We went back and re-reviewed the whole project.
10 There's not a lot of projects in this city where the Administrator
11 -- I guess I should have started by stating my name and position.

12
13 My name is Armando Lourenco -- better late than
14 never -- and I am the Administrator for Building and Land
15 Regulation Administration, and for a period until the second of
16 August of 1999 I was the Acting Zoning Administrator while I was
17 waiting for Mr. Johnson to come in.

18 So there's not a lot of projects in this city that
19 receive this much attention from the Administrator, the Director,
20 the Zoning Administrator. We issued maybe 12,000 permits last
21 year. This is just one of them. It's not even one of the big
22 ones.

23 As I said, I went to the field to see the field
24 conditions. We reviewed the drawings. We reviewed what was
25 submitted. Obviously, there is a discrepancy between the first

1 application and the first set of drawings, and I can -- Even
2 though Mr. Bello stated that he didn't feel misled, I can
3 understand how someone reasonably can infer that there's something
4 there that may mislead someone.

5 My interaction with the applicant after we found
6 the discrepancy is such that I do not believe there was any intent
7 to mislead. There were some questions before on whether the
8 permit was -- I can't remember exactly what the word is -- anyway,
9 incorrect or something like that.

10 ZONING COMMISSIONER MITTEN: I think I might have
11 said improper.

12 MR. LOURENCO: Improper. Okay. As far as I am
13 concerned, the permit is issued or revoked, and there's no in
14 between. It may have been issued with an error, and there are
15 several ways of fixing an error once the permit is issued with an
16 error.

17 Our first line of duty is to try to get the
18 applicant into compliance. We are not interested in starting a
19 war with every single person that has a discrepancy between an
20 application and a plan. We would never get around to doing our
21 job. I believe that the applicant was cooperative in trying to
22 get to a solution.

23 There have been several questions about whether or
24 not there was a stop work order. I can check on that. I don't
25 have the answer to that in my hand. I do not believe there was a

1 stop work order. There may have been talked about a stop work
2 order.

3 A stop work order is basically the tool we use when
4 we don't get cooperation from the applicant. I know that sometime
5 in August this issue was brought to my attention, and I can't
6 precise the date, but sometime in August this issue was brought to
7 my attention, and I believe that through Mr. Toye Bello contacts
8 were made to the permit agent, permit application agent to get the
9 applicant to come to our office, because we needed to have that
10 thing resolved.

11 Now in relation to the important points in this
12 project, the way our office looked at it was here is an existing
13 lot with an existing building which is a two-story building, and
14 I'm going to try to be as precise as possible with these terms.
15 We can't just throw a story and floor in the existing building
16 that had two stories, a basement and a first floor.

17 We received an application to demolish a portion of
18 the building, leaving the basement. So it's basically removing
19 the roof and the top floor, and then to build three stories on
20 top, and the application did state going from two stories to three
21 stories.

22 We have to be cognizant also that it's difficult to
23 get an applicant to get this issue of the stories right, as Mr.
24 Sockwell very well knows, because depending on who you are talking
25 to, you get different answers.

1 If you talk to the structural engineer who is
2 reviewing your building based on the building code, he is going to
3 look at this building, and he may come up with a totally different
4 conclusion than the conclusion that the zoning technician will
5 come up, and both are right; because the criteria to define what's
6 a basement, what's a story above grade in the building code is
7 different from the criteria used in the zoning regulations to
8 determine what's a cellar, what's a basement and what's a story on
9 top of a cellar, what's a story to count the number of stories.

10 It is just the way things are. The application is
11 an application for a building permit. It's not an application for
12 a zoning approval. So even the information that's on the front
13 page where you state the number of stories I could write two or
14 three, and we could come to the conclusion that it was correct
15 zoning-wise and it was incorrect building code-wise.

16 Normally, boxes 14 and 17 are there for the
17 applicant to state the number of stories based on the building
18 code, not on the zoning regulations. So let's not put a lot of
19 weight on this.

20 The most important document, to me, are the plans.

21 VICE CHAIRPERSON SOCKWELL: Mr. Lourenco, let me
22 just interrupt you there. You said that those two boxes are
23 generally for the placement of the building permit related -- the
24 building code related stories. That's not correct. That is
25 absolutely not correct.

1 We have, in all the years that I have been
2 involved, never used -- We always use the number of stories based
3 upon the zoning ordinance. We only deal with the number of
4 stories in building code related issues with regard to gross
5 square footage in establishing on page 2 the real elements to be
6 constructed, but when it comes to number of stories, it has never
7 been my understanding in countless meetings with your
8 predecessors, with countless building codes behind me, that we
9 used those to indicate anything other than the zoning code height
10 or number of stories of the building, and I do disagree with you
11 on that.

12 MR. LOURENCO: Do you know when that application
13 was revised?

14 VICE CHAIRPERSON SOCKWELL: I have both the
15 original and the current versions.

16 MR. LOURENCO: 1991. I revised that application.
17 So I know what those boxes are for.

18 VICE CHAIRPERSON SOCKWELL: Well, but let me
19 explain to you. I can bring you -- I could bring to your office
20 probably 100 building permit applications, and not one of them for
21 any building has ever had anything in those boxes other than the
22 building stories for zoning purposes -- never, ever, not one.

23 I can bring to you people from the Building Code
24 Advisory Committee, the most senior people in our firm. They
25 would tell you exactly the same thing. I disagree with you

1 entirely.

2 MR. LOURENCO: We, obviously, disagree.

3 VICE CHAIRPERSON SOCKWELL: And you don't file
4 building permits. I'm only saying this, because we couldn't do
5 that. Our clients would lose their shirts if we ever put anything
6 on there other than what's zoning. If we put 12 stories and we're
7 talking about four cellars and eight floors, it wouldn't fly,
8 because a zoning technician is expecting to see the number of
9 stories for zoning.

10 MR. LOURENCO: If you have four cellars in zoning,
11 you don't have four stories in building code.

12 VICE CHAIRPERSON SOCKWELL: I know. What I'm
13 saying is --

14 MR. LOURENCO: Because it's stories above grade.

15 VICE CHAIRPERSON SOCKWELL; Yes, I know. The only
16 stories that we are concerned with in those things are the stories
17 above grade for zoning purposes, period.

18 MR. LOURENCO: We disagree on that point. But the
19 important document for this purpose are the drawings, the plans.
20 The plans did show a four-story building, because there was no
21 change on the elevation or there was no significant change on the
22 elevation from the original condition of the building that would
23 make that basement be anything other than a basement, therefore
24 be counted as a story under the zoning regulations.

25 That is the discrepancy that was found. That was

1 what was brought to the attention of the applicant. He could not
2 have a four-story building. The options that the applicant had at
3 that point were, one, leave everything as it was and come before
4 the Board of Zoning Adjustment to get relief; two, change the
5 grade so as to make the lower level of the building become a
6 cellar; three, modify, the project so as to make the top floor
7 disappear. Those were the three options that were on the table.

8 One of the reasons why we let the construction
9 continue while this issue was being resolved was because the
10 construction had not reached the point where we couldn't force the
11 applicant to take some remedial steps, and we felt that the
12 applicant was diligently pursuing one such solution.

13 That application to relief the noncompliance came
14 into our office on August 25th, and was processed through
15 September 13th, I think it was, and basically it was pending a
16 decision on the zoning. It took us a little while to make the
17 decision, because I had to go out in the field, see what was
18 there, discuss it with other people, etcetera.

19 Now there are some other issues that have been
20 raised here such as the side yard, size of the side yard. The
21 height of the building is related to the number of stories. Even
22 though I don't think, with the berm as it is now or as it was
23 before, there is no issue of reaching the 40 feet. I think the
24 building is well below that.

25 Remember, all of these heights above this finished

1 grade at the center of the front of the building -- that's the
2 level from where you measure the height, and you don't measure the
3 height to the top floor. You measure the height to the ceiling in
4 the cellar or basement. And you don't measure the height to the
5 top of the roof; you measure the height to the ceiling of the
6 topmost floor. Just, I think there was a little bit of confusion.

7 VICE CHAIRPERSON SOCKWELL: There really wasn't any
8 confusion there. The original -- if I might just say this, just
9 so we get that clear. The original finished grade was at 108.
10 The original basement slab was at 106. Adding all the floors and
11 all of the interstitial space up to the ceiling of the top story,
12 the building complied with zoning for height under any
13 circumstance.

14 MR. LOURENCO: Yes. So that was really a nonissue.
15 Obviously, there is this issue of does the lower level count as
16 a story or not. My contention is that -- I'm sorry that Ms.
17 Renshaw is not here, because my contention is that at this point
18 no one can tell.

19 The construction isn't finished. I don't know
20 where the ceiling of the basement or cellar is going to be. So I
21 don't know where to measure, but certainly, I believe that where
22 the grade is now, the finished grade, to the floor of the first
23 story, there is less than four feet, which means that, no matter
24 where you put the ceiling of the cellar, it will be a cellar, not
25 a story. Therefore, this building has three stories.

1 The issue of -- Okay, now comes the issue of
2 building on top of the previous footprint or expanding from the
3 footprint. This application was very clear from the start. He
4 would be building three stories on top of the existing footprint,
5 plus an addition to the rear and a slight addition extending to
6 the front overhang into the front.

7 The zoning regulations on, I believe, 405.8 contain
8 provisions to deal with these cases where a building that predates
9 May 12, 1958, has side yards smaller than eight feet, and allows
10 expanding on that aspect as long as you do not reduce the size of
11 the side yard, which I don't believe happened in this case, and as
12 long as those side yards are at least five feet.

13 There are, obviously, lot occupancy percentages
14 that I don't think are at issue here. The issue that was also
15 raised is the fact that the lot is about five feet or just over
16 five feet square feet short of 7500, and new Section 223 was
17 brought up. I would like, for the record, to read the second
18 paragraph of the introduction of this order of the Zoning
19 Commission which says:

20 "The purposes of the amendments are to provide a
21 legal basis for making reasonable additions to single family
22 dwellings where the street tests associated with an area variance
23 are unobtainable and to authorize the Zoning Administrator to
24 allow very minor de minimis deviations from the area standards of
25 the zone districts."

1 First of all, clearly from the introduction, the
2 purpose of this section 223 is to provide an alternative criteria
3 when the BZA has to deal with a variance and, due to the criteria
4 being too strict, this is intended, I think, to relax what was
5 before contained in the zoning regulations.

6 A second part of that sentence is that it states
7 that it authorized the Zoning Administrator to allow minor
8 variations. If we turn to the second page, Section 407, which was
9 also added, it gives Zoning Administrator flexibility to some very
10 minor deviations from the requirements of 401 and 403.

11 I believe it's in 401 that the 7500 square feet is.
12 Five or six square feet is well, well below two percent of 7500
13 square feet. Therefore, I think we need to read all these
14 sections in conjunction with the intent of them and not forgetting
15 that 407 is there.

16 I was the Zoning Administrator when this first
17 permit was issued. I think it was my prerogative to rule that
18 five square feet short of 7500 is not an unreasonable relief to
19 provide without coming to the Board of Zoning Adjustment.

20 In sum, I think that our office did not err in
21 giving the applicant the opportunity to come up with a solution to
22 the issue of the three stories which, in my view, was the only
23 issue that was questionable in the initial permit.

24 I believe that this project stretches to the limit,
25 almost to the limit, the ability to develop this property.

1 Personally, I'm not very happy with the end result and, as I
2 stated before, we will be preparing some documentation to forward
3 to the Office of Zoning, to the Zoning Commission, with some of
4 our ideas of the result of the zoning regulations as they stand
5 right now, and some ideas on how the Zoning Commission can address
6 that.

7 Until then, both the Office of the Zoning
8 Administrator and the Board of Zoning Adjustment can only apply
9 what's in the regs, and I think we applied them correctly,
10 accurately, and consistent with the way we have been applying the
11 regulations for many years.

12 VICE CHAIRPERSON SOCKWELL: Mr. Lourenco, a couple
13 of questions. First, were your communications with the
14 development group in the presence of Mr. Cohen at anytime?

15 MR. LOURENCO: First let me make sure I understand
16 who we are talking about.

17 VICE CHAIRPERSON SOCKWELL: That guy.

18 MR. LOURENCO: I only had -- That I can recall, I
19 only had one contact with Mr. Cohen. It wasn't even in the
20 context of discussing this issue. I had been to a meeting. I
21 can't recall if I had to make a presentation or something, a
22 meeting of the -- I believe it was the Home Builders Association,
23 some industry meeting where I go very often to make presentations
24 on what we are doing.

25 At the end of the meeting, Mr. Cohen approached me

1 and asked me if I knew where the project was. This was, I
2 believe, if the dates in this summary that I read are correct,
3 this was the day after I went to the field to do the inspection.

4 I should note for the record that every time I was
5 in the field to do an inspection, there was no work going on.
6 There was no one in the area except this morning. There was
7 someone working on the third floor, some worker. So I've been
8 basically rambling through the property alone.

9 VICE CHAIRPERSON SOCKWELL: Most of your
10 communication with the developer was with whom? Mr. Gangloff as
11 their representative?

12 MR. LOURENCO: Most of my communication was with
13 Cathy Patterson in writing. I wasn't at any meeting with the
14 developer on this issue. I don't recall having been in any
15 meeting directly on this issue. Most of my communication was with
16 my staff, discussing it with Mr. Bello and --

17 VICE CHAIRPERSON SOCKWELL; Okay. So your
18 responses were primarily technical assistance and management
19 decision making on this particular issue?

20 MR. LOURENCO: Exactly, and firsthand knowledge of
21 the field situation, because I wanted to know what we were talking
22 about.

23 VICE CHAIRPERSON SOCKWELL: In your estimation, a
24 project of this type -- Now this is a house that would retail for
25 more than a million dollars, based on advertised costs that are

1 part of the record.

2 You felt that this property could not effectively
3 be developed without somewhat more flexibility in regulatory
4 oversight than some other projects, because of the shape and
5 basic topography.

6 Obviously, the site is sufficiently valid for
7 construction to produce a house of the top five percent cost in
8 the District of Columbia, probably, in terms of property value,
9 for sale and assessment.

10 So the site really does have a great deal of
11 utility at virtually the highest level of use in terms of value of
12 construction. So I would say that the site probably is not
13 anywhere near limited personally, based on what is being built
14 there.

15 It would be one thing if they were building a
16 \$30,000 house for a very low income family and were just barely
17 eking out something. But this is a major piece of construction
18 that really the topography and lay of the land were incidental
19 to, because we're talking about something for the upper echelon.

20 So I would tend to disagree on that particular
21 point. I do want to know whether or not you feel that the
22 applicant disclosed to you effectively costs and other issues,
23 because the permits that I see applications for are notorious -- I
24 won't use that -- are very specifically blank where costs are
25 involved.

1 The permit for berming was merely an earthwork
2 permit that did not respond to what had to be done to the building
3 in order to berm up against it. In other words, the taking out of
4 existing windows, the bricking up of the facades, possible
5 waterproofing issues. There were certainly going to be an extreme
6 change to the front and stone and block work to be accomplished.

7 None of that was shown on the berm permit and,
8 therefore, the berm permit was issued for \$60. The next permit
9 was issued for a total of \$450, 50 of which was for a projection.

10 Fifty of it was for something else, but no justification for the
11 other \$350.

12 I don't understand why those lines are so vacant
13 when the permits were signed off by the final reviewer, and -- the
14 application was signed off by the final reviewer, and the permits
15 were issued. It's as if there's something missing, and I am not
16 sure why those dollars aren't there, and how these things can get
17 through our system without those figures.

18 MR. LOURENCO: I think I have an explanation for
19 the second permit, for the revision to berm up. That is purely a
20 revision permit. A revision permit, as you know, are fees based
21 on the amount of review that's necessary.

22 The fee for the work shown on the revision permit
23 is considered to have been paid with the main permit, the initial
24 permit. So unless the revision is such that, for instance, you
25 are adding another wing to the building or doing something that

1 would add to the cost that wasn't included on the original
2 permit, we would fee it only for the value of our review, which
3 was very limited, because it had specifically just one purpose,
4 which was to regrade the front.

5 The second revision permit -- I believe it's a
6 revision permit. I lost my permits up there. The second revision
7 permit had some changes to the front. So some of the -- I can
8 figure out how --

9 VICE CHAIRPERSON SOCKWELL: \$15,000 worth of work
10 maybe minimum.

11 MR. LOURENCO: Yes. So that's a little bit of the
12 fee that is to the time of revision, and the rest is based on the
13 cost of the retaining walls and whatever is there. The steps were
14 there, one way or the other.

15 Now I didn't get into that detail.

16 VICE CHAIRPERSON SOCKWELL: I know that you
17 personally don't see those. You issue --

18 MR. LOURENCO: I try to stay away as much as I can.

19 VICE CHAIRPERSON SOCKWELL: But I do find that the
20 lack of completeness on some of the applications is disturbing,
21 because it makes it more difficult for us to get a good picture of
22 what has taken place, and it can always lead us to believe that
23 perhaps the applicant was not being forthcoming with proper
24 information, as preferred by DCRA in doing its business and
25 creating effective assessments and the things that bring money to

1 the District of Columbia as tax base goes.

2 So those are things that are just documentation,
3 and I know that you're trying to move into a more computer based
4 system, and maybe at some point that will require certain lines to
5 always be filled in, and those things will be generated as a
6 matter of course.

7 MR. LOURENCO: That's correct. We are dealing in
8 that.

9 VICE CHAIRPERSON SOCKWELL: I guess my last
10 question is that I am still somewhat uncomfortable with how this
11 whole process evolved, and I do think that it is going to require
12 more staff.

13 MR. LOURENCO: I couldn't agree more.

14 VICE CHAIRPERSON SOCKWELL: And training and all of
15 the things that prevent this kind of occurrence, because I'm just
16 -- You hate to tell somebody they've got to lop off a floor on a
17 nice building. It's been done, and it will be done again.

18 Okay, thank you.

19 CHAIRPERSON REID: Thank you.

20 ZONING COMMISSIONER MITTEN: I just have a quick
21 question.

22 Mr. Lourenco, at the end of Mr. Bello's time with
23 us, Mr. Clark had asked him a question about what constitutes --
24 how far can you go and still be just doing partial demolition.
25 Mr. Bello said that was not in his purview.

1 I was wondering if you could shed any light on that
2 for us, because in order to -- as a zoning technician, to
3 understand when you're supposed to apply the rules for addition
4 versus new construction, I would think you would have to
5 understand when you've gone too far on a partial demolition.

6 Are there any standards in your office by which
7 that would be judged?

8 MR. LOURENCO: We have -- There are no strict
9 standards to speak of. We have certain areas of our activity
10 where we use some rules of thumb. Those areas were created
11 because of the need to enforce certain other laws.

12 Someone had to make a decision on what constituted
13 a -- I guess it's a raze. I guess raze is the word that's used --
14 of a historic property, and some criteria were developed for that
15 to be applied strictly on cases of enforcement of law 2144 which
16 is our possession act.

17 We do not have strict rules for any of the other
18 disciplines, for zoning, for building. Certainly, if you remove a
19 building to the ground, if you remove it so that there's nothing
20 left, you flatten out the lot, that's a raze, and no one is going
21 to say that there's any structure left.

22 In this particular case, I think the essence of the
23 first floor remained intact. This is what some of these pictures
24 show. So I have no problems in determining that this building
25 wasn't razed to the ground, that a portion of the building was

1 retained, and then an addition to it was built.

2 ZONING COMMISSIONER MITTEN: You just used -- I
3 know you were going to be real careful in the use of your terms,
4 and you said just now that the main structure of the first floor
5 remained, I believe you said.

6 MR. LOURENCO: Yes, that's correct.

7 ZONING COMMISSIONER MITTEN: Is that literally what
8 you mean?

9 MR. LOURENCO: The first floor --When I say first
10 floor, I'm talking about the basement, the old basement.

11 ZONING COMMISSIONER MITTEN: Okay.

12 MR. LOURENCO: Essentially, that old basement
13 remained standing. It was the only portion of the building that
14 was brick masonry construction, and it remained essentially
15 intact. Obviously, there was some addition, some changes, some
16 infills on some windows to make them less high and on some of
17 those pictures -- I think it's 41 and 42, if I still remember
18 correctly -- it shows a wood frame here in the front. I'm talking
19 about this one.

20 I'm guessing this is where the garage door is, and
21 as you can see from my pictures today, this wood framing is not
22 there. It was temporarily erected to hold the projecting portion
23 at the front.

24 There is, obviously, some demolition of a piece
25 above the lintel of the door, if I'm in the right corner of the

1 house. I'll have to -- I don't know exactly where this is in the
2 house. I'm just guessing, but on the inside I believe the floor
3 joists of the floor above remained and the subflooring. I don't
4 think anyone contested that.

5 This picture seems to indicate that there was a
6 reinforcement of the floor support, because, obviously, a wall was
7 removed from there. You can see where the wall was removed. This
8 happens all the time. It's interior alteration.

9 One has to understand that all of this damage in
10 here inside could have been done without even setting foot in our
11 office. Someone can actually get a postcard permit which is
12 allowable under this MR-12 and demolish everything inside this
13 basement.

14 So not only Toye wouldn't look at it. No one in my
15 office would look at it until they call us to come and take a look
16 at it. That's the way the regulation is written. That's the way
17 --

18 ZONING COMMISSIONER MITTEN: I understand that, and
19 I was just trying to get at -- You know, there has to come a point
20 where you've sort of torn down too much to qualify for an
21 addition.

22 MR. LOURENCO: I don't think that point was reached
23 here.

24 ZONING COMMISSIONER MITTEN: Okay. And does it
25 concern you at all that Mr. Bello thinks that' snot in his

1 purview?

2 MR. LOURENCO: It's not in his purview to make that
3 decision, but he has plenty of stuff next to him to ask these
4 questions. We have engineers of several disciplines, and they are
5 familiar with the building code. Mr. Toye is not very familiar
6 with the building code. He's very familiar with the zoning
7 regulations.

8 We have a team approach to everything. So,
9 obviously, I would like people to be as cross-trained as possible
10 and know about the adjoining disciplines as much as possible, but
11 it doesn't really bother me that he is not particularly familiar
12 with the criteria in this area.

13 I think this is more of a common sense issue than
14 having a specific wording for what constitutes, or doesn't, raze
15 or partial demolition

16 ZONING COMMISSIONER MITTEN: Thank you.

17 CHAIRPERSON REID: All right. We come now to seven
18 o'clock, and we have to do cross-examination for Mr. Lourenco.
19 Mr. Brown and Mr. Clark, did you want to cross-examine him?

20 MR. CLARK: I have a question.

21 CHAIRPERSON REID: Do you have many questions?

22 MR. CLARK: It will take at least 15 or 20 minutes.

23 MR. BROWN: I have very few questions, and I defer
24 to Mr. Clark.

25 CHAIRPERSON REID: Okay.

1 MR. BROWN: Madam Chair, I've been asked if we
2 could take just a two-minute break.

3 CHAIRPERSON REID: Sure. That was my next
4 statement, was that we would take a ten-minute break, because
5 everyone is tired, and we need to kind of stretch and, you know,
6 just take a little break.

7 Sir, come forward.

8 MR. BARDIN: Madam Chair, I'm the Chairman of ANC-
9 3F. My name is David J. Bardin. I have four questions for my
10 friend, Mr. Lourenco, and I assume, since you said that we are now
11 a party to the case, that you would allow us to ask questions.

12 CHAIRPERSON REID: The ANC is always a party to the
13 case. Okay.

14 MR. BARDIN: I only have four questions.

15 CHAIRPERSON REID: Sure. What we'll do is -- Now
16 let us go from the -- Take the break, and then come back, and
17 we'll have cross-examination of Mr. Lourenco, and then the
18 intervenor. Mr. Brown, how long do you think you need?

19 MR. BROWN: I think we can expedite it and present
20 our case in probably the 45 minute range.

21 CHAIRPERSON REID: Okay. Do you have a lot of
22 witnesses?

23 MR. BROWN: I have two.

24 CHAIRPERSON REID: Two witnesses to testify? All
25 right. Then we'll have rebuttal by the appellant.

1 MR. CLARK: I think, Madam Chair, that I had a few
2 pictures also to show. Remember, we were going to put that off
3 until after the BZA people.

4 CHAIRPERSON REID: Well, can you do it with your
5 rebuttal?

6 MR. CLARK: If you'll accept it as part of the case
7 then, that's fine.

8 CHAIRPERSON REID: We will do that.

9 MR. CLARK: Mr. Bardin on the ANC may have more to
10 present as well. I don't know.

11 CHAIRPERSON REID: All right.

12 MR. CLARK: He does not.

13 CHAIRPERSON REID: You know, I'm sorry. What was
14 your name, sir?

15 MR. BARDIN: David Bardin, B-a-r-d-i-n.

16 CHAIRPERSON REID: Mr. Bardin, what happened was
17 when we took the ANC out of sequence -- Did you have a statement
18 to make as well?

19 MR. BARDIN: No, Madam Chair. Commissioner Kogan
20 made the statement on behalf of the ANC. I will just have the
21 four questions. I will not make a statement.

22 CHAIRPERSON REID: All right. Very well. Okay,
23 let's now take a ten-minute break and come back, and then we can
24 finish up this case as quickly as we can. We'll have to make
25 calls and do whatever.

1 (Whereupon, the foregoing matter went off the
2 record at 7:03 p.m. and went back on the record at 7:18 p.m.)

3 CHAIRPERSON REID: Shortly after eight o'clock,
4 give or take a few more minutes, I'll lose a quorum, and I'm not
5 trying to rush anyone. So I just wanted to kind of right at this
6 point just discuss with everyone whether or not you think that we
7 could possibly do the cross, go in the case, and rebuttal in an
8 hour and 15 minutes or so.

9 Does that sound reasonable or, in the alternative,
10 we can reschedule this segment for another day. That is
11 completely up to -- It doesn't matter to me. I'll stay or -- We
12 can do it today or we can do it on a subsequent day.

13 MR. BROWN: We'd like to proceed and try to finish
14 today.

15 CHAIRPERSON REID: Would the appellant like to try
16 to finish today?

17 MR. CLARK: I think that's going to be hard.

18 CHAIRPERSON REID: That's a given, that it's going
19 to be hard.

20 MR. CLARK: Well, I'm not sure it can be done is
21 what I'm saying. I mean, I'll work for it to try to get done, but
22 as you said, I'm not going to shortcut the case in order to do
23 that nor am I going to prolong it.

24 CHAIRPERSON REID: Also, I think they turn the heat
25 off, because it's freezing in here.

1 MR. CLARK: I am always concerned about the health
2 and welfare of my panel.

3 MS. PRUITT: Madam Chair, I believe, to inform the
4 public, that there is a hearing on the 23rd that only has one case
5 in the morning agenda that's already scheduled, the 23rd of
6 February. Unless you do a separate day, another day, that would
7 be the first available and the closest one. I just wanted, for
8 information's sake.

9 MR. BROWN: My concern, Madam Chair, is that in the
10 time we have allotted to be in a disadvantage of breaking up my
11 presentation. One, I think that's unfair to my clients in their
12 presentation. Two, I think it makes it very difficult for the
13 Board to hear the thing in pieces.

14 So I'd like to respect that. I know delaying it
15 further is not --

16 CHAIRPERSON REID: All right. Well, let's go. Mr.
17 Clark, can you -- Initially, you said you needed about 20 minutes.
18 Can you truncate that and get the responses that you want, you
19 know, just elicit it as expeditiously as you can for Mr. Lourenco.

20 MR. CLARK: The answer is I don't know. Maybe Mr.
21 Bardin, with his four questions -- I'll let him go first, and
22 maybe he will truncate it.

23 CHAIRPERSON REID: Okay. Mr. Bardin. maybe some
24 of the questions he will ask will take care of some of your
25 questions as well.

1 MR. BARDIN: Thank you, Madam Chairman.

2 Mr. Lourenco, considering the application for the
3 first permit, the permit that was actually issued in June, did
4 your department give notice to the ANC of that application, either
5 by directly communicating the information to the ANC or by
6 publishing the fact of the application in some general place such
7 as the D.C. Register?

8 MR. LOURENCO: No.

9 MR. BARDIN: Did your department give notice to the
10 ANC of the second application, the application that resulted in
11 the revised permit in September?

12 MR. LOURENCO: No.

13 MR. BARDIN: Did your department give notice to the
14 ANC of the third permit, which I heard about for the first time in
15 this room today -- I think somebody said it was issued in
16 December?

17 MR. LOURENCO: I don't believe either, no. We're
18 talking about applications, not permits, right?

19 MR. BARDIN: We're talking about applications.
20 That's right.

21 MR. LOURENCO: No.

22 MR. BARDIN: Does the D.C. Code require
23 notification to the ANCs of demolition and construction permits?

24 MR. LOURENCO: I don't believe so. Applications,
25 certainly not. We issue about 8500 to 10,000 permits every year

1 on the same day the application comes through the door. So that
2 would be an impossibility. It's not the case of these three, but
3 there is in the ANC law provisions for mandatory notification. I
4 do not believe that they cover building permit applications.

5 MR. BARDIN: Isn't it a fact that your department
6 used to issue an A list of applications for building permits?

7 MR. LOURENCO: Building permits issued. I believe
8 we used to give notice of building permits issued.

9 MR. BARDIN: No, I'm asking about applications.

10 MR. LOURENCO; Not applications. Only those that
11 go through a public hearing process, applications that go to
12 Historic Preservation Review Board, applications that come through
13 -- well, to the Board of Zoning Adjustment. That notification is
14 given by the Office of Zoning, and applications for -- we used to
15 give notice of applications for raze of buildings, razing a
16 building, removing a building down to the ground. That's correct.

17 We are now reinstating the same practice, not in
18 relation to applications but in relation to issued permits. We
19 are even starting to use e-mail files, if that's to e-mail
20 messages, to distribute that more expeditiously; but that's a
21 distribution of permits already issued, not applications taken in.

22 At this point we do not have a process in place
23 that would effectively do that, but I guess the short answer to
24 your question is I don't think the D.C. Code requires that.

25 MR. BARDIN: Madam Chairman, just for the record,

1 the letter that we submitted to you and which, I assume, is part
2 of the public record dated 16th of January on page 3, Section C,
3 cites Section 1-261(c)(3) of the D.C. Code, and my interpretation
4 is it did require the kind of notice we used to get, the A list of
5 applications, and it goes to the heart, Madam Chairman, not only
6 of the legal niceties but of the question you asked, which I think
7 was pretty much to the point, as what can the ANC do to try to
8 help resolve, broker, mediate these kinds of disputes.

9 The answer is, obviously, if we get into these
10 issues early at the point where things are still possibly
11 flexible, we have much more chance to listen, study, learn, try to
12 bring the sides together than if we get into the situation that
13 you're in now with an appellate kind of process. But --

14 CHAIRPERSON REID: Your point is well taken. The
15 ultimate authority or responsibility for that being complied with,
16 the regulation in regard to the notice to the ANC, lies with who?

17 MR. LOURENCO: And for this hearing, of what is
18 required to be part of the notice. Can I read that section?

19 CHAIRPERSON REID: But you're saying that you
20 didn't think that in this instance that that was a requirement to
21 notify. Did you not say that?

22 MR. LOURENCO: We do not give notification about
23 applications. As I mentioned, we process most of our applications
24 on the same day they come in through the door. We process and
25 issue the permits. Obviously, we can't give 30 day notification

1 on an over-the-counter permit.

2 I don't think that section states what Mr. Bardin
3 thinks it does.

4 MR. BARDIN: Speaking for the future, I'm going to
5 meet and discuss with Mr. Lourenco what I think and hope we ought
6 to do for the future, and to some extent the D.C. Council's
7 considering these issues. But for this case before this
8 distinguished Board, what I urge you if you, reading the section,
9 agree with my reading that the ANC was denied notice that it was
10 legally entitled to and with all the concomitant of I then giving
11 notice to the entire community, then that you should reject Mr.
12 Brown's argument that this case is too late, that you have no
13 jurisdiction, because it's too late to do anything about it.

14 CHAIRPERSON REID: No. What we will do is have
15 corp. counsel give us a read on that particular regulation, and
16 whatever the outcome of their research is will be made available
17 to you and to us as well.

18 MR. BARDIN: Thank you, Madam Chair.

19 CHAIRPERSON REID: We really don't know at this
20 time -- and to Mr. Lourenco as well. Thank you. Mr. Clark?

21 MR. CLARK: Actually, I think these are Mr. Brown's
22 copies, sir.

23 Mr. Lourenco, when did the Zoning Administrator
24 give a minor variation under Section 407? Where is the record of
25 that?

1 MR. LOURENCO: I didn't say the Zoning
2 Administrator gave a minor variation. I said a six square foot
3 variation on a 7500 square foot requirement seems to be like a
4 reasonable application of the new sections that the Zoning
5 Commission passed last year.

6 MR. CLARK: But it wasn't done in this case?

7 MR. LOURENCO: I guess you can infer that
8 automatically it was done, given the fact that the 7500 square
9 feet wasn't an issue.

10 MR. CLARK: Well, doesn't it say that the Zoning
11 Administrator is supposed to do something, not we're supposed to
12 assume it was done automatically?

13 MR. LOURENCO: I would have to read the
14 regulations. I don't know off the top of my head.

15 MR. CLARK: I won't make you do that now, sir.
16 Isn't it true that, in your opinion, one of the reasons this
17 project was okay was because the existing lower level foundation
18 and the walls and the first floor joists and first floor subfloor
19 were retained?

20 MR. LOURENCO: Can you rephrase the question?

21 MR. CLARK: Isn't it true that one of the reasons
22 you thought this project was okay was because the existing lower
23 level foundation, the first floor joists and the first floor
24 subfloor were retained?

25 MR. LOURENCO: Oh, I didn't state that. Did I

1 state that?

2 MR. CLARK: I thought you did, sir.

3 MR. LOURENCO; No, I didn't. What I said is in
4 response to a question from the Board on what is the criteria on
5 when a building disappears, I said that with the retention to the
6 extent that it was retained as we can see it here, it clearly did
7 not disappear, clearly wasn't razed.

8 CHAIRPERSON REID: I think Mr. Bello responded to
9 that question.

10 MR. CLARK: The record will reflect whatever Mr.
11 Lourenco said, but is it your understanding that, in fact, the
12 first floor joists and first floor subfloor were retained?

13 MR. LOURENCO: I stated that it had been stated
14 before. No one had contested it.

15 MR. CLARK: Let me hand you what's been marked as
16 Exhibit 39.

17 CHAIRPERSON REID: Are these the pictures that you
18 referred to earlier?

19 MR. CLARK: No. These are exhibits which I've
20 given to Ms. Pruitt during one of the breaks that we had here.
21 These are pictures that I was actually going to use in cross-
22 examining Mr. Cohen, but I'm tipping my hand and showing them to
23 Mr. Lourenco.

24 MR. LOURENCO; Okay. What is this?

25 ZONING COMMISSIONER MITTEN: Can you say what

1 number?

2 MR. CLARK: Thirty-nine. That's 40, I think. Or I
3 can tell you what that is, Mr. Lourenco. It's a picture I took
4 out at the property after the demolition was done there. Does
5 that show that, in fact -- Doesn't that, in fact, show that there
6 are new first floor joists and a new subfloor?

7 MR. LOURENCO: What location is this? Where is
8 this in relation to the property? I need references.

9 MR. CLARK: I understand what you're saying, sir.
10 If you see right here where there's a break in the joists on the
11 back, that's where the newly expanded 6 1/2 foot expansion in the
12 back is.

13 MR. LOURENCO: To the back?

14 MR. CLARK: That's to the back.

15 MR. LOURENCO: So that would be the existing --
16 initial existing building?

17 MR. CLARK: To the top of the picture is the front.

18 MR. LOURENCO: Okay. So what is the question
19 again?

20 MR. CLARK: Doesn't, in fact, that show new joists
21 over on the left side of the --

22 MR. LOURENCO: Sure, it does.

23 MR. CLARK: And doesn't it show, in fact, that
24 there's no subfloor over a portion of the existing footprint?

25 MR. LOURENCO: Sure, it does.

1 MR. CLARK: Let me hand you what's been marked as
2 Exhibit 40, which is another picture taken on the property. This
3 one is now taken from basically over the garage.

4 MR. LOURENCO: Over the garage?

5 MR. CLARK: Just to try to put a little perspective
6 --

7 MR. LOURENCO: So that is south?

8 MR. CLARK: That's Mr. Sloame's house. Right, and
9 that's at the top of the picture is what Mr. Lourenco was
10 referring to.

11 I think you see the hole -- I'm not certain that's
12 the stairway down. So I won't say that, but doesn't, in fact -- I
13 think, Mr. Lourenco, I'm going to point now to the very top of the
14 picture where you can see a difference in the color between the
15 floor joists at the very top of where you can see it.

16 MR. LOURENCO: That's correct.

17 MR. CLARK: And I think right there to the right of
18 that is the new expansion to the old foundation, and everything to
19 the left --

20 MR. LOURENCO: To the right of this line?

21 MR. CLARK: To the right of that line, you're
22 right. Everything to the right of that was the preexisting
23 footprint. Doesn't it show on the preexisting footprint that
24 there is a large portion of the subfloor missing that's going to
25 be new?

1 MR. LOURENCO: Sure.

2 MR. CLARK: And doesn't it show a large number of
3 new floor joists?

4 MR. LOURENCO: Sure, it does.

5 MR. CLARK: And does that have any effect on your
6 decision whether, in fact, there was a demolition?

7 MR. LOURENCO: No, it doesn't.

8 MR. CLARK: I want to ask you about a building.
9 Doesn't a building have a roof? We wanted to be careful about our
10 definitions. Doesn't the D.C. Building Code say that a building
11 has a roof?

12 MR. LOURENCO: Once it's finished, yes.

13 MR. CLARK: Where does it say once it's finished?

14 MR. LOURENCO: Obviously, when you are building it,
15 what do you call it?

16 MR. CLARK: Well, let's talk about this. That's
17 not what was said here, though, was it? I mean, we're talking
18 about Section 405.8, aren't we? Isn't that the section we're
19 talking about? Doesn't that talk about an expansion or an
20 addition to an existing building?

21 MR. LOURENCO: Sure.

22 MR. CLARK: And so does that mean that you can
23 completely take off the roof, take away the building, and still
24 call it an expansion or addition to a building?

25 MR. LOURENCO: It's our inference that when you

1 take away the roof, you take away the building. I never saw an
2 addition that could be performed without removing a portion of the
3 building to which you do the addition. Otherwise, it would be a
4 separate building.

5 MR. CLARK: You ever see an addition made to the
6 back of a house? I see them in my neighborhood all the time.

7 MR. LOURENCO: Sure.

8 MR. CLARK: Do you have to take the roof off to do
9 that?

10 MR. LOURENCO: Sometimes, portions of it. You have
11 to connect the addition to the existing construction.

12 MR. CLARK: Well, you have to connect -- What if
13 the addition doesn't go all the way up to the existing roof? You
14 don't have to do anything.

15 MR. LOURENCO: Then you don't touch the roof. Of
16 course. You would be stupid.

17 MR. CLARK: Okay. So your interpretation, and I
18 understand you're interpreting technical regulations, but your
19 interpretation is that, with respect to a nonconforming structure,
20 that the word building doesn't really mean what it says; it means
21 something else.

22 MR. LOURENCO: I didn't say that. That's your
23 inference.

24 MR. CLARK: I think that will be the inference that
25 will be drawn.

1 Let me ask, sir, whether DCRA relies on the honesty
2 and integrity of representations made in permit applications?

3 MR. LOURENCO; Very much so, yes.

4 MR. CLARK: I've opened in front of you, sir, to
5 Exhibit 3 in our book, and I've opened to page 2. I've got it
6 right open there for you to try to shortcut things a little bit
7 here.

8 Now you see a building there. You see a black line
9 on the drawing for a building?

10 MR. LOURENCO: It's all black lines. Which one do
11 you mean?

12 MR. CLARK: Okay. A dark black outline?

13 MR. LOURENCO: Oh, the outline here?

14 MR. CLARK: Yes, up at the top of the page there.
15 Do you see that?

16 MR. LOURENCO: Yes.

17 MR. CLARK: I'll wait until the --

18 CHAIRPERSON REID: We have it.

19 MR. CLARK: Okay, thank you. Why don't you turn
20 back to that page that I'm showing you. I'll ask you about that
21 one in a second, but why don't you go back to the one I'm showing
22 you here.

23 Let me ask you -- You can look at that one. Let me
24 ask you, doesn't the black outline indicate that that is, in fact,
25 the existing footprint?

1 MR. LOURENCO: It's not conclusive.

2 MR. CLARK: Do you know what the zoning regulations
3 say that it's supposed to be in dark ink when it's the existing
4 outline?

5 MR. LOURENCO: What document is this?

6 MR. CLARK: That's the plat that was submitted with
7 the plans for the original permit application. That's part of the
8 page.

9 MR. LOURENCO: So this is the original plat, the
10 original --

11 MR. CLARK: That's what was submitted by the
12 developer.

13 MR. LOURENCO: Okay. Now I see a thin outline for
14 the one-story addition in back and the one story garage which is
15 not going to be built anymore. Isn't that -- Doesn't that
16 indicate under normal zoning practice that that's a new structure?

17 MR. LOURENCO: It's normal practice to -- When you
18 do the outline of a building like this, it's normal practice to
19 have the portion that has X number of stories and the portion that
20 has different number of stories outlined separately. It's a
21 convention like any other convention.

22 MR. CLARK: Okay. Well, in my post-hearing
23 submission I'll point to the zoning regulations that talk about
24 that.

25 VICE CHAIRPERSON SOCKWELL: May I interrupt just

1 briefly. It does not have to hold true what you're saying, Mr.
2 Clark. When we as architects provide buildings that have varying
3 roof heights, we sometimes represent the higher roof in a darker,
4 heavier line and the lower roof in a lighter, thinner line, which
5 is what I think I see here, as opposed to what you're saying.

6 The labeling of the structure would determine what
7 is existing and what is not, as opposed to a line wave. A line
8 wave is not the issue.

9 MR. CLARK: I understand. I'll submit it in my
10 post-hearing brief, but let me ask Mr. Lourenco that question.

11 VICE CHAIRPERSON SOCKWELL: But I'm looking at the
12 full-size drawing here.

13 MR. CLARK: I understand, and that's what that
14 comes from.

15 VICE CHAIRPERSON SOCKWELL: Right. But I think
16 your assertion may be an assumption more than a fact.

17 MR. CLARK: I understand what you're saying, sir.

18 Mr. Lourenco, what did your department take from
19 that drawing to mean the existing footprint was?

20 MR. LOURENCO: This is not the only drawing.
21 That's why I was asking what is this. There's a complete set of
22 drawings that has information on other parts. I don't know
23 exactly what the other drawings show, but I hope they are more
24 clear on where was the original footprint.

25 MR. CLARK: Did you ever look at those?

1 MR. LOURENCO: I am sure I looked at them, but I
2 look at hundreds of drawings. I don't have that kind of memory.
3 If you want to show them to me, we can talk about it.

4 MR. CLARK: I understand. Well, I understand it,
5 sir, but let me try to shortcut it rather than have you look
6 through all those thick plans.

7 MR. LOURENCO: I looked at them very quickly.

8 MR. CLARK: You already said that this case
9 involved an enormous amount of scrutiny. My question is, in
10 giving it then an enormous amount of scrutiny, did you ever look
11 at the plans?

12 MR. LOURENCO: I'm sure I looked at the plans. I'm
13 saying I do not recall from memory what those plans showed,
14 because I've seen many other plans after that.

15 MR. CLARK: When you make a ruling that a
16 particular construction conforms with the zoning regulations,
17 you're aware that your ruling may set a precedent for future
18 applications, aren't you?

19 MR. LOURENCO: Sure.

20 MR. CLARK: Why don't we talk about my house across
21 the street. I'm the guy, as I said, who lives down below there
22 across the street, and you could understand why I'm upset. But
23 let me ask you something.

24 Let's say that I was a smart enough guy to have
25 bought AOL at 88 cents or whatever it was, and now I'm a multi-

1 millionaire from Northern Virginia, and I see Clark's house over
2 here, and what I say is this: I'm going to take Clark's house,
3 and I'm going to tear it down to the existing foundation. Okay?
4 You understand where I am so far?

5 He's going to come to you and ask for a permit to
6 tear down --

7 MR. LOURENCO: That's a hypothetical scenario? And
8 what are you doing to your house?

9 MR. CLARK: We're going to take down everything to
10 the existing foundation.

11 MR. BROWN: Madam Chair, I object. It's late.
12 We're not even talking about hypotheticals with respect to this
13 property now. I think it's unfair to the Board and to Mr.
14 Lourenco.

15 CHAIRPERSON REID: Sustained.

16 MR. CLARK: Madam Chair, I must protest, because,
17 in fact, this gentleman has said that what happens in this case is
18 precedent for future cases. If we can't explore what the extent
19 of the zoning regulations is, then I think we've got a real
20 serious problem here, and I think that this Board is unduly
21 cutting off cross-examination to try to prejudice the case of the
22 appellants.

23 VICE CHAIRPERSON SOCKWELL; It's nice of you to
24 think that way, and we'd love to comply, but we're just not that -
25 - We're not that nasty. We're actually really nice people.

1 MR. CLARK: I hadn't had a problem, Mr. Sockwell,
2 with you, but I object, and I have to object to cutting off my
3 cross-examination.

4 CHAIRPERSON REID: No, no, no.

5 VICE CHAIRPERSON SOCKWELL: We just would like you
6 to get to the point, because we're not sure where you're going.
7 I'm not sure where you're going.

8 CHAIRPERSON REID: Yes. So we didn't cut you. We
9 just asked that you -- How many more questions do you have now?

10 MR. CLARK: Ms. Reid, I'm not going to -- When I've
11 been trying to cut down on my examination -- I've already done it
12 -- I think it's unfair when I'm only a couple of minutes into it
13 to say how many more questions.

14 CHAIRPERSON REID: Oh, no, no, no. You've been at
15 it now for about 15 minutes. So that's what I'm saying. It may
16 seem like a couple of minutes, but actually, you know, we weren't
17 cutting you. We're just asking you to just move it along.

18 MR. CLARK: Let me ask another question.

19 Mr. Lourenco, isn't it true that no decision was
20 reached by DCRA that 4512 was in zoning compliance until September
21 1999?

22 MR. LOURENCO: What's the question again, that DCRA
23 made no decision?

24 MR. CLARK: You didn't make your final decision
25 that it was in compliance until September 1999, did you?

1 MR. LOURENCO: I didn't make my final decision
2 until, yes, September, sometime in September. Yes, that's
3 correct.

4 MR. CLARK: Yes, and if you look at Exhibit 1 in
5 there, you'll see your letter dated September 10, 1999.

6 MR. LOURENCO: That's correct.

7 MR. CLARK: And in that letter don't you say --

8 MR. LOURENCO: I wasn't at the site until September
9 7th, and I'm pretty sure I didn't make any final decision before
10 that date.

11 MR. CLARK: Okay. When a builder undertakes
12 construction without a permit but on the expectation that a permit
13 will be granted, even though no application has been filed,
14 doesn't he do so at his own risk?

15 MR. LOURENCO: I guess your question in general,
16 the answer is yes.

17 MR. CLARK: Well, did DCRA tell or warn Mr. Cohen
18 that if he built before a permit review was completed, he did so
19 at his own risk?

20 MR. LOURENCO: In this particular case, I don't
21 believe so.

22 MR. CLARK: He's an experienced builder. Right?

23 MR. LOURENCO: Yes. He was working another permit,
24 a permit that we did not revoke. So it was a valid permit, had a
25 floor had to be fixed. We called him in to make sure he fixed it.

1 MR. CLARK: And so if it wasn't fixed, he did it at
2 his own risk. Right?

3 MR. LOURENCO: Oh, if it wasn't fixed, he did it at
4 his own risk. That's correct.

5 MR. CLARK: And if you didn't agree on his fix, it
6 was at his own risk. Right?

7 MR. LOURENCO: That's correct.

8 MR. CLARK: Well, aren't you required to apply
9 Section 223 to this property?

10 MR. LOURENCO: I don't believe so.

11 MR. CLARK: Why not?

12 MR. LOURENCO: Because this is not the case before
13 the Board of Zoning Adjustment requiring an area variance, which
14 is clearly the intent of the Zoning Commission when these
15 provisions were passed, to provide a legal basis for making
16 reasonable additions to single family dwellings where the strict
17 test associated with an area variance are unattainable.

18 In order to apply 223.1, first you have to make a
19 determination that the project does not comply with -- that the
20 addition does not comply with Sections 401, 403, 404, 405 or 406.

21 MR. CLARK: And, of course, this one didn't comply
22 with the lot size, did it?

23 MR. LOURENCO: Why do you say that?

24 MR. CLARK: Well, because it's less than 7500
25 square feet.

1 MR. LOURENCO: Why do you read the top of the page
2 and not the bottom? 407.1 gives the Zoning Administration
3 authorization to permit the deviation.

4 MR. CLARK: Okay, let's look at that. We got 407
5 in front of us now. Why don't we look at it there? Okay. He's
6 authorized to permit a deviation. Where did you approve a
7 deviation?

8 MR. LOURENCO: The permit was issued, a signature
9 on the zoning box, which means it's approved by zoning. That
10 approval is done under the authority delegated from the Zoning
11 Administrator. So formally the size of the lot for this project
12 was approved.

13 MR. CLARK: So are you saying that, when you issue
14 minor deviations under 407, there's absolutely no record of it
15 anywhere?

16 MR. LOURENCO: The permit is the record. There's a
17 signature with a date on the application. If you look at the
18 application, you're going to see the record.

19 MR. CLARK: Does it say anywhere on there issued
20 pursuant to 407, a little deviation?

21 MR. LOURENCO: I don't think so.

22 CHAIRPERSON REID: Would it have to?

23 MR. LOURENCO: 6/26/99 -- I don't see anywhere in
24 the regulations where it states that.

25 CHAIRPERSON REID: Mr. Clark, where are you going

1 with this?

2 MR. CLARK: I'm going with it -- It says the Zoning
3 Administrator is authorized to permit, but the Zoning -- He
4 admitted what that means, ma'am, is that the Zoning Administrator
5 must, in fact, consider it. He can't come back later on and say I
6 meant to, I thought to, but I never did.

7 CHAIRPERSON REID: I thought he said that he did.
8 I thought he said that he --

9 MR. CLARK: He said the issuance of the permit was
10 the same thing, and I say you can't say I have complied with the
11 law by reading between the lines somewhere to see something that
12 isn't there. That's all I'm saying.

13 CHAIRPERSON REID: No. What I understood him to
14 say is that he invokes his privilege to, in this instance, apply
15 some leverage with some allowance to deviate from the strict
16 compliance with the regulations, and he did that.

17 MR. CLARK: Let me ask. When is the first time you
18 did that, Mr. Lourenco? Wasn't it sitting here this afternoon?

19 MR. LOURENCO: You're assuming that. Did I say
20 that?

21 MR. CLARK: Mr. Lourenco, I'm asking you a
22 question. Can you please answer it, sir?

23 MR. LOURENCO: No.

24 MR. CLARK: Okay. Where is the record that you did
25 it?

1 MR. LOURENCO: It's here. This application was
2 approved on 6/26/99.

3 MR. CLARK: And you are testifying here today that
4 you gave consideration to Section 407 when that was approved?
5 Testifying under oath to that?

6 MR. LOURENCO: I'm testifying under oath. I'm
7 testifying under oath that I have the authority to do that, and
8 I'm testifying under oath that the zoning approval of the
9 application is done under all -- That's not the only authority
10 that the Zoning Administrator has. The permit was approved
11 entirely under the authority of the Zoning Administrator. The
12 approval had a flaw.

13 MR. CLARK: How do citizens of the District of
14 Columbia or the BZA sitting in review know that you exercised that
15 authority if you don't make any record of it?

16 MR. LOURENCO: The record is here. How many times
17 do I need to repeat? The record is here.

18 MR. CLARK: Well, I understand. So are you saying
19 --

20 MR. LOURENCO: As long as -- Two percent of 7500
21 square feet is what, 150 square feet? As long as the size of the
22 lot complies with less than 150 square feet --

23 VICE CHAIRPERSON SOCKWELL: Mr. Clark --

24 MR. LOURENCO: AS long as it complies with less
25 than 150 square feet difference --

1 VICE CHAIRPERSON SOCKWELL: Let me just say this
2 very briefly. There is nothing in this regulation that states a
3 procedure by which the Zoning Administrator might make such a
4 minute deviation ruling. It does not say that it has to be
5 written down or recorded specifically. It doesn't say that
6 someone has to file a recommendation or request for a variance
7 that would then be ruled upon by the Zoning Administrator.

8 It gives the Administrator the ability, apparently
9 by not stating a procedure, to do it somewhat off the cuff, if one
10 might use the term. But it would be recommended in more cases
11 than not that the Administrator, for the sake of protecting the
12 applicant for the building permit, do a written record so that,
13 should such an appeal as this one come forth, that the record
14 would be addressable.

15 MR. CLARK: Thank you, sir. Mr. Lourenco, I think
16 that Mr. Brown's exhibits are on the table in front of you, and I
17 want to ask you to look at Exhibit 14. I think that's the file.
18 It's the one in your left hand there, not in your right hand, your
19 left hand.

20 MR. LOURENCO: This one?

21 MR. CLARK: Yes. The September 10 letter from Mr.
22 Cohen to you. You see that? Do you recognize that letter? It's
23 Exhibit 14 to Mr. Brown's exhibits. Have you ever seen this
24 before?

25 MR. LOURENCO: I'm pretty sure I did.

1 MR. CLARK: And doesn't Mr. Cohen indicate that
2 your input was needed, because the neighbors had questioned the
3 side yard requirements and the finished grade elements?

4 MR. LOURENCO: That's what Mr. Cohen states, yes.

5 MR. CLARK: Well, let me ask. Was that true?

6 MR. LOURENCO: You're asking me if what Mr. Cohen
7 wrote is true about something that he heard from Mr. Bello? I
8 don't know.

9 MR. CLARK: I'm asking -- Let me ask. Well, let me
10 ask you a question. Did Mr. Bello indicate that your approval was
11 necessary?

12 MR. LOURENCO: I don't know. I wasn't present at
13 this conversation between Mr. Bello and Mr. Cohen.

14 MR. CLARK: Didn't you get involved? Wasn't your
15 input necessary?

16 MR. LOURENCO: I was involved.

17 MR. CLARK: Wasn't your input necessary?

18 MR. LOURENCO: I gave my input. That's correct.

19 MR. CLARK: And wasn't your input necessary?

20 MR. LOURENCO: Necessary? Not necessarily, but --

21 MR. CLARK: But somebody at your level had to
22 decide. Right?

23 MR. LOURENCO: Not necessarily.

24 MR. CLARK: Somebody did. Right?

25 MR. LOURENCO: I did make decisions. That's

1 correct.

2 MR. CLARK: Didn't you make that decision as it
3 indicates here somewhere in the time frame of September 7th, 8th,
4 9th, 10th?

5 MR. LOURENCO: What decision?

6 MR. CLARK: The decision that the property could go
7 ahead? The building could go ahead?

8 MR. LOURENCO: No, no, no. The decision was about
9 the revision of the permit, berming up the building. If you read
10 the rest of the letter, it doesn't talk about size of the
11 property. It talks about the house location and sideline
12 setbacks.

13 MR. CLARK: I'm not saying size of the property,
14 sir. That's not what I'm saying. We're not on Section 407
15 anymore. Don't worry about that. We're past that.

16 My question to you, sir, is: Isn't it true that
17 the final approval that you gave for this to go forward was
18 somewhere September 7th, 8th, 9th, 10th, somewhere in there?

19 MR. LOURENCO: Probably around that date, yes.

20 MR. CLARK: And then you wrote a letter to Council
21 Member Patterson dated September 10 that we looked at before.
22 Right?

23 MR. LOURENCO: That's correct.

24 MR. CLARK: Mr. Lourenco, isn't it true -- and I
25 don't know if you were here when Mr. Sloame testified. Were you

1 here during that?

2 MR. LOURENCO: Yes, I was here the whole time.

3 MR. CLARK: Okay. Isn't it true that, in fact, as
4 Mr. Sloame testified, that Mr. Lourenco -- I'm sorry; we're
5 getting late -- that Mr. Bello told him that, in fact, that you
6 could have a ten-story house with a seven-story berm in the R-1-A
7 zone under the interpretation you have given to the zoning
8 regulations?

9 MR. LOURENCO: What is your question? Did Mr.
10 Sloame say that?

11 MR. CLARK: No. My question is, isn't that true
12 under the interpretation you've given here today?

13 MR. LOURENCO: I explained before that this issue
14 of berming up has some inherent automatic controls. Common sense
15 will say that no one is going to build a 70 foot high mound just
16 to put the house on top of the mound and then have to climb up 70
17 foot of steps to get to the front door.

18 MR. CLARK: But let's put it the other way.

19 MR. LOURENCO: Common sense will state that.

20 MR. CLARK: Let's put it the other way, Mr.
21 Lourenco. Let's go to my house across the street.

22 MR. LOURENCO: Okay, your house.

23 MR. CLARK: Okay. Now you've put it exactly in
24 point. If I put a 70 foot high mound on my property, I could walk
25 in level. I wouldn't have to walk down. Isn't that right?

1 MR. LOURENCO: You probably would need a 20 foot
2 mound or something.

3 MR. CLARK: Okay. I agree, 70 is too much.

4 MR. LOURENCO: But you probably wouldn't be allowed
5 to do that.

6 MR. CLARK: Why not?

7 MR. LOURENCO: Because there are other regulations
8 other than zoning regulations. There are regulations that pertain
9 to soil erosion. There are regulations that pertain to storm
10 water management that do not allow you to simply plant a 20 foot
11 mound wherever you want.

12 MR. CLARK: I thought that I could regrade to
13 whatever height I wanted.

14 MR. LOURENCO: Under the zoning regulations, there
15 are no limitations. That's what I said.

16 MR. CLARK: Okay. Well, so your guess is that --
17 Let's say that I've got all that AOL money, and I can spend
18 whatever money I want on this property, and I can take care of
19 whatever drainage I want, which wasn't done here. But let's say
20 that I do that.

21 You're telling me that I can regrade, I can put in
22 that 20 foot mound, tear down my house, put up however many
23 stories, three stories in front, and I can do that with no zoning
24 approval other than the building permit.

25 MR. LOURENCO: Well, there's a lot of ifs here.

1 I'm assuming your lot is the right size and you got enough land
2 all around and all that.

3 MR. CLARK: I agree that -- We have 17,000 square
4 feet, but I agree, sir, that's a consideration.

5 MR. LOURENCO: So we're assuming the only issue
6 here is where you, so to speak, plant your house. I think so. I
7 think you can regrade your lot to bring it at the level -- the
8 house at the level of the street. Where it is now, it probably --
9 the height is measured from maybe 20 feet below, something like
10 that.

11 VICE CHAIRPERSON SOCKWELL: If I might interrupt
12 just briefly, again the contextual issues here are such that I
13 think what has been made apparent is that the zoning regulation
14 does not specifically prohibit the use of a berming situation,
15 does not specifically limit the extent of berming but would in
16 context with other regulatory issues and other law possibly be
17 contextually not possible in certain circumstances.

18 MR. CLARK: That may be, but I will say that it's
19 up to this BZA to determine what those zoning regulations say, and
20 not Mr. Lourenco. I understand, Mr. Sockwell, you will make the
21 ruling and be one of the members voting on that, but I do point
22 out that it is this responsibility here, and not with Mr. Lourenco
23 to do that.

24 Could you look, Mr. Lourenco --

25 CHAIRPERSON REID: Mr. Clark, before you started

1 your cross-examination, we talked about the fact that it was late
2 and that we needed to try to have some type of constraints on
3 time, at which time you said it would take you about 15 or 20
4 minutes now.

5 You have now taken approximately 20 -- almost 30
6 minutes, and just in cross-examination. I explained that I was
7 going to lose a quorum shortly after eight o'clock.

8 MR. CLARK: I'm sorry, ma'am. I told you that I
9 would do it as quickly as I could. I've been interrupted, and
10 I've had long answers, and I'm trying to move as quickly as I can.

11 CHAIRPERSON REID: No, no. You have not. You have
12 not. I don't think that the sensitivity to the fact that in a few
13 minutes we will not be able to continue is being considered by
14 you.

15 MR. CLARK: Then we ought to adjourn, if that's the
16 case. I don't care, but the fact is that I don't think that my
17 cross-examination has gone too long. We've just spent more time
18 discussing that than doing it.

19 CHAIRPERSON REID: But what you just did, whether
20 you care or not, there are other people to consider in this room
21 other than just yourself; and whether you care or not, the issue
22 that you just got through bantering around had been thoroughly
23 addressed earlier today, the same issue, and you had the same
24 questions. The same questions got the same answer.

25 MR. CLARK: I'm asking DCRA.

1 CHAIRPERSON REID: It took you about ten minutes
2 just to frame that question and get the same answer. So why would
3 you take us through asking that same question when you had already
4 received an answer to that question earlier today?

5 MR. CLARK: Thank you, ma'am. I hope that I would
6 have the opportunity to ask DCRA that question, which --

7 CHAIRPERSON REID: Why? Mr. Bello and Mr. Sockwell
8 answered that question for you earlier today. Can you just move
9 on, because we don't want to have to be here all night, because
10 you don't care about the fact that this hearing is going on much
11 longer than it should.

12 VICE CHAIRPERSON SOCKWELL: Mr. Clark, I realize
13 that you are looking for some kind of specific answer, but you are
14 asking the same question eight or nine different ways rather than
15 taking a path that seems to lead to uncovering new ground.

16 I would like to think that you are most astute,
17 most professional, most well prepared, and know exactly where you
18 want to end up. Maybe we should start there and work back and see
19 what we can eliminate.

20 MR. CLARK: I have two pictures to ask Mr. Lourenco
21 about. They are Exhibit 20.

22 CHAIRPERSON REID: Is that it? Are you done when
23 you finish with these two pictures?

24 MR. CLARK: Yes, ma'am, I will be.

25 CHAIRPERSON REID: Thank you.

1 VICE CHAIRPERSON SOCKWELL: That sounds very good.

2 Thank you.

3 MR. CLARK: Twenty, sir, 2-0.

4 VICE CHAIRPERSON SOCKWELL: 20 is Section 20 of the

5 --

6 MR. CLARK: No, I'm sorry, it's Exhibit 19.

7 VICE CHAIRPERSON SOCKWELL: Thank you.

8 MR. CLARK: Would you look at the bottom of the

9 first page of Exhibit 19? Does that show any erosion on the berm?

10 On the bottom picture, sir, the bottom picture.

11 MR. LOURENCO: I'm sorry. Okay. Yes, I guess you

12 can say so.

13 MR. CLARK: Would you look at the next page, the

14 last page to Exhibit 19? That's the berm at the left side of the

15 house, the part that faces Mr. Sloame's property. Does that show

16 erosion there?

17 MR. LOURENCO: This is the southeast corner of the

18 house, right?

19 MR. CLARK: That's right.

20 MR. LOURENCO: What was the question again?

21 MR. CLARK: Does that show erosion there?

22 MR. LOURENCO: It looks like there's some erosion

23 here. That's correct.

24 MR. CLARK: No more questions, ma'am.

25 CHAIRPERSON REID: Thank you. Mr. Brown?

1 MR. BROWN: You indicated that -- and you had gone
2 out to the site and visited and seen the unique conditions, both
3 on the side as well as the adjoining properties, and factored in
4 the concerns of the neighbors. Is that correct?

5 MR. LOURENCO: Other than the fact that I don't
6 have a lot of latitude to factor in the concerns of the neighbors
7 because I'm bound by very strict rules, I do think I understand
8 the concerns of the neighbors, and I wish we could reach some
9 agreeable solution here.

10 MR. BROWN: Having recognized and understood their
11 concerns, your responsibility, duty, was to enforce the zoning
12 regulations.

13 MR. LOURENCO: That's correct.

14 MR. BROWN: And in doing so, other considerations
15 were not relevant beyond the zoning regulations and the --

16 MR. LOURENCO: I'm not sure where you're going with
17 that question, because there's all sorts of other considerations
18 that are relevant.

19 MR. BROWN: Going to the concerns of the neighbors,
20 in particular, that your job, both as Director, DLRA, and Acting
21 Zoning Administrator, was to enforce the zoning regulations.

22 MR. LOURENCO: Yes, that's one of my -- That's
23 correct.

24 MR. BROWN: Those zoning regulations, and
25 particularly as they relate to these issues, go back to 1958. Is

1 that correct?

2 MR. LOURENCO: Yes, that's my understanding. I
3 wasn't around.

4 MR. BROWN: Literally, neither was I.

5 VICE CHAIRPERSON SOCKWELL: Let's clarify one
6 thing. The ordinance in 1958 was this thick, only that thick.
7 Today, it is that thick. The regulations have changed
8 considerably, and I just want everyone in this room to understand
9 that they don't go back to '58. They started in '58, have been
10 modified since '58. It's not the same regulation.

11 MR. BROWN: As a complete package, but certain
12 provisions which I think are relevant here have their birth in the
13 original version.

14 VICE CHAIRPERSON SOCKWELL: Born but not still
15 infants.

16 MR. BROWN: Thank you. Point well taken.

17 In your experience, the zoning regulation that we
18 have in issue here, particularly finish grade, have a longstanding
19 pattern of enforcement in the manner in which you enforce the
20 regulations?

21 MR. LOURENCO: Yes. The zoning regulations are a
22 very brief sized document that needs to be read very carefully,
23 and you can't take provisions out of context and just look at a
24 couple of lines. I have to figure out in what context they are.

25 At the same time, they are provisions that --

1 taking just the height of the building, the height of the building
2 is measured in different ways depending on what building we're
3 talking about. You measure the height of a garage differently
4 from the height of the main single family dwelling, different from
5 the height of a commercial building.

6 So we have to be very careful and precise in that.

7 In the particular case that you alluded to of the finish grade,
8 that is the way the regs read, finished grade. That's why I said
9 before that, if you ask me today does that building that I saw
10 this morning comply with the zoning regulations, I really can't
11 tell it, because it's not finished. I don't know.

12 MR. BROWN: But you also indicated that, while it's
13 not finished, that at this point -- and making the assumption that
14 the grade wasn't lowered, that it was currently less than the four
15 feet.

16 MR. LOURENCO: It looks like it's going the right
17 direction. That's correct.

18 MR. BROWN: And would it be relevant to your review
19 of the finished grade issue if, in researching this case, you
20 found out through the original building plans for the 1956 house,
21 that in fact the grade to build the 1956 house was lowered and
22 that the return here in 1999 of finished grade was actually
23 returning it to approximately the 1956 preconstruction level?
24 Would that be relevant to your--

25 MR. LOURENCO: Frankly, no. I think it's a very

1 interesting point. I noticed yesterday reviewing the plans from
2 the 1956 construction that the grade had been lowered on the
3 southeast side of the site by about a foot and change in the front
4 and about three feet in the back of the original house. But quite
5 frankly, I don't think that's relevant, because we're talking
6 about finished grade. We're not talking about the grade in 1955.
7 We're not talking about the grade in 1997. We're talking about
8 the finished grade, which will be in the year 2000 when the
9 construction is finished.

10 MR. BROWN: And that's the point I was trying to
11 make.

12 I don't think I have any further questions for the
13 witness.

14 CHAIRPERSON REID: Thank you.

15 ZONING COMMISSIONER MITTEN: Madam Chair, can I ask
16 one very simple question?

17 Is this the only drawing that was attached to the
18 second -- the application for the second permit? Are there more
19 drawings or is this it?

20 MR. LOURENCO: I can't respond to that, because, as
21 I said, I was counting on coming to this hearing this morning. I
22 went to look for the official record, and it was in the remote
23 storage. So I couldn't grab it. But I think, for the -- It's a
24 good assumption to make for the extent of revision of the permit
25 that was issued in September, that would be all that's necessary.

1 MR. BROWN: Can I assist? I'm told by my clients
2 that, in addition to the multi-page application form, that that
3 was the extent of the filing for permit number two.

4 VICE CHAIRPERSON SOCKWELL: Let me make one closure
5 on this finished grade issue. That is that, regardless what
6 finished grade existed in '56 and what finished grade might exist
7 in 2000, the finished grade that was applied for with regard to
8 the permit that was initially issued is the one that would have
9 been at question.

10 That finished grade was not correct for the
11 existence of a three-story building. It was correct for the
12 existence of a four-story building.

13 MR. LOURENCO: As shown in the first permit.

14 VICE CHAIRPERSON SOCKWELL: As shown in the first
15 permit.

16 MR. BROWN: Which gave occasion for the revision in
17 permit number two.

18 VICE CHAIRPERSON SOCKWELL: Which gave occasion for
19 the application for a revision in permit number two.

20 MR. BROWN: Madam Chair, I don't think I'm going to
21 have a major dispute on this. I'm looking at the clock. It's
22 five after eight and, given your schedule and the fact that I have
23 not put on any of my case, I think this is a good time to break,
24 continue until the 23rd.

25 It will allow me to make my presentation

1 completely, and I think that would be, certainly from my
2 perspective and, I think, the Board's perspective, probably the
3 most efficient way to proceed, with the hope of -- At this point,
4 I can't compress my presentation in fairness to what I need to do
5 into, I think, your time frame nor allow for cross-examination.

6 CHAIRPERSON REID: I think that makes all the sense
7 in the world, because, obviously, it was ambitious for us to try
8 to finish it today, and we did put forth a Herculean effort to do
9 so. Nonetheless, I guess prudence would dictate that we adjourn
10 here this evening and allow you to put on your case and then
11 cross-examination, and then for the rebuttal by the appellant.

12 MR. CLARK: Which will include my pictures that
13 didn't get in the main part of the case, but that's not an issue.

14 CHAIRPERSON REID: Which would include your
15 pictures that did not get into the main part of the case.

16 MR. BROWN: Madam Chair, one thing. It's a
17 logistical issue. A lot of exhibits have been passed back and
18 forth. I'm not so sure I've got a complete set or that I can
19 properly identify them by number. If there's some way that,
20 through staff and Mr. Clark, that we can make sure that the Board,
21 myself, Mr. Lourenco is on the same sheet of music.

22 CHAIRPERSON REID: Okay.

23 MR. BROWN: The other thing would be --

24 MR. CLARK: I'm happy to do that for Mr. Brown.

25 MR. BROWN: -- is in looking forward to the 23rd,

1 it would be in the morning that day. Given the delay, I think
2 procedures to move forward at that point to expedite the decision
3 and order process would be in the best interest of everybody
4 involved. So I would ask that the Board keep that in mind as we
5 move forward to that process.

6 ZONING COMMISSIONER MITTEN: I just want to
7 clarify. I think it's in the afternoon, that there was already
8 something scheduled for the morning. Is that correct?

9 MS. PRUITT: That is correct. There is one case in
10 the morning. That's also a continuation from last week or week
11 before last, and this would be the only case on the afternoon
12 agenda. Hopefully, we would be able to start at one.

13 MR. BROWN: One o'clock. Okay.

14 MS. PRUITT: And we will work -- John Nyarku, who
15 is the staffperson assigned to this case, please work really
16 closely with him so that we can update the record, the file, so
17 that the exhibits can be in as early as possible, and the file
18 updated so that everybody can sort of have the same picture to
19 work from.

20 CHAIRPERSON REID: And there were a couple of
21 requests by the Board members.

22 MS. PRUITT: Well, the record isn't closed. I
23 didn't know if you wanted to wait until the end of the record for
24 that information.

25 CHAIRPERSON REID: No, not necessarily. If we are

1 going to come back on the 23rd, then I had requested pictures of
2 Mr. Sloame's house, if they would provide that, and Ms. Mitten
3 had asked for the timeline from the ANC and from the appellant.
4 Then that could be submitted at the same time that we have the
5 hearing, and we'll have a complete record for the most part,
6 unless there is something else.

7 MS. PRUITT: Madam Chair, you want a timeline from
8 the appellant. Do you also want one from DCRA? We have one from
9 the intervenor.

10 CHAIRPERSON REID: From the appellant and from the
11 ANC.

12 MS. PRUITT: Okay, and from the ANC. Do you also
13 want to include DCRA is what I'm asking.

14 CHAIRPERSON REID: Well, that wouldn't hurt.

15 MS. PRUITT: As much as they can get?

16 CHAIRPERSON REID: Yes. I don't think that there
17 are any other questions. This segment here completes the
18 government, DCRA, testimony; and we have heard from Mr. Bello and
19 Mr. Lourenco and Mr. Johnson stated for the record that Mr.
20 Lourenco could respond to any questions that would have been
21 directed to him anyway. So --

22 MR. LOURENCO: Madam Chair, that means that on the
23 23rd you desire me to come?

24 CHAIRPERSON REID: I don't think so.

25 MR. LOURENCO: Or it would be advisable?

1 CHAIRPERSON REID: I don't think so, unless -- DCRA
2 does not usually cross-examine, do you?

3 MR. LOURENCO: No.

4 CHAIRPERSON REID: No. Then I don't think that --
5 Your portion of this particular case has now been taken care of,
6 and we move now to the intervenor's case, which is also the owner
7 of the property, and rebuttal. Those are the only two things we
8 have to do.

9 So, Mr. Brown, you don't have to squeeze your whole
10 presentation into just ten or 15 minutes. Just joking. We
11 wouldn't do that anyway.

12 All right. Does that take care of everything?
13 Board members, do you have any other questions? Are we done? All
14 right. Thank you very much for your indulgence and for your time,
15 and we will reconvene this case on the 23rd at one o'clock.

16 (Whereupon, the foregoing matter went off the
17 record at 8:13 p.m.)

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