

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 30, 2007

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Mayoral Appointee
SHANE DETTMAN National Capital
 Planning Commission

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL G. TURNBULL Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Special Public Hearing held on October 30, 2007.

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Adjourn

P R O C E E D I N G S

(9:58 a.m.)

CHAIRPERSON MILLER: This meeting will please come to order.

Good morning, ladies and gentlemen. This is the October 30, 2007 morning public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I'm the Chair of the BZA.

To my right is Mr. Michael Turnbull representing the Zoning Commission on the BZA. To my left is Marc Loud, mayoral appointee, Mr. Shane Dettman, representing NCPC, Cliff Moy from Office of Zoning, and Beverly Bailey from Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also Webcast live.

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1 Accordingly, we must ask you to
2 refrain from any disruptive noises or actions
3 in the hearing room. When presenting
4 information to the board, please turn on and
5 speak into the microphone, first, stating your
6 name and home address. When you're finished
7 speaking, please turn your microphone off, so
8 that your microphone is no longer picking up
9 sound or background noise.

10 All persons planing to testify
11 either in favor, or in opposition, are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness table.

15 Upon coming forward to speak to
16 the board, please give both cards to the
17 reporter sitting to my right.

18 The order of procedure for appeals
19 are one, statement and witnesses of the
20 Appellant. Two, the Zoning Administrator or
21 other government official's case. Three, case
22 for the owner, lessee or operator of the

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1 property involved, if not the Appellant.

2 Four, the ANC within which the
3 property is located. Five, Intervenor's case,
4 if permitted by the board. Six, rebuttal and
5 closing statement by Appellant.

6 Pursuant to sections 3117.4 and
7 3117.5, the following time constraints will be
8 maintained. The Appellant and parties, except
9 an ANC in support, sixty minutes,
10 collectively. Individuals, three minutes.

11 These time restraints do not
12 include cross examination and/or questions
13 from the board. Cross examination of
14 witnesses is permitted by the Appellant or
15 parties. The ANC within which the property is
16 located is automatically a party in the appeal
17 case.

18 Nothing prohibits the board from
19 placing reasonable restrictions on cross
20 examination, including time limits and
21 limitations on the scope of cross examination.

22 The record will be closed at the

1 conclusion of each case except for any
2 materials specifically requested by the board.
3 The board and the staff will specify at the
4 end of the hearing exactly what is expected
5 and the date when the person must submit the
6 evidence to the Office of Zoning.

7 After the record is closed, no
8 other information will be accepted by the
9 board.

10 The Sunshine Act requires that the
11 public hearing on each case be held in the
12 open before the public. The board may,
13 consistent with its rules of procedure, and
14 the Sunshine Act, enter executive session
15 during or after the public hearing on a case
16 for purposes of reviewing the record or
17 deliberating on the case.

18 The decision of the board in these
19 contested cases must be based exclusively on
20 the public record.

21 To avoid any appearance to the
22 contrary, the board requests that persons

1 present not engage the members of the board in
2 conversation.

3 Please turn off all beepers and
4 cell phones at this time, so as not to disrupt
5 these proceedings. The board will now
6 consider any preliminary matters. Preliminary
7 matters are those which relate to whether a
8 case will or should be heard today, such as
9 requests for postponement, continuance or
10 withdrawal, or whether proper and adequate
11 notice of the hearing has been given.

12 If you're not prepared to go
13 forward with a case today, or if you believe
14 that the board should not proceed, now is the
15 time to raise such a matter.

16 Does the staff have any
17 preliminary matters?

18 MS. BAILEY: Madam Chair, members
19 of the board, good morning. No, staff does
20 not.

21 CHAIRPERSON MILLER: Okay. Then
22 let's proceed with the agenda.

1 Would all individuals wishing to
2 testify today please rise to take the oath.

3 MS. BAILEY: Would you please
4 raise your right hand.

5 [Witness duly sworn, en masse]

6 MS. BAILEY: Thank you.

7 CHAIRPERSON MILLER: Thank you,
8 Ms. Bailey. I believe we have one case on the
9 agenda this morning.

10 MS. BAILEY: Madam Chair, and it's
11 an appeal and the number is 17657, and it is
12 of 1231 Morse Street, Inc., pursuant to 11
13 DCMR 3100 and 3101, from the decision of the
14 Zoning Administrator to deny a building permit
15 application for revisions to an existing
16 building permit allowing for the
17 reconstruction of collapsed walls for a
18 single- family dwelling with addition, and a
19 conversion to an 11 unit apartment building.
20 The property is located in the R-4 District at
21 premises 1233 Morse Street, N.E., Square 4069,
22 Lot 130.

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1 Members of the board, the staff is
2 aware of at least four preliminary matters,
3 and to quickly mention what those matters are.

4 The appellee has filed a motion to
5 disqualify Mr. Toye Bello as Appellant's
6 expert witness.

7 Secondly, there is an appellee's
8 motion to strike the testimony of Mr. Bellow.

9 Appellee's motion to dismiss the
10 appeal and appellee's motion for summary
11 judgment.

12 CHAIRPERSON MILLER: Okay. Let's
13 start with introductions. Would the parties
14 introduce themselves for the record, please.y

15 MS. WOOLRIDGE: Good morning,
16 Madam Chair and board members. My name is
17 Doris Woolridge. I'm an aide to the counsel
18 of DCRA.

19 MR. GREEN: Good morning, Madam
20 Chairman, members of the board. My name is
21 Matthew J. Green, Jr. I'm an assistant
22 attorney general assigned to represent the

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1 Department of Consumer and Regulatory Affairs.

2 MR. LEGRANT: Good morning. I'm
3 Matthew LeGrant. I'm the Acting Zoning
4 Administrator for the District of Columbia.

5 MS. BOLLING: Good morning. My
6 name is Melinda Bolling. I'm Assistant
7 Attorney General for the government.

8 MR. BROWN: Good morning, Madam
9 Chairman. Patrick Brown, Greenstein, DeLorme
10 and Luchs, on behalf of the Appellant.

11 MR. DEMUREN: Good morning, Madam
12 Chairman and members of the board. Taiwo
13 Demuren on behalf of 1231 Morse Street, Inc.

14 MR. BELLO: Good morning. Toye
15 Bello of Bello Bello & Associates.

16 MR. FORD: Good morning. Vincent
17 Ford, Ford & Associates.

18 CHAIRPERSON MILLER: Okay. Thank
19 you. Ms. Bailey named a few motions, but I
20 think that the only one that's right now
21 before us to deal with at least--we've had the
22 motion for summary judgment and motion to

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1 dismiss filed before, and we're holding those
2 in abeyance, and the parties were proceeding
3 with presenting their evidence.

4 However, we now have a more recent
5 motion to disqualify Mr. Bello as an expert
6 witness and strike his testimony, and the
7 board has read the two filings which were very
8 thorough, and I just want to give the parties
9 a very brief opportunity to make any final
10 statements, and I would start with DCRA
11 because you filed the motion, there's been a
12 response, and so it's really actually time.

13 Do you have a response to their
14 response at this point, or anything further
15 you want to say on the record, and then the
16 board may have a few questions?

17 MS. BOLLING: Thank you, Madam
18 Chair. The District of Columbia moves this
19 honorable board to both disqualify Mr. Bellow
20 as the Appellant's expert and to strike his
21 testimony that was previously given on October
22 2nd, and the reason that we file this motion

1 at this point in the proceedings is during our
2 preparation for our witnesses to be rebutted,
3 rebuttal witnesses for Mr. Demuren, we
4 discovered documents where Mr. Bello had
5 participated on the specific project that is
6 owned by the current Appellant. It was the
7 subdivision.

8 But there's a lot of work and
9 research and confidential information that
10 goes into the entire zoning process, and as
11 the supervisor and as the Zoning Administrator
12 during that time, he was responsible for
13 directing the employees at the District of
14 Columbia Department of Consumer and Regulatory
15 Affairs within the Office of Zoning, and in
16 that capacity, we believe that he has
17 confidential information regarding this
18 project, this owner, that it's harmful to the
19 District, to our position, and that it's
20 contrary to case law in this jurisdiction.

21 It's also, we'd like to point out,
22 a violation of both the Ethics In Government

1 Act, and the D.C. Employee Code of Conduct,
2 which regards successive government employment
3 for individuals such as Mr. Bello, who has
4 gone on to be private contractors. So we
5 believe he should be disqualified, even though
6 in the first proceeding we felt that based on
7 his qualifications, he is an expert in zoning,
8 but for this specific project, with this
9 specific Appellant, he should be disqualified.

10 And furthermore, as a result of
11 those reasons, the testimony that he gave
12 should be stricken from the record and not
13 considered.

14 CHAIRPERSON MILLER: Do you have
15 any further information with respect to
16 confidentiality, or information that he had
17 access to, that might specifically relate to
18 the case? Or is it just generally?

19 MS. BOLLING: We've attached a
20 portion of a document that we found, that he
21 signed off on, that was reviewed during the
22 subdivision portion of this project. We have

1 not been able to find any other documents that
2 would support our motion but we believe, from
3 talking to the current Acting Zoning
4 Administrator and previous Zoning
5 Administrators, and the work that's involved
6 in a project such as this, that he does have
7 confidential information which he's used to
8 the detriment of the District.

9 CHAIRPERSON MILLER: Just for the
10 board's sake, though, can you explain what
11 that might entail.

12 MS. BOLLING: I'm sorry, Madam
13 Chair--

14 CHAIRPERSON MILLER: I was just
15 wondering if you could explain it a little
16 more fully for the board, what that might
17 entail. I mean, you said he has access to
18 confidential information, but like what kind
19 of information that would have bearing on this
20 case?

21 MS. BOLLING: With this particular
22 case, we've spoken with the Office of the

1 Surveyor, and the kinds of decisions that
2 would go in to subdividing the plot, and the
3 Acting Zoning Administrator, regarding what
4 would be needed to build a building such as
5 this, that's so huge and out of character for
6 the actual space that's there.

7 And the administrative
8 deliberative process that's involved with
9 talking to the actual zoning technicians and
10 administrators, I don't know exactly what they
11 talk about, and how they reach their
12 decisions, but it was explained to me that
13 there would have to be some discussion on how
14 this proposed project would fit here, and
15 that's why they needed to do the subdivision
16 of a lot, so they could bring it altogether,
17 and proceed with the building that they
18 constructed.

19 CHAIRPERSON MILLER: Any questions
20 by the board?

21 COMMISSIONER TURNBULL: Madam
22 Chair, I just had one question. Is there a

1 term limit, when you leave office, then, to be
2 involved? Getting back to your, about the
3 ethics issue.

4 MS. BOLLING: There are term
5 limits on specific things, but it is
6 specifically permanently prohibited when it
7 dealt with a specific project, with the
8 specific owners on this particular matter.
9 You can never represent a party adverse to the
10 government's interests--ever.

11 COMMISSIONER TURNBULL: And that's
12 stated in the ethics act?

13 MS. BOLLING: Yes, it is, which
14 I've cited in my motion.

15 COMMISSIONER TURNBULL: Okay;
16 thank you.

17 CHAIRPERSON MILLER: Let me ask a
18 follow-up question on that. I know that
19 there's an office in the D.C. government that
20 specifically deals with these kind of
21 questions, whether there's a conflict of
22 interest or bias, or anything like that, with

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1 different scenarios with D.C. employees, or
2 former D.C. employees.

3 Are you familiar with that office?

4 MS. BOLLING: Yes, we are.

5 CHAIRPERSON MILLER: What's the
6 name of that office?

7 [Off-microphone comment]

8 CHAIRPERSON MILLER: Well, did you
9 ask them about this situation?

10 MS. BOLLING: We intend to refer
11 this matter to them after this proceeding.

12 CHAIRPERSON MILLER: Okay. It
13 seems like they may be the experts on this
14 issue. But let's hear from the Appellant.

15 MR. BROWN: Thank you, Madam
16 Chairman. And I think you need to look at
17 this--the subdivision is unrelated--the
18 subdivision plat process and this one, in
19 particular, is unrelated in time and substance
20 to the matter which is the subject of this
21 appeal, which is a subsequent building permit
22 application.

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1 The subdivision process--and Mr.
2 Bello is here and he can discuss it in more
3 detail--is a very mechanical process. While
4 the Government keeps saying there's
5 confidential information, it's really a public
6 record process. The information appears on
7 the document itself. So there's no great
8 mystery here. Mr. Bello certainly can testify
9 that as a result of processing a hundred or
10 more subdivision plats a month, as Zoning
11 Administrator, that he did not come into
12 contact with confidential information.

13 The other thing is if you look at
14 the subdivision here, the process began in
15 2004 and was completed by Mr. Bello on
16 February 23rd of 05, and recorded I believe
17 March 6th of 05, shortly after that.

18 That process, which created the
19 current lot, was completed. The book closed,
20 and did not in any way involve the subsequent
21 permits that have been sought and obtained,
22 did not involve the improvements that occurred

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1 on that property, did not involve, in any way,
2 the issues that are before this board.

3 And so that both for time and
4 substance, the two are really unrelated.
5 There's nothing that occurred in the
6 subdivision process that bears on what
7 occurred subsequently, and, in fact, there's
8 no--you know, in this case a permit was
9 obtained subsequently, but that needn't have
10 been the case.

11 I mean, the subdivision process is
12 complete and independent of anything that may
13 or may not occur subsequently.

14 Interestingly, and again, the
15 timing is important as much as the lack of any
16 substance to this argument--Mr. Bello left the
17 government on May 15th, had no involvement,
18 there's been no allegation that he was
19 involved in the subsequent building permit
20 application which was approved July 16th of
21 2005. Months after he left, all the other
22 decisions that are at issue here occurred by

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1 other individuals, subsequent to that.

2 So that from a time perspective,
3 he was not in any way involved in the matters
4 that are at issue here. The government has
5 not raised any objection to the subdivision,
6 I don't think there are any objections to
7 raise to it, and so I think we need to keep
8 focused on what's at issue here, and that his
9 involvement previously is unrelated.

10 CHAIRPERSON MILLER: Let me ask
11 you, when you do the subdivision, do you have
12 in mind how you're going to use the property?
13 Is that a factor which would be related to the
14 permits, later on?

15 MR. BROWN: No, because the
16 subdivision is based on the circumstances that
17 exist at that moment. You're confirming--and
18 Mr. Bello, perhaps if you'd allow him to
19 answer it--but it's a snapshot in time as of
20 the moment the subdivision plat is put before
21 the Zoning Administrator.

22 Mr. Bello.

1 MR. BELLO: Certainly. Good
2 morning, Madam Chair and board members. The
3 subdivision here is a subdivision application
4 that was effected independently. This is not
5 a subdivision that was effected in conjunction
6 with the a building permit application, and
7 there's no such requirement for such.

8 In the process of reviewing the
9 subdivision, the only determination that the
10 Zoning Administrator needs to make is whether
11 the subdivision meets the minimum requirements
12 for the underlying zone, particularly when
13 that subdivision is affected independently.

14 So the sole determination at that
15 time is whether the subdivision is in
16 compliance with the zoning regulations. I
17 think that the "leap of faith" that DCRA wants
18 the board to make, is that somehow, I had a
19 premonition that an application would be
20 forthcoming at a later date.

21 MR. BROWN: And could I follow up?

22 Mr. Bello, one, you had no

1 premonition, and two, in the process of
2 reviewing this subdivision plat, did you
3 obtain any confidential information of any
4 kind, and--did you?

5 MR. BELLO: Absolutely not.

6 MR. BROWN: And so that there's no
7 information that you gleaned from the
8 subdivision process, that has been utilized by
9 you in this proceeding?

10 MR. BELLO: There's absolutely
11 nothing confidential about a subdivision
12 process. Again, the simple determination that
13 the Zoning Administrator must make is whether
14 that subdivision is in compliance with the
15 zoning regulations and the conditions at that
16 time.

17 CHAIRPERSON MILLER: Mr. Bello,
18 let me ask you this. When you decided to
19 participate in this case, did you seek an
20 opinion from the D.C. office that deals with
21 conflicts of interest, or anything like that,
22 of former employees?

1 MR. BELLO: The simple answer to
2 that is no. Secondly, I don't know that
3 there's a process for an ex-employee to do
4 that. And thirdly, I am not representing the
5 client in this case. I'm only here,
6 participating as an expert witness. But the
7 answer to your question is now.

8 CHAIRPERSON MILLER: Mr. Brown,
9 are you familiar with some body of law that
10 would differentiate--I know that representing,
11 we've been through this before--representing
12 an expert witness, but I don't think it was
13 quite in the same context, where the person
14 may have been involved in a particular case.

15 MR. BROWN: Well, if you go to--
16 and the government did not go into detail in
17 applying the analysis, but it really comes
18 down to a question of timing and substance,
19 and the factual question is what was the
20 timing of the activity and was the matter
21 substantially related, and the citations they
22 do to the CFR, the Code of Federal

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1 Regulations, lays that out.

2 And if you look at--again, going
3 back to--that's the standard, and there is a
4 certain balancing to it. But if you look at
5 that, we have a situation here where the two
6 are not related from a timing perspective.
7 One operation, subdivision, had been
8 completed, and Mr. Bello had terminated his
9 employment with the government, and some
10 unrelated, subsequent event occurred after his
11 departure from the government service.

12 So based on the standard that the
13 government attempted to enunciate, there is no
14 time and substance relationship here, and I
15 think we ought to move on. Certainly, both
16 coming at this late date and without any
17 really substantial nexus between the two
18 events, I think we need to move on.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. This is where I'm at, and I'll say, you
21 know, my board members agree and with DCRA
22 like your response, but I feel like we have an

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1 agency within the D.C. government that has
2 total expertise in this kind of question more
3 than the Zoning Board, and that you've raised
4 an issue that I think we could appreciate
5 their input on. So that would be to bring
6 this specific question to that office, and
7 then submit their report into this record, and
8 we could hold the motion to disqualify in
9 abeyance.

10 MR. GREEN: Madam Chairman, would
11 it be helpful--we have the Zoning
12 Administrator here. He could discuss, for the
13 board's purpose, what's involved in the
14 administrative, deliberative process, when one
15 considers various subdivisions, in general,
16 and certain aspects of this subdivision, in
17 particular. Perhaps it might be helpful to
18 hear from him.

19 CHAIRPERSON MILLER: Okay. I
20 mean, I think that that's true, that Mr. Brown
21 certainly made the argument, and Mr. Bello,
22 that there was a big disconnect between the

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1 subdivision and the building permit, and any
2 information that might carry forward.

3 So if Mr. LeGrant wants to address
4 that briefly, and get that on the record, then
5 we'll have a full record.

6 MR. GREEN: We would like him to,
7 Madam Chairman. Thank you.

8 CHAIRPERSON MILLER: Okay.

9 MR. LEGRANT: Well, in this case,
10 looking at the records, there is a subdivision
11 that was signed off by Mr. Bello concerning
12 this property. My reading of the very small
13 type, I believe it was February 28th, 2005, in
14 which the subdivision was signed off by Mr.
15 Bellow on behalf of the Office of Zoning
16 Administrator.

17 The application for this
18 particular building permit, the initial
19 building permit, was April 12th, 2005, and as
20 Mr. Brown mentioned, Mr. Bellow was in the
21 employ of the Office of Zoning Administrator
22 for about an additional month, until May 15th,

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1 2005.

2 My general experience is if there
3 is a subdivision that is applied for, in many
4 cases not too long after, a development
5 proposal is forthcoming. People normally--
6 they rarely just subdivide a property and
7 don't do anything with that building permit,
8 often follows shortly thereafter.

9 CHAIRPERSON MILLER: But then
10 what? I mean, is there a connection then--
11 were you going to ask another question, Mr.
12 Green?

13 MR. GREEN: Yes, I was, Madam
14 Chair.

15 CHAIRPERSON MILLER: Okay. Go
16 ahead.

17 MR. GREEN: Then Mr. Zoning
18 Administrator, what kind of discussions take
19 place within your office?

20 MR. LEGRANT: Well, I think as
21 both Mr. Bellow and Mr. Brown noted, we are
22 guided by the zoning regulations as to--in the

1 case of a subdivision we look to see what are
2 the minimum lot width, minimum lot area, and
3 so forth, requirements. Nonetheless, if there
4 is a subdivision and a building permit that
5 are either simultaneously before us, or in a
6 sequence separated by a short period of time,
7 or if we anticipate--oftentimes a developer or
8 builder will say, yeah, I want to build
9 something--that may inform our discussion to
10 say, okay, well, yeah, that building permit's
11 coming on this. It doesn't change, I don't
12 think--the analysis for the subdivision has to
13 stand on its own but it's helpful to
14 understand the full context of what's
15 happening.

16 MR. GREEN: Do you get into any
17 discussion, sir, of the purposes for which
18 these subdivisions are sought or contemplated?
19 Do any discussion of that sort take place?

20 MR. LEGRANT: Well, in regards to,
21 in some of our residential zoning districts,
22 lot sizes are driven, minimum lot sizes are

1 driven on the type of housing or use that's
2 proposed. You have different lot sizes, for
3 example, in the R-4 District, if it's a
4 rowhouse versus a semidetached, I believe.

5 So if somebody comes in and
6 subdivides something, then if they say I want
7 this size lot, that's going to ultimately help
8 drive what can be built there.

9 If they make a lot that's too
10 small for a semidetached, then by virtue of
11 creating that lot size, they may in fact have
12 it in--it has to be used for a row dwelling,
13 for example.

14 So some of those aspects are taken
15 into account.

16 MR. GREEN: So permissibility and
17 impermissibility are discussed with your
18 staff; is that right, sir?

19 MR. LEGRANT: Yes.

20 MR. GREEN: And at some point,
21 these discussions, are they ultimately told to
22 the developer, as to how far he or she can

1 take their development?

2 MR. LEGRANT: Well, obviously, if
3 a certain lot configuration is approved, we
4 try to be "up front" with an Applicant, just
5 to advise them, oh, okay, if you get a lot
6 this size, this is what you can do, because
7 the regulations allow this type of development
8 for a subsequent building application.

9 MR. GREEN: One final question.
10 Do you also get into discussions as to exactly
11 what, or how close to the line, lawfully, a
12 developer can go, before they are considered
13 in a territory that's impermissible, thereby
14 having to go to the BZA for permission to
15 continue with their project?

16 Do these types of discussions take
17 place?

18 MR. LEGRANT: Typically, that
19 discussion occurs at the building permit
20 stage, when somebody comes in with an actual
21 application. We advise people of all the
22 requirements, subsequent, that apply to a

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1 building, set-backs, lot occupancy, etcetera.
2 Certainly in a subdivision context, if a
3 Applicant's not aware, I feel it's our duty to
4 be forthcoming and explain, well, if you do
5 this, then after you put the side yard, for
6 example, then this is what you're left over
7 with. So they're fully informed as to what
8 they're subdividing for.

9 MR. GREEN: One more question,
10 ma'am.

11 Do you, sir, also get into
12 discussions as to hidden possibilities that
13 the developer might engage in conduct, or
14 practices, that the ZA and his staff just
15 might not notice?

16 MR. BROWN: I object to the
17 question. I'm not so sure it leads us
18 anywhere.

19 MR. GREEN: Well, what's his basis
20 for objection?

21 CHAIRPERSON MILLER: Are you
22 asking Mr. LeGrant if he is going to tell--

1 MR. GREEN: Sure.

2 CHAIRPERSON MILLER: --how they
3 can avoid the law, so that DCRA won't notice?

4 MR. GREEN: No; no. I'm asking
5 about the general discussions that take place.
6 What we have tried to establish, Madam
7 Chairman, is that there is a administrative,
8 deliberative process, that invites free and
9 frank discussion among the staff, which would
10 include what constitutes a violation of the
11 law, what would an individual--what kind of
12 conduct an individual would engage in, that
13 just might cross the line but not might be
14 noticed by the Zoning Administrator and his
15 staff, and what they have to be aware of.
16 That's the question.

17 That's the discussion that takes
18 place in any deliberative process that's open
19 to free and frank discussion.

20 And our contention is that the
21 Zoning Administrator and his staff engages in
22 these types of discussions.

1 CHAIRPERSON MILLER: So you're
2 asking Mr. LeGrant to confirm that that
3 occurs?

4 MR. GREEN: Yes; absolutely.

5 MR. LEGRANT: I would say this.
6 The responsibility of the Zoning Administrator
7 is to advise what the law is, and if somebody
8 then asks, well, you know, they make proper
9 scenarios and we will respond in kind. You
10 know, the, quote, unquote, the line is what
11 the regulations state.

12 CHAIRPERSON MILLER: Okay.

13 MR. GREEN: I don't have any other
14 questions. Thank you.

15 CHAIRPERSON MILLER: I have a
16 general question and that is let's say all
17 this is true, you know, that Mr. Bello was
18 engaged in these conversations and it's
19 related to the building permit.

20 How does that exactly lead to one,
21 our disqualifying him as an expert witness in
22 zoning, and just to make it--I understand that

1 you say it's tainted, and I understand that
2 you say that there are ethical concerns.

3 But even if we get an opinion from
4 that office, that there's an ethical breach
5 here, or whatever, I just want you to
6 specifically say now, in this zoning
7 proceeding, why that automatically--or why
8 that should lead to disqualification and/or
9 striking of the testimony.

10 MR. GREEN: Go ahead.

11 CHAIRPERSON MILLER: Or whether or
12 not the board recognizes that a witness has an
13 interest in the case, or whatever, and then
14 waive that.

15 MS. BOLLING: In response, Madam
16 Chair, we recognize that Mr. Bellow is
17 absolutely, in general, a zoning expert.
18 We're not trying to take that designation away
19 from him. We're saying in this specific case,
20 where he has specific knowledge on this
21 project that was owned and is owned by the
22 same individual company, that he cannot be

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1 used in a position adverse to the government
2 before this board.

3 There's case law out there that
4 just "flat out" bars it. And that's what our
5 position is. That's why, based upon the
6 administrative deliberative process that has
7 been explained, and his participation in the
8 very first step of this project with the
9 subdivision, that he cannot be an expert for
10 Morse Street.

11 CHAIRPERSON MILLER: Okay, and the
12 cases that you cited in your motion are the
13 ones you're relying on for that point.

14 MS. BOLLING: That is true. Yes.

15 CHAIRPERSON MILLER: Okay.

16 MR. BROWN: Madam Chairman, could
17 I allow Mr. Bello to respond, because Mr.
18 LeGrant--and he was dealing in a hypothetical
19 situation, which can and cannot be helpful.
20 But I think Mr. Bellow can testify to more
21 specific circumstances, and again, the
22 critical element is timing. Two separate

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1 events. One occurred and was completed long
2 before the events that are before this board.

3 And there's no substantial link,
4 substantive link between the subdivision and
5 what's occurring now.

6 CHAIRPERSON MILLER: Mr. Brown,
7 yes, I think that that's fair, and we want to
8 get a full record on this.

9 But I just want to ask you. You
10 keep saying that, you know, timing is very
11 short, but when we look at the chronology
12 that's in your opposition, it doesn't look
13 that long a period of time.

14 If he left in--let's see. He left
15 in--

16 MR. BROWN: He left May 15th of
17 2005.

18 CHAIRPERSON MILLER: Left in May.
19 Okay. And the permit was filed in April.

20 MR. BROWN: Well, the subdivision
21 plat was completed, for zoning purposes,
22 February 23rd, 2005. It went through the

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1 mechanics and was recorded March 6th of 2005.

2 So that process was--for purposes
3 of Mr. Bellow, that process was completed in
4 February of 05, and the building permit was
5 filed on April 12th, 2005. Zoning is not the
6 first step in the building permit process, and
7 you'll see, in an exhibit previously
8 submitted, that the building permit
9 application filed on April 12th was not
10 considered and approved by Zoning until July
11 16th of 05, a little more than two months
12 after Mr. Bello left.

13 The permit wasn't issued until
14 September of 05. But Mr. Bello would
15 certainly--and one of the things I wanted him
16 to clarify is that when he approved the
17 subdivision, it was in the context, not of any
18 future plans, he had no knowledge about any
19 future plans, or quite frankly, wouldn't have
20 cared about any future plans in reviewing the
21 subdivision plat, he had no knowledge of the
22 building permit that was yet to come, he had

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1 no knowledge of--

2 CHAIRPERSON MILLER: Let him say.
3 Why don't you let him testify.

4 Mr. LeGrant has said that when the
5 Zoning Administrator looks at subdivision
6 plots, they do consider what it's going to be
7 used for, usually, in discussions with the
8 Applicant.

9 MR. BELLO: Well, I think what Mr.
10 LeGrant has described as an extremely
11 magnanimous Zoning Division, one that I was
12 not used to, first of all, there is an
13 executive mayor's order which makes it the
14 sole responsibility of the Zoning
15 Administrator to approve subdivisions.

16 So the idea that you would engage
17 in all these various discussions about what's
18 to happen at some future date is really, to
19 me, beyond belief.

20 The consideration of the Zoning
21 Administrator in a subdivision process is very
22 simple. In this particular case, there was an

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1 existing structure on the building. So there
2 will be two considerations with the Zoning
3 Administrator, which would not have required
4 these kind of deliberations that's been
5 described here with junior staff.

6 First of all, the existing lot had
7 an improvement on it. That's one. Two--

8 CHAIRPERSON MILLER: Sorry. Could
9 you repeat that.

10 MR. BELLO: The existing lot had
11 an improvement--

12 CHAIRPERSON MILLER: Mr. Bello,
13 could you repeat that again. I'm sorry.

14 MR. BELLO: The existing lot had
15 an improvement on it. That's one. In the R-4
16 Zone, your consideration would be, in
17 considering a subdivision, one, whether the
18 subdivision was creating a nonconformity not
19 in existence at the time of the application,
20 and whether or not the minimum lot size
21 requirements for the underlying zone were
22 complied with.

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1 In this particular case, the
2 subdivision was expanding the lot, was not
3 being considered to reduce the lot size. So,
4 in fact, were increasing conformity of the
5 existing condition. This one would have been
6 a no-brainer, not subject to any kind of
7 substantive deliberation as described here.

8 COMMISSIONER TURNBULL: I wonder
9 if I might ask a question. Prior to the
10 subdivision, were there three lots being
11 considered?

12 MR. BELLO: I don't have
13 recollection of that.

14 COMMISSIONER TURNBULL: I mean,
15 I'm looking on site C of the original one. It
16 sort a shows three lots. Lot 810, lot 816,
17 lot 812. Were those being combined, then,
18 into one lot?

19 MR. BELLO: From what I'm looking
20 at, obviously one of the lots would have
21 constituted an alley lot. So, in fact, this
22 subdivision was bringing into much better

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1 conformity the existing condition of the site.

2 COMMISSIONER TURNBULL: Except the
3 lot is three times the size of most of the
4 lots on that block.

5 MR. BELLO: Well, I mean, the
6 request for a subdivision, again, the Zoning
7 Administrator's consideration of the minimum
8 standards of the zoning regulations. There
9 are no limitations on lot size in any zone,
10 whatsoever. You can always have a bigger lot
11 than the minimum required. You can always
12 provide more parking than is required.

13 There's no limitation in the
14 zoning regulations that says you cannot exceed
15 the minimum requirements. You just cannot,
16 not be in compliance with the minimum
17 standards.

18 COMMISSIONER TURNBULL: It just
19 seems that this is a rather large plat for
20 this area.

21 MR. BROWN: Could I follow up?
22 Mr. Bello, a property owner, it would be

1 advantageous, putting aside any development
2 plans, from a real estate tax perspective
3 wouldn't it be advantageous for a property
4 owner to consolidate three separate lots in--

5 MR. BELLO: Well, that's--even
6 though not a zoning issue, that's one of the
7 reasons that people effect subdivisions, in
8 fact.

9 MR. BROWN: And to avoid part of
10 the property being classified as vacant and
11 then taxed at \$5 a square foot?

12 MR. BELLO: At a higher rate.
13 That's correct.

14 MR. BROWN: And you could obtain a
15 subdivision for that, or other purposes,
16 without any specific plan to develop the
17 property?

18 MR. BELLO: That occurs all the
19 time. The fact of a subdivision really does
20 not necessarily go to the fact that an
21 improvement or some kind of project is
22 forthcoming.

1 MR. BROWN: And when you approved
2 the subdivision in February of 05, you had no
3 knowledge of any subsequent plans for this
4 property?

5 MR. BELLO: Absolutely not.

6 MR. BROWN: And before you left
7 the Zoning Administrator's Office in May 2005,
8 did you obtain any information or have any
9 knowledge about the building permit
10 application that was filed on April 12th of
11 2005?

12 MR. BELLO: Absolutely not. In
13 fact to describe the internal process at DCRA,
14 I think which is generally known to the
15 general public--and this application bears
16 that out. An application that's filed, at the
17 date that this is filed, would not have made
18 it to zoning review in a matter of weeks or
19 months, which would go beyond my last day of
20 engagement with the District government.

21 CHAIRPERSON MILLER: Okay. I
22 think we've covered it. I don't hear that the

1 parties are seeking to cross your witnesses on
2 this. I don't think it's necessary, unless
3 you do. Any of the parties? I mean, each of
4 you has had a witness talk to the point.

5 MR. BROWN: Madam Chair, we don't
6 have any need to.

7 CHAIRPERSON MILLER: You ready?

8 MS. WOOLRIDGE: Yes, Madam Chair.
9 I'm now ready. I just have one question for
10 Mr. LeGrant. It's very brief.

11 CHAIRPERSON MILLER: Okay. Then
12 we'll finish this segment of our appeal.

13 MS. WOOLRIDGE: For clarification,
14 I believe Mr. Bello--or I'm sorry--counsel
15 Brown indicated that Mr. Bello signed on
16 March--excuse me--February 2005 for the
17 subdivision, and when did the Surveyor's
18 Office approve it?

19 MR. LEGRANT: According to the
20 record I have before me, March 3rd, 2005, is
21 when the Office of Surveyor signed off on the
22 subdivision.

1 MS. WOOLRIDGE: And when was the
2 application for the building permit filed with
3 DCRA?

4 MR. LEGRANT: The application for
5 the building permit was filed on April 12th,
6 2005.

7 MS. WOOLRIDGE: Which is less than
8 one month.

9 MR. LEGRANT: It's a little bit
10 over a month later.

11 MS. WOOLRIDGE: So the time--

12 CHAIRPERSON MILLER: Is this one
13 question, Ms. Woolridge? We do have the
14 chronology right in front of us. All of us
15 have that.

16 MS. WOOLRIDGE: Okay; thank you.

17 CHAIRPERSON MILLER: Do you want
18 to get to your question? Is there another
19 question or is that it?

20 MS. WOOLRIDGE: I want to finish
21 it. I'm finished.

22 CHAIRPERSON MILLER: Okay.

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1 MS. WOOLRIDGE: Thank you, Your
2 Honor.

3 CHAIRPERSON MILLER: Okay. I
4 think it's a consensus of the board that we
5 hold this motion in abeyance, that we leave
6 the record open for that one report, if DCRA
7 is going to seek that from the office in D.C.
8 government that has the expertise in dealing
9 with conflicts of interest, and matters about
10 former D.C. employees and what they can do.

11 However, I do want to say that we
12 wanted to get a full record today of any
13 evidence bearing on the subject, because I
14 know it's not exactly the same issue as to
15 what the office may find out is unethical or
16 is ethical, and participation as an expert
17 witness in a zoning proceedings.

18 We just feel that that will give
19 us all the information we need, and it would
20 be useful to have their opinion on that aspect
21 of it.

22 So what we'll do is we'll leave

1 the record open for that. Hopefully we'll
2 finish the appeal today and we'll leave the
3 record open for various things and that will
4 be one of them.

5 MR. BROWN: Madam Chairman, could
6 we set some sort of time limit on that. The
7 government works--we all work well with
8 deadlines--so that we're not leaving the
9 record open for this matter indefinitely. Two
10 weeks would be sufficient. Hopefully, that
11 could be accomplished. This is not a very
12 complicated issue and I think we've laid out
13 the chronology and the facts, so that--

14 CHAIRPERSON MILLER: My thought
15 was--we could deal with this now, if we want--
16 that, you know, when we finish the appeal
17 case, we would be setting deadlines for
18 findings of fact, conclusions of law, any
19 other kind of documents, and perhaps we can
20 look at it, the whole picture then, as to when
21 this should come in, and I don't know whether
22 you're going to want to respond to that report

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1 or not. You know. So yes, it's just going to
2 be one, you know, D.C. government report.

3 MR. BROWN: But just recognizing
4 that it shouldn't be an open-ended
5 documentation.

6 CHAIRPERSON MILLER: No, it won't
7 be open-ended; right. So why don't we just
8 look at the whole picture, maybe, when we get
9 to the end of it, unless DCRA wants to agree
10 to some deadline now of two weeks or--

11 MR. BROWN: We'll wait, Madam
12 Chair.

13 CHAIRPERSON MILLER: Let's look at
14 the whole picture, then, and see what's coming
15 in and how much time we have. Okay.

16 I believe, when we left off, the
17 Appellant had concluded their case, and I
18 think we may have a few board questions before
19 we move to DCRA, that we'd like to start with.

20 So I believe Mr. Dettman has a
21 question or two.

22 MEMBER DETTMAN: Thank you, Madam

1 Chair. Good morning. In reviewing the
2 supplemental filings, as well as the
3 information that was already in the record,
4 looking over the information that was included
5 in DCRA's motion to dismiss, which was
6 received by the Office of Zoning on October
7 1st, I was looking through the material that
8 was submitted as part of the original building
9 permit application and I just needed some
10 clarification on a couple things, and perhaps
11 these are questions that are most appropriate
12 for Mr. Demuren.

13 I'm looking at Drawing S-1 which
14 shows the foundation plan.

15 MR. BROWN: Hold on. We've just
16 got to get to the right page. S-1?

17 MEMBER DETTMAN: Drawing S-1.
18 It's labeled Foundation Plan.

19 MR. BROWN: Okay.

20 MEMBER DETTMAN: And it appears
21 that you indicate the foundation of the
22 existing dwelling, and you also indicate what

1 would be considered new foundation, and
2 they're sort of--they're pochade differently.

3 So you can identify that you're at
4 least saving the foundation of the existing
5 structure; is that correct?

6 MR. DEMUREN: Yes.

7 MEMBER DETTMAN: And then if you
8 turn over to Drawing A-4, which shows the
9 front elevation--it's actually past the
10 foundation plan. It might be the other way.

11 MR. BROWN: I've probably got them
12 out of order.

13 MEMBER DETTMAN: Okay. The front
14 elevation. This is my observation but--

15 MR. BROWN: You said A-4?

16 MEMBER DETTMAN: A-4. Front
17 elevation.

18 MR. BROWN: I have a different A-
19 4. A-4.1, I think.

20 MEMBER DETTMAN: Okay.

21 MR. BROWN: Yes.

22 MEMBER DETTMAN: Now this is my

1 observation, but I don't see any semblance of
2 the existing structure, referring to that
3 picture that's indicated over there in the
4 "before" picture.

5 So I could draw the observation
6 that your original intent was to save the
7 foundation of the existing structure but that
8 was the only thing you planned on saving, and
9 that the walls of the existing structure were
10 not to remain. They were not part of the
11 original application.

12 And so maybe I'm drawing an
13 incorrect observation. I'd like to hear your
14 response to my observation.

15 MR. DEMUREN: Yes. Thank you.
16 The original plan was to--if you look at the
17 facade, we were going to put bricks instead of
18 the stucco. The structure was to be there but
19 we put bricks on to the structure that is
20 there, with the brick tiles and the tieback on
21 it, and then we have a uniform face.

22 MEMBER DETTMAN: So the foundation

1 and the framing of the original structure was
2 to be saved.

3 MR. DEMUREN: Yes.

4 MEMBER DETTMAN: But the window
5 pattern, the facade materials, everything
6 else, were to be changed?

7 MR. DEMUREN: No, it wouldn't be
8 changed but we will put, we will add it on
9 there. So where you look at it from front,
10 the bricks will be from the old to the new.
11 But behind the bricks, if you open behind the
12 bricks you still have the stucco.

13 That's what was planned. Yes. Like a
14 new skin.

15 MEMBER DETTMAN: Again, looking at
16 the front elevation, I don't see the same
17 window pattern that exists on the front of the
18 existing structure, and so if you're saying
19 that all you're doing is applying a new skin,
20 that's different than actually removing all
21 the windows, removing the materials on the
22 front, and actually reorganizing the pattern,

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1 the fenestration of the building.

2 MR. DEMUREN: I believe--I mean, I
3 might be wrong--but I believe that the
4 location of the windows can be moved, left,
5 right, and once the window itself is braced
6 and structurally restored, all the other
7 framing will still be there, just moved, you
8 know, to suit the new design where it's
9 required.

10 MEMBER DETTMAN: Okay. So the
11 foundation and the framing of the existing
12 structure--

13 MR. DEMUREN: Yes.

14 MEMBER DETTMAN: --was to be
15 retained?

16 MR. DEMUREN: Yes.

17 MEMBER DETTMAN: That was part of
18 the original application.

19 MR. DEMUREN: Yes.

20 MEMBER DETTMAN: Okay. thank you.

21 CHAIRPERSON MILLER: Any other
22 board questions before we move to DCRA?

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1 Is there any cross on that, those
2 questions? Okay.

3 Mr. Brown.

4 MR. BROWN: Yes. And I was going
5 to bring it up, that we referred to this
6 exhibit. I have a--and I referenced it,
7 briefly, in haste, in my opposition to the
8 motion to disqualify.

9 But I have some lingering
10 objections to the government and their first
11 and second supplemental evidence and witness
12 list. One of the board's concerns, when we
13 started this matter, is the government's
14 inability to file it timely, and yet they've
15 come back and their evidence and witness list
16 is actually, I think probably three times as
17 extensive as their original filing, which in
18 itself was untimely, and I don't think that's
19 appropriate, and I think that the government
20 has had the opportunity to listen to--rather
21 than preparing for the original hearing as the
22 were supposed to, they've had the opportunity

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1 to sit back and keep supplementing the record,
2 and which puts the board, obviously, at a
3 disadvantage.

4 I mean, I look at this exhibit
5 here and there are things on that, certainly
6 the board itself, I've never seen before, and
7 there's information on that that I've never
8 seen before. Yet it's all of a sudden, now,
9 before the board, and if you look at October
10 16th--or October 12th, long after the first
11 hearing date, they're proposing six additional
12 witnesses and a whole bunch of additional
13 documents.

14 And then last Friday, I was handed
15 a second supplemental evidence and witness
16 list listing more documents and at least five
17 or six more witnesses.

18 So we just keep getting bigger and
19 bigger, you know, long after the government
20 should have put their case together.

21 CHAIRPERSON MILLER: Okay. Let's
22 get to the specifics, because I know they have

1 been supplementing, I'm sure, but not all of
2 these witnesses are new. Who is new and who
3 would you be prejudiced by?

4 I don't think the board is
5 inclined to just not accept it, period.

6 MR. BROWN: Well, if you look at--
7 and this is what was filed on October 12th,
8 and it starts with the first additional--

9 CHAIRPERSON MILLER: Wait. This
10 October 12th, it's my recollection also that
11 at the last hearing, that DCRA indicated that
12 they would be supplementing their witness and
13 evidence list, and I didn't hear you object to
14 it at that point. Am I--

15 MR. BROWN: Well, I'm not so sure
16 I was asked whether I objected or not.

17 CHAIRPERSON MILLER: You don't
18 always need to be asked that, though, do you?

19 MR. GREEN: As an experienced
20 litigator, I'm quite sure that he knows when
21 to object.

22 MR. BROWN: And it hadn't

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1 happened, quite frankly, and--

2 CHAIRPERSON MILLER: Okay. This
3 happened over two weeks ago; right? October
4 12th, you're talking about? You have an
5 objection to that.

6 MR. BROWN: Yes.

7 CHAIRPERSON MILLER: That happened
8 over two weeks ago and you're objecting now.

9 MR. BROWN: I mean, one, I didn't
10 create, decide to create another piece of
11 paper. I got another witness list Friday and
12 I didn't have time to create another piece of
13 paper. But if you look at the witness list,
14 Lenny Douglas, there's no reason why he wasn't
15 on the original list, because his decision is
16 part of the--and I don't see Mr.--oh, Mr.
17 Douglas is here.

18 But I didn't see why he shouldn't
19 have been on the original list, that was
20 untimely to begin with, since his decision is
21 one that's being appealed from. Neil Letrin,
22 who I know, I'm not so sure--I'm not aware of

1 any involvement he had in these matters.

2 Bill Davidson, chief electrical
3 inspector I know as well, but I'm not so sure
4 what involvement he, or Yvonne Rockett, or
5 Colonious Anderson, or Mr. Shelton had in this
6 matter, and we just seem to be broadening the
7 scope without any kind of focus on what we're
8 doing, and again, it keeps coming after the
9 fact.

10 CHAIRPERSON MILLER: Let's just
11 "cut to the chase." Are all of them new?
12 None of them are on any witness list prior to
13 October 12th? Is that the case?

14 MR. BROWN: That's correct.

15 CHAIRPERSON MILLER: Okay. But
16 you knew they were going to be submitting a
17 witness list and--

18 MR. BROWN: I did not know that
19 they were going to be submitting--

20 CHAIRPERSON MILLER: They had zero
21 witnesses before that, so you're saying they--

22 MR. BROWN: No. Originally, they

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1 submitted a witness list--again, this was
2 submitted on the second, or the first, the day
3 before, I don't know when the board got it--
4 but that witness list included one witness,
5 Matthew LeGrant.

6 CHAIRPERSON MILLER: What exhibit
7 number is that? Do you have that?

8 MR. BROWN: I don't reference it
9 by exhibit number.

10 CHAIRPERSON MILLER: Okay.

11 MR. BROWN: But I mean, it's got a
12 certificate of service. It doesn't have a
13 date on it.

14 CHAIRPERSON MILLER: Okay.

15 MR. BROWN: It was sent to me by
16 e-mail on the first. As you recall, their
17 motion to dismiss was filed at 5:49 p.m. on
18 October 1st.

19 CHAIRPERSON MILLER: Right. We
20 dealt with that. So if your position all
21 these witnesses should be precluded from
22 testifying?

1 MR. BROWN: On the October 12th,
2 the six listed there, as well as the ones
3 listed on the October 26th list that came in
4 last Friday. And I don't even know if the
5 board has that, quite frankly.

6 If you--

7 CHAIRPERSON MILLER: October 26th?
8 Is that what you said?

9 MR. BROWN: That's when it was
10 given to me. I don't know when it was filed
11 with the board. But you're listing five
12 additional witnesses and documents.

13 CHAIRPERSON MILLER: Mr. Green,
14 I'm just looking at the October 26th one. Are
15 you planning on putting on 11 witnesses?

16 MR. GREEN: Madam Chairman, let me
17 just say this briefly, in response to what
18 counsel has alluded to with regard to
19 witnesses and any documents.

20 First of all, one plans on a
21 standard simple presentation. However, if the
22 witnesses have ballooned, it's because of

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1 counsel and his presentation. Certainly the
2 government has a right to rebut. The
3 witnesses constitute the rebuttal case. The
4 witnesses and the documentation constitute
5 what was brought out during the course of the
6 hearing.

7 We have to respond. We feel that
8 this board can't make a full and satisfactory
9 review of the process without full
10 information. And in order to get it, the
11 government has to do what? Put on its
12 rebuttal case. That's what the witnesses
13 constitute. That's what the additional
14 documents constitute. Counsel knows that.

15 MR. BROWN: Madam Chair, I
16 disagree. The government isn't there to put
17 on a rebuttal case. The government is there
18 to defend their decision.

19 CHAIRPERSON MILLER: All the more
20 so, really. I mean, they're the defendants.
21 They ought to be able to defend themselves,
22 so--

1 MR. BROWN: Well, that's right--

2 CHAIRPERSON MILLER: Unless
3 there's some precedent--

4 MR. GREEN: The government is not
5 below the law, Your Honor.

6 MR. BROWN: But the whole process
7 is set up--and the Chair expressed her
8 displeasure about the untimeliness of the
9 October 1st filing. The process is set up so
10 that--and we should have had a one-day case,
11 where we put on our case, the government puts
12 on their case, and then we close. As a result
13 of circumstances, the government wasn't
14 prepared, apparently wasn't prepared to put on
15 their case on the original hearing, and they
16 now keep taking advantage of the open door
17 that circumstances have permitted, to catch up
18 and try and put on their case. And that's not
19 how this process works.

20 It's not appropriate. It
21 continues to--put aside my difficulties with
22 it. It keeps putting the board in a situation

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1 where they're trying to get their hands around
2 a moving target, and the government has a
3 responsibility in this case, and that
4 responsibility was as to the October 2nd
5 hearing, and not continuing to expand the
6 scope of their presentation.

7 There were no surprises. I mean,
8 if you read my appeal, my prehearing statement
9 and motion for summary judgment, there were no
10 surprises in my presentation by my witnesses,
11 and the government had everything before them
12 to prepare, in advance.

13 Whether they bothered to read that
14 document or not, I don't know; but clearly,
15 there were no surprises in my presentation,
16 whatsoever. And yet the government seems to
17 want to come back and put their case together
18 a little bit here and a little bit here, and
19 that's prejudicial to this process, and we're
20 now looking at 11 witnesses, and I mean, I
21 don't see the validity or the necessity of
22 any, or most of these witnesses.

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1 The most striking is Mr. Douglas.
2 The government knew that I was appealing his
3 decision but chose, or decided not to put him
4 on their original witness list. I mean, they
5 do that at their own risk, not at the board's
6 and my risk.

7 CHAIRPERSON MILLER: Okay. Mr.
8 Brown, I think we're going to need to move on.
9 I mean, when I hear you say that--

10 MS. WOOLRIDGE: Madam Chair, may I
11 respond?

12 CHAIRPERSON MILLER: What?

13 MS. WOOLRIDGE: May I respond?

14 CHAIRPERSON MILLER: Briefly,
15 cause we're never going to get to the appeal.

16 MS. WOOLRIDGE: I'll be brief.

17 CHAIRPERSON MILLER: Okay.

18 MS. WOOLRIDGE: The Appellant's
19 counsel is absolutely incorrect.

20 CHAIRPERSON MILLER: I don't think
21 I can hear you.

22 MS. WOOLRIDGE: Appellant's

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1 counsel is incorrect. When we had the
2 hearing, or commenced with the hearing on
3 October the 1st, and Appellant's counsel
4 indicated that he wanted to amend the appeal,
5 the government received the motion to amend to
6 include Mr. Bello's affidavit, and we didn't
7 object to that.

8 When counsel indicated that they
9 had filed a motion to--or included in this
10 appeal the Appellant's also related appeal and
11 motion to amend the pending appeal to include
12 the revocation of the permit, we did not
13 receive--we did not receive that notice
14 requesting an amendment of the appeal.

15 When we got here, of course we
16 didn't have anyone here to respond to the
17 revocation of the permit. We didn't receive
18 it. And as I spoke with counsel, usually
19 counsel will e-mail to the government a copy
20 of any documents he's filing with any
21 tribunal. We didn't receive it.

22 I didn't hear back from counsel as

1 to whether or not he had e-mailed it. Usually
2 he'll e-mail and mail a copy. Jill Stern, the
3 General Counsel, and usually myself, or
4 whomever's participating in the case, we
5 receive a copy of it.

6 We went as far as going to the
7 Office of Administrative Hearings to see if
8 they received our filings, because, at times,
9 the courier for respondent's counsel had filed
10 documents at another office, and I went there,
11 they said no, they did not receive this
12 particular appeal for us or the amendment to
13 the appeal.

14 That's why we didn't have any of
15 those witnesses there that day. We were
16 shocked to learn that he had filed it. We
17 didn't know. We thought he was here just for
18 the zoning determination appeal, his letter,
19 and as far as the witnesses, that all the
20 witnesses will be called, like--of course you
21 know that Neil Letrin is not there because he
22 indicated at the last hearing that he would

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1 not be able to be here. Robert Shelton will
2 not be called. Also on the document that was
3 filed on October the 26th, Chris Alexander
4 will not be called, and Henry Thomas. Both of
5 them were unable to be here today.

6 And for the record, respondent
7 filed--excuse me--not respondent. Appellant's
8 counsel filed a document, I believe it was
9 5:03 last night, and we just told him to e-
10 mail it to us, and that was after the time, it
11 was after close of business and we accepted
12 it. His response to the government's motion
13 to disqualify Mr. Toye Bello. And that was
14 after the time period.

15 MR. BROWN: Madam Chairman, if I
16 could, I've sent up to the board--this is
17 important because we need to put it in some
18 kind of proper framework.

19 I've sent up to the board a copy
20 of an e-mail acknowledgement of August 9th,
21 where my secretary sent to Jill Stern and
22 Doris Parker-Woolridge my motion to amend, to

1 include the notice to revoke. The document
2 was also sent by first class mail. DCRA
3 apparently can't get their first class mail in
4 a timely manner.

5 We've gone through that in other
6 contexts. But it was e-mailed to Ms.
7 Woolridge and her boss, Ms. Stern.

8 But also, more importantly, if you
9 go to the government's October 1 filing, their
10 motion to dismiss, and if you go to page three
11 of that document, the second full paragraph,
12 it says--and this is their document.

13 "On April 20th, Morse Street
14 appealed the Zoning Administrator's decision--
15 blah, blah, blah, blah, blah.

16 "On August 9th, 2007, Morse Street
17 amended its appeal to also include the
18 emergency demolition permit."

19 On October 1, this document that
20 they didn't have any knowledge of they're
21 referencing in their own document.

22 So again, DCRA has to get in this

1 ball game and act in a timely manner, and
2 every time that they don't, we're now having
3 this discussion because they can't see to
4 respond to the documents. They can't seem to
5 file timely, and we're now, you know, well
6 into this, and the witness list keeps getting
7 bigger, and I don't think that's appropriate.

8 I think as we go through the
9 witnesses, we need to be very careful--and I'd
10 like to move on cause we need to finish this
11 hearing--we need to look at the witnesses and
12 look at them very carefully, for the validity
13 or the necessity of having those witnesses.

14 Because in looking at the 11
15 people referenced, I don't see a whole lot of
16 need for those witnesses, given what is the
17 fairly narrow substance here. So while I've
18 made my objections clear for the record, I
19 think as we move forward, it may be a better
20 practice to move forward and be very
21 circumspect on how broadly we allow this to
22 move forward.

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1 But certainly the government's had
2 plenty of notice on this.

3 CHAIRPERSON MILLER: Okay, I do
4 think we do need to move forward, and I mean,
5 I would agree that DCRA could be more timely.
6 However, I do recall that at our last hearing
7 everyone was put on notice that they were
8 going to be submitting, I believe, if my
9 memory services me correctly, a witness list,
10 a supplemental witness list, and that
11 certainly goes to the October 12th one, in
12 which it was filed, you know, at least two
13 weeks before this hearing.

14 So I think that the Appellant had
15 time to consider the witnesses on that list
16 and how to proceed here, and prepare. And
17 also most of them are no surprises to the
18 witness--from what I understand.

19 And the other one is much later
20 and we can cross that bridge when we get to
21 it, but they seem like not complicated
22 testimony, I wouldn't expect from--I think

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1 they're from neighbors or whatever.

2 MS. WOOLRIDGE: Yes, they were
3 present at the last hearing and--

4 CHAIRPERSON MILLER: Okay. So why
5 don't we proceed, and if Appellant has an
6 objection, you know, with respect to a certain
7 witness, how they're very prejudiced or they
8 need to supplement in some way, we'll consider
9 it then.

10 So unless m board has other
11 thoughts on this? Okay. Then let's proceed
12 with DCRA.

13 MS. WOOLRIDGE: Thank you, Your
14 Honor. We want to call as our first witness
15 Laniese Lee.

16 MR. BROWN: And Madam Chairman, I
17 don't want to try to interject myself in how
18 they order their case, but it seems like we're
19 starting from the rear, forward.

20 CHAIRPERSON MILLER: Mr. Brown,
21 it's their case.

22 MR. BROWN: Well, I'm trying to be

1 efficient. My biggest concern is that at the
2 end of the day, we don't finish today--

3 CHAIRPERSON MILLER: I think we
4 might not finish if we don't get started.

5 MS. WOOLRIDGE: Thank you, Madam
6 Chair.

7 Good morning, Ms. Lee.

8 MS. LEE: Good morning.

9 MS. WOOLRIDGE: Would you please
10 state your full name for the record.

11 MS. LEE: Good morning. My name
12 is Laniese Marie Lee.

13 MS. WOOLRIDGE: And where do you
14 presently reside?

15 MS. LEE: 1235 Morse Street, N.E.k

16 CHAIRPERSON MILLER: I just want
17 to say something else. We haven't been real
18 stringent in this case but we are trying to--
19 the rules say 60 minutes, total, for the case,
20 not including cross examination, not including
21 board questions. So just keep that in mind.

22 MS. WOOLRIDGE: Thank you, Madam

1 Chair. Where do you reside?

2 MS. LEE: 1235 Morse street, N.E.

3 MS. WOOLRIDGE: How are you
4 familiar with 1233 Morse Street, N.E.?

5 MS. LEE: It's the house--well, it
6 was the house right next door to me.

7 MS. WOOLRIDGE: It as the house
8 next door to you?

9 MS. LEE: Yes.

10 MS. WOOLRIDGE: Okay. Can you
11 tell us what happened to the house, as you
12 know it, in February of 2006.

13 MS. LEE: Okay. Basically, there
14 was one of a large, like a refuge or refuse
15 trash can put outside on the, like in the
16 street, one a the large ones. Then there were
17 these heavy-duty machinery that came up on the
18 property, and each day, a wall was knocked
19 down. I would go to work. You know, the
20 house would pretty much be standing, and when
21 I came home the next day--or came home that
22 evening, one wall was knocked down. Went out

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1 to work the next day, come back home that
2 following, the next day, another wall was
3 knocked down. So each day, they knocked a
4 wall down, until they left the little sitting
5 room on the side.

6 They left that leaning, it was
7 leaning over into where the house used to sit,
8 where the main part of the house used to sit,
9 and they left it leaning over the period of
10 the holiday weekend.

11 MS. WOOLRIDGE: Would you point to
12 the room that you're speaking of.

13 MS. LEE: This little thing right
14 here. They left that leaning over a three--
15 well, it was President's weekend, President's
16 Day weekend, and they left that. They knocked
17 all a this down, they knocked all a that down,
18 and left that. And it fell that Monday night.

19 CHAIRPERSON MILLER: I'm sorry to
20 interrupt you but what was it leaning on? You
21 said they left it leaning where the house was.

22 MS. LEE: It wasn't leaning on

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1 anything, it was just pretty much like this,
2 you know, because basically what it was
3 attached to was gone. So there nothing that
4 was, you know, holding it to the point where
5 it was standing straight. You know, they
6 didn't put any wood that would prop it; you
7 know. But it was left leaning just like this.

8 It was something that everyone
9 that rode through the block would stop to look
10 at, okay? because it was a sight to see. This
11 little building sitting there, the little
12 room, leaning like this over the weekend, and
13 then it fell on that Monday night, and it
14 knocked out all the electricity, the water was
15 still on on the property, and every utility
16 company had to come out.

17 MS. WOOLRIDGE: Did the fire
18 department come out?

19 MS. LEE: Yes.

20 MS. WOOLRIDGE: Why did the fire
21 department come out?

22 MS. LEE: The fire department had

1 to come out because they weren't for sure if
2 a child was in there playing or not, because
3 the whole time that they were knocking down
4 the building they never secured the property.
5 The property was not secure at all.

6 So they didn't know if there were
7 any children were in there or what. So they
8 had to come out with the big old spotlights
9 and everything, and ruffle through the
10 roughage and, you know, go through the
11 roughage to make sure that there weren't any
12 humans inside.

13 MS. WOOLRIDGE: So Ms. Lee, you're
14 certain that that entire building, not just
15 this building, this structure right here, this
16 entire building didn't collapse on President's
17 Day?

18 MS. LEE: No; that building wasn't
19 there.

20 MS. WOOLRIDGE: So is it your
21 testimony that each of these walls were
22 removed each day, prior to President's Day?

1 MEMBER LOUD: Counsel, if I could
2 interrupt for one second. As you sort of
3 direct her through specific points on the
4 chart, can you show the chart to the board.

5 MS. WOOLRIDGE: Thank you, sir.

6 MEMBER LOUD: Thank you.

7 MS. WOOLRIDGE: Again, as Mr.
8 Green is holding the chart, are you saying
9 that this entire building did not collapse on
10 President's Day?

11 MS. LEE: Exactly.

12 MS. WOOLRIDGE: Which part of the
13 structure are you saying collapsed in that
14 hole?

15 MS. LEE: Just this little portion
16 right here.

17 MS. WOOLRIDGE: And was it your
18 testimony that each day a wall came down from
19 where?

20 MS. LEE: Each day, they would
21 take down a wall. They started either in the
22 back, then they went to the side, they--

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1 MS. WOOLRIDGE: Are you speaking
2 of here?

3 MS. LEE: Yeah.

4 MS. WOOLRIDGE: Okay.

5 MS. LEE: They went, they started
6 in the back, came on this side. Then they
7 demolished that. Then they took the rest of
8 that wall up here out, and then it was only
9 this building right here left.

10 MS. WOOLRIDGE: So the only thing
11 that was left at one point, on February 21st,
12 or 20th, on Washington's birthday, was just
13 this structure?

14 MS. LEE: Just that little--

15 CHAIRPERSON MILLER: Can I just
16 interrupt to--when we're reading the
17 transcript, it's not going to mean that much
18 if you say--it is to us right now, looking at
19 the pictures, this wall, that wall, but if you
20 can identify and say the front wall or the
21 side wall or, you know.

22 MS. LEE: They started in the

1 back, they did the back. They did the, facing
2 it, the right side wall. Then they came to
3 the front. They took off a that. And then
4 they did the side where the sitting room is.
5 They took off the front of the side where the
6 sitting room is but they left the sitting
7 room.

8 MS. WOOLRIDGE: Let me ask you one
9 other question. Are you certain that the
10 Appellant did not just reduce this front and
11 this side and the rear to a safe height?

12 MS. LEE: No; no.

13 MS. WOOLRIDGE: Was everything
14 gone?

15 MS. LEE: Everything was gone.

16 MS. WOOLRIDGE: Except--

17 MS. LEE: Everything was gone
18 except for the sitting room, except for that
19 small room.

20 MS. WOOLRIDGE: And the sitting
21 room is located on?

22 MS. LEE: On the left side.

1 MS. WOOLRIDGE: On the what again?

2 MS. LEE: On the left side.

3 MS. WOOLRIDGE: Okay.

4 MS. LEE: The sitting room is on
5 the left side.

6 MS. WOOLRIDGE: So it's your
7 testimony that--so are you saying that it
8 wasn't an act of God that caused this entire,
9 whole structure to be removed?

10 MS. LEE: No; no. They actually
11 took the bulldozer and they [makes whooshing
12 sounds].

13 CHAIRPERSON MILLER: You actually
14 saw it?

15 MS. LEE: They hit the building,
16 hit the building and knocked it down. They
17 didn't--it was no act of God that took that
18 building down.

19 COMMISSIONER TURNBULL: I wonder
20 if I might ask. So before President's Day
21 weekend, before the Saturday, the structure on
22 the right-hand side that we're looking at was

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1 totally gone?

2 MS. LEE: Exactly.

3 COMMISSIONER TURNBULL: And what
4 you're referring to as the sitting room, is
5 that the same depth as the existing building?
6 Does it go back?

7 MS. LEE: No; it didn't go all the
8 way back.

9 COMMISSIONER TURNBULL: So it was
10 shorter.

11 MS. LEE: It was a short room;
12 yes. Yes. Because--well, that may not be
13 information you need.

14 COMMISSIONER TURNBULL: Thank you.

15 MS. WOOLRIDGE: Let me just do a
16 follow-up question. In reference to the
17 location of the sitting room, is there another
18 wall behind there that's attached to this
19 wall?

20 MS. LEE: There is.

21 MS. WOOLRIDGE: Was that removed?

22 MS. LEE: That was removed.

1 MS. WOOLRIDGE: So the only thing
2 that was left was the sitting room?

3 MS. LEE: Yeah.

4 MS. WOOLRIDGE: So basically the
5 front, the side, one-half of this side--

6 MS. LEE: Right.

7 MS. WOOLRIDGE: The top part of
8 this.

9 MS. LEE: Yes.

10 MS. WOOLRIDGE: The rear wasn't
11 removed?

12 MS. LEE: Yes.

13 MS. WOOLRIDGE: Okay.

14 MS. LEE: Yeah. Cause it was
15 just the front part and that side. That was
16 it. They tore the rest of it down. Yup.

17 MS. WOOLRIDGE: And on the day in
18 which the sitting room that was left leaning
19 over the hole, that collapsed into the hole,
20 you said the firemen came, the fire department
21 came?

22 MS. LEE: Yeah.

1 MS. WOOLRIDGE: And do you recall
2 what took place then?

3 MS. LEE: Basically they shut down
4 the whole street. The street was filled,
5 pretty much, with either fire department and
6 gas company, electric company, water company.
7 They went down into the hole. Like I said,
8 they put up this big light to shine down into
9 the hole. They went into the hole to make
10 sure that there were no kids in the hole,
11 because it was--the property wasn't secure.

12 And it had been like that since
13 they'd been working, matter of fact. It was
14 like that since--well, they just secured the
15 building maybe about three weeks ago. They
16 really secured it because people were walking
17 over the fence and climbing into the window of
18 the property.

19 MS. WOOLRIDGE: Another question.
20 Were there wires remaining? Is that why the
21 police department came?

22 MS. LEE: Wires were exposed. The

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1 electricity went out in the whole area. It
2 didn't really affect the water so much. But
3 the electricity was gone. It didn't really
4 affect the telephone either, because we called
5 the fire department. We called the emergency.

6 MS. WOOLRIDGE: Do you have a lot
7 of children in that area?

8 MS. LEE: Yes. There's a lot of
9 children.

10 MS. WOOLRIDGE: And you're saying
11 that structure that was left, it was not
12 secured?

13 MS. LEE: No; no. No. Never.

14 MS. WOOLRIDGE: On the same day
15 that the fire department came to the premises,
16 did something happen to your vehicle?

17 MS. LEE: Yes. During the course
18 of actually pulling back in their cords and
19 what have you, they hit the back of--one of
20 the cords hit the back of my car and broke one
21 of the lenses out. So I had to make a claim
22 for that. The driver's side lens on the back.

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1 COMMISSIONER TURNBULL: Let me ask
2 you a question and you may not know this,
3 which is fine, but when you noticed the walls
4 were gone above ground, above grade, did you
5 happen to notice whether the foundation walls
6 were removed? Or were they still there?

7 You may not have noticed it. I'm
8 just curious.

9 MS. LEE: Right. The way Mr.
10 Branch's house is--well, it was owned by Mr.
11 Branch. The way his house was, the basement
12 kind a housed--it was like--it was a hole but
13 it wasn't a full basement. So it had some
14 dirt in it. But where the sitting room was,
15 there was a hole there. It was--

16 COMMISSIONER TURNBULL: I see.

17 MS. LEE: We had the--it was--I
18 remember, in his basement, there was like the
19 water heater, stuff like that. So the
20 foundation on it, I can't recall if it was
21 still there or not.

22 COMMISSIONER TURNBULL: But what

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1 you're saying then is that on the larger
2 structure, there may not have been a basement
3 underneath it. It might have just been a
4 crawl space, or--

5 MS. LEE: There was--I would say
6 it was more than a crawl space because of the
7 fact that you could actually walk down into
8 his basement and everything. So it was more
9 than a crawl space, because it was tall enough
10 for you to walk down in there and be in there--
11 --and be in there because--

12 COMMISSIONER TURNBULL: All right.
13 Thank you.

14 MS. WOOLRIDGE: Ms. Lee, when the
15 structure was removed, was anything left in
16 that area as far as--was there anything left?
17 He asked about the foundation. But was just
18 dirt? Was anything left?

19 MS. LEE: I'm really trying to
20 think, and I can--I know that it was some
21 dirt. But the amount--

22 MS. WOOLRIDGE: Did he have a

1 basement?

2 MS. LEE: Like I said, it was a
3 basement that had like his water heater, and--

4 MS. WOOLRIDGE: Was it dirt? Was
5 it a wall? Was it--

6 MS. LEE: No; it was a wall. You
7 had some walls down there.

8 MS. WOOLRIDGE: Did you see that
9 once the--

10 MS. LEE: But I can't recall--I
11 can't recall if the walls were still there
12 when the building fell.

13 MS. WOOLRIDGE: Okay.

14 MS. LEE: I can't recall that.

15 MS. WOOLRIDGE: At this time,
16 Madam Chair, I'd like to have the Appellee's
17 Exhibit No. 1 be marked. The Appellant
18 Exhibit No. 1, the house, we had submitted
19 that.

20 CHAIRPERSON MILLER: Which filing
21 was it with?

22 MS. WOOLRIDGE: That was with the

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1 motion to dismiss.

2 MS. BAILEY: Ms. Woolridge, we
3 have a black-and-white copy. Do you have a
4 color copy?

5 MS. WOOLRIDGE: I have a black-
6 and-white copy.

7 MS. BAILEY: Okay. So that black
8 and white is what you want marked as an
9 exhibit, separate exhibit?

10 CHAIRPERSON MILLER: Oh, wait,
11 let's see what's going on here. We don't like
12 to have to mark and move in exhibits like in
13 a courtroom. Okay. So basically these are in
14 the record, they're attached to your filing,
15 and so you can just refer to them for the
16 record as you're working with them. But
17 they're in.

18 MS. WOOLRIDGE: Okay. Thank you.

19 And Ms. Lee, I only have a few
20 more questions. In reference to the police
21 report, was this the date--I'm referring to
22 the incident report filed on February 20,

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1 2006, by the fire department, that was
2 submitted with the October 26 filing.

3 MS. LEE: Yes.

4 MS. WOOLRIDGE: I show you this
5 document. Does this document represent what
6 took place on February 20, 2006, at 1233 Morse
7 Street?

8 MS. LEE: Yes.

9 MS. WOOLRIDGE: Okay. And did you
10 also call any other people? Did you ever
11 mention to the Zoning Administrator any
12 problems with 1233 Morse Street?

13 MS. LEE: Oh, my God. Yes. I
14 had, before the small sitting room fell, I had
15 called because I was having problems with my--
16 with the wires. The gentleman had come over
17 to my house one day and said that my wires
18 were in his airspace, and that we needed to
19 move them.

20 And so we did go about having the
21 cable company to come out and readjust the
22 wires. The telephone company to come out and

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1 redo the structuring of the wires. But still,
2 my TV would go out.

3 MS. WOOLRIDGE: But did you ever
4 talk with the Zoning Administrator about the
5 problems at 1233 Morse Street?

6 MS. LEE: Oh, yeah; yeah. I
7 called and told them that I felt that he was
8 messing with my wires and everything, because
9 I have a sick mom at home and the telephone
10 would go out. So we would have no way to
11 contact her, and so when I called, I told them
12 the situation, and he came out and he looked
13 at the wires and everything.

14 MS. WOOLRIDGE: Who is the "he"?

15 MS. LEE: The--I don't recall his
16 name. The inspector. I can't recall his
17 name, right offhand, though.

18 MS. WOOLRIDGE: Okay. That's
19 fine. Thank you.

20 MS. LEE: Yeah. But he did come
21 out the very next day after the small sitting
22 room fell.

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1 MS. WOOLRIDGE: Okay. Thank you.

2 MS. LEE: Okay.

3 CHAIRPERSON MILLER: Any board
4 questions at this point?

5 [No response]

6 CHAIRPERSON MILLER: Cross?

7 [No response]

8 CHAIRPERSON MILLER: Okay.

9 MS. WOOLRIDGE: Madam Chair, I
10 call Ms. Camille Parker.

11 MS. LEE: Madam Chair, looking at
12 the affidavit, for lack of a better term,
13 submitted by Ms. Parker, it's largely
14 duplicative of Ms. Lee's testimony. So
15 perhaps we could limit it to different--
16 something that can be added to Ms. Lee's
17 testimony rather than just of a repetitive
18 nature.

19 MS. WOOLRIDGE: Madam Chair, I
20 believe Ms. Parker, who's been residing at the
21 premises for over ten years, should have a
22 right to talk about her experience with this

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1 collapsed sitting room versus the collapsed
2 house that we've been hearing about for the
3 last hearing.

4 CHAIRPERSON MILLER: I don't have
5 the affidavit in front of me but--

6 MS. WOOLRIDGE: It was submitted
7 on October 26th.

8 CHAIRPERSON MILLER: October 26th.
9 It seems to me that it might be relevant that
10 there be corroborating testimony. But please
11 proceed. I'll stop you if it's too redundant.
12 Again, I think it's your case and she may have
13 a different perspective. I haven't read the
14 affidavit. There's so many different
15 packages, filings, I keep getting confused
16 which one this is in.

17 But I think we ought to proceed,
18 and if it becomes so apparent that it's overly
19 redundant--but I don't really expect that to
20 be the case, because I think she would have a
21 little bit of--your own perspective of what
22 happened.

1 MS. WOOLRIDGE: Ms. Parker, please
2 state your full name for the record.

3 MS. PARKER: My name is Camilla
4 Grace Parker.

5 MS. WOOLRIDGE: And where do you
6 reside?

7 MS. PARKER: I reside at 1235
8 Morse Street, next door to the property in
9 question.

10 MS. WOOLRIDGE: Can you tell us
11 what took place, what your understanding, took
12 place with the structure at 1233 Morse Street,
13 N.E.

14 MS. PARKER: My recollection is
15 that the house was vacant for some time, and
16 then they came in and they cleaned out the
17 house--I say "they" because I didn't know the
18 people personally--they cleaned out the house
19 and after some time, then the bulldozers or
20 demolition people came and they tore it down
21 from the back.

22 I noticed it was torn down from

1 the back. They didn't tear down the front
2 first. It was torn down from the back, and I
3 can see out my windows what's going on, up
4 close, cause I'm right next door.

5 So they tore down the back, and as
6 far as I remember, they progressively came
7 towards the front.

8 MS. WOOLRIDGE: Can you refer to
9 the chart, Ms. Parker, as far as the top
10 picture, as to how and what took place as far
11 as your best--best of your knowledge.

12 MS. PARKER: The back portion of
13 this section, I call that the house, or the
14 larger portion of the house, that was taken
15 down from the back. The reason I say that is
16 because for quite some time the front
17 remained, including the sitting room, and as
18 the days progressed, I can't exactly tell you
19 how many days, but they finally came towards
20 the front, with the back of the house being
21 gone, and then they began to tear down this
22 part, okay, which is the larger bulk of the

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1 house on the right-hand side.

2 And this part here was left. But
3 the most prominent picture that I have in my
4 mind, honestly, is a leaning house, cause
5 nobody--it is the most odd thing you could
6 ever see, is a house that does this all
7 weekend, and people would come down the street
8 and they would stop and look, even in groups,
9 and they'd do like this.

10 MS. WOOLRIDGE: So Ms. Parker, was
11 it a leaning house, or was it the leaning
12 sitting room?

13 MS. PARKER: This portion, here,
14 cause--

15 MS. WOOLRIDGE: You must be very
16 specific.

17 MS. PARKER: Cause this was gone.
18 Yeah. this was gone over a period of time.

19 MS. WOOLRIDGE: Okay.

20 MS. PARKER: The exact time of
21 which I am not able to recall. But this was
22 left leaning in that direction.

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1 MS. WOOLRIDGE: Now this, you're
2 speaking of--describe what you're saying was
3 leaning in that direction.

4 MS. PARKER: This was like this
5 over the weekend.

6 MS. WOOLRIDGE: Okay. And what
7 was it leaning into?

8 MS. PARKER: I couldn't understand
9 what was holding it up. I have no idea, what
10 was holding it up, cause I didn't really
11 examine it. I just know it was leaning.

12 MS. WOOLRIDGE: So what happened
13 to that little sitting area that was left?

14 MS. PARKER: Well, we were in the
15 house Monday night, and all of a sudden we
16 heard a rumble. We went outside because it
17 had to--you know, we went outside and all the
18 lights were out in the street and somebody
19 said the house fell. So that part had fallen
20 and it fell that way, away from my house. It
21 fell that way. And it was the subject of news
22 coverage. I don't know if it was channel 7 or

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1 9 or whatever, but they did come out the next
2 morning.

3 I don't know if they were out that
4 night but they did come in the next morning,
5 and on my way to work, they interviewed me as
6 to what happened the night before, and I just
7 gave them a quick account of what happened,
8 that the, you know, little house fell in the
9 hole or whatever it fell into.

10 All I remember is that it was
11 leaning all weekend, as though it had been
12 purposely left leaning, cause if you leave a
13 house leaning, you kind a expect it's going to
14 fall.

15 MS. WOOLRIDGE: So was it a house
16 or was it a sitting room?

17 MS. PARKER: It was still the
18 house but it was this portion of the house.

19 MS. WOOLRIDGE: Portion of the
20 house?

21 MS. PARKER: Yes.

22 MS. WOOLRIDGE: Okay. Be very

1 specific. How do you recall it was
2 President's Day when that sitting area fell
3 into the hole?

4 MS. PARKER: I had marked it on my
5 calendar and forgot about it. I had circled
6 my calendar and I wrote "House fell," cause to
7 me it's still the house. I mean, I know we're
8 specific here, but this is still part a the
9 house. So "house." That's how I described
10 it. "House fell." But still, for the sake of
11 being, you know, distinct, it was this portion
12 only.

13 MS. WOOLRIDGE: And did you notice
14 each day, when they knocked down a wall of the
15 house that was there at one point, was debris
16 from the structure removed each day?

17 MS. PARKER: I didn't watch it
18 that closely. I just know they tore it down
19 from the back towards the front.

20 MS. WOOLRIDGE: Well, when you saw
21 it the next, following day, was anything there
22 for that, say, the rear?

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1 MS. PARKER: Which day?

2 MS. WOOLRIDGE: Any day prior to
3 Washington's Birthday. When this wall was
4 taken down, what happened to the building
5 materials?

6 MS. PARKER: Okay. They started
7 from the back, and there was a lot--there's
8 room over here.

9 MS. WOOLRIDGE: Was it left there
10 or was it removed?

11 MS. PARKER: What? The hou--

12 MS. WOOLRIDGE: The debris from
13 it.

14 MS. PARKER: Well, they had a big
15 refuse tank out here--refuse tank, whatever
16 they call it, and they was throwing stuff in
17 there, and they would fill it up, I guess, and
18 empty it. And then they took it down, little
19 by little. That's the most I can account--
20 recall, is that they took it down little by
21 little until it was completely gone.

22 MS. WOOLRIDGE: Okay.

1 COMMISSIONER TURNBULL: But Ms.
2 Parker, just to be clear, by that weekend
3 there were no walls left standing on that
4 side?

5 MS. PARKER: No, sir. Just--

6 COMMISSIONER TURNBULL: On the big
7 house side.

8 MS. PARKER: No, sir.

9 COMMISSIONER TURNBULL: The bigger
10 part.

11 MS. PARKER: This was gone. This
12 wall, here, it was not there, cause otherwise
13 it would a looked like a sitting room and a
14 big wall extending upward.

15 COMMISSIONER TURNBULL: So there
16 were no half-walls, no three-quarters--

17 MS. PARKER: No, just this right
18 here; just the little square.

19 COMMISSIONER TURNBULL: Okay.

20 MS. PARKER: Just that little
21 square, but it was during that--it stayed that
22 way Friday night, it continued to lean

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1 Saturday, and a lotta people are home on
2 Saturday, so a lotta people saw it. And
3 Sunday, it was still like that. I even made
4 a comment. Actually, the comment was about
5 five minutes before it fell.

6 In the kitchen I said: You know,
7 if that house falls next door, or that portion
8 of the house falls, it's gonna fall away from
9 our house. And within five minutes, God is my
10 witness [makes rumbling sound] that's what we
11 heard, and we went outside. I hope I didn't
12 speak it into existence, but it fell shortly
13 after I said that. That's what happened.

14 MS. WOOLRIDGE: Thank you, Ms.
15 Parker. No further questions, Madam Chair.

16 CHAIRPERSON MILLER: Ms. Parker,
17 the little sitting room that was left, did it
18 have all four walls?

19 MS. PARKER: I can't honestly
20 speak about the wall on the right of the
21 sitting room. If I were facing it. But I do
22 know the square structure itself. Now that

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1 wall may have been there, may have not been
2 there on the right. I'm not sure. I just
3 know that that portion was just leaning.

4 CHAIRPERSON MILLER: Okay.

5 MS. PARKER: But it had, you know,
6 it had the roof, and it definitely had the
7 left wall, and it had the front wall. And I'm
8 not sure about that right wall.

9 CHAIRPERSON MILLER: Okay. And
10 then you testified, I believe, that it was
11 leaning throughout the weekend?

12 MS. PARKER: Throughout the entire
13 weekend.

14 CHAIRPERSON MILLER: And did
15 anyone call DCRA, or the police, or anything
16 about that?

17 MS. PARKER: No, because I didn't
18 even think that--I didn't know what would
19 happen. I figured they were gonna finish
20 tearing it down. But it fell instead.

21 CHAIRPERSON MILLER: And did you
22 take any pictures of the leaning house?

1 MS. PARKER: No. I didn't take
2 any pictures of the leaning house.

3 CHAIRPERSON MILLER: Okay.

4 MS. PARKER: But the whole block,
5 I mean, the whole neighborhood probably.

6 CHAIRPERSON MILLER: Are you aware
7 that anybody did?

8 MS. PARKER: Huh?

9 CHAIRPERSON MILLER: Are you aware
10 if anybody did? It sounds like it was unusual
11 so--

12 MS. PARKER: It was very unusual.
13 I didn't know it would turn out to be--I
14 didn't know it would turn in to be a disaster.
15 I had no idea. I just figured they're going
16 to come back and--Why is it leaning like that
17 all weekend? But I didn't know.

18 CHAIRPERSON MILLER: Okay. Thank
19 you very much.

20 Cross?

21 MS. PARKER: No.

22 CHAIRPERSON MILLER: Okay.

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1 MS. WOOLRIDGE: Thank you. Thank
2 you, Ms. Parker.

3 Madam Chair, I call as our next
4 witness Scott, and I'll be very brief.

5 MS. BAILEY: October 26
6 supplement.

7 MS. PARKER: I'm sorry. Who are
8 you?

9 MR. JONES: Scott Jones.

10 MS. WOOLRIDGE: Mr. Jones, would
11 you state your full name for the record.

12 MR. JONES: Scott Jones, and I
13 reside at 1229 Morse Street, N.E.

14 MS. WOOLRIDGE: And are you
15 familiar with what--you've heard the
16 testimony. Are you familiar with what took
17 place on Washington's Birthday, February 20,
18 2006?

19 MR. JONES: Yes. I am.

20 MS. WOOLRIDGE: Could you tell the
21 court, to the best of your knowledge, as to
22 what you recall took place there.

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1 MR. JONES: Certainly. I guess,
2 for the record, it's probably important to
3 know that I purchased my property in February,
4 closed in March, but prior to, I had
5 permission from the previous owner to be doing
6 some cleaning up and some painting in 1229.

7 So during February I was over at
8 the property, at 1229 doing some cleaning and
9 painting, and did see some of the activity
10 that the other two witnesses had stated in
11 regards to removal of the existing structure,
12 dumping it in the bin out at the front of the
13 street, and at one point I even thought it was
14 strange that I could see the sitting room
15 itself, the wall facing into the rest of the
16 house. It was gone.

17 I could even see a toilet sitting
18 inside, and I just thought all this is
19 bizarre. It did begin to lean, through time,
20 and I assumed that the only reason that the
21 small structure had not been removed yet was
22 because the power lines were connected to that

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1 area, and I believe the gas was connected at
2 the small portion as well. And so I assumed
3 that they were simply waiting for the city to
4 turn off those items before removing the rest
5 of the structure.

6 Because this structure here did
7 have--it was no structural reinforcement but
8 there was some two by fours sort of propping
9 up against the building to address some of the
10 lean. B ut it was no major structural type of
11 thing like you wold see elsewhere throughout
12 the city, where they were trying to at least
13 save the structural facade of the building
14 for, you know, historical perspective or those
15 types of things.

16 MS. WOOLRIDGE: Okay. Thank you.

17 MEMBER LOUD: A quick question for
18 you, sir. With respect to the wall that you
19 said you were, that was facing into the
20 sitting room and you were able to look
21 directly into it, can you just point it out on
22 the chart.

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1 MR. JONES: Certainly. It would
2 be the wall that would connect the small room
3 to, which looks like an addition to the
4 property, that entire wall was open and so I
5 could see into that whole area.

6 I mean, there was a sitting room
7 area, what looked like a half-bath, because I
8 could remember seeing the toilet, just
9 sitting, completely exposed, and one of my
10 friends came over and made a joke in reference
11 to if folks were using that rest room, and I
12 told them, well, I didn't know what they were
13 doing.

14 They were using my water, so I had
15 to shut off the water to my outside spigot
16 because they were using my water to do water,
17 and those types of things.

18 And at one point even, when I
19 first bought the house, the cable line and the
20 phone line had been pulled outta my house, and
21 so the siding had been pulled away from the
22 back, and it was my assumption it was for that

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1 process, and then by speaking to neighbors,
2 they'd had the same issue in regards to the
3 use of airspace. Cause when I approached the
4 construction workers or the contractors about,
5 if they knew anything, they just simply turned
6 and walked away.

7 MEMBER LOUD: Do you recall
8 whether any part of that wall, that was now
9 gone and allowed you to peer directly into the
10 sitting room, was any part of it above grade
11 or was the entire wall demolished?

12 MR. JONES: The entire wall was
13 demolished, I mean, and it was obvious that
14 the area had been excavated. I mean, it was
15 just pretty much a hole, and to the extent
16 that they'd dug very close to the property
17 line on my side, along with dirt that had been
18 pushed up against my fence in the back, my
19 home owner's insurance came and they canceled
20 my policy because they said that the
21 construction next door was putting my property
22 at risk. So they dropped me, and so I had to

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1 buy a new policy.

2 In conversation with the gentleman
3 there, I walked him into the back because at
4 one point he'd said he wanted to cut down my
5 trees, and I said no, I'm not going to allow
6 you to cut down anything more than you have,
7 because along the back line a variety of the
8 trees had been cut down in what I guess they
9 interpreted was their airspace.

10 But in that point, I'd also
11 pointed out all the dirt that had been pushed
12 up against my back fence, and he'd made
13 mention of, well, you know, it was sort of in
14 bad condition before but he would take care of
15 covering that once they had excavated the
16 land, and then landscaped and those types of
17 things, because he wanted to make sure that
18 the fence was repaired and replaced, if it was
19 my opinion that they had damaged it.

20 COMMISSIONER TURNBULL: Mr. Jones,
21 let me just follow up on that question.

22 You're saying that before

1 President's Day weekend, the total structure
2 on the right, the main house was gone, and all
3 the above-grade walls were gone. They had
4 also started to dig the foundation on the
5 other side.

6 Do you know, was there a
7 foundation wall that paralleled your house
8 still there? Or was that gone?

9 MR. JONES: No, everything was
10 gone. I mean, everything where the large
11 structure was, it appeared that almost all of
12 that was gone. To the extent that the two by
13 fours that were put in place, that were
14 supporting the small structure went down into
15 the hole, where they had excavated the larger
16 structure.

17 COMMISSIONER TURNBULL: Is it your
18 feeling--and again, you wouldn't know this--
19 but was the power still on to the--

20 MR. JONES: I--

21 COMMISSIONER TURNBULL: You don't
22 know.

1 MR. JONES: I don't know. I mean,
2 power hadn't been affected to my house and I
3 wasn't there over the night that it'd fallen.
4 I was still residing elsewhere. But
5 throughout time of coming, I mean, there was
6 just--I wasn't there every day, but through
7 the process of coming and doing work at 1229,
8 I continued to see what just didn't seem like
9 would be safe activity, along with the
10 property just continuing to sit unsecured.

11 COMMISSIONER TURNBULL: But it's
12 your feeling that even the foundation walls
13 were gone?

14 MR. JONES: Yes; yes. They were
15 to the large structure. I mean, there wasn't--
16 --I mean, especially this whole wall section
17 there, I mean, that was all excavated.

18 COMMISSIONER TURNBULL: When your
19 insurance adjuster came out, he saw a big hole
20 and it was very close to your property, so--

21 MR. JONES: Yes.

22 COMMISSIONER TURNBULL: Your

1 property is the house on the right?

2 MR. JONES: Yes. My property is
3 this property. There are parts where the dirt
4 has been removed so far, that for them to walk
5 currently with the large structure, this
6 structure in the bottom, for them to walk
7 between my house, they had to put boards,
8 sections of two by six over areas of dirt that
9 had fallen in because there would be no way
10 for them to cross between this property and my
11 property without those bridge walkways in
12 place.

13 COMMISSIONER TURNBULL: Okay.
14 Thank you.

15 MS. WOOLRIDGE: At one point did
16 you have problems with the soil eroding from
17 your house? Did you have problems with your
18 soil?

19 MR. JONES: I don't know if it was
20 through the excavation, cause then in this
21 large picture here, you can see where they've
22 put in new foundation down at the bottom, and

1 so through that time, after this initial
2 excavation of property from the top, in this
3 process, they continued to dig and dig and dig
4 until through just normal process, the variety
5 of dirt that was sort of up against my house
6 just continued to sort of crumble and, you
7 know, I guess just through normal rain and
8 traffic, or whatever, of people walking to the
9 point that they then finally put two by sixes
10 down, to where then, you know, they could at
11 least walk between my property and that
12 property there.

13 MS. WOOLRIDGE: So they had to put
14 two by sixes down in order to walk from your
15 property to--

16 MR. JONES: Yeah, to walk between
17 my property and their property, they had to
18 put two by sixes down, because otherwise there
19 would be no way for them to access it from the
20 roadway, unless they were to go on the other
21 side of the property.

22 MS. WOOLRIDGE: And you're saying

1 your insurance company dropped you because
2 they said your structure was unsafe because of
3 the construction?

4 MR. JONES: Yes. Initially, they
5 dropped me because they said sections of fence
6 were missing and damaged, based on the dirt
7 that had been pressed up against my wood fence
8 in the back. It had started to pull away and
9 the gate had been removed, and I don't know if
10 that was, through what means, but with my
11 water faucet and the hose running, and those
12 types of things, I just felt like it was easy
13 access for them to get into then my backyard.

14 And so through that process, then
15 they dropped me initially for the fence
16 sections that were missing or damaged.

17 So I went back through and secured
18 all those, and when they came back out again
19 to inspect, they said, well, at this point the
20 construction next door is at too high a risk
21 and liability for us to continue insuring you,
22 so they gave me a month's notice and then

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1 dropped me, and during that time then I
2 secured insurance elsewhere.

3 MS. WOOLRIDGE: I have no other
4 questions, Madam Chair.

5 CHAIRPERSON MILLER: Okay. I
6 don't see any board questions.

7 Cross?

8 MR. BROWN: No questions.

9 CHAIRPERSON MILLER: Okay. Thank
10 you.

11 MS. WOOLRIDGE: Thank you, Mr.
12 Jones.

13 Madam Chair, I'd now like to call
14 Mr. Anderson, Inspector Anderson, and his will
15 be very brief. Were you here when they swore
16 everybody in?

17 MR. ANDERSON: Yes.

18 MS. WOOLRIDGE: Mr. Anderson,
19 would you please state your full name for the
20 record.

21 MR. ANDERSON: My name is
22 Colonious Anderson. I'm a D.C. electrical

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1 inspector.

2 MS. WOOLRIDGE: Sorry. Would you
3 repeat that again, please.

4 MR. ANDERSON: My name is
5 Colonious Anderson. I'm a D.C. electrical
6 inspector.

7 [Adjustment to microphone system]

8 MR. ANDERSON: I'm Colonious
9 Anderson, D.C. electrical inspector with
10 Department of Consumer and Regulatory Affairs.

11 MS. WOOLRIDGE: Mr. Anderson, at
12 any time did you go to the premises at 1233
13 Morse Street, N.E.?

14 MR. ANDERSON: Yes. I did.

15 MS. WOOLRIDGE: What day?

16 MR. ANDERSON: On February 21st,
17 2006.

18 MS. WOOLRIDGE: And what did you
19 observe on that day?

20 MR. ANDERSON: I was called there
21 on a complaint for 1233 but the complaint
22 actually came from the neighbor next door who

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1 was Ms. Lee. When I arrived at the property,
2 Ms. Lee came out and we talked, and she was
3 telling me that her telephone and cable had
4 been out. I looked next door and all I saw
5 was a hole in the ground and debris in the
6 hole.

7 MS. WOOLRIDGE: And did you see
8 debris that would indicate that entire
9 structure that we've been speaking of, has
10 been testified to this morning by the other
11 three witnesses?

12 MR. ANDERSON: You're talking
13 about this structure? Basically all I saw was
14 a hole right here and a bunch a debris in it.
15 I was informed at that time by Ms. Lee, that
16 this had fallen into the hole.

17 CHAIRPERSON MILLER: Excuse me.
18 Do you want to identify for the record what
19 you mean by "this" and "fallen in." Just for
20 the transcript.

21 MR. ANDERSON: This structure at
22 1233.

1 MS. WOOLRIDGE: So in your
2 assessment on that day that you were there, on
3 the day after Washington's Birthday, did it
4 look like the structure was for this entire--
5 the debris that you saw in the hole, was it
6 the entire structure here or was it--

7 MR. ANDERSON: The debris that was
8 in the hole, I couldn't tell if it was the
9 entire structure. It was just some debris in
10 there. But you could still see down in the
11 hole. I mean, it was just, looked like it had
12 fallen in, sticks and wood and stuff was down
13 in the hole.

14 MS. WOOLRIDGE: Well, let me ask
15 you another question. Let's assume that this
16 was there at the time, on the day that you did
17 your inspection. Could you tell if all of
18 this was there versus, say, if this wasn't
19 there, that would say this amount was there?

20 MR. ANDERSON: No.

21 MS. WOOLRIDGE: No. What is "no"?

22 MR. ANDERSON: In my assessment it

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1 could not have been all of this because I
2 could--

3 MS. WOOLRIDGE: "All of this."
4 Would you please state what "all of this" is,
5 please.

6 MR. ANDERSON: All of this
7 structure.

8 MS. WOOLRIDGE: Okay.

9 MR. ANDERSON: It wasn't that much
10 debris in that hole.

11 MS. WOOLRIDGE: Okay. So it was
12 not enough debris to indicate--

13 MR. ANDERSON: No; it wasn't.

14 MS. WOOLRIDGE: --this entire
15 structure?

16 MR. ANDERSON: No; it wasn't.

17 MS. WOOLRIDGE: Okay. What about
18 the smaller structure?

19 MR. ANDERSON: It could have been
20 this much, for just this section here.

21 MS. WOOLRIDGE: You wouldn't know
22 the difference between all this being in the

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1 hole versus this--

2 MR. ANDERSON: Oh, yes, ma'am.
3 I've been doing this for 37 years.

4 MS. WOOLRIDGE: Okay. Thank you.
5 Thank you, sir.

6 CHAIRPERSON MILLER: And what do
7 you mean by that? You've been doing this for
8 all those years, so you could tell--

9 MR. ANDERSON: I've been in
10 construction and inspections for 37 years.

11 CHAIRPERSON MILLER: And you've
12 seen instances like this, where there's so
13 much debris in a hole from a home?

14 MR. ANDERSON: Yes, ma'am.

15 CHAIRPERSON MILLER: Okay.

16 COMMISSIONER TURNBULL: Could you
17 tell--I'm just trying to confirm--if looking
18 in the hole, were there foundations on the far
19 side by the house?

20 MR. ANDERSON: You're saying "on
21 the far side." You're talking this side?

22 COMMISSIONER TURNBULL: No; the

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1 other side.

2 MR. ANDERSON: This side here?

3 No, you couldn't tell because debris was all
4 the way across.

5 COMMISSIONER TURNBULL: Was fallen
6 all the way through?

7 MR. ANDERSON: Yeah.

8 COMMISSIONER TURNBULL: Okay.
9 Could you tell at the house, had the
10 electricity been still on when the debris fell
11 in? Could you--

12 MR. ANDERSON: I couldn't tell if
13 the electricity was still on to that house;
14 no. I didn't see any wires or anything there
15 at that time. I was informed by Ms. Lee that
16 the utility companies had already been there.

17 COMMISSIONER TURNBULL: Okay;
18 thank you.

19 MR. ANDERSON: So I don't know if
20 they removed them or not.

21 MS. WOOLRIDGE: Madam Chair, I
22 have no more questions for Inspector Anderson.

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1 CHAIRPERSON MILLER: Okay. Any
2 questions by board members? Other questions?

3 [No response]

4 CHAIRPERSON MILLER: Cross?

5 MR. BROWN: Very quickly. You
6 were there February 21st?

7 MR. ANDERSON: Yes.

8 MR. BROWN: And as a result of
9 that visit, or at that visit, you didn't cite
10 the property owner for any violations, did
11 you?

12 MR. ANDERSON: No. I was there
13 for a complaint by Mr. Lee for her property.

14 MR. BROWN: That's it. Thank you.

15 CHAIRPERSON MILLER: That's it?
16 Thank you.

17 MS. WOOLRIDGE: Thank you, sir.

18 May we take a break. Madam Chair,
19 may we have at least a five minute break?

20 CHAIRPERSON MILLER: Why don't we
21 take a ten minute break then.

22 MS. WOOLRIDGE: Ten minutes.

1 Okay. Thank you.

2 [Whereupon, a recess was taken
3 from 11:55 a.m. to 12:15 p.m.]

4 CHAIRPERSON MILLER: We are ready
5 to proceed with DCRA's next witness.

6 MS. WOOLRIDGE: Would you please
7 state your full name for the record.

8 MR. DOUGLAS: Lennox Douglas.

9 MS. WOOLRIDGE: And what is your
10 position at DCRA?

11 MR. DOUGLAS: Currently, I'm the
12 acting deputy director for Licensing and
13 Permitting.

14 MS. WOOLRIDGE: And how long have
15 you been acting director for Licensing and
16 Permitting in DCRA?

17 MR. DOUGLAS: April 2007.

18 MS. WOOLRIDGE: And prior to that?

19 MR. DOUGLAS: Prior to that, I was
20 a division chief for Permit Operations.

21 MS. WOOLRIDGE: Okay. Mr.
22 Douglas, are you familiar with the property at

1 1233 Morse Street, N.E.?

2 MR. DOUGLAS: Yes.

3 MS. WOOLRIDGE: How so?

4 MR. DOUGLAS: Well, on several
5 occasions. The first time I became familiar
6 with that property is a staff person came to
7 me, indicating that an applicant is requesting
8 an emergency demotion, and emergency
9 demolition is something that we normally don't
10 give over the counter, you know, based upon a
11 request. It must be something happening that
12 would precipitate and emergency or would be
13 called an emergency.

14 But the staff person stated to me
15 also, they said, you know, this is--you know,
16 I have some concerns about this property,
17 because a couple days before, the person came
18 to me asking about a raze application to take
19 a building down, and so I'm having some
20 concerns on this emergency raze. So, you
21 know, at that point in time I spoke with the
22 applicant and they indicated to me that the

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1 building was leaning, and it has a tendency of
2 falling on a neighbor's property. I turned to
3 the person and, I said, well, what you need to
4 do is to bring me a picture of exactly what
5 you're looking at, so that we can make a
6 determination.

7 The next day, a picture was
8 brought and I authorized the emergency
9 demolition. That's the first time.

10 MS. WOOLRIDGE: Okay. And so you
11 authorized a demotion permit based on what?

12 MR. DOUGLAS: Based on the
13 exterior wall, as identified in the picture,
14 leaning, with a tendency of falling.

15 MS. WOOLRIDGE: So you were given
16 a picture, shown a picture by the appellant?

17 MR. DOUGLAS: By an applicant;
18 yes.

19 MS. WOOLRIDGE: Okay. Is that
20 applicant in this courtroom today?

21 MR. DOUGLAS: I don't know. I
22 don't think so. It was a different person.

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1 MS. WOOLRIDGE: And do you know
2 who he was?

3 MR. DOUGLAS: No. I don't. I
4 can't remember; can't recall.

5 MS. WOOLRIDGE: And he was
6 speaking of what particular address then?

7 MR. DOUGLAS: 1233 Morse Street.

8 MS. WOOLRIDGE: Okay. And did you
9 approve the demolition permit?

10 MR. DOUGLAS: Yes. I did approve
11 that emergency demotion.

12 MS. WOOLRIDGE: And you approved
13 it based on the picture?

14 MR. DOUGLAS: I approved it based
15 on the picture and what I was being told.

16 MS. WOOLRIDGE: And is the picture
17 that you were given, is that shown--I'm sorry--
18 -shown--is that on this picture?

19 MR. DOUGLAS: No.

20 MS. WOOLRIDGE: Okay. And you saw
21 it--did the building look like the building
22 that's on the top photograph?

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1 MR. DOUGLAS: Actually, there was
2 no building per se. It was just a wall. The
3 picture was taken in such an angle, where I
4 was just seeing a wall that had a tendency of
5 collapsing.

6 MS. WOOLRIDGE: And it had the
7 address of--did you see an address on that
8 picture?

9 MR. DOUGLAS: The address was
10 stated on the application.

11 MS. WOOLRIDGE: So you had a
12 picture, no address, and it was attached to
13 the application. So how did you know that
14 picture represented that particular address?

15 MR. DOUGLAS: I just took the
16 applicant's word. You know, I just took the
17 applicant at his word.

18 MS. WOOLRIDGE: Okay. So was the
19 demolition permit approved based on the
20 picture and the applicant's representative's
21 statement?

22 MR. DOUGLAS: I would say so.

1 MS. WOOLRIDGE: Okay. Did you
2 send an inspector out there to inspect 1233
3 Morse Street before you approved the
4 demolition permit?

5 MR. DOUGLAS: No. I did not.

6 MS. WOOLRIDGE: So no inspector
7 was sent out to determine if the structure was
8 unsafe, or was falling, or etcetera?

9 MR. DOUGLAS: No. I did not.

10 MS. WOOLRIDGE: Okay. So the
11 permit was approved based on the picture, the
12 representation of the person. Am I correct?

13 MR. DOUGLAS: Yes.

14 MS. WOOLRIDGE: You made a comment
15 in reference to the raze, that someone came in
16 to ask for a raise permit application. Did
17 they file an application for a raze permit?

18 MR. DOUGLAS: In research, no,
19 they did not.

20 MS. WOOLRIDGE: They did not. But
21 they came in two days prior to inquire about
22 a demotion permit. They inquired about the

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1 raze permit?

2 MR. DOUGLAS: That's what the
3 staff person told me.

4 MS. WOOLRIDGE: Okay. Turning
5 your attention to the document, and it's the
6 building application filed on April 12th,
7 2005. It was attached to the motion to
8 dismiss on October 1. Are you familiar with
9 that document? This. I'm sorry.

10 MR. DOUGLAS: Yes. I am.

11 MS. WOOLRIDGE: Okay. And a
12 building permit was issued for this, for 1233
13 Morse Street, N.E.?

14 MR. DOUGLAS: Yes.

15 MS. WOOLRIDGE: Okay. And at some
16 subsequent time, someone came to your office
17 and said they need an emergency demotion
18 permit?

19 MR. DOUGLAS: That is correct.

20 MS. WOOLRIDGE: Okay. Turning
21 your attention to building permit application
22 dated--well, there's no date on this. T he

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1 revised building permit application. Are you
2 familiar with this document?

3 MR. DOUGLAS: Yes.

4 MS. WOOLRIDGE: And can you tell
5 the court what the board--on the board what--
6 how this revised building permit application,
7 why was this filed with DCRA?

8 MR. DOUGLAS: Well, after the
9 initial building permit was issued, the permit
10 was issued to construct an addition to an
11 existing single family house, to convert it to
12 11 units, and subsequently, you know, the
13 office was made to understand that the entire
14 structure was gone and a new building is, will
15 be constructed, at which time several letters
16 were sent out, I think stop work orders were
17 placed by the Inspection Division, and the
18 applicant was instructed to apply for a new
19 building permit.

20 MS. WOOLRIDGE: Now in reference
21 to number 12 of that particular application,
22 what did the applicant indicate on his revised

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1 permit application?

2 MR. DOUGLAS: "Revision to Permit
3 No. B477039 to reconstruct collapsed walls of
4 existing structure for plans, an order changed
5 to previously-approved plans."

6 MS. WOOLRIDGE: Okay.

7 CHAIRPERSON MILLER: Where is that
8 in our record, the application for the revised
9 building permit?

10 MS. WOOLRIDGE: It should have
11 been with October 1st. Yes. October 1.

12 MR. BROWN: You can also find it,
13 my Exhibit A to the original appeal.

14 CHAIRPERSON MILLER: Thank you.

15 MR. BROWN: And was the revised
16 application--what happened to the revised
17 application?

18 MR. DOUGLAS: As I can recall, I
19 think it started a process and it was required
20 to go through the zoning, a zoning review, and
21 I think in the zoning administration there
22 were some concerns of the new construction of

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1 this new building, or this new building
2 opposed to an addition, and it is my
3 understanding--and again, I'm not a zoning
4 person--but the Zoning Administrator shared
5 with me that in that zone, there would be some
6 concerns as to a matter of right, in building
7 a new building with that number of units in
8 that location.

9 MS. WOOLRIDGE: At any time, did
10 you meet with Mr. Demuren?

11 MR. DOUGLAS: Yes. I did.

12 MS. WOOLRIDGE: And what was your
13 conversation with Mr. Demuren regarding the
14 revised building permit application?

15 MR. DOUGLAS: Well, I didn't meet
16 with Mr. Demuren regarding the revised
17 building permit. I met with Mr. Demuren after
18 the building collapsed, first, and he wanted
19 to know specifically how he can rectify the
20 matter after it was done, and I pointed out to
21 him that, you know, we have some concerns
22 here. The permit was not issued. There was

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1 no permit for a raze. There was no permit
2 issued for a raze, and he would have to
3 initiate an application for a raze permit.
4 That's the first time I met with him.

5 MS. WOOLRIDGE: So Mr. Demuren
6 came to you about a raze permit application?

7 MR. DOUGLAS: Well, Mr. Demuren
8 came to me to get a clear understanding, what
9 he needs to do to rectify the current
10 situation.

11 MS. WOOLRIDGE: Okay. At any time
12 did you speak with--well, first of all, the
13 Zoning Administrator denied this application?

14 MR. DOUGLAS: As I can recall, the
15 Zoning Administrator was not prepared to
16 approve that application as a matter of right.

17 MS. WOOLRIDGE: Okay. When this
18 application--do you recall a meeting that you
19 had with Mr. Bello, Attorney Brown, myself--of
20 course you were there--and there was one other
21 person. I can't recall. Do you recall that
22 meeting that took place at DCRA in the Office

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1 of General Counsel conference room?

2 MR. DOUGLAS: Yes. Yeah. We did
3 meet.

4 MS. WOOLRIDGE: Okay. And do you
5 recall what we told the Appellant to do, in
6 order for him to get, to have this--not
7 demolition--but the revised building permit
8 application approved?

9 MR. DOUGLAS: I can't recall all
10 of the subject matter that we spoke about.

11 MS. WOOLRIDGE: Can you tell us
12 what you do recall.

13 What did you tell the applicant
14 that he needed to do?

15 MR. DOUGLAS: Well, I've been very
16 consistent in telling the applicant that he
17 needs to apply, A, for a raze permit for that,
18 the building that was torn down. He also
19 needs to submit new plans for the new building
20 that he's building. I mean, that has never
21 changed.

22 MS. WOOLRIDGE: Okay. And why did

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1 you say he needed a raze permit versus the
2 demolition permit that he received?

3 MR. DOUGLAS: Well, a raze permit
4 is to tear a building down, down to grade. A
5 demolition permit is just to remove interior
6 walls or practically two or three exterior
7 walls.

8 MS. WOOLRIDGE: Okay. And what
9 made you think that he had removed the
10 building down to grade?

11 MR. DOUGLAS: Based on
12 conversations with the inspectors who went out
13 there and the complaints that were coming in
14 to the permit operations division.

15 MS. WOOLRIDGE: Okay. At any time
16 during that conversation, or during that
17 meeting, did you tell the Appellant, or
18 counsel, to notify you, once that application
19 has been filed with DCRA, so it could be
20 expedited?

21 MR. DOUGLAS: Yes. I did.

22 MS. WOOLRIDGE: And did it take

1 place? Were you notified when this
2 application was filed, the revised building
3 permit application?

4 MR. DOUGLAS: Yes. I did--yes, I-
5 -yes.

6 MS. WOOLRIDGE: And did anyone
7 speak to you about this application, once it
8 was in the process of being filed?

9 MR. DOUGLAS: Yes. Mr. Bello came
10 to me and wanted to seek my assistance in
11 seeing how we can expedite this process
12 because of the construction that was ongoing
13 or pending, and how can we get this moving.

14 MS. WOOLRIDGE: And what else did
15 Mr. Bello ask you to do? What did Mr. Bello
16 ask of you?

17 MR. DOUGLAS: Well, he asked to
18 look at--you know, which is something I--you
19 know, to take a look at the application and
20 see what's the best possible way that we can
21 expedite it.

22 MS. WOOLRIDGE: Did you and Mr.

1 Bello have a conversation as to this
2 application going to the Zoning Administrator?

3 MR. DOUGLAS: I can't recall that.

4 MS. WOOLRIDGE: Do you recall Mr.
5 Bellow asking you how can we process this
6 application and not forward it to the Zoning
7 Administrator?

8 MR. DOUGLAS: He may--yeah--he may
9 have asked me that.

10 MS. WOOLRIDGE: Do you recall Mr.
11 Bello saying that if the application goes to
12 the Zoning Administrator, he has concerns
13 they're going to deny it?

14 MR. DOUGLAS: No. I think what he
15 actually said is that he would like to avoid
16 having this application go through a BZA
17 hearing, because he has some concerns when it
18 gets to this hearing, what would happen.

19 MS. WOOLRIDGE: And this
20 application going to the Zoning Administrator,
21 at the time Bill Crews, would that have caused
22 it to go forward for a BZA hearing?

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1 MR. DOUGLAS: Mr. Crews did bring
2 that to my attention; yes.

3 MS. WOOLRIDGE: Okay. I beg the
4 court's indulgence.

5 [Pause]

6 MS. WOOLRIDGE: I show you a
7 document dated March 31st, 2006. It's a
8 letter and it was submitted with the
9 supplemental dated October 26. Do you recall
10 this letter, Mr. Douglas?

11 MR. DOUGLAS: Yes. I do.

12 MS. WOOLRIDGE: Okay. And who's
13 the author of this document?

14 MR. DOUGLAS: I am.

15 MS. WOOLRIDGE: And what was the
16 purpose of you writing this letter?

17 MR. DOUGLAS: This letter was in
18 response to legal counsel, Lyle Blanchard, who
19 was requesting partly--you know, well, after
20 the complaints came in, a stop work order was
21 placed. He was indicating that the stop work
22 orders were illegal, and that the permit

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1 center had--or the permit operations division
2 had no legal right to have this stop work
3 order being placed.

4 MS. WOOLRIDGE: Okay. What was
5 your response, sir?

6 MR. DOUGLAS: My response was that
7 I pointed out, from his points, exactly, that
8 it was not illegal, there was falsification of
9 information on the application which gave us
10 the right to A, revoke this permit, or keep
11 this stop work order in place until the
12 current violations are abated.

13 MS. WOOLRIDGE: And what--

14 CHAIRPERSON MILLER: Ms.
15 Woolridge, excuse me. I think we're all kind
16 of looking for this letter.

17 MS. WOOLRIDGE: Oh. I'm sorry.

18 CHAIRPERSON MILLER: Is it in the
19 record.

20 MS. WOOLRIDGE: Yes. The
21 supplemental witness, the evidence list, six
22 people have just submitted.

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1 CHAIRPERSON MILLER: It's attached to
2 that document?

3 MS. WOOLRIDGE: Yes.

4 CHAIRPERSON MILLER: Okay. Thank
5 you.

6 MR. BROWN: It's actually the
7 first document behind the actual list.

8 MS. WOOLRIDGE: Does the board
9 have it?

10 CHAIRPERSON MILLER: No. Let's
11 see. You say it's attached to the District of
12 Columbia's supplemental witness and evidence
13 list?

14 MS. WOOLRIDGE: Yes, this
15 supplement, the last one we filed.

16 CHAIRPERSON MILLER: Yes. Dated
17 October 26th?

18 MS. WOOLRIDGE: 26th. Yes.

19 CHAIRPERSON MILLER: And Mr. Brown
20 said it was the first what?

21 MS. WOOLRIDGE: First
22 supplemental.

1 MR. BROWN: It was the one that
2 was filed on the 12th.

3 CHAIRPERSON MILLER: Oh, the 12th.

4 MR. BROWN: And it has Mr. Douglas
5 as the first witness.

6 MS. GLAZER: Madam Chair, it's
7 attached to Exhibit 27.

8 MEMBER LOUD: Okay. First
9 attachment on that October 12 pleading.

10 MS. WOOLRIDGE: Yes. I said the
11 wrong date. Sorry.

12 MEMBER LOUD: Thank you.

13 CHAIRPERSON MILLER: Okay. We
14 have it now. Thank you.

15 MS. WOOLRIDGE: Okay. Thank you.

16 Mr. Douglas, you were--

17 MR. DOUGLAS: I also pointed out
18 in the letter that the initial building permit
19 application was issued for an addition to an
20 existing single family house, and it was
21 brought to our attention in the office that
22 this was not the case. There's a new building

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1 being constructed, from ground up.

2 MS. WOOLRIDGE: And what happened
3 thereafter? What did you do thereafter?

4 MR. DOUGLAS: I didn't do
5 anything. I think that the Inspection
6 Division went out subsequent to that, and
7 placed other stop work orders on the site, and
8 I think there was a constant vigil of this
9 site being, with the number of complaints that
10 were coming in to the center.

11 MS. WOOLRIDGE: Okay. And on
12 February 24th, 2006, did you also send another
13 letter to Mr. Douglas, and it's also in the
14 same package?

15 MR. DOUGLAS: You mean to Mr.
16 Demuren.

17 MS. WOOLRIDGE: Mr. Demuren?

18 MR. DOUGLAS: Yes. I did.

19 MS. WOOLRIDGE: And what was the
20 basis of that letter.

21 MR. DOUGLAS: The basis of this
22 letter is to let Mr. Demuren know that, you

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1 know, a stop work order is being placed on the
2 ongoing construction, and, you know, he needs
3 to abate the situation by applying for a new
4 permit, etcetera, etcetera. I mean, it's
5 being consistent with the same thing.

6 MS. WOOLRIDGE: He needed to apply
7 for a new what, again?

8 MR. DOUGLAS: A new application
9 for a new permit.

10 MS. WOOLRIDGE: Okay. And he's
11 also required to do what else? What else did
12 you tell Mr. Demuren to do?

13 MR. DOUGLAS: He needs to submit
14 new plans, and I practically spelled out
15 exactly what he needs to submit, so that a new
16 review can take place on this new building.

17 MS. WOOLRIDGE: Okay. Now was
18 that the revised application that was filed
19 thereafter?

20 MR. DOUGLAS: That was supposed to
21 be; yes.

22 MS. WOOLRIDGE: Thereafter, you

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1 also issued a notice to revoke Building Permit
2 Nos. B477039 and B478240. Are you familiar
3 with that document?

4 MR. DOUGLAS: Yes.

5 MS. WOOLRIDGE: And that's also in
6 the same package, Madam Chair, and the board.
7 And what was the basis for that revocation?

8 MR. DOUGLAS: The basis on that
9 revocation was because after the previous
10 letters or the previous conversations, and
11 stop work orders and inspections, nothing was
12 being done. We did not receive anything
13 substantial, to show that the applicant was
14 acting in good faith, so, you know, the
15 revocation came about to revoke the initial
16 building permit.

17 MS. WOOLRIDGE: And you revoked it
18 on the basis of?

19 MR. DOUGLAS: Of falsification of
20 information on the previous permit that was
21 issued.

22 MS. WOOLRIDGE: Okay. And was it

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1 also revoked based on the fact that the
2 District had issued the permit in error?

3 MR. DOUGLAS: Yes.

4 MS. WOOLRIDGE: And the error
5 being that--what error are you stating that
6 the District committed in issuing that permit?

7 MR. DOUGLAS: Well, can I see the
8 permit that was issued.

9 [The witness peruses the document]

10 MR. DOUGLAS: I don't think the
11 errors were basically the District's error.
12 Most of the errors were created by the
13 applicant.

14 MS. WOOLRIDGE: Is there was a
15 zoning-related violation, and the District
16 issue the permit, not knowing it was a zoning
17 violation, it found out later, is that
18 considered to be an error?

19 MR. DOUGLAS: Yeah, but that
20 error, the Zoning Administrator, you know,
21 told the applicant that, you know, he could
22 not--you know, he was concerned with the

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1 conversion factor for a new building and
2 opposed an addition, and after that was
3 identified, I think that was also a concern
4 for the revocation of the existing building
5 permit because it was no longer an addition to
6 a single family house. It was construction of
7 a brand new building.

8 MS. WOOLRIDGE: And did you also
9 approve Building Permit No. 477039? Did you
10 issue?

11 MR. DOUGLAS: Yeah. There was a
12 permit issued for that, but I was not familiar
13 with the process that went into the issuance
14 of this first--that permit.

15 MS. WOOLRIDGE: But the purpose of
16 that particular building permit was for what
17 reason?

18 MR. DOUGLAS: It was to convert a
19 single-family house to an 11-unit apartment.

20 MS. WOOLRIDGE: Are you familiar
21 with--were you the one that approved the
22 Building Permit B478240?

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1 MR. DOUGLAS: I was the one that
2 authorized the approval of that permit, yes,
3 the emergency demolition.

4 MS. WOOLRIDGE: And the basis that
5 you approved this demolition permit was for
6 what purpose?

7 MR. DOUGLAS: Was specifically to
8 avoid the building collapsing on to the
9 neighbor's property on an emergency basis.

10 MS. WOOLRIDGE: Did you also
11 approve this permit to bring the structure of
12 the walls into a safe height?

13 MR. DOUGLAS: That's what was
14 brought to my attention, you know, by the
15 applicant, who was stating that this building,
16 the collapse was at a certain level, and if
17 they bring it down to another level it would
18 not collapse. And so that's the reason, you
19 know, for bring--cutting it down, so that that
20 lean, you know, would not take place, that
21 moment would not, you know, be done.

22 MS. WOOLRIDGE: Did the applicant

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1 also inform you that he wanted to remove a
2 wall that was structurally unsound?

3 MR. DOUGLAS: Yes.

4 MS. WOOLRIDGE: So were you
5 surprised to hear that the applicant had
6 removed all the walls, except the one small
7 portion?

8 MR. DOUGLAS: Yes.

9 MS. WOOLRIDGE: Mr. Green will
10 show you the document, the picture. So were
11 you surprised when you saw that the entire
12 structure had been removed, from the top
13 picture had been removed?

14 MR. DOUGLAS: As for Plan G, yes.
15 I never visited the site, initially. I never
16 went out to see what was there before. Like
17 I said earlier on, I only saw a picture that
18 showed a wall that was leaning. The picture
19 never showed the rest of anything else, and
20 based on that picture, I made my decision that
21 we do have a potential collapse here, and I
22 made the decision to issue an emergency

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1 demolition permit for that wall, reducing it
2 in height.

3 MS. WOOLRIDGE: Mr. Douglas--

4 COMMISSIONER TURNBULL: I just
5 wonder if I could interrupt for a minute. And
6 I know it's hard to tell. Do you think that
7 the wall you saw was a one-story height wall,
8 or a two-story height wall? I mean, is it the
9 wall on the left here of the building? Do you
10 think--

11 MR. DOUGLAS: It was more than one
12 story.

13 COMMISSIONER TURNBULL: It was
14 more than one story?

15 MR. DOUGLAS: Yes; yes.

16 COMMISSIONER TURNBULL: What date
17 was the permit issued?

18 MR. DOUGLAS: The permit was
19 issued on 12-14-06.

20 COMMISSIONER TURNBULL: 12-14.

21 MR. DOUGLAS: Well, now there was
22 an error created in the issuance of this

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1 permit on the dates, and I identified that in
2 one of my letters to the applicant.

3 The second permit was issued on
4 December 14, 2005.

5 MS. WOOLRIDGE: And that's
6 indicated, Madam Chair, in a letter dated
7 March 31st, 2006.

8 MR. BROWN: I'm confused here. I
9 missed--

10 CHAIRPERSON MILLER: I am too.
11 Are you talking about a demolition permit was
12 issued for a two-story wall?

13 MR. DOUGLAS: Well, I don't--the
14 thing is when the application was brought to
15 me, or the picture was shown to me, there was
16 a taller wall, and the picture that was taken
17 was only a side wall. It was a taller wall
18 than one story, it appeared to me. I did not
19 go out on the site and see it. So as I can
20 recall, it was more than one story.

21 COMMISSIONER TURNBULL: But if it
22 was taken from a basement level, it could have

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1 been a basement wall and a one-story wall.

2 MR. DOUGLAS: Possibly. Possibly.

3 CHAIRPERSON MILLER: And was it
4 attached to other walls?

5 MR. DOUGLAS: Not in the picture.

6 CHAIRPERSON MILLER: Or was a
7 freestanding wall?

8 MR. DOUGLAS: Not in the picture.
9 Not in the picture.

10 CHAIRPERSON MILLER: And what's
11 the date you think the permit actually was
12 issued?

13 MR. DOUGLAS: Our permit had to be
14 issued probably in--somewhere in December 05.
15 Yeah. I think it was December 14, 05.

16 MR. BROWN: Madam Chair, I'm now
17 totally confused. What permit are we talking
18 about?

19 MR. DOUGLAS: The emergency
20 demolition permit.

21 CHAIRPERSON MILLER: Why don't we
22 identify it in somebody's filing, so we know

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1 exactly which permit.

2 MS. WOOLRIDGE: It's number five
3 in the file with the motion to dismiss.

4 (Pause.)

5 MS. PARKER-WOOLRIDGE: Beg the
6 court's indulgence. This was filed with the
7 District of Columbia's response to the Board's
8 inquiries, which was filed on October 12th.

9 (Pause.)

10 MS. GLAZER: Madam Chair, I
11 believe it's attached to Exhibit 19.

12 (Pause.)

13 BOARD MEMBER LAUDER: Just so
14 we're clear that we're looking at the correct
15 document, because it's in a number of
16 different pleadings, what's the permit number
17 on the document.

18 MS. PARKER-WOOLRIDGE: B478240.

19 BOARD MEMBER LAUDER: Okay, thank
20 you.

21 CHAIRPERSON MILLER: I think we're
22 all looking at the same document, and it is

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1 attached -- Mr. Douglas, can you explain?

2 MS. PARKER-WOOLRIDGE: Okay. It's
3 Exhibit 5, building permit. It's dated on
4 here as 12/14/06.

5 CHAIRPERSON MILLER: Right.

6 MS. PARKER-WOOLRIDGE: Would you
7 explain to this Board the reason why this date
8 should have been 12/14/05, versus what it is?

9 THE WITNESS: Well, that was an
10 error created in the office by the person who
11 was typing the permit. So at that point in
12 time, we were typing permits on a typewriter.
13 It wasn't being printed.

14 That error was brought to bear
15 after the permit was issued. To me, there is
16 no particular reason why that error was
17 created. I can't foresee. But you know, we
18 did acknowledge that that was an error early
19 on.

20 MR. BROWN: Madam Chair, it looks
21 like a computer-generated permit to me. Also,
22 the date isn't 12/14/05. The demo permit was

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1 issued on February 14th of '06, as they've
2 acknowledged. So we need to get our stories
3 straight.

4 MS. PARKER-WOOLRIDGE: Is counsel
5 speaking of, I believe, one of the pleadings
6 that was filed, indicating that on February
7 14th, '06? Is that what counsel's speaking
8 about, what you're reading from?

9 MR. BROWN: Well, I'm looking at
10 the building permit, and notwithstanding the
11 fact that it's typed 12/14/06, I think we've
12 all acknowledged subsequently that it was
13 actually issued on February 14 of '06, not
14 December 14th of '06 and not December 14th of
15 '05. But we need to get our stories straight.

16 CHAIRPERSON MILLER: We need to
17 get our basic facts straight. You're saying
18 it was February what, 14th? And we're all in
19 agreement that the date on the building permit
20 is incorrect. Now the question is what's the
21 correct date?

22 MS. PARKER-WOOLRIDGE: Yes, Madam

1 Chair.

2 CHAIRPERSON MILLER: Do you
3 disagree with Mr. Brown's representation of
4 what the correct day of the permit would be?
5 What is that, Mr. Brown?

6 MR. BROWN: Well, the permit as
7 it's typed in my view is incorrect.

8 CHAIRPERSON MILLER: DCRA says
9 that also.

10 MR. BROWN: All right. But their
11 representation that the date should be
12 December 14th of '05 I believe is incorrect.

13 THE WITNESS: You know, I can't
14 validate counsel right now. I would have to
15 go back and do some more research on that one,
16 Mr. Brown.

17 MR. BROWN: It's complicated,
18 Madam Chair. DCRA has indicated to us that
19 the actual application that was filed can't be
20 located. We've tried to find it, they've
21 tried to find it and we can't seem to find it.

22 But if you look at the

1 circumstances and what was occurring, the one
2 -- the circumstances leading up to the
3 February 20th '06 collapse of the building,
4 which was occurring after the stop --
5 immediately after the stop work order, I mean
6 the emergency demo permit was issued.

7 Then Mr. Douglas' letter of
8 February 24th of 2006, and then the stop work
9 order that was also issued. Again, we're
10 looking at the February 2006 time frame, not
11 a December 2005 time frame.

12 CHAIRPERSON MILLER: Okay. Let's
13 go back to DCRA. I don't know whether you
14 want to pursue this point right now or get
15 back to it.

16 MS. PARKER-WOOLRIDGE: Beg the
17 court's indulgence.

18 (Pause.)

19 MS. PARKER-WOOLRIDGE: Madam Chair
20 and Board members, in reference to the date,
21 could the government leave the record open to
22 get the clarification, because I don't want

1 the witness to say one thing and we find out
2 when we do our research further that it should
3 be December '05, instead of February.

4 MR. BROWN: I object.

5 MS. PARKER-WOOLRIDGE: The
6 record's going to be left open anyway counsel,
7 for other documents to be submitted. It's no
8 harm or prejudice to you at all.

9 CHAIRPERSON MILLER: What's the
10 objection, Mr. Brown?

11 MR. BROWN: Well, one --

12 CHAIRPERSON MILLER: Do we have
13 the right information? Do we have the correct
14 information?

15 MR. BROWN: Well, but I think it's
16 their burden, and again they're once again not
17 prepared. I've indicated and I've laid out in
18 my documents quite clearly, and the
19 circumstances support that it's February 14th
20 of '06.

21 DCRA is wasting the Board's time
22 and everybody else's time. Their witness is

1 not prepared to testify.

2 CHAIRPERSON MILLER: Okay. I
3 think this is wasting time. That's a fact.
4 I think it would be fine to clarify or confirm
5 it. We're leaving the record open.

6 We're not going to be extending
7 the time in this case for that one fact. So
8 let's go forward. But are you prejudiced by
9 that, that confirmation of a fact?

10 MR. BROWN: I am, because they've
11 taken certain actions that are being appealed
12 here. If they can't get their story straight
13 about the dates that occurred, my ability one,
14 to submit evidence and my ability to cross-
15 examine a witness who quite frankly doesn't
16 have a clue about when the events occurred,
17 I'm prejudiced, my client's prejudiced.

18 CHAIRPERSON MILLER: How are you
19 prejudiced, Mr. Brown? How is the client
20 prejudiced?

21 MR. BROWN: Because if Mr. Douglas
22 comes back and gets his story straight, I've

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1 lost the ability to cross-examine him on that
2 fact.

3 CHAIRPERSON MILLER: Well, let's
4 just say if a new fact comes in and it's a
5 surprise to you and it affects your case, then
6 the Board would certainly consider allowing
7 you the opportunity to respond. So I don't
8 see how you're -- I'm sorry.

9 MR. BROWN: We seem to make
10 excuses and allowances for DCRA's inability to
11 proceed in an orderly fashion. I understand
12 the Board's desire to one, complete the
13 proceeding and to be fair.

14 But we continue to make
15 allowances, compromise the Board's orderly
16 proceedings, to indulge DCRA and the
17 government. I don't think that -- we just
18 keep compounding the problem, step after step,
19 and the record is left open for more and more
20 things.

21 We can't even get the fundamental
22 dates agreed upon. It makes a difference,

1 quite frankly in the context here, whether
2 this demo permit was issued on December '05 or
3 it was issued in December 14th, '06, as it was
4 -- it says on its face, or it was issued on
5 February 14th of '06, as I maintain and have
6 maintained all along.

7 I mean it makes -- number one,
8 it's a one year swing of events. If it's on
9 its face December 14th, '06, the demo permit
10 was issued months after --

11 CHAIRPERSON MILLER: They already
12 said it wasn't that date. So you're talking
13 about the other, December 14th '05 or your
14 date, sometime therein. If they come back and
15 confirm your date, you really haven't been
16 prejudiced.

17 If they come back with some other
18 date then perhaps that would give reason for
19 you to challenge it.

20 MR. BROWN: Well, I mean I'm --

21 CHAIRPERSON MILLER: And you know,
22 then we can cross that bridge. I just find it

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1 hard to believe that this Board wouldn't allow
2 confirmation of a date, where there's an error
3 on an official document.

4 MR. BROWN: But we ought to be
5 looking to DCRA. I've made it very clear all
6 along, throughout my pleadings, what I believe
7 the correct date is and why. For them to
8 arrive and plead ignorance and hold up these
9 proceedings seems to --

10 Again, it's a failing on the
11 government to participate in a meaningful way
12 in these proceedings.

13 MS. PARKER-WOOLRIDGE: Madam
14 Chair, may the government respond?

15 CHAIRPERSON MILLER: Briefly. I
16 think Mr. Lauder may have a question too, but
17 I don't want to make a mountain out of a
18 molehill here.

19 MS. PARKER-WOOLRIDGE: Okay. I'll
20 wait.

21 CHAIRPERSON MILLER: Did you have
22 a comment, Mr. Lauder?

1 BOARD MEMBER LAUDER: Just that I
2 think all the Chair's saying is to leave the
3 record open for the confirmation of the date.
4 The great sweep of the evidence to me would
5 suggest that the date would probably be
6 February 14th, if we're talking about
7 something that was deemed an emergency, that
8 DCRA was not inclined to even approve of in
9 the first instance.

10 Mr. Douglas had to have some
11 significant reasons for approving it. It
12 subsequently found that yes, it was an
13 emergency. At least to me it would seem very
14 unlikely that the permit would have been
15 issued in December and someone would have sat
16 on it for 60 days, and it was supposed to have
17 been an emergency.

18 But I think the Chair's just
19 saying leave the record open, allow it to be
20 confirmed, and we probably can proceed right
21 now, consistent with where the evidence
22 suggests that date was.

1 CHAIRPERSON MILLER: Let me just
2 say. It appears that in Exhibit 19, DCRA's
3 Motion to Dismiss, that DCRA states that the
4 demolition permit was issued on February 14th,
5 2006.

6 MS. PARKER-WOOLRIDGE: We saw
7 that, Your Honor.

8 CHAIRPERSON MILLER: Are you
9 questioning that now?

10 MS. PARKER-WOOLRIDGE: Well, we
11 still would like to have the record open, just
12 to confirm, based on what Mr. Douglas has just
13 said, to make sure that the Board has the
14 correct date.

15 CHAIRPERSON MILLER: I thought he
16 said that because he didn't have any documents
17 before him, and to jog his memory. But when
18 you file a motion to dismiss a legal pleading,
19 you're now questioning the date in your
20 pleading?

21 MS. PARKER-WOOLRIDGE: Well,
22 that's what we had was February the 14th '06,

1 and we believe it to be February 14th, '06.
2 If Mr. Douglas is willing to state that at
3 this time, then the issue is moot.

4 But the only concern would be that
5 I guess for Mr. Brown, if the demolition
6 permit was issued in December '05 and the
7 demolition took place in February, sixty days
8 thereafter, then of course it wouldn't have
9 been an emergency.

10 CHAIRPERSON MILLER: Ms. Bolling
11 signed this. Do you have --

12 MS. BOLLING: The information that
13 we had when we did the pleading, we absolutely
14 believed it was February 14th.

15 CHAIRPERSON MILLER: Would you
16 have reason to question that?

17 MS. BOLLING: I believe what my
18 co-counsel is saying that Mr. Douglas has
19 testified to something different, and she
20 wanted to have the opportunity for him to
21 clarify that to his own satisfaction.

22 But the information we had when we

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1 prepared a pleading for this tribunal --

2 CHAIRPERSON MILLER: I would hope
3 that it would be based on.

4 MS. BOLLING: That's what we
5 thought. That's what we --

6 CHAIRPERSON MILLER: I can
7 understand, Mr. Douglas. Is it possible you
8 just don't personally remember, but that
9 doesn't mean that there's anything wrong with
10 the date that they put in the pleading?

11 THE WITNESS: That is correct.

12 MS. BOLLING: Okay.

13 CHAIRPERSON MILLER: All right.
14 Let me just say that I think we should move
15 on. But I think that it may go without saying
16 that, you know, should one of the parties
17 discover that they've written something
18 incorrect in any of the filings, I think that
19 the record would be open to make a correction.

20 But I don't think we should dwell
21 on this. I don't think there's been reason to
22 really doubt this date, unless you have really

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1 reason to doubt, other than Mr. Douglas just
2 not remembering himself.

3 MS. PARKER-WOOLRIDGE: No. When
4 we did the pleading, we had the documents
5 before us. We were just shocked when he said
6 that.

7 CHAIRPERSON MILLER: Okay, let's
8 move on then.

9 BY MS. PARKER-WOOLRIDGE:

10 Q I have two questions of Mr.
11 Douglas and I'll be finished. Mr. Douglas,
12 did you visit the premises at 1233 Morse
13 Street?

14 A Yes, I did.

15 Q And what did you observe? First
16 when did you visit the premises?

17 A I'm bad on dates and I can't
18 remember the dates that I visited. But I know
19 I was out there in your company.

20 After we received several
21 complaints, after a stop work order was
22 placed, and it was my understanding that no

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1 construction was ongoing, I said to Ms.
2 Parker-Woolridge, I said "Listen, you know
3 what? Let's get out there and see exactly
4 what's happening."

5 So I drove out there and I was
6 kind of a little surprised to see, you know,
7 a full-blown structure already enclosed. That
8 was the extent of my visit. I just drove
9 around. I went through the alley.

10 I looked to see where an addition
11 could have been placed. I observed, based on
12 the grade line, there were new foundations for
13 it, or new foundations up from the ground. I
14 couldn't validate what was being told to me
15 that there was an addition.

16 So I pointed that out to Ms.
17 Parker-Woolridge, I says this is a brand new
18 building that they're putting up here.

19 It's kind of amazing to look at
20 the size of the building and the rest of the
21 street, the stories of this towering building
22 over the other buildings. But that was the

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1 extent of my visit.

2 Q And during your visit, was the
3 picture that's reflected on the poster on the
4 bottom reflect what you observed on that day?

5 A Yes.

6 Q And the picture that's being shown
7 by Attorney Green, would you point that
8 picture please?

9 A This one.

10 Q The bottom lower left. Thank you,
11 Mr. Green. Madam Chair, I have no other
12 questions for Mr. Douglas.

13 CHAIRPERSON MILLER: All right.
14 Mr. Douglas, I have one question. I think you
15 made reference at one point to a raze permit,
16 and it sounded like --

17 And I'm not sure I really
18 understood it; that's why I'm asking -- they
19 had already gotten an emergency demo permit
20 and knocked down the wall, right, and then
21 this raze permit was afterwards? Was it a
22 retroactive permit or can you explain what

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1 you're referring to?

2 THE WITNESS: They never obtained
3 a raze permit, and there's a difference
4 between the demolition and the raze, and maybe
5 if I explain that to you, it will give you
6 some insight.

7 A raze permit actually, the
8 applicant will have to cut off all the
9 utilities, cut off the water, actually tear
10 this building down and its entirety and you
11 know, cut off the utilities.

12 In a demolition, you're not doing
13 that, because you will be on the existing
14 foundation, and all of the infrastructure will
15 remain in place.

16 The raze application process is a
17 little lengthy than a demolition permit,
18 because you will have to contact the utility
19 companies, the gas company and PEPCO and
20 Verizon, etcetera, etcetera, to get a
21 clearance to be brought into our office before
22 we can issue that permit.

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1 So it is not a one day, one week
2 or two-week process. Sometimes it takes four
3 to eight weeks, consisting applying for this
4 raze permit.

5 Now when it was brought to my
6 attention that the building was down, we
7 normally give -- our offices normally give
8 applicants the opportunity, you know,
9 retroactively, to now rectify the situation
10 they have created by going back and applying
11 for a raze permit, and getting the utility
12 companies involved, so that we can be assured
13 that this site now is now safe.

14 So that's when, you know, after
15 that was brought to my attention, you know, I
16 brought it to the attention of the applicant
17 that look, you need to apply for a raze permit
18 so that we can give you these clearance
19 letters, so at least we have a record that
20 this site is safe. I don't know if that
21 clears that up for you.

22 CHAIRPERSON MILLER: Well, so you

1 advised them to do that, and you're saying
2 they never applied for a raze permit. Then
3 this big structure was built. So the big
4 structure was built without ever getting the
5 clearance from your office?

6 THE WITNESS: That is correct.

7 CHAIRPERSON MILLER: Okay, thank
8 you. Other Board questions?

9 BOARD MEMBER LAUDER: Just very
10 briefly, Mr. Douglas, and your testimony went
11 through this once before.

12 But just walk me through what it
13 was you saw in the picture of 1231 Morse that
14 led your office to conclude that there was a
15 need for the emergency demo permit and the
16 wall that you found needed to be demo'd, I
17 guess.

18 The permit is kind of vague on
19 what the emergency demo permit was to consist
20 of. There's been a lot of testimony. But
21 your recollection of what the demo was to
22 consist of.

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1 THE WITNESS: As I can recall, the
2 emergency -- well, let me go back. Based on
3 a conversation with the applicant a day
4 before, the applicant came in to apply for an
5 emergency demolition permit.

6 So I explained to him that there
7 is no emergency demolition. There's no such
8 thing. What is the emergency? The applicant
9 indicated that the building -- the structure
10 has a tendency of collapsing onto the
11 neighbor's property.

12 I said "Well, you know, I need
13 something to see, and I'm not prepared to go
14 out on the site, because that's not what I
15 do." I said if you can bring me a picture or
16 something showing me the collapsing of this
17 wall, I will make a decision."

18 The next day, the applicant came
19 back with a picture showing the wall that they
20 are asking for this emergency. It showed a
21 wall that was leaning. It showed that part of
22 the top part is practically down, off. There

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1 is no roof onto this site that I was looking
2 at.

3 So at that point in time, I made a
4 decision. I said you know, no harm can be
5 done here to make this safe. Let's get this
6 down. So I gave them, I authorized the
7 issuance of that permit. I don't know if that
8 answers your question.

9 BOARD MEMBER LAUDER: It does
10 partially. I wanted to again just ask a
11 follow-up question.

12 THE WITNESS: Sure.

13 BOARD MEMBER LAUDER: And in
14 granting the emergency permit, were the walls
15 to be demo'd to a certain height, and was it
16 a single wall that was to be demo'd to a
17 certain height or three walls? Do you recall?

18 THE WITNESS: That was not really
19 based in our discussion in the issuance of
20 this permit.

21 But in our conversation, what the
22 applicant was saying is they're not taking out

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1 the entire wall; they want to bring it down to
2 a safe height, so that it would not collapse
3 onto the neighbor's property. So that was the
4 extent of our conversation.

5 So you know, in hindsight now I'm
6 thinking about it, I don't know if it really
7 was from the basement level I was looking, you
8 know, the picture was taken.

9 But I know it seemed to me to be
10 more than two stories, to be more than one
11 story at the time that I saw it.

12 BOARD MEMBER LAUDER: Thanks.

13 CHAIRPERSON MILLER: I just have
14 one more question. Given that the dates on
15 the building permit are not correct, I just
16 want to ask you in general, though, for an
17 emergency demolition permit, is it unusual to
18 have the expiration date a year later?

19 THE WITNESS: Normally, what
20 actually happened, the permit issuance clerk
21 is given the instructions that every permit
22 expires after one year. They would just

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1 probably look at the top and put one year
2 later on the bottom, you know.

3 To correct Mr. Brown in something
4 that he said, this permit was typed on a
5 typewriter. It wasn't produced
6 electronically. The form is produced
7 electronically, but the date that was put
8 inside of it was by typewriter.

9 CHAIRPERSON MILLER: Thank you.

10 BOARD MEMBER TURNBULL: Mr.
11 Douglas, I just have one question. When you
12 look, going back to the picture that you had
13 seen, your photograph of what looked to be a
14 two-story wall, there was no intermediate
15 numbers, no flooring in there? It was just a
16 solid height wall going up? No floor joints
17 or anything?

18 THE WITNESS: It wasn't reflected
19 in the picture. Like I said, the picture was
20 cut off and it shows a jagged edge of a side
21 of an exterior angle, and this wall that was
22 leaning.

1 BOARD MEMBER TURNBULL: And there
2 was no bracing or anything?

3 THE WITNESS: I didn't see
4 anything of that nature in the picture.

5 BOARD MEMBER TURNBULL: Okay,
6 thank you.

7 BOARD MEMBER DETTMAN: Mr.
8 Douglas, it sounds like the scope of the
9 emergency demo permit wasn't clearly
10 articulated. It sounds like the appellant was
11 saying that he wanted to bring the walls down
12 to a safe height.

13 However, DCRA never really clearly
14 articulated to what extent; is that correct?

15 THE WITNESS: That's basically
16 true. When we have something of an emergency
17 nature, you don't step back to, you know --

18 My thought process in the
19 authorizing of the issuance is that look,
20 let's make this area safe. Let's bring this
21 wall down to a safe, you know, and give the
22 applicant the opportunity to do what he needs

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1 to do, instead of questioning, sending out an
2 inspector, etcetera, etcetera.

3 So that was my thought process at
4 the time of the issuance of this permit.

5 BOARD MEMBER DETTMAN: It sort of
6 sounds like, though, that the big difference
7 between a demo permit and a raze permit is
8 that when operating under an emergency demo
9 permit, if not clearly articulated to the
10 scope of it, I could bring a building down to
11 its foundation. But the foundation utilities
12 need to stay.

13 THE WITNESS: You can do that.
14 There are some instances where you can bring
15 a building down to grade and keep the
16 utilities in place.

17 We would make a decision based on
18 the seize of the building, the location of it
19 and its impact on the community, whether you
20 will still have to go and get the utilities
21 cut off, or get some understanding from the
22 utilities that it is safe for you to do so.

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1 It is not, you know, basically
2 upon just an application.

3 BOARD MEMBER DETTMAN: If I have
4 an emergency demo permit and I bring a
5 building down and remove its foundation and I
6 remove its utilities, would I be considered
7 outside the scope of an emergency demo permit?

8 THE WITNESS: Yes.

9 BOARD MEMBER DETTMAN: Thank you.

10 BOARD MEMBER TURNBULL: Madam
11 Chair, I've got one more question. Getting
12 back to this, you've been inspecting for a
13 number of years, 20 years or --

14 THE WITNESS: No, I was never an
15 inspector.

16 BOARD MEMBER TURNBULL: You were
17 never an inspector?

18 THE WITNESS: No sir.

19 BOARD MEMBER TURNBULL: Well, let
20 me -- I'm just asking if you've run into this
21 situation before, where people have had issues
22 with these demo permits?

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1 THE WITNESS: Well, I've run into
2 situations with emergency applications before,
3 where applicants have certain emergencies and
4 we would grant them a permit without putting
5 the normal process in place, which is, you
6 know.

7 That's why it comes to me in many
8 instances, because the staff person cannot
9 handle something that is classified as
10 emergency. So that's how it elevated to my
11 level.

12 BOARD MEMBER TURNBULL: Did any of
13 your inspectors look at the photograph?

14 THE WITNESS: Normally on the
15 inspection, inspectors normally don't get
16 involved in the issuance of a building permit,
17 unless there is some grave concern or the
18 inspector was there before, and placed a stop
19 work order prior to this application being
20 submitted.

21 At which time our office will
22 forward the application to the Inspection

1 Division for clearance based on, you know, the
2 identified, yes, this is what I saw? This is
3 the scope of work. Go ahead, issue the permit
4 or don't issue the permit, because the
5 application does not reflect exactly what I
6 saw.

7 That was not done in this case,
8 because I didn't see the need to. It was a
9 brand new application, and they were applying
10 for it for the first time, as far as I know.

11 BOARD MEMBER TURNBULL: I guess
12 what I'm trying to come to some conclusion
13 here is to try to -- was the wall unsafe
14 because it was initially unsafe, or was it
15 unsafe because it was improper demolition
16 going on, the constructing of the building?

17 THE WITNESS: What was reflected
18 to me at the time is that this building was
19 collapsing. This wall had a tendency of
20 collapsing onto the neighbor's property.

21 I didn't know about the pre-
22 condition of the building, and the tearing

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1 down of this building. I just reacted to what
2 I saw.

3 BOARD MEMBER TURNBULL: You were
4 looking at a wall that was unsupported with
5 anything?

6 THE WITNESS: Exactly, exactly.

7 BOARD MEMBER TURNBULL: Okay,
8 thank you.

9 CHAIRPERSON MILLER: Any other
10 Board questions? Cross.

11 CROSS EXAMINATION

12 BY MR. BROWN:

13 Q If we could start, Mr. Douglas,
14 you pointed to the bottom photograph on the
15 board there. What's the date on that photo?

16 A 4/4/07.

17 Q And that's the time frame that you
18 went out to the site?

19 A I can't remember the date I went
20 out. I know, you know, the only thing I can
21 tell you Mr. Brown is that when I went out, I
22 knew what I saw.

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1 I don't know if this photograph
2 was taken after I went or before I went there.
3 I can't tell you.

4 Q You went in 2007, not 2006?

5 A I really can't say if it was late
6 2006 or early 2007. You know, can I ask
7 counsel, because she was with me at that time.

8 MS. PARKER-WOOLRIDGE: No, but I
9 can state that I didn't have the case until
10 April of 2007. So it had to have been after
11 that. I was assigned this case in April of
12 2007 or March, so it had to be after that time
13 period.

14 BY MR. BROWN:

15 Q You seem surprised when you went
16 out to the site and the photo, about the
17 extent of the construction that had occurred?

18 A I was surprised.

19 Q Did you have an opportunity to
20 look at the building permit application and
21 the building permit that was issued
22 originally?

1 A I've seen the building -- yes, I
2 did. Yes.

3 Q Doesn't the structure that's shown
4 on that photograph and the conditions you saw
5 reflect the addition that was authorized under
6 the building permit?

7 A As far as I can recall, the
8 existing building permit that was issued was
9 to have an addition onto a single family
10 house, to convert it to an 11-unit dwelling
11 place.

12 I didn't inspect it for content,
13 number of units. I didn't go into the
14 building. I was just surprised at the level
15 of construction that was completed, knowing
16 that there were several stop work orders, and
17 I know where it started from.

18 So I couldn't understand how this
19 building could have come to this level while
20 there were stop work orders in place. That's
21 why I was surprised.

22 Q So you weren't surprised by the

1 size of it; just the state of the
2 construction?

3 A That is correct.

4 Q When the first stop work order was
5 issued, and you issued that back in February
6 of '06; is that correct?

7 A Well, the department issued it. I
8 didn't.

9 Q You sent a letter confirming it,
10 though?

11 A Yes.

12 Q And wasn't the addition portion of
13 the structure under roof at that point?

14 A I don't know. I didn't go out
15 there that time.

16 Q And that first stop work order
17 that was issued in February of 2006, wasn't
18 that ruled invalid by the Office of
19 Administrative Hearings?

20 A I'm not familiar with that.

21 Q So the fact that the stop work
22 order that was placed on the property was

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1 ruled invalid, and Mr. Demuren and the
2 appellant could go back to work.

3 So there was a period of time when
4 there was no valid stop work order on the
5 property and the work could proceed. Does
6 that sound correct?

7 A Again, I'm not familiar with that.
8 If that was the case, I guess so.

9 Q Are you familiar that the District
10 and your department issued a second stop work
11 order in 2007?

12 A Yes.

13 Q And a third stop work order in
14 2007?

15 A I really can't answer whether
16 there was a third stop work order. But if the
17 records reflect that, then it did.

18 Q So you would understand that there
19 was a period of time where there was no stop
20 work order pending on this property?

21 MS. PARKER-WOOLRIDGE: Madam
22 Chair, I object as to relevancy. He's asked

1 and answered. He said he didn't know.

2 MR. BROWN: I'll move on.

3 BY MR. BROWN:

4 Q Back in March of 2006, and you
5 referenced a letter of March 31st, 2006 to Mr.
6 Blanchard of my office, and at that time, you
7 indicated that you had the basis for revoking
8 the original building permit that had been
9 issued in September of '06; is that correct?

10 A Can you repeat the question?
11 Sorry. Just the last part. I didn't hear the
12 last part.

13 Q You testified that in March of
14 2006, when you corresponded with Mr.
15 Blanchard, that you believed the basis existed
16 to revoke the original building permit that
17 had been issued in September of 2005; is that
18 correct?

19 A That's correct.

20 Q So March 31st, 2006, you thought
21 that the building permit should be revoked; is
22 that correct?

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1 A Based on information that was
2 provided to me, it gave me a clear
3 understanding and, you know, the violation
4 identified, yes.

5 Q So why did you wait from March
6 31st, 2006 until July 19th, 2007 to actually
7 take the step of revoking the building permit?

8 A I think there were several
9 conversations going on between the applicant
10 and the department, that is through the
11 inspection, for the applicant to exercise good
12 faith in bringing the place into compliance,
13 applying for new permits as the applicant was
14 instructed.

15 I think that's what that took that
16 delay. I think the applicant was given ample
17 time to abate whatever violations were there.

18 Q The applicant submitted a revised
19 application that you were privy to the
20 preparation or the discussion of back in
21 December of '05 or '06, excuse me; is that
22 correct?

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1 You and I met with Mr. Bello and
2 Ms. Woolridge in December 15th of 2006?

3 A You know, it's funny. That
4 meeting, I can't remember the contents. I'm
5 vaguely remembering the meeting, but I'm bad
6 on times in that meeting. But let's go ahead
7 and say yes.

8 Q And as a result of that meeting,
9 Mr. Bello filed in January, early January, a
10 revised permit application?

11 A Yes.

12 Q And that was rejected by Mr. Cruz
13 in March of '07?

14 A Yes. I don't know the rejection
15 date, but I know Mr. Cruz did have some
16 concerns about it.

17 Q So even after that was rejected,
18 you waited from March of '07 until July of '07
19 to do what you had the right to do back in
20 February of '06 or March of '06?

21 A But if I remember correctly, there
22 was a number of ongoing communications and

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1 negotiations back and forth with the agency
2 and possibly with your office and the
3 applicant, in trying to abate this situation.

4 I don't think that it was sitting,
5 where nothing was being done. Everybody just
6 waiting and that time just --

7 Q But your branch issued in April,
8 issued two separate stop work orders to the
9 property. It sounds like there weren't that
10 many negotiations going on in April of '07?

11 A Well, I can't comment on the stop
12 work orders, because that came out of the
13 Inspection Division. But if I remember, there
14 were a number of complaints that were coming,
15 coming into the department, and I think those
16 complaints initiate other actions from other
17 areas.

18 Q Okay. Going back in July of '07,
19 you finally got around to issuing the Notice
20 to Revoke the original permit and the
21 demolition permit; is that correct? You
22 issued a letter dated July 19th, 2007?

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1 A Yes.

2 Q You revoked the original permit
3 based on my client's misrepresentation. Be
4 specific. How did my client in April 2005,
5 when he applied for the permit, what did he
6 misrepresent?

7 A In a Description of Proposed Work,
8 the applicant indicated building permit is for
9 an additional to a single family house,
10 dwelling house, and convert apartment to an 11
11 unit building.

12 It was brought to bear, based on
13 inspections, that it was not an addition to a
14 single family house. The single family house
15 was torn down. It was a brand new building.

16 Q That occurred subsequently;
17 correct?

18 A Subsequent to what?

19 Q To the building permit
20 application. The building permit application
21 occurred in April of 2005; correct?

22 A If that's what the record

1 reflects, okay. One minute. Give me that
2 other page, the back page. Where's the back
3 page of the application?

4 Yes. I don't have the -- I have
5 -- I need to see something else. Where is the
6 back page of the application?

7 Q Actually, the date of the
8 application is shown on the front page of the
9 application.

10 A But the front of the application
11 is not a reflection of the date the
12 application was filed. It just indicates the
13 date that the applicant filled out the
14 application.

15 If I can see a copy of the back
16 page of the application, the application was
17 started on 4/12/05.

18 Q That's amazing. So your position
19 is that on April 12th, 2005, my client knew
20 that he was going to lie on this building
21 permit application, and tear down and have
22 part of this building collapse almost a year

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1 later?

2 A I have no idea what your
3 applicant's intent was. I just reflect
4 exactly what --

5 Q You said he misrepresented.
6 That's lying.

7 MS. PARKER-WOOLRIDGE: Madam
8 Chair, if counsel's going to ask a question to
9 the witness, at least give him an opportunity
10 to respond to it.

11 MR. BROWN: Go ahead.

12 THE WITNESS: I never indicated
13 that the applicant lied or he did lie. I'm
14 stating to you specifically what the
15 application stated and what was done.

16 BY MR. BROWN:

17 Q But you've said he's
18 misrepresented on that application?

19 A I said he misrepresented the
20 facts. He misrepresented the information on
21 the application. He gave an application to
22 say he's putting on an addition to an existing

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1 single family house, and in fact that did not
2 transpire.

3 Q How do you know that?

4 A Well, from all of the inspections
5 that were done, and based on my last visit to
6 the site.

7 Q Mr. Douglas, in April, he made a
8 representation on the permit application, and
9 you're saying that at that moment, based on
10 the information my client had at that moment,
11 that he misrepresented. You're based that on
12 events that occurred subsequently; correct?

13 A That's correct. That's correct.

14 Q All right, and how would my client
15 have known in April 2005 what was going to
16 happen more than a year later, almost a year
17 later?

18 A Well, let's go on your premise.
19 Let's say he started the process to put on an
20 addition with the most honorable intentions.
21 Let's go that route. Later on, he found out
22 "Look, this building is down. I'm building a

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1 new building."

2 At that point in time, it would
3 have been on your client's behalf to apply for
4 a revision to the building permit, to correct
5 the first one.

6 Q But under even your scenario, he
7 hasn't misrepresented the original permit.
8 Wasn't it more just circumstances changed?

9 A I wouldn't know what circumstance.
10 I know what was not abated. I know what was
11 done.

12 Q But you're still going back to
13 events that occurred subsequently --

14 MS. PARKER-WOOLRIDGE: Your Honor,
15 Madam Chair, he's asked and answered the
16 question.

17 CHAIRPERSON MILLER: It sounds
18 like you're arguing with the witness.

19 MR. BROWN: Well, I'm trying to
20 get, because he has in fact said that my
21 client, in two circumstances, has
22 misrepresented. Misrepresented in my book is

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1 lying. I mean we could -- and I'm trying to
2 nail down that in April of 2005, the nature of
3 my client's misrepresentation about facts that
4 hadn't even occurred yet.

5 I'm not getting an answer, other
6 than to say things happened in the future.

7 CHAIRPERSON MILLER: Well, it
8 seems like that's his answer. I mean you
9 asked him what it was based on, and he told
10 you. To you that might be satisfying with
11 respect to rising to the level that you think
12 misrepresentation should mean.

13 MR. BROWN: Well, I'm trying to
14 get the truth, because that's what we're
15 looking at. I mean I'm trying to find out if
16 he has some basis for it, and I'm giving him
17 every opportunity, and he just keeps saying
18 but things happened later. So we'll leave it
19 at that. I'm willing to move on.

20 BY MR. BROWN:

21 Q Mr. Douglas, the picture that was
22 provided with the emergency demo application,

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1 do you have that photo?

2 A No, I don't.

3 Q Do you have the application
4 itself?

5 A As you stated early on, we can't
6 find any records of this application or some
7 of these applications surrounding this case.

8 Q You didn't inspect the property
9 personally before the emergency demo permit
10 was issued?

11 A No, I did not.

12 Q Do you know if anybody from DCRA
13 inspected the property prior to the emergency
14 demo permit being issued?

15 A I'm not aware of any.

16 Q Have you ever met with my client,
17 Mr. Demuren?

18 A Yes, I did.

19 Q And when did that occur?

20 A After the first stop work order
21 was placed. I think he came in and met with
22 myself and Mr. Cruz.

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1 Q And did you give Mr. Demuren
2 guidance about stabilizing the site?

3 A Not that I know of.

4 Q And after the collapse, were there
5 any inspectors who went out to the site?

6 A I'm not familiar. I'm sure there
7 probably were.

8 Q So you didn't receive reports from
9 any of them. And when we met in December of
10 2006, your expectation was that there would be
11 a revised building permit application
12 submitted?

13 A I think that was my
14 recommendation, that a revised permit, a
15 revised application needs to be submitted to
16 abate those violations that were identified.

17 Q And the revised building permit
18 application that was submitted, did that
19 satisfy your concerns? Not Mr. Cruz's
20 concerns, your concerns?

21 A Well, all along I really didn't
22 have much of a concern because most of the

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1 issues that was brought to bear was of a
2 zoning nature.

3 Q So from your perspective, you
4 didn't see any reason why the revised permit
5 application should have been granted?

6 A I have no say-so in that, whether
7 it was granted. I indicated to Mr. Bello and
8 the applicant that once Mr. Cruz approves it,
9 it's good.

10 Q Just to clarify, you indicated
11 that in your previous testimony, you were
12 indicating that Mr. Cruz did not need to be
13 consulted about this revised building permit
14 application?

15 A What previous testimony are you
16 talking about?

17 Q Today, today.

18 A That Mr. Cruz did not need to be
19 consulted. No, I didn't say that. I don't
20 recall saying that. What was the context of
21 saying that?

22 Q It had to do with the processing

1 of the revised building permit application?

2 A No, I never said that. Not that I
3 can recall.

4 MR. BROWN: This time. I think,
5 Madam Chair, we're finished with Mr. Douglas.

6 CHAIRPERSON MILLER: Okay.

7 MS. PARKER-WOOLRIDGE: Madam
8 Chair, may I ask two other questions?

9 CHAIRPERSON MILLER: Okay.

10 REDIRECT EXAMINATION

11 BY MS. PARKER-WOOLRIDGE:

12 Q In reference to the plat find by
13 the Office of the Surveyor, can you tell me do
14 you see the existing structure on that
15 document, that was filed with the application
16 for the building permit?

17 A Yes. I see the identification of
18 where they indicated the existing structure
19 is.

20 Q And you later received complaints
21 that the existing structure no longer exists?

22 A You know, I didn't receive -- I

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1 personally did not receive those complaints.
2 I think complaints came into the department.
3 Several different complaints came into the
4 department.

5 I think one of the inspection
6 reports identified or one of the inspectors
7 indicated that there is no building out there
8 anymore. The building is gone.

9 Q But you issued a permit for an
10 existing single family dwelling to be
11 converted into an apartment building, am I
12 correct?

13 A To put an addition onto an
14 existing single family dwelling; that is
15 correct.

16 Q So once you learned that that
17 existing single family dwelling no longer
18 existed, was that the point when you issued
19 your notice to revoke the permit?

20 A Yes.

21 Q Okay. Counsel Brown asked you
22 about a statement you got from former Zoning

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1 Administrator Bill Cruz. At some point when
2 the person came to you and asked you for the
3 emergency demolition permit -- I'm sorry, the
4 revised building permit application, the
5 process, it goes to different disciplines; am
6 I correct?

7 A All applications will have to go
8 to different disciplines.

9 Q Okay, and the Zoning Administrator
10 is one of the disciplines?

11 A That is correct.

12 Q When you met with Mr. Bello, was
13 there a conversation between you and Mr. Bello
14 as to the revised building permit application
15 not going to Mr. Cruz, but going to someone
16 other than Mr. Cruz for approval?

17 A I don't recall.

18 Q Do you recall what the
19 conversation was regarding Mr. Cruz and --

20 A Mr. Bello's concern basically in
21 our conversation when we met is to, in
22 revising this building permit, where it would

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1 not need to go to zoning and zoning is the
2 issue.

3 He was trying to point out to me
4 that look, it has already been approved by
5 Zoning. All it needs to do is to be revised
6 to reflect exactly what is out there at this
7 current time.

8 I point out to Mr. Bello that, you
9 know, that is not going to be the case because
10 basically this whole case is predicated on a
11 zoning matter, and this applicant will need to
12 see Mr. Cruz or the Zoning Department.

13 MS. PARKER-WOOLRIDGE: Okay, thank
14 you. No other questions, Madam Chair. Thank
15 you.

16 CHAIRPERSON MILLER: Okay.

17 MS. PARKER-WOOLRIDGE: I have one
18 witness left. Well, we have two. I will call
19 my last one, Mr. Davidson.

20 (Witness excused.)

21 BY MS. PARKER-WOOLRIDGE:

22 Q Mr. Davidson, would you please

1 state your name for the record?

2 A William Davidson.

3 Q And what is your position with
4 DCRA?

5 A I am the supervisor of electrical
6 inspectors, otherwise known as the chief
7 electrical inspector.

8 Q At any time, did you visit the
9 premises at 1233 Morse Street, N.E.?

10 A Yes, I did.

11 Q When, and for what purpose?

12 A I was out there in April of 2007
13 and also in May of 2007. I accompanied the --

14 MR. BROWN: I object. The subject
15 matter of this case is events that occurred in
16 a building permit application in 2005, and a
17 demolition permit in 2006. I mean I'm not
18 sure how a visit to the site in April and May
19 of 2007 adds a whole lot to the Board's
20 inquiry here.

21 We've seen pictures from 2007.

22 I'm not so sure that we're not repeating or

1 wasting time outside the focus of our inquiry.
2 I would ask the Board do you really care what
3 happens in April 2007, for purposes of making
4 a decision on the issues that are before you.

5 MS. PARKER-WOOLRIDGE: Madam
6 Chair, Counsel Brown has an opportunity to put
7 on his case. I think the government or the
8 appellee should have the same right and same
9 opportunity.

10 Now as Counsel Brown indicated, he
11 filed this amended Notice of Appeal to include
12 the revocation of the permit. That's part of
13 it. The inspection is part of it. The April
14 9th, 2007 inspection is part of the
15 revocation.

16 His testimony is very pertinent.
17 His testimony can also indicate whether or not
18 there were any footings there, any foundation.
19 I believe one of the Board members, Turnbull,
20 asked that question.

21 The pictures that we have attached
22 will indicate that, and the inspector can

1 attest to whether or not any foundations or
2 footings were there at the premises.

3 I'm sure Counsel Brown may not
4 want this testimony to take place, but however
5 it's very relevant in order to make a decision
6 on this matter.

7 CHAIRPERSON MILLER: Okay.

8 MR. BROWN: Madam Chair, I mean if
9 you look at the revocation of permit, dated
10 July 19th, 2007, it doesn't talk about
11 anything occurring in the year 2007. I'm
12 sorry. My apologies.

13 CHAIRPERSON MILLER: Isn't it
14 relevant to how this building turned out, what
15 the permit was for and how the building turned
16 out? Is that relevant? That's later.

17 MR. BROWN: To be honest with you,
18 I don't think it's really all that relevant in
19 the time frame in April and May 2007. We have
20 it before us.

21 It's there, and nobody -- I mean
22 we're willing to stipulate if they're willing

1 to stipulate to it. But I don't think how an
2 inspection in 2007 adds anything to the
3 Board's inquiry.

4 CHAIRPERSON MILLER: I wouldn't be
5 inclined to preclude it, because I don't
6 really know what the testimony is going to
7 reveal. So I think at this point, we might as
8 well just take it in. I'd like to hear the
9 evidence.

10 BY MS. PARKER-WOOLRIDGE:

11 Q Inspector Davidson, you said you
12 visited the premises in April 2007?

13 A April of 2007 and also in May of
14 2007.

15 Q And when you visited the premises,
16 did you visit it with anyone else?

17 A Yes. I was requested by the
18 acting chief of Legal Construction, Neal
19 Lectrin. He asked me to come along with him
20 that day. He had several sites he needed to
21 visits.

22 Q Okay. Can you tell me what you

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1 observed on that particular day?

2 A I seen at that particular time in
3 April, there was what I deemed to be an
4 apartment building.

5 Q Apartment building?

6 A Yes.

7 Q Did you all take pictures?

8 A Yes.

9 Q Turning your attention to the
10 photograph that was submitted on October 12th,
11 2007, I believe there were 43 photographs. I'm
12 only going to go over a few.

13 Turning your attention to the
14 first photograph, which shows a gentleman
15 standing in at the structure.

16 MR. BROWN: Can I see which photo
17 you're referring to?

18 MS. PARKER-WOOLRIDGE: Yes. This
19 is one of the photographs with the gentleman
20 standing at the structure.

21 THE WITNESS: Again, I'm standing
22 next to a backhoe, a backhoe shovel right to

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1 its left.

2 MS. PARKER-WOOLRIDGE: Council
3 Member Brown, it's just before the one that
4 shows the foundation. It's just after that
5 one. Your Honor, may I approach counsel?

6 CHAIRPERSON MILLER: I'm sorry?

7 MS. PARKER-WOOLRIDGE: May I
8 approach counsel so I can show him the
9 photograph. You've got it?

10 MR. BROWN: My apologies for being
11 dense.

12 MS. PARKER-WOOLRIDGE: That's
13 okay. You have it?

14 MR. BROWN: Okay.

15 BY MS. PARKER-WOOLRIDGE:

16 Q Would you indicate what that
17 photograph depicts?

18 A It looks like a gentleman looking
19 over the site. It looks like a backhoe that's
20 doing some excavating on the site.

21 Q And what other structure do you
22 see there?

1 A I see, which would be towards the
2 rear of the property, I guess that would be
3 the addition.

4 HH Madam Chairman, I keep coming
5 back. Mr. Davidson was at the site in April
6 of 2007. Yet he's testifying about pictures
7 that were taken in 2006.

8 CHAIRPERSON MILLER: Is that
9 correct?

10 THE WITNESS: That's correct.

11 CHAIRPERSON MILLER: Okay. Let's
12 pin this down. So the picture that we're
13 looking at with the man facing the project was
14 taken when?

15 MS. PARKER-WOOLRIDGE: I'm sorry,
16 Your Honor, Madam Chair.

17 CHAIRPERSON MILLER: When was this
18 picture taken that we're looking at?

19 MS. PARKER-WOOLRIDGE: Okay, that
20 was 2006 and Yvonne Rockett --

21 CHAIRPERSON MILLER: When in 2006?

22 MS. PARKER-WOOLRIDGE: November of

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1 2006, because Yvonne Rockett went out there
2 and she took pictures as well.

3 MR. BROWN: I don't think so,
4 Madam Chair, because there was no work going
5 on at the site in November of 2006, because he
6 was under a stop work order. But this
7 picture, I think, occurred shortly after the
8 collapse, and was when he was stabilizing the
9 site.

10 If you see the row of pictures,
11 you see the block. It's the three pictures
12 on. You see the block wall is being put in as
13 Mr. Demuren was directed by DCRA, to stabilize
14 the site after the collapse. So it's not
15 November 2006.

16 MS. PARKER-WOOLRIDGE: Madam
17 Chair, I don't know if his opinion --

18 MS. BOLLING: Can counsel hold up
19 the picture that he's speaking of?

20 CHAIRPERSON MILLER: Yes. Let's
21 see if we're looking at the same picture.

22 MR. BROWN: Well, this is the

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1 first one we're talking about.

2 MS. PARKER-WOOLRIDGE: Correct,
3 okay.

4 MR. BROWN: And then the second
5 one here, and then if you follow on, again the
6 same backhoe is there and you see the block
7 being installed here.

8 That was occurring in February of
9 '06 per the instructions to Mr. Demuren. He's
10 testified per the instructions of DCRA, to
11 stabilize the site, the walls of the site
12 here.

13 CHAIRPERSON MILLER: Mr. Brown, I
14 don't think it's right though for you to be
15 testifying to that.

16 MR. BROWN: Well no --

17 CHAIRPERSON MILLER: I understand
18 you want to challenge the date.

19 MR. BROWN: And I'm making my
20 point, the relevance. If Mr. Davidson was at
21 the site in April and May of 2007, which I
22 have no reason to doubt he was or was not, he

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1 ought not to be testifying to photos that
2 occurred more than year previously.

3 CHAIRPERSON MILLER: Well, why are
4 you testifying to these photos? How are you
5 using these photos? We don't know when they
6 were taken now.

7 MS. PARKER-WOOLRIDGE: I have to
8 check with Yvonne Rockett, who stepped out,
9 because she did take photographs.

10 CHAIRPERSON MILLER: They're her
11 photographs?

12 MS. PARKER-WOOLRIDGE: He's going
13 to get her now. But he was testifying as to
14 what the photograph depicts. So there's no
15 foundation and no footing; am I correct? Yes.

16 MR. BROWN: That's not relevant to
17 an inspection that occurred a year later.

18 CHAIRPERSON MILLER: Yes. I see a
19 disconnect here too. So really, I don't
20 understand why this witness is testifying to
21 these pictures.

22 MS. PARKER-WOOLRIDGE: Well, I'll

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1 withdraw these photographs and let Ms. Rockett
2 then testify to the photographs she had taken,
3 and he will just testify as to the photographs
4 that he and Neal Lectrin took.

5 CHAIRPERSON MILLER: Okay.

6 MS. PARKER-WOOLRIDGE: Okay. So I
7 won't hold up the proceedings.

8 CHAIRPERSON MILLER: So he's not
9 going to be testifying to these photos?

10 MS. PARKER-WOOLRIDGE: Not to
11 those.

12 CHAIRPERSON MILLER: Okay.

13 (Pause.)

14 MS. PARKER-WOOLRIDGE: Madam
15 Chair, I'm ready. Thank you.

16 BY MS. PARKER-WOOLRIDGE:

17 Q Okay. Inspector Davidson, can you
18 indicate what the photograph reflects in this
19 picture dated April 9th, 2007?

20 A That would be the rear of the
21 building. That would show a storage container
22 and just the rear of the building from the

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1 alley side.

2 BOARD MEMBER LAUDER: Can you hold
3 off for just one second? I think a number of
4 us are trying to get caught up, locating the
5 picture. It's in the same packet?

6 MS. PARKER-WOOLRIDGE: Same
7 packet.

8 BOARD MEMBER LAUDER: Okay.

9 (Pause.)

10 CHAIRPERSON MILLER: Do you want
11 to go back and tell us what we're looking at
12 again? The date was taken, who took it and
13 what it is?

14 THE WITNESS: Inspector Neal
15 Lectrin took it, it should have been on
16 4/9/07, and it's a picture of the rear of the
17 building taken from the alley, which shows a
18 storage container just to the rear of the
19 building.

20 BY MS. PARKER-WOOLRIDGE:

21 Q And what does it depict, the
22 second picture?

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1 A It depicts the rear of the
2 building, just the height of it.

3 MR. BROWN: Madam Chair, what's
4 the relevance of this?

5 MS. PARKER-WOOLRIDGE: The
6 relevance to the case is that Inspector
7 Davidson went to the premises and that the
8 construction had taken place April 9th, 2007
9 and continued to take place.

10 MR. BROWN: Well --

11 CHAIRPERSON MILLER: What is the
12 top picture? I see what the bottom one is.
13 What is the top picture on that page? Are we
14 supposed to be looking at that or no?

15 THE WITNESS: The top picture just
16 looks like some -- from I can tell, it just
17 looks like some plumbing stuff.

18 CHAIRPERSON MILLER: You didn't
19 take that picture?

20 THE WITNESS: Inspector Lectrin
21 would have took that one. I was with him when
22 he took that picture.

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1 CHAIRPERSON MILLER: So you're
2 testifying just to the bottom picture?

3 THE WITNESS: Yes.

4 CHAIRPERSON MILLER: And the
5 significance of that is the amount of
6 construction that took place by April 9th?

7 THE WITNESS: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MR. BROWN: That would only be
10 relevant if we were protesting some sort of
11 violation of the stop work order.

12 Quite frankly, the stop work
13 orders began because the first stop work
14 order, and it's in my pleadings, the first
15 stop work order was invalidated.

16 There was a period of time until
17 the second stop work order was issued in
18 April, I believe April 3rd of '07. I'll
19 double-check my dates.

20 But there was a period of time for
21 almost two months, where a valid stop work
22 order did not exist, and my client was free to

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1 continue construction.

2 MS. PARKER-WOOLRIDGE: Your Honor,
3 I beg to differ. That's not correct. The
4 judge issued an order, I believe, in the
5 latter part of March 2007, in which the judge
6 determined that the first stop work order did
7 not meet the requirement of 12(a) DCMR 114.1,
8 in that the inspector failed to include the
9 specific site which was not having a permit,
10 or constructed beyond the permit.

11 On April 4th or April 9th, the
12 government issued another stop work order, so
13 that the respondent would not continue to
14 construct until after --

15 CHAIRPERSON MILLER: Wait, wait,
16 wait.

17 MR. BROWN: You make my point,
18 that the only reason why another stop work
19 order was issued was because my client had the
20 right to continue construction --

21 MS. PARKER-WOOLRIDGE: The point
22 is it wasn't two months.

1 CHAIRPERSON MILLER: Wait, let's
2 stop. I think the point is that you can argue
3 later about what we should be considering and
4 what we shouldn't be considering. But often,
5 if we're going to err at all, we err on the
6 side of taking in the evidence.

7 Then if it's not really relevant
8 to the appeal, then the Board won't be relying
9 on it. But I think at this point, we're not
10 going to make that decision about this photo
11 or anything. We're not going to strike it.

12 MS. PARKER-WOOLRIDGE: Thank you.

13 BY MS. PARKER-WOOLRIDGE:

14 Q Inspector Davidson, can you please
15 indicate what the next photograph depicts?

16 A That would be the front, from
17 Morse Street looking on both sides of the
18 building.

19 Q And the following photograph?

20 A That would be inside on the
21 property line, taking a look on both sides of
22 the property lines of the building.

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1 Q And the next photograph?

2 A The top one is the rear of the
3 building, and the bottom one is the front of
4 the building.

5 Q And this one?

6 A That would be the side of the
7 building, and that was just -- we just took a
8 picture of the hole, the access hole that the
9 gentlemen were using to do the work on the
10 property down in the basement.

11 Q And this one?

12 A That one would just depict that
13 they put a sump pump hole in down on the lower
14 level, and that's just some corrugated pipe
15 laying around.

16 Q And this photograph?

17 A That's just showing a stairway in
18 one corner in the side of the building.

19 Q Okay.

20 CHAIRPERSON MILLER: Okay, Ms.
21 Woolridge. What is the relevance of all these
22 pictures?

1 MS. PARKER-WOOLRIDGE: Just I have
2 one more to show. Thank you.

3 BY MS. PARKER-WOOLRIDGE:

4 Q And this one?

5 A That one will be taken from the
6 rear, on the right side of the rear.

7 Q From the rear?

8 A Yes.

9 Q Inspector Davidson, did you get an
10 opportunity to review the plans that were
11 submitted with the application for the
12 building permit?

13 A Yes, I took a look at the plans.

14 Q And did it also include the
15 existing single family dwelling?

16 MR. BROWN: Madam Chairman,
17 object. One, I'm not so sure why the
18 electrical inspector is reviewing the building
19 plans, and I'm not sure how it's relevant to
20 his April and May 2007 visit to the site.

21 CHAIRPERSON MILLER: Why don't you
22 address that? I don't think that's clear

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1 either.

2 MS. PARKER-WOOLRIDGE: Madam Chair
3 and the Board members, what happens when they
4 conduct an inspection, they usually review the
5 plans before they go out to the premises, to
6 see what they're supposed to be looking at.

7 If they see anything different
8 than what's actually out there. So that's
9 what his testimony would have been.

10 MR. BROWN: Well, but then he
11 should be reviewing the plans for purposes of
12 his electrical expertise, which I suspect is
13 not a pressing issue on the Board's mind right
14 now.

15 MS. PARKER-WOOLRIDGE: Inspector
16 Davidson also inspects for the building as
17 well, for the construction, not just
18 electrical.

19 CHAIRPERSON MILLER: I really
20 don't understand where this witness would be
21 going, that would help us make the decision --

22 MS. PARKER-WOOLRIDGE: It would

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1 really confirm what others have testified to,
2 that from the plans it indicated one thing;
3 when they went to the premises, they saw that
4 we had a complete new building, versus at
5 least part of the old existing building and
6 the addition.

7 CHAIRPERSON MILLER: Okay. Let me
8 just say this. It's getting late.

9 MS. PARKER-WOOLRIDGE: Okay.
10 We'll move forward. I'm almost finished with
11 him.

12 CHAIRPERSON MILLER: Okay. If
13 there's one statement he's going to make, find
14 it. Do you want to make one statement about
15 what you saw in relation to the plans?

16 THE WITNESS: Yes. According to
17 the plans that I saw, I did not see any
18 evidence of a single family home at that time,
19 and the relevance to my position is I am the
20 electrical chief, but I have been acting as
21 the construction manager for the Construction
22 Division.

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1 MS. PARKER-WOOLRIDGE: Thank you,
2 Madam Chair. No other questions for Inspector
3 Davidson.

4 CHAIRPERSON MILLER: Any Board
5 questions? Any other? Okay. Ms. Woolridge?
6 Tell me how many more witnesses you have.

7 (Witness excused.)

8 MS. PARKER-WOOLRIDGE: Well, I
9 thought I only had one, but Yvonne Rockett is
10 now here, and then Mr. LeGrant, and that's it
11 for us.

12 MR. BROWN: I don't want to be
13 seen as a naysayer, but you started the
14 presentation by saying that we need to
15 provide, by some sort of time limits, one
16 hour.

17 We've been at it some time, and we
18 still haven't gotten to Mr. LeGrant, who I
19 suspect in the Board's mind is the most
20 important witness.

21 I'm beginning to get concerned
22 we're not going to finish today, because I

1 still have the right and I'm ready to go on
2 rebuttal and closing statements.

3 So I'm being an alarmist.

4 CHAIRPERSON MILLER: Well, let's
5 say the problem is we didn't exactly time you
6 too carefully, and I think that went on for a
7 while as well. But I agree. We're saying we
8 wanted to be fair, because we didn't put the
9 clock on them, not to put the clock on you.

10 But on the other hand, not to go
11 on for hours and hours. Ms. Rockett, is that
12 going to be fairly quick?

13 MS. PARKER-WOOLRIDGE: Yes.

14 CHAIRPERSON MILLER: Okay. I
15 think this is what the Board has in mind, and
16 that is that we'll hear Ms. Rockett right now.
17 Mr. Turnbull is going to have to be leaving
18 after that.

19 We'll still have a quorum. We'll
20 break for lunch and come back and finish.
21 Also, we have parties here from another case,
22 ANC 1A I believe.

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1 I think what I'd like to do is
2 hear this one witness while Mr. Turnbull's
3 here. Then you all can be excused for lunch.
4 And we'll just see what we're going to do with
5 other case, see where we are.

6 Okay. So that's just to let
7 people know what's going on. So why don't you
8 call your last witness for the morning.

9 MS. PARKER-WOOLRIDGE: Okay.

10 DIRECT EXAMINATION

11 BY MS. PARKER-WOOLRIDGE:

12 Q Inspector Rockett, would you
13 please state your name for the record?

14 A Yvonne Rockett.

15 Q And you are a zoning inspector?

16 A Yes, I am.

17 Q And did you visit the premises at
18 1233 Morse Street, N.E.?

19 A Yes, I did.

20 Q Okay, and did you take any
21 pictures when you were at 1233 Morse Street,
22 N.E.?

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1 A Yes, I did.

2 Q Okay. Can you identify the
3 picture that you took at 1233 Morse Street,
4 N.E.?

5 A Yes, I can.

6 Q Is this one of the pictures?

7 A Yes. That's one of the pictures I
8 took some time ago, which probably earlier
9 this year. It's a very old picture, one of my
10 first visits to the site.

11 MS. GLAZER: Madam Chair, can I
12 suggest that the photos be identified?
13 Nothing's going to show up on the record.

14 CHAIRPERSON MILLER: Actually, I
15 think all the Board members have identified
16 that picture. Okay, the picture of the fence
17 in the front? Is this the one?

18 THE WITNESS: Yes.

19 MS. PARKER-WOOLRIDGE: Yes.

20 CHAIRPERSON MILLER: With the "No
21 trespassing" sign at the bottom?

22 THE WITNESS: Yes.

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1 BY MS. PARKER-WOOLRIDGE:

2 Q And what does this picture depict?

3 A A foundation in the front and a
4 rear building in the rear.

5 CHAIRPERSON MILLER: I'm sorry.
6 Could you identify when the picture was taken?

7 BY MS. PARKER-WOOLRIDGE:

8 Q Do you recall the date on which
9 you took the picture?

10 A I want to say in 2006. I'm not
11 sure.

12 Q 2006?

13 A Uh-huh.

14 Q But you're not certain?

15 A Not certain.

16 CHAIRPERSON MILLER: What's the
17 significance of the picture, when we don't
18 know when it was taken?

19 MS. PARKER-WOOLRIDGE: Let me see
20 if I can refresh Ms. Rockett's memory.

21 MR. BROWN: Madam Chair, I'm not
22 sure that's a wise use of our resources, to be

1 refreshing Ms. Rockett's memory. She was
2 asked and she said she doesn't recall when the
3 picture was taken.

4 I think we'd strike all those
5 photos, at least with respect to Ms. Rockett
6 and move on.

7 MS. PARKER-WOOLRIDGE: Madam
8 Chair, Ms. Rockett only spoke to, only
9 addressed one picture.

10 MR. BROWN: I mean if -- and I
11 suspect they're in a series. If she doesn't
12 know when the first picture was taken, I'm not
13 so sure that she's going to recall when the
14 second picture was taken.

15 CHAIRPERSON MILLER: I hear your
16 point. Let's just take a moment.

17 MS. PARKER-WOOLRIDGE: Madam
18 Chair, I believe some of her pictures have
19 dates on them. Unfortunately, she didn't put
20 dates on her pictures.

21 CHAIRPERSON MILLER: Why are we
22 looking at these photos?

1 MS. PARKER-WOOLRIDGE: I beg the
2 court's indulgence.

3 (Pause.)

4 CHAIRPERSON MILLER: I mean I
5 don't think that the appellant is contesting,
6 am I correct? I don't think that appellant is
7 contesting that this 11 unit apartment
8 structure was built.

9 So I concur with Mr. Brown to some
10 extent. I'm not sure why we're spending so
11 much time on the fact that this large
12 structure was built, when they're not
13 challenging that.

14 MS. PARKER-WOOLRIDGE: Okay. I
15 won't spend no more than one more minute on
16 it. Thank you, Your Honor.

17 BY MS. PARKER-WOOLRIDGE:

18 Q Inspector Rockett, you said that
19 you took that photograph that's on the poster?

20 A Yes, I did.

21 MR. BROWN: Which photo?

22 MS. PARKER-WOOLRIDGE: The bottom

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1 photo.

2 CHAIRPERSON MILLER: What does it
3 depict, since we can't even see it.

4 THE WITNESS: Dated April 4th,
5 2007.

6 BY MS. PARKER-WOOLRIDGE:

7 Q Okay, and what does it depict?

8 A It shows the front of the new
9 building.

10 BOARD MEMBER LAUDER: Can you hold
11 the chart a little bit higher? Thank you. I
12 appreciate it.

13 BY MS. PARKER-WOOLRIDGE:

14 Q And indicate to the Board, what
15 does that depict?

16 A It depicts the front of the
17 building, new building.

18 Q The construction of the new
19 building?

20 A Yes.

21 Q And did you also take the
22 photograph dated -- you remember when you took

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1 this photograph, if we're asking questions?

2 MR. BROWN: Which photo are we
3 talking about here?

4 THE WITNESS: Yes, yes.

5 CHAIRPERSON MILLER: I think you'd
6 better describe that for the record as well.

7 BY MS. PARKER-WOOLRIDGE:

8 Q Describe this photograph?

9 A It's a photograph of the front of
10 the new building, dated November 15th, 2006.

11 Q Okay.

12 MR. BROWN: Madam Chair, I'm
13 sorry. I'm lost here. I'm trying to figure
14 out which photo we're looking at.

15 MS. PARKER-WOOLRIDGE: The one
16 with the vehicle in the front.

17 CHAIRPERSON MILLER: And it was
18 taken November 15th, 2006. Did I hear that
19 right or not?

20 THE WITNESS: That's what the date
21 is on it, yes.

22 CHAIRPERSON MILLER: Oh, it's

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1 already marked with the date. Okay. Did you
2 take it, Ms. Rockett?

3 THE WITNESS: Yes.

4 CHAIRPERSON MILLER: Okay.

5 MR. BROWN: I'm not so sure of the
6 relevance.

7 CHAIRPERSON MILLER: Well, I'm not
8 sure of the relevance. Are you going to tell
9 us about the relevance?

10 MS. PARKER-WOOLRIDGE: It just
11 indicates that the men were still constructing
12 at the premises at 1233 Morse Street. That's
13 the only relevance to this.

14 CHAIRPERSON MILLER: How do we
15 know that?

16 MS. PARKER-WOOLRIDGE: And of
17 course, the house has been removed, was
18 removed from the premises prior to that. The
19 single family dwelling was removed.

20 CHAIRPERSON MILLER: Oh, that
21 there's no single family dwelling there as of
22 November 15, 2006?

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1 MS. PARKER-WOOLRIDGE: Right.

2 MR. BROWN: I'm not so sure we --

3 CHAIRPERSON MILLER: Is that
4 contested?

5 MR. BROWN: No.

6 CHAIRPERSON MILLER: Okay. Do we
7 need -- I'm just saying, how much time do we
8 need to spend on something that's not
9 contested.

10 MS. PARKER-WOOLRIDGE: As far as
11 -- I have no other questions for Ms. Rockett
12 on the pictures, because the pictures speaks
13 for itself. So I don't have to ask any other
14 questions.

15 CHAIRPERSON MILLER: Any Board
16 questions?

17 (No response.)

18 CHAIRPERSON MILLER: Okay. Mr.
19 Brown.

20 MR. BROWN: I might not have any
21 questions for Ms. Rockett. She'd never
22 forgive me.

1 (Pause.)

2 MR. BROWN: No questions.

3 (Witness excused.)

4 CHAIRPERSON MILLER: Okay. What I
5 want to do is excuse this case for lunch. I
6 think we'll stay until 3:30, because we're
7 going to take up the ANC case. Just some
8 procedural issues, and then the Board will
9 take a lunch break.

10 So I think that's a safe amount of
11 time to provide for that. So we'll see you
12 back here at 3:30, and the other case can come
13 forward. I'm just going to go get my file.

14 (Off the record.)

15 CHAIRPERSON MILLER: I think we
16 can go back on the record now. Ms. Bailey, do
17 you want to call this case please?

18 MS. BAILEY: Madam Chair, it's the
19 appeal, and its number is 17671, and this is
20 an appeal of Advisory Neighborhood Commission
21 1A, pursuant to 11 DCMR 3100 and 3101, from
22 the decision of the Zoning Administrator to

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1 issue Building Permit No. 90426 dated December
2 15th, 2006, for the conversion of a single
3 family dwelling into a four unit apartment
4 building.

5 The property is in the R-5-B
6 district and it's located at 1432 Monroe
7 Street, N.W., Square 2676, Lot 792.

8 CHAIRPERSON MILLER: Thank you.
9 Good afternoon. Will the parties introduce
10 themselves for the record please?

11 MR. TAYLOR: Dennis Taylor for
12 DCRA. I have with me acting Zoning
13 Administrator Matthew LeGrant.

14 MS. THEISEN: My name is Anne
15 Theisen. I'm ANC commissioner of 1A05, single
16 member district where 1432 resides, and I live
17 at 1514 Monroe Street, N.W.

18 MR. COOPER: Good afternoon, Madam
19 Chair. Robert Cooper, law firm of Cooper and
20 Krickman. I'm here on behalf of the
21 intervenor, Peter Dabrowski, who's the owner
22 of the property, the subject property, 1432

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1 Monroe Street, and I Have Mr. Dabrowski here
2 to my left.

3 CHAIRPERSON MILLER: Okay. I just
4 want to see where we're at on the consent
5 motion for continuance, first of all. There
6 is motion by, I believe, the intervenor and
7 DCRA consent to that, and Ms. Theisen, where
8 is the ANC on that?

9 MS. THEISEN: With all due
10 respect, we are very sorry to hear of Mr.
11 Phillips' illness, but we're especially
12 worried about a continuance, because the stop
13 work order on this project has been listed,
14 and yesterday work has resumed.

15 We feel this prejudices our case,
16 because work can now continue. The issue at
17 hand is really whether or not the building
18 permit was issued in error, and not the
19 architect's drawings.

20 Our appeal is based on our own
21 review of the plans, as submitted by the
22 developer and approved by the Zoning

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1 Administrator.

2 We have every confidence that the
3 BZA will be able to review those plans, and
4 make a determination of whether or not the
5 project, as drawn, exceeds the height
6 restrictions, has improperly setback rooftop
7 elements, exceeds lot occupancy, lacks legally
8 required parking, indicates an illegal closed
9 court, and exceeds FAR, as we have stipulated
10 in our appeal.

11 Continuance also places a hardship
12 on the neighbors, whose property has been
13 damaged, and a community which will have to
14 continue to endure the problems, such as rats
15 and trash, poor disposal of construction
16 materials, and vagrancy that has occurred
17 because the property has been so poorly
18 maintained thus far.

19 As to the matter of the developer
20 not having received information regarding the
21 case, he was e-mailed the information
22 submitted to the BZA on May 11th, and he was

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1 mailed both sets of filings submitted by the
2 ANC to his address of record.

3 The Zoning Administrator has had
4 over five months in which to address these
5 issues, and has failed to do so. So we are
6 therefore asking that the BZA review the case
7 today.

8 CHAIRPERSON MILLER: Any other
9 comments from the parties, brief?

10 MR. COOPER: None, other than the
11 fact that our architect needs to be here. The
12 very issues are the negotiations, the
13 discussions, the meetings. All of those
14 transpired between the then-Zoning
15 Administrator and the architect on this
16 project.

17 I think it's vital that his
18 testimony be presented to the Board. Without
19 it, it is clearly prejudicial to my client.
20 It's not -- he's not attempting to evade here.

21 Likewise, you know, there are some
22 documents that I believe are not before the

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1 Board, which I believe the architect has and
2 could bring more light onto some of these
3 issues.

4 CHAIRPERSON MILLER: Okay.
5 Anything else? Okay. I guess it's my view,
6 first of all, that it does sound like there is
7 prejudice to the intervenor if we proceed
8 without the witness.

9 As far as the prejudice goes to
10 the ANC, the intervenor proceeds at his own
11 risk in these kind of cases. This Board is
12 not swayed by the fact that the building is
13 being constructed.

14 If the Board were to just rule in
15 the ANC's favor, then it would just be at a
16 greater expense for them to take the building
17 down or whatever would have to happen.

18 I understand what you're saying
19 about inconvenience and disruption and noise
20 and rats and all that kind of stuff. But I
21 don't think that outweighs the prejudice to
22 the intervenor.

1 And I would also say that it's not
2 realistic today on our schedule to actually
3 proceed. We still have one -- unfortunately,
4 we're still in the middle of that other case.

5 This was an extra day we added
6 onto our schedule, and we had hoped to do one
7 appeal in the morning and one appeal in the
8 afternoon, but sometimes they take longer.

9 So unless our Board members feel
10 otherwise, I think we're going to be looking
11 at another date. Oh, okay. She was just
12 giving me some dates. Also, if there are more
13 documents to be filed in this case, then we
14 would have a full record when we hear this
15 case.

16 Also, I know that there's a motion
17 to dismiss that was filed by DCRA. We're
18 going to give the ANC time to respond to that
19 motion to dismiss.

20 MS. THEISEN: I'm prepared to
21 respond.

22 CHAIRPERSON MILLER: You're

1 prepared anyway. So it's not that you're not
2 prepared. It's that we will be continuing
3 this for two reasons. One is because I think
4 the Board would find prejudice to the
5 intervenor and to the nature of the schedule
6 today.

7 So we are looking at January 15th
8 in the afternoon. We have that totally open,
9 and we could give that spot to this case. Is
10 that amenable to all the parties, that date?

11 MR. COOPER: Yes.

12 CHAIRPERSON MILLER: ANC?

13 MS. THEISEN: I believe so. May I
14 ask why the documents haven't been filed?

15 CHAIRPERSON MILLER: I'll let Mr.
16 Cooper respond to that.

17 MR. COOPER: When we reviewed --
18 when I got involved, I took a look at the
19 information that was presented, and met with
20 the District. I'm not certain that the
21 drawings that were presented are in fact the
22 final set of approved drawings.

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1 I got some half sheet drawings,
2 which was sent to my client. So I don't even
3 have a full sheet. But from what I saw, it
4 appears that there are some pages that are
5 missing.

6 We're trying to confirm that now
7 with the architect, because we believe he may
8 have an actual stamped set of the final
9 drawings in his possession. So that's that
10 document. Then there may be some other
11 documents that he has.

12 In my telephone conversation with
13 him, he has documents that reflect notes from
14 meetings that he'd had with the then-Zoning
15 Administrator, which I have not seen in any of
16 the documents presented thus far, which might
17 again shed some light on some of these issues.

18 CHAIRPERSON MILLER: Okay. Well,
19 why don't we set a date by which you'll serve
20 the ANC and DCRA with all the documents.

21 MS. THEISEN: Madam Chair, I
22 believe the documents that he's referring to,

1 that are partial sheets, were copies of
2 portions of the plans that are on file with
3 DCRA.

4 If he's talking about what was in
5 our file, that is a copy of material that we
6 received from DCRA. So certainly they would
7 be able to have the same access to that
8 material. It's not -- it was not our
9 material. It was theirs.

10 CHAIRPERSON MILLER: I understand
11 Mr. Cooper is saying that since this
12 architect's been in the hospital, he's
13 familiar perhaps with more documents than you
14 all may know even exist.

15 I don't know. But that would give
16 everyone the opportunity to make sure they
17 have all the documents that are relevant; is
18 that correct?

19 MR. COOPER: That is correct, and
20 if there are some documents that she does not
21 have, I'd be happy to share them. I don't
22 have -- I have documents, and I'm not sure if

1 they're complete. I want to go over them with
2 the architect to make sure, because I
3 understood there may have been four sheets and
4 I have three.

5 So I'm like well wait. There may
6 be a fourth sheet. I don't know. They're not
7 in the packet that was sent in this BZA
8 action. I can't find the documents downtown,
9 so I want to make sure that everybody has all
10 the documents and we're all working from the
11 same page.

12 CHAIRPERSON MILLER: Okay.

13 MR. COOPER: So I'm hoping to get
14 with the architect within the next two weeks.
15 He's going back and forth to Johns Hopkins
16 every day from 9:00 until about 2:00 in the
17 afternoon. He gets back into the District
18 sometimes around 2:30 or 3:00.

19 I don't know what his state of
20 mind will be or his physical, whether he'll be
21 up for meeting with us. But I will try to get
22 that as soon as I have that information. I

1 will share it with the appellant and also with
2 the respondent.

3 Or we can meet and try to look at
4 the documents, make sure we're all on the same
5 page.

6 CHAIRPERSON MILLER: And we'll be
7 able to have those well in advance of the
8 January 15th date?

9 MR. COOPER: As soon as I have
10 them, and I am sure that I've got what I
11 believe is the additional documents. If I
12 meet with him and there are no additional
13 documents, then I'll let everybody know that
14 as well.

15 But in the event there are
16 additional documents, I will immediately make
17 arrangements to meet with you, Mr. Taylor,
18 review the documents and try to make sure that
19 everybody has the same set of documents.

20 CHAIRPERSON MILLER: Okay. That
21 sounds terrific. Why don't we set a date by
22 which the ANC can know that they'll have all

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1 the documents, well in advance of the hearing?
2 So like November 30th or would that be a good
3 date? I mean I'm not even looking at my
4 calendar to know what day of the week that is.

5 MR. COOPER: I'm going to need at
6 least 30 days. I understand that he's going
7 to be going back and forth to the doctor.
8 Whether I can get in with him --

9 CHAIRPERSON MILLER: Okay. What's
10 a good date, just so that it's in the record,
11 and the Board will have it as well.

12 MS. THEISEN: November 30th is 30
13 days.

14 CHAIRPERSON MILLER: I know. You
15 want a little more than that? I mean you want
16 December 5th?

17 MR. COOPER: If we can get
18 December -- yes, let's do that, some time in
19 December.

20 CHAIRPERSON MILLER: I mean that
21 would still be well over a month before the
22 hearing?

1 MR. COOPER: That's correct.

2 CHAIRPERSON MILLER: And the
3 holidays.

4 MS. THEISEN: The holidays, right
5 exactly. Not really.

6 MR. COOPER: Your Honor, I will
7 make sure. December 7th is a Friday. I'll
8 have -- if there are documents, again if I
9 know in advance that there are no documents,
10 I'll share that immediately.

11 But if they are, I'll make sure to
12 have copies for everyone, and have them submit
13 it to the Board by December 7th.

14 CHAIRPERSON MILLER: And is it my
15 understanding also though, if you have them
16 earlier, you'll share them earlier?

17 MR. COOPER: Absolutely. I mean
18 that's the absolute deadline.

19 CHAIRPERSON MILLER: The outside
20 date.

21 MR. COOPER: Yes. But as soon as
22 I get them, I will call, make arrangements to

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1 meet, distribute the documents, go over them.
2 Make sure that we're correct, that there are
3 these additional documents.

4 CHAIRPERSON MILLER: Okay.

5 MS. THEISEN: May I ask once
6 again, and I'm sorry if you answered this
7 already, but in addition to some missing parts
8 of the plans, what other types of documents
9 are you expecting might appear?

10 MR. COOPER: I don't know. But if
11 I find something that's not currently in the
12 record, I'll make sure that it gets put into
13 the record, so that the Board has a handle on
14 the entire issue before it.

15 CHAIRPERSON MILLER: Okay,
16 December 7th. All right. Let me ask you, Ms.
17 Theisen, would you like an opportunity, I
18 would think, to respond to the motion to
19 dismiss in writing, and by what time you'd
20 like to do that?

21 I mean it's normally like ten days
22 or whatever, but we have a long time to go

1 before the hearing. If you need a little bit
2 more time?

3 MS. THEISEN: I believe, Madam
4 Chair, in order to make another filing, I
5 would need to take it through the process of
6 the ANC, and our next meeting is scheduled for
7 November 14th. I would like a little time to
8 prepare and draft the document. So could we
9 say perhaps the 21st?

10 CHAIRPERSON MILLER: Any
11 objections?

12 MR. TAYLOR: No objection.

13 CHAIRPERSON MILLER: All right.
14 November 21st for your response to the motion
15 to dismiss. Is DCRA going to want to do a
16 reply? You don't know?

17 (Pause.)

18 MR. TAYLOR: Maybe a convenient
19 time would be the December 7th date that
20 everything else comes in?

21 CHAIRPERSON MILLER: No, I don't
22 think so. I think they should have it in

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1 advance.

2 MR. TAYLOR: Okay.

3 CHAIRPERSON MILLER: I think
4 that's too much time for a reply anyway.

5 MR. TAYLOR: Okay.

6 CHAIRPERSON MILLER: So I think
7 they should have it at least a week ahead. So
8 you can be prepared to, in case you need to
9 argue this. This would be the first thing
10 that would be argued at the hearing.

11 As of now, we have the date that
12 you're filing of November 21st. The movant
13 has an opportunity to do a reply to your
14 opposition. So we're just picking a date for
15 that.

16 How about November 29th or November
17 30th? That's a Friday.

18 MR. TAYLOR: Okay, now that does
19 call the Thanksgiving break into question.

20 CHAIRPERSON MILLER: Oh, we're
21 going January, all the way into January. I'm
22 sorry. I'm thinking we were in December.

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1 Okay. What did you want until?

2 MR. TAYLOR: I had suggested
3 December 7th, which gives the ANC five weeks.

4 CHAIRPERSON MILLER: Okay. Five
5 weeks before the hearing. Okay, yes. That
6 seems fine to me. Is that all right with you,
7 Ms. Theisen?

8 MS. THEISEN: Just a point of
9 clarification for me. Excuse me, I'm sorry.
10 Again, we run into the issue of meetings, and
11 our meeting in January is scheduled for the
12 9th. I know that -- I don't know that I have
13 an opportunity to respond to the response or
14 not.

15 CHAIRPERSON MILLER: Okay. Let me
16 figure. We're kind of following the court
17 system. We don't have specific rules
18 governing these kind of motions. But that's
19 what we do, basically follow the court. So
20 it's basically motion-opposition-reply.

21 However, you will have an
22 opportunity to respond orally at the hearing,

1 okay. So we just can't have pleadings come in
2 ad infinitum.

3 MS. THEISEN: Thank you.

4 CHAIRPERSON MILLER: I think that
5 will work then. Ms. Bailey, do you have those
6 dates?

7 MS. BAILEY: I think I have most
8 of them. January 15th, afternoon session,
9 2008, the hearing is to be continued. The
10 property owner, Mr. Cooper, is to file all
11 documents related to the appeal by December
12 7th.

13 The ANC should respond or may
14 respond to the motion to dismiss by November
15 21st, and I know you gave DCRA a date to
16 respond to the motion -- to the ANC's motion
17 to dismiss, but I did not hear that.

18 CHAIRPERSON MILLER: December 7th,
19 the same date. I think the only date we
20 didn't talk about was if there's a witness
21 list the parties could exchange, perhaps two
22 weeks before the hearing, and also with the

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1 Board. What's that date, two weeks before the
2 hearing, Ms. Bailey?

3 MS. BAILEY: Two weeks before the
4 hearing is January 1st, which is January 2nd if
5 you want to. That would be the appropriate
6 date, January 2nd, which would be a Wednesday.

7 CHAIRPERSON MILLER: Okay. That
8 sounds good. Anything else?

9 MS. THEISEN: Just a question,
10 Madam Chair. Will the witness list a part of
11 the file? Thank you.

12 CHAIRPERSON MILLER: Yes, okay.

13 MR. TAYLOR: Nothing further, Your
14 Honor. Madam Chair.

15 CHAIRPERSON MILLER: Okay, and
16 we'll see you next year. We'll see you.
17 Thank you.

18 (Whereupon, at 2:30 p.m., a
19 luncheon recess was taken until 3:46 p.m.)

20 CHAIRPERSON MILLER: Back on the
21 record, and is DCRA ready to go forward with
22 our last witness?

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1 MR. GREEN: Yes it is, Madam
2 Chairman.

3 CHAIRPERSON MILLER: Okay. I call
4 as my witness Mr. Matthew LeGrant.

5 MR. LeGRANT: Matthew LeGrant, the
6 acting Zoning Administrator.

7 DIRECT EXAMINATION

8 BY MR. GREEN:

9 Q Mr. LeGrant, for the record, spell
10 your name please.

11 A The last name is spelled capital
12 L-E, capital G-R-A-N-T.

13 Q And you said that you're employed
14 as the Zoning Administrator?

15 A That's correct.

16 Q Mr. LeGrant, you've been involved
17 with 1233 Morse Street, N.E. Can you tell us
18 how you became involved with it please?

19 A Upon becoming acting Zoning
20 Administrator in July, you know, I became
21 aware of this pending appeal of the previous
22 Zoning Administrator's decision. That was Mr.

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1 Bill Cruz.

2 So in order to consider this case,
3 I first reviewed the materials in the record,
4 as to the background leading to the decision
5 by Mr. Cruz, that was appealed, and reviewing
6 that information, to see if that is a decision
7 that I believe was a proper decision.

8 I will go into more detail how I
9 arrived at my conclusion, but I do believe
10 that the Zoning Administrator was proper in
11 his determination that led to this appeal.

12 Q Madam Chair and the members of the
13 Board, I'm going to direct your attention not
14 the initial filing of the Department of
15 Consumer and Regulatory Affairs.

16 More specifically, an item that is
17 marked as Exhibit No. 1. I'll hold it up and
18 see if you and I, as well as counsel, are
19 looking at the same thing.

20 (Pause.)

21 BY MR. GREEN:

22 Q Also during this discussion, our

1 Zoning Administrator is going to direct his
2 attention to the easel, which has the chart
3 and pictures in front of you to your immediate
4 right on a tripod mount.

5 First with Exhibit No. 1, Mr.
6 LeGrant, can you tell me what this is please?

7 A Yes. This picture in Exhibit 1,
8 which was also shown in the upper left-hand
9 corner of the graphic that you mentioned, is
10 a picture from the District's computerized
11 photo storage system.

12 It's known as the Master Address
13 Repository, that has pictures of structures
14 that was taken on the date. In this
15 particular case, the date is noted September
16 28th, 2004, showing the structure that was
17 present prior to the application for the
18 building permit at this location.

19 Q So you're saying that the picture
20 in Exhibit 1 and also on the easel in the
21 upper left-hand corner, is the property in
22 question that we're talking about today?

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1 A Yes.

2 Q Or at least how it looked prior to
3 any alteration that we are discussing today?

4 A That's correct.

5 Q All right. Sir, I direct your
6 attention, and also members of the Board as
7 well as counsel for the opposition to Exhibit
8 2. Can you tell me what that is, please?

9 A This is the application for the
10 original building permit that was applied for
11 on April 12th, 2005, and describes the
12 applicant's original build-out application for
13 that building permit, describing the proposed
14 work, which I'll quote in Box No. 12.

15 "The building permit for an
16 addition to a single family dwelling and to
17 convert to an 11-unit apartment building as
18 per plans."

19 Q So in other words, you're saying
20 it's an application to convert or build an
21 addition to this picture depicted on September
22 28th '04, that we're looking at or looked at

1 in Exhibit 1. Is that what you're saying it
2 was an application to do?

3 A Yes.

4 Q All right. I direct your
5 attention now to Exhibit No. 3. What is that?

6 A Exhibit No. 3 are the plans
7 associated with that building permit that I
8 mentioned in Exhibit 2. These are a reduced
9 version of the plans, so they're not to scale
10 in this format.

11 But it includes the plans, which
12 are the floor plans, the elevations, the plat,
13 which of course showed the building in context
14 to the site, in relation to the property
15 lines.

16 Q Excuse me, Mr. Administrator. I'm
17 going to hold it up so that the Board can see
18 exactly where we are. This is Exhibit No. 3.
19 Are you there? All right. Carry on.

20 A What's also perhaps relevant in
21 this exhibit is the fact that it was reviewed
22 and approved and signed off by the Office of

1 the Administrator on July 13th, 2005. I can
2 direct your attention to the third page of
3 that.

4 These are 8-1/2 by 14 pages. The
5 third page is a plat with a signature, one of
6 the Zoning technicians in the Office of
7 Zoning, Swann Mack. If you continue to, I
8 believe it's Sheet A-2, it's her stamp and
9 signature as well with the same date.

10 Q I'm going to direct your attention
11 back to Exhibit 3, more specifically the first
12 page. Can you show us on that particular
13 document the footprint of the existing
14 structure, that is, the structure that existed
15 9/28/04 and its relationship to the area
16 applied for for construction?

17 A Yes. Although it's not called out
18 specifically, near the front of that building,
19 which is close to the Morse Street, N.E.
20 frontage, there's a heavy black line that goes
21 around the footprint of a new total
22 construction.

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1 But there's also a thinner line in
2 the upper left-hand portion of that P-shaped
3 footprint, that denotes to me the footprint of
4 the previous structure. Perhaps it's better
5 shown on the third page on the plat, which you
6 can see called out more clearly on this up
7 here.

8 Q Yes.

9 A With a small shaded border and a
10 label that I believe says "Existing SFD," for
11 single family home.

12 Q For illustrative purposes, can you
13 show us on the large map exactly what you have
14 previously described on, I guess it's page,
15 what is it three?

16 A The third page.

17 Q Can you show us on the big map
18 please?

19 A The red area appears to be the
20 original footprint of that structure.

21 Q All right. Let's go now to
22 Exhibit 4.

1 CHAIRPERSON MILLER: Can I
2 interrupt for a minute? That shapes looks
3 different than the shape on the plat.

4 BY MR. GREEN:

5 Q All right. Why don't you explain
6 that to her?

7 A The applicant had depicted on the
8 plat the footprint of the original structure.
9 This information is taken from an aerial image
10 in the city's geographic information system.

11 So I do not know exactly which one
12 is correct, as the depiction of what the
13 original single family home's footprint was.
14 It was shown again by the applicant to be a
15 complete rectangle. Here, it seems to be
16 flag-shaped, with maybe an area behind that
17 wasn't filled in. But that is from the
18 District's geographic information systems,
19 aerial photos.

20 Q All right. Number 4, Exhibit 4.

21 A Number 4 is the approved --

22 MR. GREEN: Madam Chairman, this

1 is Exhibit 4.

2 THE WITNESS: This approved
3 building permit number 477039, which was
4 approved by DCRA on September 6, 2005, the
5 result of the review of that application and
6 plan set that I noted in Exhibits 2 and 3.

7 So that permit was issued to
8 "build an addition to a single family
9 home/convert single family to 11-unit
10 apartment as per plat and plans. Separate
11 electrical, plumbing, mechanical installation
12 permits are required."

13 BY MR. GREEN:

14 Q All right. The next exhibit is
15 number five.

16 A Number five. This is the building
17 permit, 478240. Now the date, which has been
18 of course questioned earlier, is shown on this
19 as December 14th, 2006. This description of
20 work is "emergency demo."

21 Also, the next page, Exhibit 5-A,
22 was my understanding of what the date, which

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1 again has been talked about previously, but I
2 think we do agree that the 12/14/06 date is
3 incorrect. But the date I understand -- the
4 correct date was supposed to December 14th
5 '05.

6 Q Exhibit 6 should have on it
7 19846TL7 on it. What is that?

8 A This is an application for a
9 revision to the original issued building
10 permit, and as I understand it and as noted in
11 the description, "Revision to permit B477039,
12 reconstruct collapsed walls of existing
13 structure per plans. Noted changed to
14 previously approved plans."

15 This was the application for a
16 building permit, for a revision to the
17 original permit following the collapse of the
18 walls of the original single family home.

19 Q All right. Number 7, Exhibit 7.

20 A Exhibit No. 7 is a letter from the
21 previous Zoning Administrator, Bill Cruz,
22 dated March 6th '07, which basically is the

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1 denial of the building permit application from
2 the Zoning Administrator.

3 The determination of the Zoning
4 Administrator is that the application for that
5 building permit, which was to reconstruct
6 collapsed walls, cannot be considered in that
7 vein, that the scope of work was not accurate.

8 But in fact the structure had been
9 razed. The key determination of the Zoning
10 Administrator was based on the property had
11 been razed.

12 The District determined that the
13 application violates the zoning regulations,
14 specifically Section 11 DCMR 330.5C, because
15 there's no structure on which to build an
16 addition to.

17 Q Now you're using some terms --

18 CHAIRPERSON MILLER: Excuse me.

19 Which exhibit were you just looking at?

20 MR. GREEN: Number 7.

21 CHAIRPERSON MILLER: Is that in
22 the same packet?

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1 MR. GREEN: Yes, it is.

2 THE WITNESS: It's a letter to Mr.
3 Demuren, a two-page letter.

4 CHAIRPERSON MILLER: Thank you.

5 BY MR. GREEN:

6 Q So in other words you're saying
7 that on a date certain, communication was sent
8 to Mr. Demuren that did what?

9 A The Zoning Administrator
10 determined that the application for that
11 building permit in the previous exhibit cannot
12 be approved, because there was no structure
13 left on which to make an addition to, and in
14 fact the structure had been razed.

15 Therefore, the Zoning
16 Administrator did not have the authority to
17 approve the building permit, because it
18 constituted new construction of an 11-unit
19 apartment building.

20 Q So you're saying that upon razing,
21 his authority, that is his, meaning the Zoning
22 Administrator's authority was extinguished?

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1 A That's correct, because Section
2 330.5C allows the Zoning Administrator to, in
3 the R-4, subject R-4 district, to permit
4 conversions and additions to single family
5 homes for apartments.

6 But it does not allow the
7 construction of new apartment buildings that
8 are not a conversion, that are not connected
9 to a conversion of a single family home.

10 Q What happened in this instance,
11 sir?

12 A In this instance, the Zoning
13 Administrator, Mr. Bill Cruz, determined that
14 there was no single family structure
15 remaining, that in fact it had been wholly
16 removed or razed.

17 Therefore, his authority to
18 approve that conversion or addition was
19 extinguished. He didn't have that authority,
20 and he was letting the applicant know that he
21 could not approve the building permit
22 application, and in fact he wrote "denied"

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1 across that application in the previous
2 exhibit, Exhibit 6.

3 Q Directing your attention again to
4 the big chart, more specifically to the second
5 picture on the left-hand side, what does that
6 show?

7 A The second picture from the top
8 shows prior to the construction, the layout
9 and appearance of the previous configuration
10 of the structure, I believe the date of that
11 photo is approximately 2003, although it's not
12 dated.

13 But from the city's aerial
14 photographic records, which have different
15 dates; one of them is 2003, it shows a
16 structure commensurate with what is shown
17 above in what I will call the Master Address
18 Repository or MAR photo.

19 This is both photos together that
20 show from different angles the before
21 situation.

22 Q I direct your attention to the

1 third picture down. What does that show?

2 A This is a picture from April
3 2007's aerial photographic records of the
4 District, that shows the structure as per that
5 date, and it shows a large building that's T-
6 shaped on that same lot.

7 Q I direct your attention to another
8 picture below it. What is this?

9 A This is a picture taken on April
10 4th, 2007, by Inspector Yvonne Rockett,
11 showing the structure at that point in time
12 and its appearance.

13 Q Have you had an opportunity, sir,
14 to go upon the site or at least see it?

15 A I have. I drove by, I believe,
16 prior to our last hearing, I believe around
17 October the 14th -- excuse me. October 1st I
18 went by the site and I simply observed from
19 the street the appearance of the structure.

20 Q The structure as you saw it, in
21 proportion to the other structures nearby, how
22 did it appear sir?

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1 MR. BROWN: Objection. That's not
2 relevant to anything before the Board. This
3 is not a special exception or variance case.
4 This is an appeal.

5 CHAIRPERSON MILLER: Mr. Brown,
6 your mike.

7 MR. BROWN: Oh, I'm sorry. I
8 object. Characterizing the property in
9 relationship to the adjoining ones isn't
10 relevant to the Board's purpose here. We're
11 in an appeal status, not in any special
12 exception or variance case.

13 As a factual matter, the house is
14 as big as the building permit authorized it.
15 So how it's characterized is now irrelevant.

16 CHAIRPERSON MILLER: Mr. Green, do
17 you want to respond?

18 MR. GREEN: I think he's
19 absolutely wrong, Madam Chairman. I think
20 that, particularly in light of a letter of
21 denial from the Zoning Administrator, and I
22 think that the current Zoning Administrator

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1 certainly can describe what he saw. It's not
2 like he's talking speculative. He's saying "I
3 saw something."

4 CHAIRPERSON MILLER: And what's
5 the relevance?

6 MR. GREEN: The relevance is to
7 describe what he saw, is to describe whether
8 or not there was any adherence to the zoning
9 regulations, in the area of conforming and not
10 conforming.

11 The whole issue is to depict,
12 again, what he saw. We're looking at
13 pictures. We're looking at drawings, and we
14 also had testimony from the neighbors about
15 the impact that a structure of this type has
16 on their neighborhood.

17 So I think that it is very
18 relevant for the Zoning Administrator to weigh
19 in, because this Board does consider the
20 adverse impact of things in the neighborhood.
21 This thing has an adverse impact on the
22 neighborhood.

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1 So the Zoning Administrator is the
2 proper man to discuss it.

3 MR. BROWN: And I go back to my
4 earlier point. If this were a variance or
5 special exception case, this would be
6 relevant. But you're being asked to render an
7 appellate decision that has absolutely nothing
8 to do with whether this property fits in the
9 neighborhood or doesn't.

10 You're being asked to make a
11 factual and legal decision about the building
12 permits that were issued, and the actions the
13 Zoning Administrator made.

14 This could be the prettiest or the
15 ugliest biggest building in the world, but not
16 relevant to your considerations. It really is
17 not.

18 It's prejudicial to my client,
19 because it's try to paint that this building
20 is somehow improper or harmful, and that's not
21 relevant.

22 Quite frankly this building looks

1 the way it looks because the city issued a
2 building permit that authorized it. Now we're
3 getting into discussions about what wall
4 collapsed when and the meaning of that.

5 But that building looks the way it
6 does because the city issued a building
7 permit, and none of us can change that.

8 CHAIRPERSON MILLER: Mr. LeGrant,
9 does this question go to your evaluation of
10 whether the prior Zoning Administrator made
11 the right decision in this case?

12 THE WITNESS: Only to the extent
13 that did my side visit find the structure
14 equivalent to what the plans depicted.

15 MR. BROWN: I think that's very
16 relevant, and I appreciate Mr. LeGrant saying
17 that. That's a relevant comment, and I think
18 that's very important for the Board to know,
19 but not whether it's good or bad or somewhere
20 in between.

21 MR. GREEN: We're not talking
22 about how good or bad, Madam Chairman. We're

1 talking about the structure, we're talking
2 about the closeness to the neighbors. That
3 goes to --

4 MR. BROWN: That's exactly what
5 we're not talking about.

6 CHAIRPERSON MILLER: Well, okay.

7 MR. GREEN: Well, you heard from
8 the neighbors. You have a big monstrosity
9 next to them.

10 CHAIRPERSON MILLER: Actually, Mr.
11 Green, I think their testimony was a little
12 bit different. I think their testimony went
13 to what was there when and what kind of, you
14 know, was there a foundation left and things
15 like that which were relevant.

16 MR. GREEN: And almost fell over
17 and hurt somebody too.

18 CHAIRPERSON MILLER: Okay. I
19 think that Mr. Brown actually is correct in
20 this. We don't need to go into adverse
21 impacts, unless they're related to the Zoning
22 Administrator, and it sounds like they

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1 weren't, and Mr. LeGrant is going to testify
2 whether or not what he saw reflected what the
3 plans approved. Is that correct?

4 THE WITNESS: Yes.

5 CHAIRPERSON MILLER: Okay. Let's
6 go.

7 BY MR. GREEN:

8 Q Number eight.

9 A Exhibit No. 8 --

10 Q Hold it up so they can see it.

11 CHAIRPERSON MILLER: Is this also
12 in the first batch of exhibits?

13 MR. GREEN: It should be ma'am.

14 CHAIRPERSON MILLER: Okay. Yes,
15 it is.

16 THE WITNESS: At the top it's
17 entitled "Stop Work Order, 1233 Morse Street,
18 N.E.," and this is a stop work order that was
19 issued May 8, 2007 by Neil Lectrin, describing
20 the --

21 MR. BROWN: I object to the
22 relevance of this document. Again, it comes

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1 a year and a half after the collapse, two
2 years after the building permit was issued.
3 Historically, it's interesting, but it's not
4 relevant to this proceeding.

5 CHAIRPERSON MILLER: Okay, Mr.
6 LeGrant. Is this relevant to the prior Zoning
7 Administrator's decision, and if so, how?

8 THE WITNESS: The third listed
9 violation speaks to this, and it denotes they
10 razed the building without a permit.

11 MR. GREEN: That's quite relevant,
12 Madam Chairman.

13 MR. BROWN: But that's an
14 allegation. That's not a finding of fact.
15 We'll stipulate to the fact that this is the
16 fourth stop work order on the property, where
17 there's been no adjudication on whether that
18 allegation is correct.

19 So the document by itself doesn't
20 add anything to our inquiry. And beyond the
21 scope, with all due respect to Mr. LeGrant,
22 he's not the issuing official of the stop work

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1 order.

2 CHAIRPERSON MILLER: Yes, but Mr.
3 LeGrant said he reviewed the documents in the
4 files to determine whether or not he agreed
5 with the decision made by the prior Zoning
6 Administrator. So again, it's kind of a
7 question. How is this document relevant to
8 your review? What should the Board determine
9 from this document?

10 THE WITNESS: Well, it is relevant
11 in the fact that when I look at the totality
12 of the record and I went back and said okay,
13 now Mr. Cruz made a determination. He looked
14 at information to determine his determination,
15 and I had to see if I would agree with that.

16 Part of my analysis, which I'll
17 get more into, is what I found on the ground,
18 what other divisions in the department found
19 in their review, and what physically is out
20 there, to see if I could come to the same
21 conclusion, that the building had been totally
22 removed and razed.

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1 MR. GREEN: Madam Chair, I would
2 also point --

3 CHAIRPERSON MILLER: So okay. Is
4 this document, if we look at this document, is
5 it just a historical document? This is
6 chronology of the stop work order, or is there
7 something in this document that is meaningful
8 to deciding whether or not the Zoning
9 Administrator made an error in his decision or
10 not?

11 THE WITNESS: It's meaningful to
12 me, that in re-reviewing that, Mr. Cruz's
13 determination. While he back in March said
14 the thing had been razed, I see a stop work
15 order saying that the Inspections Division had
16 issued a stop work order in this regard.

17 I went out to the site and I
18 didn't see any remaining single family home
19 myself. Although that information, I feel was
20 relevant to me in order to make -- to see if
21 I could make a determination that the building
22 had been razed and removed.

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1 MR. BROWN: Madam Chair, I go back
2 to one. This document dated May 8th '07 came
3 more than two months after Mr. Cruz made his
4 decision. So it obviously did not factor into
5 his decision-making.

6 If we go back to the original stop
7 work order, which made a similar allegation
8 back in February of '06, and the Office of
9 Administrative Hearings ruled that stop work
10 order invalid as a matter of law.

11 So historically it's interesting,
12 and I've referenced it in my documents
13 chronology. But I don't think it adds
14 anything relevant to the Board's inquiry.

15 CHAIRPERSON MILLER: Well, okay.
16 I don't want to belabor this, but we have --
17 I mean Mr. LeGrant's a special witness in this
18 case, and it has become his decision, as well
19 as Mr. Cruz.

20 So if he looked at this document
21 and relied on this document for whatever
22 reason, I don't see why the Board would strike

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1 that or anything like that. So I think we
2 should proceed.

3 MR. GREEN: Thank you, Your Honor,
4 Madam Chairman.

5 BY MR. GREEN:

6 Q Let's look at number nine.
7 Exhibit 9?

8 A Exhibit No. 9, the last page of
9 the packet, that particular packet, it shows
10 two photographs. I do not know frankly the
11 date of these photographs or which inspector
12 took them, but they do show the building's
13 condition, similar to that what I observed on
14 October 1st, of a pretty much constructed
15 building.

16 On the October the 1st, the only
17 thing that I would say is that the building's
18 been wrapped in the T-Vek fabric that's over
19 all the windows. The last time I saw it,
20 that's what I observed.

21 Q And this building is also -- I
22 think you describe it as a T-shape. Is that

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1 right?

2 A That's correct.

3 Q That's shown on the third picture
4 down on the left-hand side on the big chart;
5 is that right?

6 A Well yes. This third photograph
7 on the left side does have a T-shaped building
8 shown.

9 Q Out of curiosity, in that picture,
10 are there any remains of the original picture,
11 I should say any remains of the original
12 building in the first photograph at the top
13 left hand?

14 A None that I could find.

15 Q Not even a wall?

16 A Not a wall, no.

17 Q Now you indicated that you had an
18 opportunity to review the determination made
19 by Mr. Cruz, which was encompassed in Exhibits
20 1 through 9, is that not right?

21 A Yes.

22 Q You utilized a methodology in

1 making a determination about this; is that
2 also correct?

3 A Yes.

4 Q Can you tell us what that
5 methodology was please?

6 A Okay. My methodology was to first
7 look at the involved building permits that
8 were reviewed and issued by DCRA, to look at
9 the applications, the plans. I also reviewed
10 the applicable sections of the zoning
11 regulations, to see if the review was done
12 consistent with the zoning regulations.

13 I looked at the correspondence
14 regarding the case that had been part of the
15 record file. I especially paid attention to
16 Mr. Cruz's determination that I believe was
17 the basis for the appeal, the key question
18 being was -- appealing his determination that
19 he could not approve the building permit, and
20 to understand the reasons why Mr. Cruz felt he
21 could not approve the building permit.

22 In close examination of the

1 subject section of the zoning regulations,
2 again Section 330.5C, which permits a
3 conversion of a single family home or a flat
4 into an apartment building, that is the only
5 way an apartment building can be established
6 in an R-4 district.

7 Then looking at the history of --
8 piecing together the history of what seems to
9 have occurred with the removal of the single
10 family house that no longer existed, not that
11 I could observe any single family house
12 existing, not that at least there is
13 information in the file to me that it had been
14 razed, but my own inspection that there's no
15 remains of the single family house.

16 That led me to conclude that Mr.
17 Cruz's determination was correct, and that I
18 agree with that determination, that there's no
19 longer -- the Zoning Administrator does not
20 have authority to approve a wholly new
21 apartment building in the subject R-4
22 district.

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1 Q During the course of our
2 conversation in this proceeding, there's been
3 discussion of 11-2001.4. Can you tell us what
4 this is, please?

5 A In the zoning regulations, Chapter
6 20, starting with Section 2001.1, going down
7 to locate this and then 2001.4, talks about if
8 a non-conforming structure is destroyed by
9 fire collapse or act of God, to an extent of
10 more than 75 percent of the cost of
11 reconstructing entire structure, the non-
12 conforming structure shall not be restored or
13 reconstructed except in conformity with all
14 provisions of this title and except as
15 provided otherwise in 2001.5 through 2001.10.

16 So this clause speaks to those
17 instances when you have a non-conforming
18 structure that is destroyed. In my review of
19 this, I concluded that this is not germane or
20 relevant to the matter at hand, because the
21 single family home use that existed prior was
22 a conforming use.

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1 So 2001.4 does not apply. If we
2 had an opposite situation of let's say an
3 apartment building in an R-4 district, then I
4 can see something along the lines of
5 applicability. But in this case, my
6 conclusion is that this is not applicable to
7 this matter at hand.

8 Q And you come to these conclusions
9 based on your experience, background, training
10 and status as a zoning expert, is that not
11 right?

12 A Yes, and my career, both with the
13 District and prior, I've had much experience,
14 lots of experience with non-conforming, those
15 regulations dealing with non-conforming
16 structures and uses.

17 Q Out of curiosity, how long have
18 you been in the zoning area?

19 A 25 years.

20 MR. GREEN: Thank you. I don't
21 have any other questions at this point.

22 CHAIRPERSON MILLER: What did you

1 say, 25 years?

2 THE WITNESS: 25 years.

3 CHAIRPERSON MILLER: Okay.

4 MR. GREEN: I would point out
5 again to the Board, just briefly, that Mr.
6 LeGrant has been certified by this Board as an
7 expert in the area of zoning. Thank you,
8 ma'am.

9 CHAIRPERSON MILLER: Mr. LeGrant,
10 you're not bound by Mr. Cruz's decision, are
11 you?

12 THE WITNESS: No, no.

13 CHAIRPERSON MILLER: Okay. Could
14 you address the question of vesting that was
15 raised earlier in these proceedings, whether
16 or not the fact that the appellant had a
17 building permit to begin with, before the
18 walls collapsed, vested in them the right to
19 rebuild?

20 THE WITNESS: Well, in my view one
21 is vested with certain rights based on the
22 presence, especially in a situation where a

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1 structure or use that is present continues.

2 In this particular case, it's very
3 clear in the regulations if you have a pre-
4 existing single family home or flat, you may
5 do certain things in an R-4 district that are
6 not normally allowed, i.e., conversion to
7 apartments.

8 There is no provision that
9 specifically addresses, in my opinion, the
10 instance of does that vest you once that
11 structure is gone. The structure once it's
12 extinguished, tells me or it appears to me
13 there's no longer a basis on which I can use
14 that regulation.

15 So in this instance, that's how I
16 would look at the question of vesting in this
17 regard.

18 CHAIRPERSON MILLER: And in the
19 Zoning Administrator's decision, it wasn't
20 just that he didn't, reading the regulations,
21 didn't allow -- well, I don't know how to
22 phrase it. But you've saying that the Zoning

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1 Administrator didn't have authority even to
2 issue a building permit for the 11-unit
3 building, once the smaller structure
4 disappeared?

5 THE WITNESS: That's correct.

6 CHAIRPERSON MILLER: So it's a
7 question of jurisdiction, authority. He just
8 didn't have it?

9 THE WITNESS: Well, right. The
10 authority was extinguished at the point that
11 the structure was removed.

12 CHAIRPERSON MILLER: Okay. Any
13 other Board questions? Mr. Brown.

14 CROSS EXAMINATION

15 BY MR. BROWN:

16 Q And I'll be brief, Mr. LeGrant. I
17 just want to reiterate, when you did go out to
18 the site and you made a comparison between the
19 plans in the original building permit and what
20 was there at the site; is that correct?

21 A Yes.

22 Q And your determination was that

1 the two are conforming; they match each other?

2 A Well only -- in terms of the
3 overall footprint, the height, although I did
4 not go out with a tape measure to confirm,
5 those aspects of the structure shown on the
6 plans appear to coincide, with the exception
7 that there was no single family home or a
8 portion of an original single family home
9 present.

10 Q So the structure that's there now,
11 the appellant, Mr. Demuren and his company,
12 they haven't gained any advantage or benefit
13 from what they originally requested under the
14 original building permit?

15 A I guess I don't understand what
16 you're -- gain or benefit. In what regard?

17 Q They haven't constructed anything
18 that or gained any advantage, any improvement
19 in their position from what they asked for in
20 the original building permit, which was an
21 addition and a conversion to an 11-unit
22 apartment building?

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1 A In the respect that there was no
2 single family home still present, in the
3 absence of having a single family home, there
4 is a gain, in my opinion, to construct a
5 wholly new apartment building.

6 Q The department authorized a
7 conversion, addition and conversion to an 11-
8 unit apartment building. Under that permit,
9 what would have been the end result of that
10 process?

11 A Well, as described in the Scope of
12 Permit, the ultimate result was an 11-unit
13 apartment building.

14 Q All right. So that the single
15 family dwelling element would have been
16 converted or kind of subsumed within the 11-
17 unit apartment building?

18 A I would use the word "subsumed,"
19 yes.

20 Q Okay. So that independent of the
21 11-unit apartment building and single family
22 dwelling, would not be distinguishable or

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1 exist, independent of the 11-unit apartment
2 building?

3 A Well, it's hard to pull away from
4 that, given the regulation that's at hand
5 here. One could say that if that single
6 family home had been retained and then covered
7 over, so as to be indistinguishable, but the
8 walls and the elements that still made a
9 single family home, yes, I would agree.

10 There could be an ultimate result,
11 even though it's speculative, that one could
12 not, after the structure exterior was
13 finished, that you could not distinguish that
14 a single family home was present.

15 Q And looking at the picture at the
16 lower left-hand corner of the board, and
17 that's April of 2007?

18 A Yes.

19 Q Is that an 11-unit apartment
20 building?

21 A I did not count the units, but it
22 appears to be a multi-family structure.

1 Q And under the zoning regulations
2 and the permit that was issued, isn't that the
3 permitted result of the permit and building
4 process that was anticipated?

5 A The ultimate result, which was
6 specified in the permit, was an 11-unit
7 apartment building.

8 Q And you've indicated that a single
9 family dwelling in the R-4 zone is a
10 conforming use?

11 A Correct.

12 Q The addition and conversion to an
13 11-unit apartment building in the R-4 zone
14 that was permitted in this case, is that a
15 conforming use?

16 A If it followed all the
17 requirements set forth in the Code, at the end
18 of the day, yes, it would be conforming.
19 You've got to secure proper permits.

20 Q And specific to this, when you
21 went back and looked at the original permit,
22 did you take the opportunity to re-evaluate

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1 that permit application, to see and make your
2 own determination about whether that permit
3 application, as presented, was permitted by
4 the zoning regulations, at the time the permit
5 was applied for?

6 A I guess I understand your question
7 was --

8 MR. GREEN: Well, I'm going to
9 object and ask that the question be
10 simplified.

11 BY MR. BROWN:

12 Q Mr. LeGrant, did you agree with
13 the determination that was made on the
14 original permit application, did you agree
15 that that application, when it was made,
16 complied with the zoning regulations?

17 A Yes.

18 Q Let me ask you a question. A
19 conforming use and a conforming structure, the
20 end result, the 11-unit apartment building
21 you've indicated was a conforming use?

22 A If it was approved under the

1 regulations and the permits were approved
2 under the regulations in effect.

3 Q In the same vein, issuance of the
4 permit would indicate that it was a conforming
5 structure; correct?

6 A Can you rephrase your question?

7 MR. GREEN: I'm going to object,
8 Madam Chairman, because when in time are we
9 talking? Are we talking when that little
10 house with the L shape was in existence, or
11 after it fell down? What period of time does
12 counsel wish to have a response?

13 BY MR. BROWN:

14 Q Well, we'll start at the time when
15 the original building permit was issued in
16 September of '05. Wasn't the issuance of a
17 permit a determination that the proposed
18 addition and conversion was a conforming
19 structure?

20 MR. GREEN: I'm going to object
21 again, Madam Chairman. It appears that
22 question has been asked and answered 18 ways

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1 to Sunday. How many times is he going to
2 respond to his question?

3 MR. BROWN: I don't recall asking
4 it 18 times.

5 MR. GREEN: Well maybe not 18
6 times. That's an exaggeration. But it
7 certainly been asked a multiplicity of times,
8 and I don't think that the ZA has to continue
9 to answer the same question. I'd ask the
10 court to rule.

11 CHAIRPERSON MILLER: I don't
12 recall how he answered it. How did you answer
13 this before?

14 THE WITNESS: As I understood -- I
15 think I spoke to about whether the conformity,
16 the question of conforming use, and I spoke to
17 that. If you can rephrase your last question
18 again, I can maybe state whether I felt I've
19 answered it previously.

20 MR. BROWN: You've answered the
21 conforming use question. This is a separate
22 category. A conforming structure. Does that

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1 structure conform to the zoning regulations?

2 MR. GREEN: What structure, Madam
3 Chairman?

4 CHAIRPERSON MILLER: Okay. I
5 think that you were about to modify your
6 question.

7 BY MR. BROWN:

8 Q When the original building permit
9 was issued, the work that was approved,
10 addition to a single family dwelling and
11 conversion to an 11-unit apartment building,
12 was that a conforming structure?

13 A In my review of the plans, the
14 plat, I would say yes, that was conforming.
15 Based on the analysis of looking at lot
16 occupancies, setbacks, parking, height and so
17 forth.

18 Q Okay. If this conforming use and
19 conforming structure, the 11-unit apartment
20 building that we're showing there, if it had
21 been completed, finished, occupied, finally
22 inspected, that would have been a conforming

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1 use and a conforming structure?

2 MR. GREEN: I'm going to object.

3 CHAIRPERSON MILLER: Do you mean
4 if it had been built per plans, with --

5 MR. GREEN: With the little house
6 in front.

7 CHAIRPERSON MILLER: Do you mean
8 built per plan?

9 MR. BROWN: Yes, yes.

10 THE WITNESS: If the original
11 single family home had remained, it would have
12 been subsumed in the structure as shown in the
13 original plans, yes.

14 CHAIRPERSON MILLER: And if God
15 forbid a week after that structure had been
16 completed and occupied it burned to the
17 ground, could that structure have been
18 rebuilt?

19 MR. GREEN: I'm going to object,
20 Madam Chairman. Again, we're talking about
21 something that's not going on and it just
22 doesn't exist today, and unless he's got a

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1 time machine over there, can't exist. It's
2 immaterial.

3 CHAIRPERSON MILLER: Mr. Brown,
4 what is that related to in this case?

5 MR. BROWN: What, the time machine
6 or --

7 MR. GREEN: If we had a time
8 machine we could go back, and you could put
9 your little house in front.

10 CHAIRPERSON MILLER: Mr. LeGrant
11 didn't have to make that decision, nor --

12 MR. BROWN: I'm asking him --

13 CHAIRPERSON MILLER: Nor does the
14 Board.

15 MR. BROWN: What?

16 CHAIRPERSON MILLER: Mr. Cruz
17 didn't have to make that determination, as far
18 as I can tell, neither did Mr. LeGrant,
19 neither does the Board; is that correct?

20 MR. BROWN: I think the Board has
21 to come to an understanding of that very
22 issue, because Mr. LeGrant, and I think we

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1 agree on this, that what was proposed was a
2 conforming use and a conforming structure.

3 I think it's then a very relevant
4 inquiry about what happens, and this goes to
5 the heart of Mr. Cruz's decision, what happens
6 and what are the rights of a party if you have
7 a non-conforming use and a non-conforming
8 structure, that is damaged by collapse, act of
9 God?

10 CHAIRPERSON MILLER: Why does that
11 go to the crux of this case, if we don't have
12 a non-conforming structure that's non-
13 conforming, that was burned down?

14 MR. BROWN: In this case, we're
15 asking the question in the context of a
16 conforming use and a conforming structure.
17 Then what are the parties' rights, what is the
18 property owner's rights if you have a casualty
19 to a conforming use and a conforming
20 structure.

21 Mr. Bello has testified that if
22 you have a conforming use and a conforming

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1 structure, then there are no restrictions on
2 rebuilding that in the form that it existed,
3 because by definition, it's permitted.

4 CHAIRPERSON MILLER: In this case,
5 you had this particular house that's on the
6 poster, that supposedly collapsed or whatever.
7 We don't have an 11-unit that collapsed. So
8 your question's posed to what were the rights
9 if that collapsed, what we have in this case?

10 MR. BROWN: Well, but I think one,
11 we do in fact have -- whether anybody likes it
12 or not, the picture shows that in fact Mr.
13 Demuren built an 11-unit apartment building.
14 It exists, and he was well within his rights
15 to do that.

16 Complicating the issue is what
17 happened to the single family dwelling portion
18 of it. But Mr. LeGrant has correctly said
19 that a single family dwelling could be rebuilt
20 as a conforming use, could be rebuilt as a
21 matter of right.

22 So I'm just trying to take, extend

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1 the discussion, so that the Board understands,
2 because it's important, that because it was a
3 conforming use and a conforming structure,
4 with that comes certain rights.

5 I'm asking the question, and it
6 doesn't even need to apply with this. If you
7 had a conforming use and a conforming
8 structure built to completion and then
9 destroyed by casualty, would you be able to
10 rebuild it? The answer is I believe yes.

11 So that same principle should
12 apply to this case, where Mr. LeGrant has said
13 that we had a conforming use and a conforming
14 structure.

15 MR. GREEN: Madam Chairman, the
16 Zoning Administrator, wise though he may be,
17 can only devil in terms of what is, not what
18 ought to be or coulda woulda shoulda be.

19 MR. BROWN: Well, but --

20 MR. GREEN: And I would submit to
21 you that to have him to speculate would be a
22 non-started.

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1 MR. BROWN: But we're not coulda
2 shoulda woulda speculating.

3 MR. GREEN: But that's what you
4 want him to do.

5 MR. BROWN: No, I'm asking him --

6 MR. GREEN: He's not going to do
7 it.

8 MR. BROWN: Mr. LeGrant --

9 MR. GREEN: It's irrelevant, it's
10 immaterial, and it has no probative value in
11 what our discussion is about right now.

12 CHAIRPERSON MILLER: I don't think
13 the Zoning Administrator -- oh, go ahead. Do
14 you want to say something first before --

15 BOARD MEMBER LAUDER: Actually,
16 I'd like to hear an answer to the question.
17 I think there's been some testimony, not
18 saying it's been credited; we haven't credited
19 any testimony yet, that an act of God or
20 circumstances beyond the control of the 1231
21 parties caused the collapse of the property.

22 Again, I'm not saying that it's

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1 been persuasive, and there's been testimony
2 from Mr. Bello regarding his interpretation of
3 current zoning regs, and how his
4 interpretation would have, make a decision as
5 to whether the conforming structure that goes
6 through the act of God, is allowed to rebuild.

7 So I don't seem the harm in
8 allowing Mr. LeGrant to offer his opinion as
9 well, if I understand the question.

10 CHAIRPERSON MILLER: Okay. Let me
11 just get in here just for a second. That is
12 to say there was a conforming use here;
13 correct? There was a single family dwelling?

14 THE WITNESS: Yes.

15 CHAIRPERSON MILLER: Conforming
16 use, conforming structure?

17 THE WITNESS: Yes.

18 CHAIRPERSON MILLER: Okay, that's
19 real in this case, and it did collapse, for
20 whatever reasons, or be knocked down. Did the
21 owner have a right to rebuild that?

22 THE WITNESS: To rebuild a single

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1 family home certainly?

2 CHAIRPERSON MILLER: And that was
3 a conforming use?

4 THE WITNESS: Yes.

5 CHAIRPERSON MILLER: And so your
6 next question is any conforming use?

7 MR. BROWN: Well, and thank you
8 Mr. LeGrant. If they had a right to rebuild
9 the single family dwelling portion of it, and
10 at the time the collapse occurred, didn't the
11 11-unit apartment building addition exist, was
12 under roof, was framed and under roof?

13 THE WITNESS: Well, it was under
14 construction and it had not been finalized. A
15 final inspection hadn't occurred. So it's a
16 situation -- in that regard it's not finished.

17 BY MR. BROWN:

18 Q But it existed?

19 A As I understand it, portions of it
20 were constructed.

21 Q And when issuing a building
22 permit, the issuance of a building permit,

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1 that's the property owner's right to continue
2 that work to completion, subject to complying
3 with the permit; is that correct?

4 A I would not say that the mere
5 issuance does.

6 Q The issuance and the starting of
7 the work and proceeding along. I mean permits
8 can expire if you don't use them. But you
9 obtain a building permit and you start work,
10 and you work in compliance with that permit.

11 Do you have a vested right to
12 continue that project to completion?

13 A If it is in compliance with the
14 plans --

15 MR. GREEN: I'm going to have to
16 object again. I'm going to have to object.
17 It appears to me that we have an attempt to
18 get the Zoning Administrator to reach a legal
19 conclusion of some sort, and that's not his
20 function.

21 MR. BROWN: Those provisions are
22 in the zoning regs, and Mr. LeGrant is the

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1 executive official in charge of enforcing the
2 zoning regs.

3 CHAIRPERSON MILLER: Mr. LeGrant,
4 do you make decisions like that, whether or
5 not someone's rights have vested?

6 THE WITNESS: Well, if a question
7 of vesting comes up, I obviously would look to
8 my counsel, to see what the precedents have
9 been in the District, what this Board's
10 decisions have been, what case law is
11 involved.

12 Honestly, I'm probably not
13 thoroughly versed in D.C. vesting, to tell the
14 truth. However, I would look to what the
15 facts in each case were, and I'd just
16 reiterated. It would revolve significantly
17 upon what was shown in the plans approved for
18 a particular permit, and what was described in
19 the scope of that building permit.

20 CHAIRPERSON MILLER: So in this
21 case, there was a question of vesting?

22 THE WITNESS: Yes.

1 CHAIRPERSON MILLER: And you made
2 a decision that the rights hadn't vested, is
3 that right?

4 THE WITNESS: Say again?

5 CHAIRPERSON MILLER: You made a
6 decision or determination in evaluating this
7 case, that the rights of the appellant had not
8 vested?

9 THE WITNESS: Yes.

10 CHAIRPERSON MILLER: And what did
11 you look to for that determination?

12 THE WITNESS: Well, I looked to
13 what -- basically what my understanding of how
14 far the structure had been completed, what
15 evidence of the remains of the original single
16 family home, because it was crucial in the
17 interpretation of the regulation.

18 There was no vestige of the single
19 family home, as I understand from the record
20 and my observation that remained. So that was
21 the relevant facts in looking at whether there
22 was vesting in this regard.

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1 CHAIRPERSON MILLER: Sorry, Mr.
2 Brown. I am a little bit confused about the
3 reference to the 11-unit apartment building
4 being built, when a single family home
5 collapsed.

6 I mean I thought that there was
7 nothing there for a while, and then the 11-
8 unit building was built.

9 So is it -- is that not correct?
10 Is it correct then that the other part was
11 being built while the single family home
12 collapsed, so part of it was standing?

13 THE WITNESS: In looking at the
14 photographs that I've seen --

15 MR. GREEN: Excuse me.

16 CHAIRPERSON MILLER: I ask that,
17 because it was raised with respect to the
18 question about vesting.

19 MR. GREEN: Oh, okay. I just
20 don't want us to get too far afield on those
21 two words, and those two words are "collapsed"
22 and "removal."

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1 I think that there's been a lot of
2 removal here. I don't want the court to
3 forget.

4 CHAIRPERSON MILLER: Right, no.
5 Regardless of how the walls came down --

6 MR. GREEN: God didn't do it.

7 CHAIRPERSON MILLER: It doesn't
8 matter to this question. The question is were
9 the other walls, some other walls up while
10 these came down, or were no walls up and then
11 -- you know what I'm saying?

12 THE WITNESS: Yes. Based on my
13 view of various photographs, it looked like
14 some of those were happening simultaneously.
15 The removal of the walls of the single family
16 home and some construction footing or
17 something of the addition.

18 CHAIRPERSON MILLER: Thank you.

19 BY MR. BROWN:

20 Q Mr. LeGrant, can I draw your
21 attention -- do you have the zoning
22 regulations with you?

1 A I do.

2 Q It's a cross we both have to bear,
3 to carry them around with us.

4 A Indeed.

5 Q If I could direct your attention
6 to Section 3203.11, I think on page 32-6 in my
7 book.

8 A 3203.11?

9 Q Yes.

10 A Yes.

11 Q And then subsection (c), but let
12 me read it. "This subsection shall govern the
13 issuance of a certificate of occupancy for use
14 of a structure or part thereof, if the
15 establishment of the use is depended upon the
16 erection, construction, conversion or
17 alteration of the structure or part thereof,
18 provided," and then you go to subsection (c).

19 "At the time of the issuance of
20 the building permit that is required by this
21 subsection, the proposed use shall be
22 designated in a provisional certificate of

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1 occupancy." You're familiar with that
2 provision?

3 A Yes.

4 Q In this case, a government permit
5 for issued for addition of an 11-unit
6 apartment building; correct?

7 A A conversion and addition for an
8 11-unit apartment building.

9 Q So based on this section, upon the
10 issuance of that building permit, wasn't a
11 provisional certificate of occupancy
12 established for that purpose?

13 A Yes.

14 Q And wasn't the property owner then
15 entitled to complete that work in accordance
16 with the provisional certificate of occupancy?
17 Weren't his rights vested as it relates to
18 that?

19 A Again, if I may say, if the plans
20 had been followed, if the plans that showed
21 the original single family home conversion had
22 been followed, I would agree with that.

1 Q And in this case, where the
2 addition had been constructed so that -- the
3 addition, and this is to clarify, Mrs. Miller,
4 your point, that the single family dwelling
5 still existed on the front portion.

6 Mr. Demuren, it is your
7 understanding, built the addition portion of
8 it while the single family dwelling still
9 existed; is that correct?

10 A It appears to me, from the
11 photographs I've seen, that portions of the
12 addition were under construction.

13 Q So that the authorization granted
14 by the building permit and this section
15 applied to completing the project. The
16 ultimate conversion, the end result, is
17 critical, conversion to an 11-unit apartment
18 building?

19 MR. GREEN: We're going to have to
20 object again, Madam Chair. That question has
21 been asked and answered. Maybe not 18 ways to
22 Sunday, but at least several times.

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1 MR. BROWN: I mean I'm asking it
2 this time in the context of this specific
3 regulation, which I think is critical.

4 MR. GREEN: What?

5 MR. BROWN: I'm asking the
6 question in the context of this specific code
7 section. I think --

8 CHAIRPERSON MILLER: I think
9 you're needing to at least to repeat it in the
10 context of this reg. So I can't rule on it,
11 because I really don't --

12 MR. GREEN: Please rule on it.

13 CHAIRPERSON MILLER: No. I know I
14 need to hear it again, but I'm not sure
15 exactly what he's asking.

16 MR. GREEN: Okay.

17 CHAIRPERSON MILLER: So do you
18 want to say it again?

19 MR. BROWN: We've established the
20 baseline of 3203.11, subsection (c), and you
21 understand that section.

22 CHAIRPERSON MILLER: I don't

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1 understand what you mean, the baseline.

2 MR. BROWN: I'm asking this
3 question in the context of that code section,
4 just by way of introduction. That section
5 creates certain rights for the recipient of
6 building permit; is that correct?

7 A Well, what do you mean by certain
8 rights?

9 CHAIRPERSON MILLER: I think he
10 did answer that one.

11 MR. GREEN: Hold it, hold it.

12 BY MR. BROWN:

13 Q In this case, specially the right
14 is it creates the provisional certificate of
15 occupancy that's referenced in subsection (c);
16 is that correct?

17 A Yes. I think I've stated that.

18 Q The meaning of a provisional
19 certificate of occupancy is the provisional or
20 temporary authorization for that use during
21 the construction period; is that correct?

22 MR. GREEN: Your Honor, who's

1 testifying, Mr. Brown or Mr. LeGrant? Who
2 knows the question to answer?

3 MR. BROWN: I think Mr. LeGrant
4 understands the question.

5 MR. GREEN: I mean you're giving
6 testimony, counsel?

7 CHAIRPERSON MILLER: I understand
8 that question.

9 MR. GREEN: Everybody understands
10 the question.

11 CHAIRPERSON MILLER: Mr. Green,
12 that's a relevant question, because we're
13 talking about what happened during
14 construction, and he's asking does this
15 regulation go to certain rights during
16 construction; is that correct, Mr. Brown.

17 I think Mr. LeGrant already said
18 it did, but I don't know. Did you say that?
19 Would you like to answer the question? Mr.
20 Green, this is relevant. I don't see why
21 you're objecting.

22 MR. GREEN: All right.

1 THE WITNESS: The question again
2 is?

3 MR. GREEN: Why doesn't he restate
4 the question? Restate the question? My
5 witness does not understand.

6 CHAIRPERSON MILLER: Okay, okay.
7 Let him restate the question.

8 MR. GREEN: Restate the question.

9 CHAIRPERSON MILLER: Mr. Green.

10 MR. BROWN: I'm brown; he's green.

11 CHAIRPERSON MILLER: I know that,
12 I know that.

13 (Simultaneous discussion;
14 laughter.)

15 MR. BROWN: I think you were on
16 the Board. There was once three Mr. Browns
17 appearing in the same hearing, and Chairman
18 Griffiths almost lost his mind that day. So
19 we're lucky with a green and a brown.

20 BY MR. BROWN:

21 Q Where we left off, the provisional
22 certificate of occupancy is established by the

1 granting of the building permit; we've agreed
2 on that?

3 A Yes, yes.

4 Q And the provisional certificate of
5 occupancy applies during the period of
6 construction; correct?

7 A Yes.

8 Q And during that period, that
9 authorizes the use set forth in the approved
10 building permit?

11 A Right. But I might add this. If
12 you just look at the subsection above that,
13 section (b), the building permit shall be
14 issued in compliance with 3202.

15 To me, that has to be a building
16 permit that is being followed. So to me, (b)
17 modifies (c), in that yes, there is a
18 provisional certificate of occupancy, but you
19 have to have a valid permit associated with
20 it.

21 Q But I mean you say based on
22 compliance with 3202.2?

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1 A Yes.

2 Q And doesn't that occur with the
3 issuance of the building permit?

4 A As long as that building permit's
5 being followed.

6 Q I mean it doesn't say that in the
7 --

8 CHAIRPERSON MILLER: That's his
9 answer. I think we have heard it at least
10 once before. Yes, there are those rights, but
11 they're dependent upon compliance with the
12 permit, is that right?

13 THE WITNESS: That's correct.

14 BY MR. BROWN:

15 Q And one last question. By way of
16 introduction, Mr. Douglas testified and you
17 were here, I hope, that a raze, a razing of a
18 building, as distinguished from a demolition,
19 a razing involves the disconnection or
20 cessation of the utilities to the site. Is
21 that your understanding?

22 A Yes. Mr. Douglas is the person

1 authorized to issue raze permits. I believe
2 him.

3 Q All right, so in the
4 investigation, did you uncover any indication
5 that the utilities to this site had been
6 disconnected or in any way terminated?

7 A No.

8 Q And were you aware from your
9 investigation that the property owner, Mr.
10 Demuren, had actually added new utilities to
11 the site, particularly running through the
12 area where the single family dwelling --

13 A I'm not aware of the utility
14 aspect of that.

15 MR. BROWN: I think we're done.

16 CHAIRPERSON MILLER: Mr. LeGrant,
17 I have one more question. I think you said
18 you're not a lawyer, but you're a zoning
19 administrator?

20 THE WITNESS: That's true.

21 CHAIRPERSON MILLER: So when you
22 were considering this question of vesting, I

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1 thought that you said that one of the factors
2 you looked at was how far the structure had
3 come along in being completed?

4 THE WITNESS: Right.

5 CHAIRPERSON MILLER: Okay. So
6 where -- is that a subjective judgment, is it
7 over 50 percent, under 50 percent? How do you
8 apply that?

9 THE WITNESS: To use a legal term,
10 I don't think there's a bright line. In this
11 particular case, the photographs I saw, some
12 foundation work, some framing. I did not see
13 a roof in those photos at that point in time
14 had been constructed.

15 I didn't see it enclosed. So in
16 part it is based on an evaluation of how much
17 of the structure, how far the construction has
18 progressed.

19 CHAIRPERSON MILLER: And at what
20 point in time did you look at it, look at how
21 far the structure's progressed? What point in
22 time was this? What event was this tied

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1 to?

2 THE WITNESS: Okay. The
3 photographs that I saw, that I think were
4 shown to the Board, were taken, that showed
5 excavation and I believe the hole that was in
6 the middle of the perimeter of the single
7 family house that existed prior, and I think
8 there was a backhoe that was involved that
9 removed material.

10 Those photographs showed, again in
11 my estimation, some construction of the
12 addition to what was a single family home
13 there previously.

14 CHAIRPERSON MILLER: But I mean
15 when the permit was revoked? Is that when
16 you're looking at the construction --

17 (Simultaneous discussion.)

18 THE WITNESS: I guess at the time
19 that the walls collapsed.

20 CHAIRPERSON MILLER: At the time
21 the walls collapsed. Okay, thank you.

22 THE WITNESS: Yes.

1 CHAIRPERSON MILLER: And is that
2 rooted in regulation or case law or anything,
3 that point of looking at how far along
4 construction had come? Where did that come
5 from?

6 THE WITNESS: That's true. That
7 is based on my career experience in seeing at
8 what point the construction had proceeded, to
9 the point that the building was basically --
10 basically the shell was complete.

11 I guess that's what I'm going to,
12 that the building shell, the roof and the
13 exterior walls were framed in to that extent.
14 That's based on my career's experience.

15 CHAIRPERSON MILLER: Okay, thank
16 you. Any other questions? Okay, thank you.
17 Rebuttal questions?

18 MR. GREEN: Just a couple.

19 REDIRECT EXAMINATION

20 BY MR. GREEN:

21 Q Mr. Zoning Administrator, give me
22 a nice, clean definition and differentiation

1 of razing and demolition, as you understand
2 it?

3 A A demolition is a partial removal
4 of a structure. It can be an internal removal
5 of portions of that structure or portions of
6 the exterior.

7 A raze is removal of all the
8 above-ground portions of a structure, or the
9 roof and the walls that form the shell of that
10 structure basically. In addition, as Mr.
11 Douglas has spoken to, utility connections.

12 Q There's been a lot of discussion
13 about the little house at the top of the page
14 of the primary exhibit that we have before us,
15 and tell us when this permitted use ceased to
16 be a permitted, lawful use?

17 Let's start with the beginning.
18 When they applied for a permit, when was it a
19 permitted, conforming use?

20 A As I understand your question, as
21 long as the single family home remained, then
22 the permit on which the conversion and the

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1 addition was based upon, allowed that permit
2 to proceed.

3 At such time as the single family
4 home was gone, then that permit no longer had
5 a basis under the subject regulation, i.e., a
6 conversion.

7 There was no single family home to
8 convert anymore. So when that single family
9 home was gone, there was no conversion that
10 could be possible.

11 Q Would there have been any impact
12 if an act of God had taken place?

13 A No. As I mentioned earlier,
14 because it was a conforming use, prior to the
15 application, we do have a provision that's in
16 the zoning regulations that speaks to acts of
17 God for non-conforming structures. But this
18 was a conforming structure, so it did not
19 apply. So the act of God aspect is not
20 relevant in this case.

21 MR. GREEN: Thank you very much,
22 Mr. Zoning Administrator. Madam Chairman,

1 members of the Board, I have no further
2 questions.

3 MR. BROWN: Could I follow up very
4 quickly?

5 MR. GREEN: Well then maybe I do.

6 CHAIRPERSON MILLER: One question?
7 Do you have a lot of follow-up, because that's
8 not really in our rules to go back and forth,
9 do cross-rebuttal. Do you have --

10 MR. BROWN: What I wanted to do,
11 and I'll proffer it, I'd like to show Mr.
12 LeGrant two photos that were taken about the
13 time of the collapse, act of God casualty,
14 which give you an idea and more importantly
15 the Board an idea of the state of the
16 construction.

17 Because Mr. LeGrant said that
18 there's no bright line test, but a subjective
19 determination about where the process is. I'd
20 like to ask him if he thinks that this is far
21 enough along in the process of an 11-unit
22 apartment building to be significant.

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1 CHAIRPERSON MILLER: Just a
2 second. First of all, are you going to ask
3 him if that was the state of the subject
4 property at the time of the collapse or not?

5 MR. BROWN: He's given an
6 indication of what he understood it to be,
7 which comports with these pictures.

8 CHAIRPERSON MILLER: That's it. I
9 think that's a question.

10 MR. GREEN: I would strenuously
11 object, Madam Chairman.

12 MR. BROWN: This is a DCRA photo;
13 this is ours. But I mean they've introduced
14 into evidence and we've referred to it, and I
15 think they've attempted to establish that it
16 was taken at the time of the collapse.

17 CHAIRPERSON MILLER: Okay. Do you
18 object, Mr. Green?

19 MR. GREEN: Well, I can't see it
20 from this distance. I don't know what it is.

21 CHAIRPERSON MILLER: We are going
22 beyond what our rules provide. So Mr. Brown

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1 can offer that in rebuttal if he likes. But
2 if you want your witness to answer that, you
3 have that opportunity.

4 MR. GREEN: No ma'am. I don't
5 want my witness to answer it for several
6 reasons. I mean I don't.

7 MR. BROWN: Madam Chair, that's
8 fine. We're going to move on. We're going to
9 move on.

10 CHAIRPERSON MILLER: Okay, okay.
11 So that's it with DCRA's case. Is that
12 correct?

13 BY MR. GREEN:

14 Q Well, I just want the Zoning
15 Administrator to stay for the record, that
16 zoning is a different discipline, just like
17 plumbing and electricity; is that right?

18 A Well, if you mean in the context
19 of a review of a building permit application,
20 for the application of the zoning regulations,
21 I would say we differ from a building permit
22 discipline, such as plumbing and electrical,

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1 and that we have to look at several things.

2 Nonetheless, all those
3 disciplines, as well as zoning, must review a
4 building permit application, to ensure that
5 the subject regulations are followed.

6 Q But you don't approve building
7 permits in the classic sense, do you?

8 A No.

9 Q Who does?

10 A Ultimately the building officials
11 charged with the issuance of building permits.

12 MR. GREEN: Thank you.

13 CHAIRPERSON MILLER: Now would you
14 like to cross?

15 MR. BROWN: No, no. I didn't
16 understand the question, so I'd better not.

17 CHAIRPERSON MILLER: Okay. That
18 concludes DCRA's case; is that correct?

19 MR. GREEN: That's correct, Madam
20 Chairman.

21 CHAIRPERSON MILLER: Okay, and is
22 there anybody here from the ANC, just to

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1 double-check? Okay. So what's left is
2 rebuttal?

3 MR. BROWN: And closing arguments,
4 and we're ready to go.

5 CHAIRPERSON MILLER: And how long
6 do you think that's going to take?

7 MR. BROWN: We'll be done --
8 absent cross-examination, we'll be done prior
9 to six o'clock.

10 CHAIRPERSON MILLER: Okay. I just
11 would like to take a five minute break, then,
12 before we go to that. Okay.

13 MR. BROWN: Would you like longer
14 than that?

15 CHAIRPERSON MILLER: What no?
16 Well no. We're not usually strictly held to
17 that. I mean sometimes, but approximately
18 five to ten.

19 MR. BROWN: All right.

20 CHAIRPERSON MILLER: Okay.

21 (Whereupon, a short recess was
22 taken.)

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1 CHAIRPERSON MILLER: Back on the
2 record. Are you ready to proceed?

3 MR. BROWN: Yes.

4 REBUTTAL DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Mr. Demuren, if you could have the
7 hand-held mike. I'm going to ask you to go
8 over to the board. Identify yourself for the
9 record.

10 A Taiwo Demuren, 1231 Morse Street,
11 Inc.

12 Q First, could you point out what
13 has been referred to as the sitting room?

14 A I believe the left-hand story, one
15 story section of the building.

16 Q And as part of the plan you had
17 and the permit you received, was the "sitting
18 room" going to be retained?

19 A From my understanding from my
20 architects, no, it was not.

21 Q And it's not shown on the
22 footprint of the plans?

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1 A Yes. That's what I was made to
2 understand by my architects.

3 Q And it was retained at the site
4 for the purposes of stabilizing the site
5 during construction?

6 A Yes, to stabilize this, because it
7 was joined to it.

8 Q And in fact, the sitting room
9 portion is a significant part of what
10 collapsed on February 20th, 2006?

11 A Yes.

12 Q Okay. If you could, Mr. Demuren,
13 and I think it's sized large enough, if you
14 could -- and I'll give you this marker here.
15 This might be better. It's a pretty color.

16 MR. GREEN: Mr. Chairman, Madam
17 Chairman. I think that if he's going to mark
18 on something --

19 CHAIRPERSON MILLER: You're going
20 to mark that exhibit.

21 MR. GREEN: He ought to at least
22 ask us, because that's our exhibit.

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1 CHAIRPERSON MILLER: Yes, I agree.

2 MR. BROWN: It's the Board's
3 exhibit now.

4 MR. GREEN: Well no. The Board
5 hasn't said they've accepted it.

6 CHAIRPERSON MILLER: I think what
7 the Board would want to do is have that
8 exhibit in reduced size. Do you have other
9 copies of that, so that we can have that in
10 our files?

11 MR. GREEN: I believe you've got
12 it in your packet.

13 CHAIRPERSON MILLER: We have it,
14 okay.

15 (Simultaneous discussion.)

16 CHAIRPERSON MILLER: You object?

17 MR. GREEN: Of course. At least
18 ask my permission. My goodness, man.

19 CHAIRPERSON MILLER: Why don't you
20 ask his permission and we'll see what happens.

21 MR. BROWN: Mr. Brown -- Mr.
22 Green, may Mr. Demuren write on the exhibit?

1 MR. GREEN: Well keep one other
2 thing in mind too. You're going to need this
3 for the variance that you're going to seek, or
4 any other purposes, because we're not making
5 another one.

6 MR. BROWN: I'm not going to use
7 your exhibit in my variance case.

8 CHAIRPERSON MILLER: Yes or no,
9 Mr. Green.

10 MR. GREEN: I'm not going to let
11 him do it. I was told by senior counsel that
12 we'll need it for another proceeding.

13 CHAIRPERSON MILLER: Okay. Can
14 you just point to things or whatever, or use
15 stickems or something.

16 MR. GREEN: Yes. Stickems would
17 be okay.

18 CHAIRPERSON MILLER: Okay.

19 MR. BROWN: That's what comes with
20 being a well-prepared counsel. My mother
21 packed my bags before I came down here.

22 MR. GREEN: Madam Chairman, I just

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1 want to make you understand. I'm not being
2 obstreperous or mean-spirited.

3 CHAIRPERSON MILLER: I think he's
4 going to use stickers.

5 MR. GREEN: No, because there is
6 another proceeding --

7 CHAIRPERSON MILLER: We don't need
8 to get into that.

9 MR. GREEN: Yes, I know. We only
10 have but so many of these things, and this is
11 the only one we've got, okay.

12 BY MR. BROWN:

13 Q Mr. Demuren, first, if you could
14 put a sticker over the -- on the footprint
15 picture, if you could put a sticker over the
16 footprint where the sitting room was, that
17 would not be included in the final building?

18 A The footprint will be right here.

19 Q All right, and if you could, you
20 were issued the emergency demo permit, we
21 believe, on February 14th, 2006. Could you
22 show, using the post-its, show which portions

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1 of the walls of the single family dwelling
2 were in place on February 18th when you left
3 the site, Saturday, February 18th?

4 A Okay.

5 Q As you go through, as you point to
6 it, say what the condition of that wall was.
7 Was it three feet, four feet, whatever the
8 case may be.

9 A Okay. The front wall had the
10 foundation and I believe about three to four
11 foot of framing left, on the whole length of
12 the front.

13 Q And when you say "the front,"
14 that's the front shown in this picture here?

15 A That's the front, in the picture
16 up here, which is the front. This is the
17 front of the building.

18 CHAIRPERSON MILLER: I'm sorry.
19 What do you mean three to four left in width
20 or in height?

21 THE WITNESS: No, no, height.

22 CHAIRPERSON MILLER: In height,

1 okay. So it's still almost all the way up,
2 except for three to four feet.

3 THE WITNESS: Yes. It's got the
4 foundation.

5 CHAIRPERSON MILLER: How many feet
6 is that then?

7 THE WITNESS: The foundation was
8 about one or two foot above the ground.

9 CHAIRPERSON MILLER: And then how
10 many feet on top of that?

11 THE WITNESS: Another three to
12 four foot.

13 BY MR. BROWN:

14 Q If you could with your hand,
15 running across the front of the picture?

16 A About here, and on the -- I
17 believe this is the west side, on the side
18 where the one story name sitting room area
19 was, there was about -- the exterior wall of
20 the sitting room area was still there, north,
21 west and the south.

22 But the wall in between it, we

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1 still had about three to four foot, and it
2 extended about 20 foot from the front back
3 here that was still standing, with the
4 foundation.

5 CHAIRPERSON MILLER: It was 20
6 feet in depth, going from front to back?

7 THE WITNESS: Yes, yes. About 20
8 foot in depth.

9 CHAIRPERSON MILLER: And how high
10 was it?

11 THE WITNESS: About three to four
12 foot.

13 BOARD MEMBER LAUDER: And what
14 date are you working with?

15 THE WITNESS: When we left on
16 Saturday.

17 BOARD MEMBER LAUDER: That was
18 February 18th?

19 THE WITNESS: Yes, February 18th,
20 yes.

21 BOARD MEMBER LAUDER: Okay.

22 THE WITNESS: Then on this wall

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1 here, which was the exterior wall of the
2 existing building, which was going to be the
3 interior wall of the new building, the
4 foundation here was still there.

5 BOARD MEMBER LAUDER: Was there
6 any above-grade wall on that side?

7 THE WITNESS: No, no, because
8 nothing above. I mean the foundation wall
9 technically was above grade.

10 BOARD MEMBER LAUDER: One or two
11 feet?

12 THE WITNESS: Yes, one or two
13 foot, yes.

14 BOARD MEMBER LAUDER: Okay. But
15 nothing on top of that?

16 THE WITNESS: No, nothing on top
17 of it.

18 BOARD MEMBER LAUDER: And looking
19 at the picture, that would be the right-hand
20 side?

21 THE WITNESS: This one here.

22 BOARD MEMBER LAUDER: Okay, thank

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1 you.

2 BY MR. BROWN:

3 Q And at the rear wall of the
4 property, what was its condition when you left
5 on Saturday, February 18th?

6 A Well, on the rear wall here, there
7 was just a little bit of the foundation left
8 on the back of it, because on the, I believe
9 on the original drawing, the new wall, the new
10 interior wall that will be placed there, was
11 for the back, in this location.

12 Q And please tell the Board as part
13 of this construction project, you had to bring
14 in new utility lines?

15 A Yes. We brought in new -- as part
16 of the approval that we received, we were
17 given approval by DC WASA to bring in new
18 utility lines, new water.

19 Q And where were those utility lines
20 brought into?

21 A I will use the before picture
22 right on top, and they were right in the

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1 front, from the street.

2 CHAIRPERSON MILLER: Who gave you
3 authority to bring in new lines?

4 THE WITNESS: District of Columbia
5 Water and Sewer Authority.

6 CHAIRPERSON MILLER: Don't they do
7 that for power lines?

8 THE WITNESS: No. Water, the
9 water lines.

10 CHAIRPERSON MILLER: Water line,
11 okay.

12 BY MR. BROWN:

13 Q And you connected those utilities
14 prior to the collapse?

15 A Yes.

16 Q So contrary to the position taken
17 by the District, you were connecting
18 utilities, not disconnecting them?

19 A No. Yes, we were connecting
20 utilities, not disconnecting. I also believe
21 that the utilities were on, based on the fire
22 marshal's report.

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1 Q Which report?

2 A Which states that the electric. I
3 mean that's one of the reason why everybody,
4 the electric that was connected, which hasn't
5 been disconnected, was one of the things that
6 took the electric in the neighborhood and the
7 water, which is connected, was flooding way
8 after the collapse.

9 So there's water and electric
10 still connected in the building at the time of
11 the collapse.

12 Q And when you obtained your permit
13 in -- when you applied for your permit in
14 April of 2005, was your intention to demolish,
15 do away with any part -- or with the single
16 family dwelling?

17 A No. The only -- no. No would be
18 my answer.

19 Q And at that time, you testified
20 previously you did not realize that there were
21 structural problems related to the single
22 family dwelling?

1 A Yes.

2 Q Mr. Demuren, if you had been
3 intent on demolishing, razing, destroying,
4 doing away with the single family dwelling,
5 would you have notified DCRA of your
6 structural concerns about the property?

7 A No, I don't think so.

8 Q Would you have followed their
9 advice and gotten a demolition permit?

10 A No, because I would bring it to
11 their attention.

12 Q Would you have followed their
13 instructions? Would you have even wanted to
14 have any discussions or association with DCRA?

15 A No.

16 Q After the collapse occurred, did
17 Mr. Douglas, Lennie Douglas come to the site?

18 A Not to my knowledge.

19 Q Did he come to the site before he
20 issued you the demo permit?

21 A No.

22 Q Did you provide him a picture of

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1 the walls of the building?

2 A No, I didn't. I don't know who
3 did.

4 Q Do you have any idea whether the
5 picture he was talking about involved your
6 property?

7 A I don't know. I haven't seen the
8 picture.

9 Q When the collapse occurred,
10 describe the collapse?

11 A I wasn't there, but I believe what
12 was left, everything went in this way, in
13 towards the building.

14 Q So the sitting room fell into
15 towards the existing, rest of the existing
16 single family dwelling?

17 A Yes.

18 Q What kind of damage did that occur
19 to the existing single family dwelling?

20 A I believe it affected the
21 integrity of everything that was there.

22 Q Did the walls that had been

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1 reduced in height by you, did they sustain
2 damage?

3 A No. Everything collapsed.

4 Q And it collapsed into the hole?

5 A Yes, into what is stated as the
6 hole?

7 Q And there was no foundation under
8 the sitting room portion?

9 A No, no. The sitting room did not
10 have a basement and it didn't have a
11 foundation.

12 Q As a result of the collapse, was
13 there damage to the foundation of the existing
14 single family dwelling?

15 A Yes.

16 Q Was that foundation damaged?
17 Please describe the damage.

18 A I believe, because I inspected it
19 with -- I believe it was Bill Davidson who
20 came out, is an inspector with DCRA.

21 They came out that day, and in the
22 middle, the one that was going to be the

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1 interior wall, the remaining part of the
2 foundation had already collapsed this way, I
3 think I would say.

4 Looking at it, it would be your
5 right. Me here it would be my left, and all
6 this was in the hole. He and also I believe
7 assistant director, I think, Nick Majet, also
8 came in that day and looked at it, looked at
9 all my permits.

10 I was told that everything was
11 okay. The only thing I needed to do was to
12 secure the building, to secure the property.
13 Later on, Bill Davidson came back and said I
14 needed to come to the office the following day
15 and discuss what we needed to do next.

16 Q And you went to their office the
17 next day?

18 A Yes. I went to the office the
19 next day, as instructed.

20 Q And you met with?

21 A I met with Mr. Lennie Douglas.
22 That was the first time meeting him. I met

1 with, I believe he's Inspector Bill Davidson,
2 and there were two other inspectors, I believe
3 they were inspectors, in there when I went
4 there. About five people from DCRA in there.

5 Q And please tell the Board what
6 occurred at that meeting, what instructions
7 you were given?

8 A Well, I believe that when the
9 inspector, Bill Davidson and maybe another
10 inspector came while I was in there, and also
11 Nick Majet, assistant director Nick Majet,
12 came there.

13 They found out that the neighbor's
14 houses, with the slope of the ground, we
15 needed to shore the property, so that it
16 doesn't erode and cause the collapse of the
17 neighbor's property.

18 So the first thing that was
19 discussed was how to, what's the word again --

20 Q Stabilize.

21 A How to stabilize the site, so that
22 it doesn't affect the neighbors and

1 collapsing. After we finished the
2 conversation, they asked me how long it would
3 take. I believe I told them it would take
4 like a week.

5 They gave me the instruction
6 verbally, not in writing, to go back and
7 stabilize the site.

8 Q And you completed that
9 stabilization work?

10 A Yes, I did. I also, so at the
11 meeting, at the end after we discussed the
12 stabilization, I believe Mr. Lennie Douglas
13 said that they were going to give me a stop
14 work order after I finished the work.

15 I believe they were going to post-
16 date the stop work order that day. The other
17 two inspectors that were there left, because
18 they made the statement, I remember. They said
19 that he hasn't done anything wrong. Why would
20 you give him a stop work order?

21 When they left, it was myself,
22 Lennie Douglas and Bill Davidson that was left

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1 in the room.

2 Q So you were surprised by the
3 issuance of a stop work order?

4 A Yes, I was very surprised, because
5 my understanding was that the mandate which I
6 thought was that the mandate was for the city
7 officials to help or and not to sabotage some
8 of the things that we're trying to do, so that
9 it can put us in the right direction.

10 That's why I went there. I always
11 go there to ask for direction on how to
12 proceed at each stage.

13 Q Did you ever ask DCRA for a raze
14 permit for any part of the structure?

15 A No. No, never did.

16 Q Did you ever feel the need to get
17 a raze permit for the structure?

18 A No, never felt the need for it.

19 Q Or desire?

20 A Or desire.

21 Q Before we finish, Mr. Demuren, is
22 there anything else you think is important to

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1 tell the Board?

2 A Yes. I think there are a couple
3 of things, if I can address the Board, that
4 I'd like to say. One of the, I believe, one
5 of the members of the Board wanted to really
6 understand about how much of work has been
7 done.

8 At the time of the collapse, I
9 will state that about 75 percent of the
10 framing had already been completed at the time
11 of the collapse.

12 I also believe -- I mean I might
13 be wrong; I'm not a zoning expert on
14 buildings, that when there is construction on
15 a site, on a lot, it is no more a vacant lot.

16 If I don't have a vacant lot, I
17 would not really be building a new
18 construction on there. That's just --

19 MR. GREEN: Excuse me for
20 interrupting. Pardon me for interrupting, but
21 Madam Chairman, he's giving testimony that's
22 not based on direct knowledge all throughout.

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1 He's been giving speculations; he's been
2 giving, he believes, he thinks, and he
3 thought.

4 He's been talking about people who
5 were here and gave testimony, and certainly
6 they could have been cross-examined. But he's
7 giving pure speculation in his testimony.
8 He's given no direct firsthand knowledge of
9 anything in his testimony.

10 I really question the value of his
11 testimony. Why are we sitting here listening
12 to speculation and I believes. He should be
13 talking about what really happened, what he ob
14 served, not what somebody else thinks or how
15 he feels.

16 That's not the purpose of his
17 testimony. It's polluting the record, and it
18 should be stricken.

19 MR. BROWN: Mr. Demuren, in my
20 view, he's testifying firsthand on events that
21 he was involved in. While he may use the term
22 as figures of speech, he's giving firsthand

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1 testimony about things he was actually
2 involved in, and conversations he heard.

3 I mean I think it's as valuable a
4 testimony as you're going to receive in this
5 matter.

6 MR. GREEN: What it does is set us
7 up for bringing in rebuttal witnesses back to
8 the witness stand. I don't think that's what
9 Madam Chairman and the Board want. They want
10 to get --

11 MR. BROWN: They authorized
12 rebuttal witnesses, so I think we have to cut
13 that speculation out.

14 CHAIRPERSON MILLER: Okay, okay.
15 First of all, I think Mr. Demuren is wrapping
16 up, and what I heard him start to say was
17 something about the lot being vacant. He I
18 believe is talking from his personal
19 experience, when he was doing the project; am
20 I correct?

21 THE WITNESS: Yes, Your Honor.

22 CHAIRPERSON MILLER: Okay. You

1 don't have to call me that.

2 THE WITNESS: Oh, I'm sorry.

3 CHAIRPERSON MILLER: No, that's
4 okay. So I think -- thank you. So anyway, I
5 think that you can continue. But you're just
6 wrapping it up at this point?

7 THE WITNESS: Yes, I was just
8 wrapping it up, and I don't know if to use the
9 words, say what I think or what I know. I
10 mean I haven't been brought in as an expert
11 witness and I'm not an expert. So I can't say
12 an expert.

13 So that's basically why I'm saying
14 what I believe or what I feel. Now I've been
15 thrown off course.

16 BY MR. BROWN:

17 Q One last question, Mr. Demuren.
18 Compared to what was approved in the original
19 building permit, are you seeking the right to
20 do anything more, gain any advantage, or are
21 you simply seeking to complete your project as
22 originally planned?

1 A Yes. I'm just seeking to complete
2 the project as by the drawings and
3 specifications. That's all I'm seeking.

4 MR. BROWN: Thank you.

5 CHAIRPERSON MILLER: Any other
6 questions?

7 MR. BROWN: No.

8 CHAIRPERSON MILLER: Okay. Any
9 cross?

10 MR. GREEN: Mr. Demuren --

11 CHAIRPERSON MILLER: Do you want
12 to sit down?

13 MR. BROWN: Can he sit down, or
14 does he need to --

15 MR. GREEN: He needs to stand up
16 there, because I want him to point out a
17 couple of things, please.

18 CROSS EXAMINATION

19 BY MR. GREEN:

20 Q Sir, will you identify please the
21 wall that remained before it fell over?

22 A Okay, I will.

1 Q Just point to it.

2 A Well, I was going to write remain
3 on it.

4 Q No, don't do that. No, no, no.

5 A On this.

6 Q I want you to go to the before big
7 picture, the picture --

8 A Oh, this one.

9 Q Yes sir.

10 A Okay.

11 Q Show me the wall that remained,
12 and then fell over. The front wall. Is that
13 the one that you're identifying sir?

14 A Yes. I'm identifying the front
15 wall, the foundation and about three to four
16 foot of the front wall.

17 Q All right.

18 A The wall of the sitting room area
19 on the front.

20 Q Okay.

21 A The wall of the sitting room area
22 on the side.

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1 Q Okay.

2 A The wall, which is the exterior
3 wall, which is inside the sitting room area,
4 the foundation and about three or four foot of
5 that.

6 Q So where I'm pointing the laser
7 pointer, you're saying that these are the wall
8 or this is the wall that remained? Is that
9 what you're telling me?

10 A These are a part of the wall that
11 remained.

12 Q Okay.

13 A And then on the other side here,
14 the foundation wall.

15 Q When you say "foundation wall,"
16 what do you mean?

17 A The dictionary meaning or --

18 Q No. Tell me what it means to you.
19 How high off the ground? I'll tell you what.
20 We're looking at the dias here that the
21 members of the Board are sitting behind. Is
22 that wall, in relationship to that, how high

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1 was that wall, the foundation wall?

2 A Well, if you're standing in the
3 basement, that foundation wall is about six
4 and a half to seven and a half foot high in
5 the basement. But when you're outside, it is
6 about a foot to a foot outside.

7 Q So in other words, you're saying
8 that in this area that I'm pointing to on the
9 dias, which is about a foot, that is the first
10 break just below the top of the dias? It's
11 about a foot. You're telling me that this is
12 what remained above ground?

13 A When you're looking on the
14 outside?

15 Q Yes.

16 A About one or two foot. But when
17 you're inside, which is still part of the
18 foundation wall I believe, inside the
19 basement.

20 Q It will be twice the dias in terms
21 of height; is that what you're telling me?

22 A Yes, about six and a half foot to

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1 seven foot.

2 Q We agree that the dias is about
3 three and a half to four feet; would we agree
4 to that, sir?

5 A Yes, we can. We haven't measured
6 it, but we can agree.

7 Q But speculative, since we're
8 speculating around here today.

9 A Right.

10 Q All right. With regard to the
11 walls that you've identified, you've
12 identified the walls on the front of the
13 building at the top of the left-hand page of
14 this, right?

15 A Yes.

16 Q Okay. Now there came a time, sir,
17 when you knocked down the wall on the left, is
18 that not right?

19 A That's not right.

20 Q No?

21 A This wall came down when the
22 building collapsed.

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1 Q What about the wall in front? Did
2 you take that wall out, that part of the
3 building?

4 A Part of the wall in the front of
5 the building, that is not the sitting room
6 area, was taken down.

7 Q Now you said a part of it was?

8 A Yes.

9 Q Where? Which one? Which part?

10 A This is the one that is the
11 sitting room area. This wasn't taken down.

12 Q Was not taken down?

13 A Yes. This is one that is not,
14 part of the sitting room area. This was taken
15 down; about three to four foot of it was left.

16 Q And was it taken down with a
17 front-loader, sir, or did you hit it with a
18 sledge hammer?

19 A I don't know what you mean by
20 front-loader.

21 Q Mechanical device that people
22 drive, that has an arm that can raise up and

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1 down. How did that wall come down sir?

2 A You mean -- we took it down --

3 Q Or backhoe.

4 A Yes. We took it down as we see
5 fit. We didn't use a backhoe.

6 Q You did not use a backhoe. How
7 did you get it down?

8 A We were getting it down by hand,
9 by manual labor.

10 Q Manual labor?

11 A Yes.

12 Q This area that I'm pointing to
13 with the laser point?

14 A Yes. We started --

15 Q Was brought down manually?

16 A Yes.

17 Q All right. What about the wall on
18 the right-hand side of this front picture?
19 There's a wall back there on the side. How
20 did that come down, sir?

21 A I think to help you --

22 Q No, no. Just tell me how it came

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1 down.

2 A Well, I want to tell you how the
3 whole thing came down. Is that fair enough?

4 Q Well, the judge will decide how
5 fair it is, but you just tell me how it came
6 down.

7 A Okay. It came down the same way,
8 by manual labor.

9 Q So some guy with a hammer --

10 A No. We have -- there's something
11 called a sawzall that you can use to cut it
12 and take it down.

13 Q So this was a diamond-toothed saw;
14 is that what happened? Did you use that?

15 A No. You want me to draw it? It's
16 a sawzall. It's a saw.

17 Q I know what a saw is, but is it
18 one of those diamond-toothed deals?

19 A No.

20 Q Well, how did you cut into the
21 concrete?

22 A That's why I said, up here,

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1 there's not concrete up here.

2 Q What is it then?

3 A This is wood and stucco.

4 Q Oh, Okay.

5 A And they make the sawzall blades
6 to be able to cut metal, you know, cut metals,
7 cut --

8 Q So it's diamond-studded?

9 A I wouldn't call it that, because
10 the manufacturer didn't call it that.

11 Q All right, all right. We won't
12 debate that. Now did there come a time when
13 a backhoe was used to knock any of these walls
14 down, sir?

15 A No.

16 Q So in other words, you're saying
17 that all of the walls came down either through
18 mechanical means, people using hammers and the
19 sawzall, as you described it?

20 A Yes.

21 Q And that's the only way the walls
22 came down?

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1 A Apart from the collapse, yes.

2 Q Yes.

3 A Yes.

4 Q So if people say that this wall
5 came down a by a backhoe or was knocked down
6 by a backhoe, you're saying that they're
7 wrong?

8 A I don't know if I'm saying they're
9 wrong, but they're not talking about this
10 building.

11 Q What are they talking about?

12 A I don't know. You have to ask
13 them.

14 Q I'm asking you. Was there other
15 buildings in this area near your building
16 being taken down?

17 A I only focus on what I know. I
18 mean you're telling me to say something for --

19 Q I'm just asking you to tell me
20 what you know. Either you know of another --

21 MR. BROWN: I object. I don't
22 think it's relevant for him to be asked about

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1 other buildings.

2 CHAIRPERSON MILLER: Okay. Wait,
3 wait, wait. It sounds like Mr. Green is
4 saying the neighbor said that it was taken
5 down by a what, a backhoe or whatever. You're
6 saying no, is that right?

7 THE WITNESS: Yes, yes.

8 CHAIRPERSON MILLER: Okay.

9 BY MR. GREEN:

10 Q So you're saying they were all
11 wrong?

12 A Yes. There was a backhoe there,
13 but they're wrong. It wasn't taken down by a
14 backhoe.

15 Q But it was knocked down though?

16 CHAIRPERSON MILLER: Does that
17 mean there was a backhoe there? What are you
18 saying, there was a backhoe there?

19 THE WITNESS: No. We had the
20 backhoe when we came in to stabilize and we
21 came in to do the work. Because we brought
22 the backhoe in when we did the water service,

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1 to dig the ground.

2 We left the backhoe, because when
3 we take the material and we put it in the
4 dumpster, which is the stuff that was outside,
5 so that we don't have to take six dumpsters
6 out. With the backhoe we can compress it and
7 have two dumpsters.

8 CHAIRPERSON MILLER: Mr. Green,
9 can I just ask you why is this important to
10 the Board's decision in this case, how the
11 walls -- whether they came down with a hammer,
12 a backhoe, whatever?

13 MR. GREEN: Well, the neighbors
14 who were present said that the walls came
15 tumbling down by means other than a bunch of
16 guys getting out there with hammers and saws.
17 Now he's saying something different.

18 CHAIRPERSON MILLER: Okay. This
19 may go to credibility then.

20 MR. GREEN: Of course it does.

21 CHAIRPERSON MILLER: Okay. So can
22 we move on now?

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1 MR. GREEN: All right. One
2 moment, Madam Chairman.

3 (Pause.)

4 BY MR. GREEN:

5 Q Sir, with respect to the sitting
6 room, did you get any kind of permit to remove
7 it? The sitting room --

8 A I don't understand your --

9 Q Did you get a permit to tear it
10 down, partially demolish it or whatever you
11 did?

12 A Well, the sitting room, I believe,
13 collapsed, which your witnesses, I believe
14 testified.

15 BY MS. PARKER-WOOLRIDGE:

16 Q Mr. Demuren you testified, if I'm
17 correct, in the plan, it did not indicate that
18 the sitting room would remain; am I correct?

19 A Yes.

20 Q Okay. So you intended on removing
21 that; am I correct?

22 A Yes.

1 Q In order to remove a structure,
2 what must you do to remove that particular
3 remaining part of that house?

4 A Well, I hadn't removed it at that
5 time.

6 Q But your testimony I believe on
7 October 12th, if that's the last day of the
8 hearing.

9 A Before the collapse, I had not
10 removed it.

11 Q I understand that, sir, because
12 you said you left it because it was leaning.

13 A No. I didn't say anything was
14 leaning.

15 Q Let me correct that, sir. The
16 neighbor's testimony was that it was left
17 leaning on a Friday. I believe your testimony
18 was, the last time we were here, was that you
19 stopped work, because you didn't realize that
20 you couldn't work after a certain period of
21 time. So you all had to stop. Am I correct?

22 A Yes.

1 Q Okay. Was it on a Friday or a
2 Saturday, because I believe your testimony
3 today was --

4 A I believe it was a Saturday.

5 Q Okay, and your testimony at the
6 last hearing, I believe it was a Friday; am I
7 correct?

8 (Simultaneous discussion.)

9 THE WITNESS: Yes. I still stay
10 with the -- yes. I mean I think it was a
11 Saturday.

12 BY MS. PARKER-WOOLRIDGE:

13 Q Okay. So going back to the plans,
14 you indicated from the plans that you did not
15 intend on having that sitting room. Did you
16 know that you're supposed to get a permit to
17 remove that, or you thought you did not have
18 to get one?

19 A Well I mean, like I also stated, I
20 was -- at that time, I didn't have the plan --

21 Q Did you know that you needed to
22 get a permit to remove that? Can you say yes

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1 or no?

2 A No, I can't say that.

3 MR. BROWN: Please let him answer

4 --

5 THE WITNESS: Let me answer the
6 question the best way I see fit.

7 CHAIRPERSON MILLER: Let him
8 answer the question.

9 THE WITNESS: Yes. Let me say at
10 that point in time, like I said, that sitting
11 room was still left because part of it was
12 holding the main building, and we had not --
13 this part.

14 We did not take this out. Part of
15 it was still joined together. So that's one
16 of the reasons why we not taken this down, and
17 it collapsed.

18 I can tell you that I planned to
19 get a permit when I wanted to take it down in
20 the future. But before that, it collapsed.

21 Q Okay. So you removed all the
22 other parts of the building, and your

1 testimony now is you left the front portion of
2 the top photograph, you left a portion of that
3 there, I believe that's what you said; am I
4 correct?

5 A Yes.

6 Q And you're saying that in the
7 plan, it doesn't show that existing sitting
8 room?

9 A Yes.

10 Q And you didn't think you needed to
11 get a permit to remove it; how was it going to
12 come down; by the act of God, casualty,
13 removal?

14 A Let me say what I said again.

15 Q Please.

16 A At the time that the building
17 collapsed with the sitting room, we had not
18 gotten a permit and we had not demo'd or
19 removed the sitting room. Let me also correct
20 something that you said.

21 In the last hearing, I told you
22 that I took it down to a safe height. I

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1 didn't tell you that I took the sitting room
2 down. I said the building.

3 I didn't tell you anything about
4 the sitting room, taking down the sitting
5 room, and the records will show that also,
6 because you said I take the sitting room down.

7 Q But Mr. Demuren, I'm looking at
8 the plats signed by the officer there and lots
9 of other people, and this is 2005. At that
10 point, at that time, you knew two years ago
11 that you were not going to keep that sitting
12 room.

13 So you intended on doing something
14 with it. I believe your testimony was it was
15 going to be obviously removed, because it's
16 not on the plan, or unless the plans are not
17 accurate.

18 A Yes. But I also believe that
19 before completing the project, I had enough
20 time to get a permit to do that.

21 CHAIRPERSON MILLER: Ms.
22 Woolridge, I just wondered if you could move

1 your microphone a little closer to you. It
2 might be easier for the court reporter to hear
3 you.

4 MS. PARKER-WOOLRIDGE: I didn't
5 have it on. Thank you. Beg the court's
6 indulgence.

7 (Pause.)

8 MS. PARKER-WOOLRIDGE: Madam Chair
9 and Board members, I have no other questions
10 of Mr. Demuren, but we would like to call Ms.
11 Lee back as rebuttal.

12 CHAIRPERSON MILLER: I don't know
13 that we can do that. But let me just --

14 MR. GREEN: They opened it up when
15 they put him up there.

16 CHAIRPERSON MILLER: No. They get
17 rebuttal. They want to call another witness
18 back.

19 MR. BROWN: The regulations make
20 no provision for that. We'll never end.

21 CHAIRPERSON MILLER: Okay. I
22 think that's true. Wait. Before we even deal

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1 with that question, let's see if there's some
2 Board questions for Mr. Demuren. You do? Go
3 ahead.

4 BOARD MEMBER DETTMAN: I just have
5 a couple of questions. In your original
6 application to DCRA for your building permit,
7 did you -- anywhere in that application did
8 you indicate that you planned on taking down
9 the sitting room, like with a demolition plan
10 or anything?

11 THE WITNESS: No, no, and I can
12 explain what my architect told me, because I'm
13 not a registered architect in the city. I
14 engaged in architect when we were drawing the
15 plan. From what he told me, maybe not the
16 exact words, was that originally, it was in
17 his original drawing.

18 But in the review process, a
19 statement was made that in a single family
20 dwelling, it is conforming for the building to
21 be able to go to the property line.

22 But in a multi-unit or apartment

1 building, it creates a non-conforming use, and
2 he told me that it was advised at that time
3 when he had the review, to remove that.

4 (Off the microphone discussion.)

5 MS. PARKER-WOOLRIDGE: Is that
6 what you said?

7 CHAIRPERSON MILLER: He said it
8 was his architect.

9 THE WITNESS: Yes. My architect
10 told me.

11 CHAIRPERSON MILLER: Told him.

12 (Simultaneous discussion.)

13 BOARD MEMBER DETTMAN: Okay. So
14 in a single family dwelling, it's okay to
15 build to the building line. However, when you
16 convert it to a multi-family dwelling,
17 building to the building line is non-
18 conforming?

19 THE WITNESS: That's what I was
20 told.

21 BOARD MEMBER DETTMAN: So he
22 advised you to remove the sitting room in

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1 order to come into compliance?

2 THE WITNESS: Yes.

3 BOARD MEMBER DETTMAN: Okay, and
4 just quickly, in terms of when you left the
5 site on that Saturday, what remained? Because
6 that's really going to help me and I think Mr.
7 Turnbull would be very interested in this, to
8 get a very clear picture on what was existing
9 when you left that day.

10 So on the western side of the
11 building, you said the entire length of the
12 western side, there was just the foundation
13 wall left, right?

14 THE WITNESS: Yes.

15 BOARD MEMBER DETTMAN: That's
16 about two feet above grade.

17 MR. BROWN: When you say the
18 western side?

19 (Simultaneous discussion.)

20 CHAIRPERSON MILLER: It's very
21 confusing, and not covering up too much.

22 THE WITNESS: I'm sorry.

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1 CHAIRPERSON MILLER: That's okay.

2 (Pause.)

3 BOARD MEMBER DETTMAN: Okay. So
4 along the entire western side, the entire
5 western length of the building, you said that
6 that was just foundation wall?

7 THE WITNESS: Yes.

8 BOARD MEMBER DETTMAN: Okay, about
9 two feet above grade?

10 THE WITNESS: Yes. About one to
11 two foot above grade around that side.

12 BOARD MEMBER DETTMAN: And moving
13 to the front of the building, the original
14 single family dwelling, it was foundation wall
15 about two feet and then an extra three to four
16 feet of the wall?

17 THE WITNESS: Yes.

18 BOARD MEMBER DETTMAN: The sitting
19 room on the front?

20 THE WITNESS: Yes.

21 BOARD MEMBER DETTMAN: That
22 remained as is?

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1 THE WITNESS: Yes.

2 BOARD MEMBER DETTMAN: As well as
3 the eastern wall?

4 THE WITNESS: No. The eastern
5 wall --

6 BOARD MEMBER DETTMAN: No, the
7 eastern wall of the sitting room?

8 THE WITNESS: Oh, the sitting
9 room, yes.

10 BOARD MEMBER DETTMAN: That
11 remained. The back wall?

12 THE WITNESS: Yes, the back wall
13 also of the sitting room.

14 BOARD MEMBER DETTMAN: Okay, two
15 more. The back wall of the single family
16 dwelling, I think I heard you say, was gone,
17 but the foundation remained?

18 THE WITNESS: Yes. There was
19 really about two or three foot of the
20 foundation that remained.

21 BOARD MEMBER DETTMAN: Okay, and
22 the middle wall, what would be the eastern

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1 wall?

2 THE WITNESS: East wall?

3 BOARD MEMBER DETTMAN: Right.

4 THE WITNESS: Yes.

5 BOARD MEMBER DETTMAN: What
6 remained there?

7 THE WITNESS: The foundation and
8 about three to four foot of the framing.

9 BOARD MEMBER DETTMAN: For the
10 entire length?

11 THE WITNESS: About 20, I believe
12 about 20, 25 foot down. I didn't really
13 measure it.

14 BOARD MEMBER DETTMAN: Okay. Is
15 20 to 25 feet, does that exceed the sitting
16 room?

17 THE WITNESS: Yes, yes, yes.

18 BOARD MEMBER DETTMAN: Okay, all
19 right. Thank you for your patience on that.

20 THE WITNESS: Thank you.

21 CHAIRPERSON MILLER: Mr. Demuren,
22 could you just refresh my memory now on this.

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1 This single family dwelling looks like
2 basically two parts, the main part and then
3 the sitting room part. It's what's been
4 referred to as the sitting room part.

5 It's my understanding that you say
6 that your architect said that you wouldn't be
7 in conformance with the regulations to keep
8 the sitting room part; is that correct?

9 THE WITNESS: Well, yes. I
10 believe it was for two reasons why he said he
11 was advised to remove it. First of all, it
12 didn't have a foundation. So there's no
13 foundation wall that could be shown on the
14 drawing.

15 Then also, that if it was there,
16 it would make it non-conforming. It would
17 bring it to a non-conforming condition.

18 CHAIRPERSON MILLER: Because it
19 was too --

20 THE WITNESS: Because it was by
21 the property line, and an apartment -- I mean
22 apartment conversion. The setback or

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1 something.

2 CHAIRPERSON MILLER: And you say
3 he was advised, he or she was advised?

4 THE WITNESS: Yes, because what I
5 -- what it is when you put in the plan,
6 somebody reviews it and they make their
7 comments on the whatever. Because I believe
8 on the original drawing that he made, it was
9 included.

10 Whoever reviewed it put in a
11 comment. They have the comments.

12 CHAIRPERSON MILLER: Are the
13 comments in the record?

14 THE WITNESS: They have the
15 comments, everything. They keep it on their
16 record.

17 CHAIRPERSON MILLER: Okay. So we
18 should have in our record then comments to
19 that effect.

20 THE WITNESS: Oh, I don't know if
21 they provided it. DCRA keeps records of
22 comments like that.

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1 CHAIRPERSON MILLER: Okay, and
2 then my other question is for the main
3 building part, why did that whole thing
4 disappear? All the walls were unstable --

5 THE WITNESS: Yes, yes. As we
6 were coming down, we found out that it was not
7 safe to leave them.

8 CHAIRPERSON MILLER: Okay. So
9 they went down first, and what was left was
10 what we refer to as the sitting room?

11 THE WITNESS: Yes.

12 CHAIRPERSON MILLER: And you were
13 still planning on getting rid of the sitting
14 room?

15 THE WITNESS: Yes, on a later
16 date, after I was all fully stabilized.

17 CHAIRPERSON MILLER: Okay. I
18 don't have any other questions.

19 MR. GREEN: Madam Chairman, I
20 don't have any questions of the witness. But
21 I do want to strongly urge the Board, in light
22 of the fact that there are live witnesses who

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1 can refute what he said.

2 I think the Board, if not me, I
3 think that the Board, in order to make a
4 complete record, should at least hear them
5 out. I mean Thermisticles said to Euripides,
6 you know, "Before you strike, strike but first
7 hear me."

8 I say you should at least make
9 inquiry of those witnesses who are present.
10 The Board should. I will remain silent, but
11 I will let the Board ask them questions.

12 CHAIRPERSON MILLER: I'm certainly
13 going to open this up to the Board for their
14 opinion. I think it can be proper if the
15 rebuttal witness testified to something new,
16 that this witness would address. If it's old
17 and we've already got that witness' testimony,
18 I don't know that the Board per se is saying,
19 you know, they're here, we can ask them
20 questions.

21 I don't have a question myself. I
22 don't know if the other Board members do. We

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1 did pay very close attention to what those
2 witnesses said.

3 MR. GREEN: All right, all right.

4 MR. BROWN: Can I proceed with my
5 rebuttal and closing remarks?

6 CHAIRPERSON MILLER: Well, I just
7 want to make sure that my other Board members
8 don't feel that they have a need to ask any
9 question of Ms. Lee, I believe probably. Is
10 that correct? It's what we heard before?

11 MR. GREEN: Yes, and Mr. Jones.

12 BOARD MEMBER LAUDER: Mr. Green,
13 what's the gaping hole that you think we'd be
14 asking them questions about?

15 MR. GREEN: Well, you know I don't
16 think there's a gaping hole. I think that the
17 problem is this. A rebuttal witness was put
18 on to try and rebut what the folk who actually
19 suffered the damages to their property, to the
20 quietude and their neighborhood suffered.

21 Now I think that in light of the
22 fact that someone came back and said some

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1 things that were inaccurate, that these folk
2 ought to be heard from. But I mean if you've
3 already heard from them and you don't think
4 it's necessary, we understand.

5 I can understand us closing this
6 case out now. We'll accept that.

7 MR. BROWN: I agree, and if I
8 could proceed with my --

9 CHAIRPERSON MILLER: Okay, one
10 second.

11 MR. GREEN: No, I don't think he
12 should. He can make his comment like we're
13 going to make our comment, and we can all go
14 home. But I think to put another witness on
15 the stand by the appellant would do a
16 disservice to the whole process.

17 CHAIRPERSON MILLER: I don't think
18 the Board should not have evidence that's here
19 to be offered that we need. All I can say is
20 I know, and I think the other Board members
21 know, that we heard different things from the
22 witnesses.

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1 We heard different descriptions of
2 what's there and what, etcetera. I'm not sure
3 that we need a rebuttal at this point, to say
4 -- for them to say that was inaccurate.

5 Of course they're going to say
6 it's probably inaccurate, because they gave us
7 a different description. But we heard their
8 description. It's in the record.

9 MR. GREEN: All right. I'll
10 accept that, and I believe that the Board will
11 gave a fair hearing to that. Thank you very
12 much, Madam Chairman.

13 CHAIRPERSON MILLER: Okay, thank
14 you.

15 MR. BROWN: If I could proceed
16 with my rebuttal, I'd like to introduce first
17 Mr. Bello and last Mr. Ford.

18 MR. GREEN: If he does that, well
19 all right.

20 CHAIRPERSON MILLER: Wait. This
21 is your rebuttal witnesses to what DCRA put
22 on; correct? I'm not sure why you're

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1 objecting. They have the right to rebuttal
2 witnesses. But it has to be specifically to
3 what was testified to; correct?

4 MR. BROWN: I think you will find
5 Mr. Bello and Mr. Ford extremely focused and
6 direct.

7 MR. GREEN: Madam Chairman.

8 CHAIRPERSON MILLER: We're just
9 talking logistics, parking and so on.

10 MR. GREEN: Certainly. I
11 understand.

12 (Pause.)

13 CHAIRPERSON MILLER: Okay. One of
14 our Board members has to leave in ten minutes
15 to get his car -- 20 minutes?

16 BOARD MEMBER LAUDER: 6:40.

17 CHAIRPERSON MILLER: Oh, okay.
18 Okay, good. Are you going to wrap it up by
19 6:40, or do we have to wait for him to go and
20 come back.

21 MR. BROWN: Or we give Mr. Lauder
22 a ride home.

1 CHAIRPERSON MILLER: Okay, go
2 ahead.

3 REBUTTAL DIRECT EXAMINATION

4 MR. BROWN: If I could Mr. Bello,
5 Mr. Ford will be back in a second, Mr. Bello.

6 MR. GREEN: Let me ask one
7 question procedurally. If we're going to do
8 this, can we get assurances from counsel that
9 his so-called rebuttal witnesses will give us
10 and the Board new information, something not
11 heard that we all can utilize?

12 Or is it going to be a rehash of
13 this he said-he said? We don't need to be
14 unduly repetitious.

15 CHAIRPERSON MILLER: Okay. We
16 already went through what rebuttal means, and
17 you can object if you hear questions that
18 aren't appropriately rebuttal questions.

19 MR. GREEN: Yes ma'am.

20 CHAIRPERSON MILLER: Okay. Go
21 ahead.

22 MR. BROWN: Mr. Bello, I'm going

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1 to allow him to proceed.

2 MR. BELLO: Madam Chair, Board
3 members, good evening. I just wanted to --

4 MR. GREEN: Excuse me. Is he
5 giving a narrative testimony, or is he going
6 to respond to specific points made by (a) the
7 Zoning Administrator or someone else? What
8 are we getting?

9 CHAIRPERSON MILLER: You didn't
10 let him start. I don't think --

11 MR. GREEN: There was no question
12 on the table.

13 CHAIRPERSON MILLER: I know that
14 there's no question. I'm not sure there has
15 to be. You're going to address the testimony
16 by DCRA in rebuttal; correct?

17 THE WITNESS: Right. I really
18 just wanted to speak to the issue of the
19 vesting of rights, which goes directly to Mr.
20 LeGrant's testimony, and how he determined
21 that vesting of rights.

22 In his testimony, he clearly

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1 claims that such determination is based on
2 some subjective determination about the
3 progress of the construction. I just wanted
4 to beg to differ.

5 There's really more than one
6 section of the zoning regulations that speaks
7 to this issue. One is the vesting of your
8 rights through the issuance of a provisional
9 certificate of occupancy.

10 The other is your vesting of
11 rights, even when the Zoning Commission has
12 provided public notice of a hearing to amend
13 the text or the map of the zoning regulations.

14 Those rules are very clearly
15 outlined in the zoning regulations. Section
16 3202.11 C and D speak to the vesting of your
17 rights once a building permit is issued. A
18 certificate of occupancy, provisional or
19 otherwise, is not a frivolous document.

20 It's one that vests your rights,
21 that speaks to the legitimacy of your use,
22 which is established by the approval of your

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1 building permit.

2 If I may just read into the record
3 those two sections. I know that the Board --

4 MR. GREEN: Madam Chairman, I'm
5 going to again register my continuing
6 objection. What we have is a soliloquy that
7 just goes on and on and on, and it provides no
8 new information that will assist the Board.

9 I think that, you know, I can't
10 even put people on who are here, who can give
11 facts about what they observed. Yet were are
12 considering philosophy.

13 CHAIRPERSON MILLER: Okay. Well,
14 let's not say that he can't. I mean we
15 determined that you weren't going to do that.
16 But anyway, you don't need to read into the
17 record the regulations. If you just want to
18 say you differ with Mr. LeGrant, and based on
19 those two regulations, just cite them. We all
20 have our zoning regulations.

21 THE WITNESS: Certainly, thank
22 you. I would refer the Board to Section

1 3202.11, subsection C and D. I would refer
2 the Board to Section 3202.5, which speaks to
3 the ability of an applicant to vest their
4 rights under a building permit,
5 notwithstanding when the building permit is
6 filed prior to the date that the Zoning
7 Commission notices to the public an amendment
8 to the zoning regulations. These are very
9 specific rules.

10 Secondly, the importance of a
11 certificate of occupancy. It really bestows
12 upon an applicant the legitimacy of use.

13 So for all intents and purposes,
14 at the time that Mr. Demuren obtained his
15 building permit, he was issued a provisional
16 certificate of occupancy, that vested his
17 rights to establish an apartment house on that
18 lot.

19 The lot at no time was vacant. The
20 construction, as we have testified previously,
21 had progressed significantly prior to the
22 collapse of the building.

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1 These rules are written so that an
2 applicant's rights are not yanked at any point
3 in the construction once you commence
4 construction. That's really basically my
5 testimony, to speak to those two issues.

6 CHAIRPERSON MILLER: Thank you.
7 Any Board questions? Any cross?

8 MR. GREEN: One moment, Madam
9 Chairman.

10 (Pause.)

11 CROSS EXAMINATION

12 BY MR. GREEN:

13 Q Excuse me. What section did you
14 rely upon, Mr. Bello again please?

15 A With respect to which issue?

16 Q Vesting.

17 A I cited 3203.11, subsection C and
18 D, and I also cited 3205.

19 (Pause.)

20 MR. GREEN: We have no questions.

21 Thank you. Wait a minute. Hold on now.

22 Madam Chairman, I object. I said no

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1 questions. What's he going to follow up on?

2 My no questions? He had an opportunity.

3 MR. BROWN: He hasn't finished.

4 CHAIRPERSON MILLER: He has
5 finished.

6 (Pause.)

7 MR. BROWN: Because the question,
8 I think, came from you or the Board to Mr.
9 Bello. I don't think he had finished his
10 testimony. He finished the discussion he was
11 having as it relates to --

12 CHAIRPERSON MILLER: Why did we go
13 to cross if he wasn't finished?

14 MR. GREEN: Absolutely.

15 MR. BROWN: Because I think it
16 kind of slipped in as a result of a Board
17 question. If you're not interested, we're
18 fine. But I think he wanted to add a point.

19 MR. GREEN: Madam Chairman,
20 please. You didn't let us do it. I've got
21 live witnesses that you're not going to hear
22 from, because you told me I couldn't.

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1 I think that we're not going to
2 allow a soliloquy to take place based on
3 philosophy. It's wrong. I respect your
4 position on that.

5 CHAIRPERSON MILLER: No. What I
6 say is really, I really was under the
7 impression that you were finished and that's
8 why I went to cross. I thought that was
9 clear.

10 I don't think it's a great idea to
11 start breaking these rules, and I do think
12 that if we go and hear Mr. Bello some more,
13 than we should hear the other witness for
14 DCRA. Is that where you want to go?

15 MR. BROWN: No. But Mr. Ford has
16 rebuttal.

17 CHAIRPERSON MILLER: Mr. Ford,
18 Okay.

19 MR. BROWN: I'm reminding the
20 Board that Mr. Ford is our
21 construction/building code/demo permit expert.

22 REBUTTAL DIRECT EXAMINATION

1 BY MR. BROWN:

2 Q You heard Mr. Douglas testify that
3 he issued an emergency demolition permit based
4 on photographs?

5 A That's correct.

6 Q Is that an appropriate way to
7 issue an emergency demo permit?

8 A No.

9 Q How would you, having been in the
10 position before, issue an emergency demo
11 permit?

12 A An inspector or inspectors should
13 have been sent to the field, one to make sure
14 that -- to see the actual conditions of the
15 site, and to make sure that the picture that
16 was being shown was of the correct site.

17 Also, if it was an emergency
18 condition, which becomes akin to an actual
19 raze, then the utility companies should have
20 been notified, to have all of the services
21 terminated before anyone would go into that
22 site to start any kind of work or

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1 investigating or bringing the materials out of
2 the site.

3 So what could have started out as
4 a demolition could quite well have gone into
5 an emergency raze. But an inspector should
6 have been called out, and then the proper
7 utility companies brought out to terminate
8 service.

9 Q And that's important not only for
10 defining the nature of the problem, but also
11 giving instructions to Mr. Demuren as the
12 property owner?

13 A That's correct.

14 Q And Mr. Demuren has testified
15 that, as part of the emergency demolition
16 permit, he was instructed to reduce the walls
17 to a safe height. Does that meet proper
18 standards in the context of a structural
19 problem and the issuance of an emergency demo
20 permit?

21 A Yes. It's not unusual for someone
22 to be told to bring a wall or walls down to a

1 safe height.

2 The reason you want them at a safe
3 height is that you want them at an elevation,
4 so that the wind can't get to it or something
5 else would happen, to cause them to fall over,
6 or to cause bodily injury.

7 CHAIRPERSON MILLER: Is this
8 rebuttal now?

9 MR. GREEN: I'm going to object.
10 He's going far afield. He's providing no new
11 information, and more importantly, Mr. Ford,
12 though given a nice definition and
13 presentation, his observations are irrelevant
14 to our proceeding here today.

15 CHAIRPERSON MILLER: It just
16 doesn't sound like a rebuttal question, that
17 last one.

18 MR. GREEN: They should be all
19 stricken. His testimony should be stricken.

20 (Simultaneous discussion.)

21 CHAIRPERSON MILLER: He wasn't
22 testifying with respect to what DCRA had

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1 testified to.

2 MR. BROWN: Yes, he was.

3 MR. GREEN: It is irrelevant.

4 CHAIRPERSON MILLER: What was that
5 last question? I thought he was talking about
6 what Mr. Demuren testified to.

7 MR. BROWN: I think he was
8 testifying as to testimony given by
9 specifically Mr. Douglas. Mr. Douglas'
10 testimony wasn't particularly clear, and it
11 was limited.

12 But he was responding to his
13 testimony. I mean the question began that Mr.
14 Douglas issued the demo permit based on a
15 photo, and we were responding to that specific
16 issue.

17 He was providing the proper
18 procedures and basis for issuing a permit. So
19 I think it was appropriate. But I only have
20 one question and we'll be done.

21 When a collapse occurs, and
22 maintaining or recreating the stability of a

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1 site is important, one, how is the best way to
2 do that in a site such as this, to return the
3 stability of the site when you've got the
4 collapse of a --

5 MR. GREEN: I'm going to object
6 again strenuously, Madam Chairman.

7 CHAIRPERSON MILLER: I agree.
8 That doesn't sound like rebuttal testimony.
9 What are you rebutting? Whose testimony was
10 incorrect? It sounds like you're asking a
11 general question to beef up your case, and
12 that's not really the time to do that.

13 MR. BROWN: All right. If I
14 could, testimony was given that the rebuilding
15 of the walls that occurred, the foundation
16 walls for stability, and there's been
17 testimony and documents entered that that
18 would -- should have required a permit. Are
19 there circumstances where in --

20 MR. GREEN: Again Madam Chairman,
21 who are we trying to rebut? Who said that?

22 CHAIRPERSON MILLER: Who gave

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1 testimony about what?

2 MR. BROWN: Well, the stop work
3 orders are in the record and have been
4 referenced by -- they were actually referenced
5 by Mr. LeGrant, as well as Mr. Douglas, and so
6 -- and in the Notice to Revoke Permit, they
7 indicate that Mr. Demuren acted beyond the
8 scope of the demo permit.

9 One of those issues was the
10 reconstruction of the foundation walls. So I
11 think while the testimony wasn't there, wasn't
12 particularly clear, in large measure the
13 question of the scope of the demo permit and
14 what was the appropriate work that was done is
15 very much before the Board.

16 MR. GREEN: The appropriate
17 parties were present. He could have asked
18 them those questions on cross-examination, or
19 more importantly, he could have brought them
20 in as his own witness.

21 CHAIRPERSON MILLER: My question
22 is --

1 MR. GREEN: He also objected to
2 the use of the terminology and the whole thing
3 of the stop work orders. We had to stop. I
4 mean the Board --

5 CHAIRPERSON MILLER: But my
6 question is did Mr. LeGrant or Mr. Douglas or
7 somebody say something that you are going to
8 rebut? Otherwise, if you're just going to
9 address something that's been in the record
10 for the whole case, I don't think that's the
11 time. Are you rebutting some testimony?

12 MR. BROWN: I think Mr. Douglas
13 testified that, and it's in his letters as
14 well as his testimony, that my client acted
15 beyond the scope of his demo permit, and did
16 so both to the extent of the demolition --

17 CHAIRPERSON MILLER: And who
18 testified to that?

19 MR. BROWN: Mr. Douglas.

20 CHAIRPERSON MILLER: Mr. Douglas.
21 Okay, so you want to rebut Mr. Douglas'
22 testimony, that your client acted beyond the

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1 scope of the demo permit.

2 MR. BROWN: Both as it relates to
3 the demotion work, as well as Mr. Douglas was
4 also making the point, both in his testimony
5 and in written form in his enforcement
6 actions, the revocation, that my client
7 exceeded the scope of his authority in the
8 demo permit by rebuilding the foundation
9 walls.

10 CHAIRPERSON MILLER: Okay. We're
11 going to have to break. Wait. We're just
12 losing our quorum.

13 MR. GREEN: He didn't do that,
14 number one, and so what? Number two, we're
15 not here to deal with that. We've got the
16 Zoning Administrator. This is a zoning
17 matter. We're dealing with zoning issues.
18 He's getting involved in something else.

19 CHAIRPERSON MILLER: We're going
20 to lose our quorum. We are going to finish
21 this case tonight, but we do have to allow for
22 our Board member to take care of his parking

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1 situation before the garage closes. So I
2 think --

3 MR. BROWN: So are we going to
4 take a break?

5 CHAIRPERSON MILLER: Yes. We're
6 going to take a break for 15 minutes.

7 (Whereupon, a short recess was
8 taken.)

9 CHAIRPERSON MILLER: Okay. We're
10 back on the record. Mr. Brown was going to go
11 to closing, I believe. But while we were back
12 there, we came up with one factual question
13 that we wanted to ask, and I'm going to defer
14 to Mr. Dettman on that.

15 BOARD MEMBER DETTMAN: Thank you,
16 Madam chair. I have one question for the
17 appellant, and that is as the property is
18 improved today, as it's constructed today, is
19 there anything inside and out, and I think in
20 testimony today we've discovered that it
21 appears on the outside nothing really
22 resembles the existing structure.

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1 Is there anything on this property
2 that belonged to the existing pre-May 1958
3 structure, be it foundation, be it --

4 MR. DEMUREN: Nothing.

5 BOARD MEMBER DETTMAN: Nothing.

6 So after the collapse, when you were
7 instructed to clean up the site and stabilize
8 the walls, you came in and cleaned up the
9 site?

10 MR. DEMUREN: Yes.

11 BOARD MEMBER DETTMAN: Okay.

12 Thank you.

13 CHAIRPERSON MILLER: Okay. We're
14 ready for closing. Thank you.

15 MR. BROWN: Very briefly. Despite
16 a whole lot of information and testimony, I
17 think focusing in on several important facts
18 here. One, the District issued a building
19 permit for this conversion.

20 Mr. Demuren proceeded in
21 accordance with those permits, to make the
22 conversion. I think the critical issue is

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1 that there is a conversion from what was there
2 before, a single family dwelling, to
3 ultimately the 11-unit apartment building,
4 which you see in the pictures there.

5 It exists; it's a fact. It was
6 largely at the point where it is now at the
7 time of the collapse. The issuance of the
8 building permit is important not only because
9 it established that you had a conforming use
10 and a conforming structure, but it also
11 established Mr. Demuren's rights.

12 Those rights were vested by virtue
13 of the permit and the provisional certificate
14 of occupancy, which gave him the right to
15 complete the work and complete the work set
16 forth in the permit, which again the end
17 result is not a single family dwelling with an
18 apartment building appended to it. It was the
19 conversion to an 11-unit apartment building.

20 All Mr. Demuren asks and all that
21 we're asking the Board is to recognize the
22 rights that were created, the facts that

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1 occurred.

2 A collapse occurred. The portion
3 of the building that collapsed is the single
4 family dwelling, which in fact is permitted as
5 a matter of right in an R-4 zone.

6 We know for a fact that the
7 conversion is permitted as a matter of right
8 in the R-4 zone, and no advantage is being
9 sought or obtained as a result of this.

10 So that I think the Board, in
11 looking at this, needs to recognize what
12 occurred, the fact that there was this
13 collapse that occurred, and that Mr. Demuren
14 is a victim of that collapse.

15 But he has certainly has the right
16 to finish this project under the conforming
17 use and conforming structure that was
18 approved, as well as if you look at the
19 individual components.

20 So I'd ask the Board to one, look
21 at the totality of the facts, and grant the
22 appeal.

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1 It's important both as it relates
2 to the revised building permit application,
3 which was the initial filing, as well as the
4 notice to revoke permits, again which is based
5 on the tenuous claim that Mr. Demuren somehow
6 misrepresented himself in the original permit,
7 when there was a change of circumstances
8 later, and that somehow he exceeded the scope
9 of his demolition permit.

10 In fact he one, voluntarily got
11 the demolition permit and acted under the
12 District's directions, in a way that Mr. Ford
13 has testified to was appropriate, both in the
14 demolition as well as in the stabilization of
15 the site after the collapse.

16 With that, I'll leave it with the
17 Board. I would though mention that there is
18 a time element to this. I personally think
19 the Board has more than enough to act on and
20 grant my motion for summary judgment.

21 But beyond that, I would ask for a
22 quick turnaround on a decision. Anything that

1 we as the appellant can do, through findings
2 of fact and conclusions of law, to assist the
3 Board and the process, and quite frankly
4 accelerate that process, because one, this has
5 been going on since February of 2006, and two,
6 it will have a dramatic impact on these other
7 related proceedings before the Office of
8 Administrative Hearings.

9 Which are not a function -- the
10 stop work orders are before the Office. But
11 until we can resolve the BZA situation, the
12 OHA stop work order matters are being
13 continued.

14 So there is -- the thigh bone is
15 connected to the knee bone. So it's important
16 that we move as quickly as possible. We're
17 ready to assist the Board through findings of
18 fact, conclusions of law, on a quick
19 turnaround. That's all I ask.

20 CHAIRPERSON MILLER: Okay, thank
21 you. Well, our next decision -- well, it
22 wouldn't be our next decision meeting. That

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1 would be November 6th. That's too soon.

2 MR. BROWN: Too soon for who?

3 CHAIRPERSON MILLER: I would think
4 it's too soon to get in findings of fact and
5 conclusions of law, for the Board to review it
6 in time.

7 MR. BROWN: I ask the Board --
8 while I'm volunteering to provide that, is it
9 necessary for your decision-making. We could
10 certainly then post-decision provide draft
11 findings of fact and conclusions of law, to
12 aid in the actual issuance of an order.

13 CHAIRPERSON MILLER: I think it
14 would be useful for the Board to use in its
15 deliberations. So you know, unless everybody
16 is really that speedy, I would think that the
17 December 4th decision meeting might be the
18 logical time to decide this.

19 I know that appellant would like
20 to go more quickly and do it in a week or so.
21 But where is DCRA on that?

22 MS. BOLLING: Point of

1 clarification. Do we get closing, Madam
2 Chair?

3 CHAIRPERSON MILLER: No, you don't
4 under the rules.

5 MS. BOLLING: Okay, and just to
6 give some more information regarding our --

7 CHAIRPERSON MILLER: Mr. Green,
8 are you surprised at this? I read the rules
9 when I started here on zoning regulations.
10 Okay. Go ahead. You will have an opportunity
11 to address the issue in writing one more time,
12 though. That's what we're discussing.

13 MR. GREEN: I'm truly
14 flabbergasted, because in the past, we have
15 had an opportunity to at least say something.
16 I mean it just seems unfair for the Board to
17 go to bed at night at not at least hear from
18 the government.

19 But if that's what you want, Madam
20 Chairman, we'll abide.

21 CHAIRPERSON MILLER: No. It's not
22 what I want. It's what the rules state.

1 MR. GREEN: Yes, I know. But what
2 I'm saying is that the rules weren't
3 necessarily followed.

4 CHAIRPERSON MILLER: I think the
5 rules were followed, but I might feel that way
6 if we weren't having an opportunity to hear
7 from you one more time in writing. So --

8 MS. BOLLING: Madam Chair, I just
9 wanted to clarify. With our motion to
10 disqualify Mr. Bello and strike, I've spoken
11 with the Office of Attorney General on the
12 government ethics issue, and it does take a
13 little bit longer.

14 So I don't believe we'd have a
15 final order back from the Office of
16 Administrative Hearings, even when we do ask
17 for an expedited hearing on the matter,
18 because he gets an opportunity to have due
19 process. It's a full hearing.

20 We would make a request, saying
21 that we believe there's been a breach of the
22 D.C. Employee Code of Conduct. Then there

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1 would be a hearing, where he would be
2 represented by counsel. There will be an
3 order by the Office of --

4 (Simultaneous discussion.)

5 CHAIRPERSON MILLER: Okay. Let me
6 just clarify here. That wasn't what I was
7 thinking of. I know that there is an office,
8 and I'm not sure if it's Campaign Finance and
9 I know we're not talking about finance or
10 whatever, or whatever, the Ethics office or
11 whatever.

12 But just to get -- they issue a
13 written opinion, where you give them a
14 scenario and you say, you know, can a former
15 D.C. employee who heard this then participate
16 in an administrative hearing on that subject
17 or whatever. That's what I was referring to.

18 So we're not referring to any type
19 of or encouraging you all to take any type of
20 action against Mr. Bello. It was just an
21 opinion. And we're leaving the record open
22 for that. We're not going to require it.

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1 We just thought that if they had
2 expertise in that area that bore on the
3 subject here. Do you know? I'm sorry, I
4 don't have the exact office that I'm thinking
5 about.

6 MS. BOLLING: Yes, Madam Chair,
7 but at the break, I went to confer, to get
8 advice from our ethics officer, and he
9 explained the process to me for this
10 particular kind of scenario and situation.

11 So I didn't want to leave the
12 Board with the impression that there was some
13 process where we could go and get an advisory
14 opinion, based upon this expertise advice that
15 I got from Thorn Posen, who's our ethics
16 officer.

17 CHAIRPERSON MILLER: So Mr.
18 Posen's not going to just give an opinion, as
19 ethics officer; is that correct?

20 MS. BOLLING: No, that is correct.

21 (Pause.)

22 CHAIRPERSON MILLER: Okay. I

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1 think there is another office as well. But
2 you know what? We have our own proceedings?
3 You filed legal authority on the question.

4 So we just thought that that might
5 add to it. But if you're talking about a
6 whole adjudicatory hearing, then I don't think
7 it's appropriate for us to get into that.

8 Okay. So I would say this, you
9 know. We would leave the record open. If
10 there is an office that's going to give a
11 legal opinion on it, you could put it into the
12 record. Other than that, we're not going to
13 tie this proceeding up with another type of
14 adjudicatory proceeding.

15 So let me ask you this. December
16 4th, does that work for DCRA for a decision
17 date, and then we would back up for filing of
18 findings of fact and conclusions of law?

19 Ms. Bailey, if we set December 4th
20 for a decision date, when would the proposed
21 findings of fact and conclusions of law be due
22 by, to give the Board enough time as well?

1 MS. BAILEY: Madam Chair, I would
2 suggest after the Thanksgiving holiday. That
3 could be Tuesday, November 27th.

4 MR. BROWN: Due simultaneously?

5 CHAIRPERSON MILLER: Yes.

6 MR. BROWN: That's acceptable for
7 us.

8 MS. BOLLING: That's acceptable,
9 Madam Chair. We can meet that deadline.

10 CHAIRPERSON MILLER: Okay, good.

11 MR. BROWN: By 5:00 p.m., close of
12 business?

13 CHAIRPERSON MILLER: Ms. Bailey,
14 I'm not sure. What time would the office need
15 it?

16 MS. BAILEY: 3:00 p.m. We would
17 prefer to have it by 3:00 p.m.

18 (Pause.)

19 CHAIRPERSON MILLER: Okay. As of
20 now, the record then is going to be left open
21 for proposed findings of fact and conclusions
22 of law from both parties. If there is per se

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1 any written legal opinion on the
2 disqualification issue. Anything else?

3 MR. BROWN: In the unlikely event
4 that something does come in on the
5 disqualification issue, I would like to have
6 the opportunity to respond. I'm not saying I
7 will, but I would like to have the opportunity
8 to respond.

9 CHAIRPERSON MILLER: Okay. So
10 maybe we should have that due, if it's going
11 to happen, by a week earlier. Would that
12 work, by November 20th? Again, it's not --
13 the Board isn't asking for it per se, but the
14 Board would consider it.

15 That would be specifically from
16 either Office of Campaign Finance or some
17 other ethics office of the District of
18 Columbia, that addresses questions like this.

19 So if that were the case, that
20 would come in on the 20th, and then the
21 appellant could address it on the 27th with
22 the other findings and conclusions of law.

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1 Anything else?

2 MS. BOLLING: No, Madam Chair. Is
3 that everything, co-counsel?

4 MS. PARKER-WOOLRIDGE: Madam
5 Chair, while DCRA is speaking, I'm not sure if
6 the Board wants this, but there was some
7 discussion concerning clarification, DCRA to
8 provide clarification regarding the correct
9 date of the emergency demolition permit.

10 There was some concern concerning
11 that date, whether that be December 14th of
12 '06, December 14th of '05, or February 14th of
13 '06. I'm not quite sure if that is still
14 needed.

15 CHAIRPERSON MILLER: Do you want
16 to respond to that, Ms. Woolridge.

17 MS. PARKER-WOOLRIDGE: Okay, very
18 briefly. We will also submit regarding the
19 date.

20 CHAIRPERSON MILLER: I thought we
21 had a document that you cited a date in your
22 pleading, and there wasn't any reason.

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1 (Simultaneous discussion.)

2 CHAIRPERSON MILLER: I think I
3 said that if there's anything in error that
4 the parties could correct the record if they
5 made some mistake, so that the Board doesn't
6 rely on wrong information.

7 MS. PARKER-WOOLRIDGE: Right.

8 CHAIRPERSON MILLER: Mr. Brown,
9 anything else?

10 MR. BROWN: No. I mean I thought
11 the issue had been resolved, but if they want
12 to add something to it, provided it doesn't
13 come in on December 3rd. I mean I think we
14 ought to -- November 27th ought to be the end
15 of it.

16 Otherwise, you know, we're back to
17 where we are today, which is things coming in
18 at the last minute. I don't think that helps.
19 That doesn't help the Board in your decision-
20 making, which is where we're at.

21 CHAIRPERSON MILLER: All right. I
22 think that it was resolved. I think -- but in

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1 general, I think if there is something
2 mistaken that's going to affect the parties
3 filing their proposed findings and conclusions
4 of law, that ought to come in by the 20th, so
5 that both parties have the right facts before
6 them in order to submit those filings. Okay.
7 Fair enough.

8 Okay. Then that concludes this
9 case if there are no further questions.

10 MR. BROWN: Thank you. Good
11 night.

12 CHAIRPERSON MILLER: Okay. Happy
13 Halloween.

14 (Whereupon, at 7:26 p.m., the
15 hearing was adjourned.)

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