GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 26, 1999

+ + + + +

The Special Public Hearing convened in Room 220, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chair
JERRY GILREATH	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANGEL F. CLARENS	Commissioner

STAFF PRESENT:

Sheri Pruitt-Williams, Interim Dir., Ofc. of Zoning
John Nyarku, Office of Zoning
Paul Hart, Office of Zoning
Beverly Bailey, Office of Zoning
Edward Nunley, Office of the Zoning Administrator

C-O-N-T-E-N-T-S

AGENDA ITEM PAGE

PRELIMINARY MATTERS 4

APPEAL OF MILDRED RODGERS CRARY
16405 ANC-3D 7

PATRICK BROWN, ESQ.9
1620 L STREET, N.W., #900
WASHINGTON, D.C. 20036
(202) 452-1400

MAUREEN DWYER, ESQ.174
Wilkes, Artis, Hendrick & Lane, Chartered
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006
(202) 457-7800

WITNESSES

CHARLES SISSON 176

GEORGE E. WATSON 274

REBUTTAL

PATRICK BROWN 282

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

(9:35 a.m.)

CHAIRPERSON REID: The hearing will please come to order. This is the May 26 Public Hearing of the Board of Zoning Adjustments for the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today are Betty King, Gerry Gilreath representing the National Capital Planning Commission and Angel Clarens, representing the Zoning Commission.

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

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

The order of procedure for special exception and variance cases will proceed as follows: statement of the witnesses and applicant, government reports including Office of Planning, Department of Public Works, ANC, persons and parties in support, persons and parties in opposition, closing remarks by the Applicant.

The order of procedure for appeal applications will be as follows: statement and witnesses of the applicant, the Zoning Administrator or other government official, the owner, lessee or operator of property involved, if not the

Appellant, the ANC within which the property is located, Intervenor's case, rebuttal and closing remarks by Appellant.

Cross examination of witnesses is permitted by persons or parties with direct interest in the case. The record will be closed at the conclusion of each case except for any materials specifically requested by the Board and the staff will specify at the end of the hearings exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requires that persons present not engage the members of the Board in conversation.

At this time the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today such as requests for postponement, continuance or withdrawal, whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with the case today or if you believe that the Board should not proceed, now is the time to raise such a matter.

MR. BROWN: Excuse me. I have a question. Mr. Nunley or somebody from the Zoning Administrator's Office, are they going to be here?

CHAIRPERSON REID: Yes. They're on their way.

Does staff have any preliminary matters?

MS. PRUITT: No, Madam Chair.

CHAIRPERSON REID: For those persons who are here who are not involved with this particular case, just for information purposes we are not doing any deliberation or any conditions whatsoever today on George Washington University. We will not be doing any deliberation or any discussion or any conditions today on George Washington University. That has been postponed until a later date yet to be decided.

VICE CHAIR KING: The conditions and order and so forth will be issued. There will not be a further meeting at which we will discuss George Washington University in public.

CHAIRPERSON REID: The conditions will not be decided upon in public. It will be in closed session.

VICE CHAIR KING: So let's call the case.

MS. PRUITT: Are you ready, Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT: Case No. 16405, Appeal of Mildred Rodgers Crary, pursuant to 11 DCMR 3105, from the administrative decision of the Zoning Administrator to issue the following building permits allowing various alterations and additions to the subject property: Permit No. B413166, dated January 29, 1998 for a "2-story Addition to the Rear"; Permit No. 413424, dated January 23, 1998 for an "Addition to a garage, Length 20 feet, Height 14 feet"; and Permit No. B417814, dated August 17, 1998, for "Repair of Existing Roof,

Roof in Place, No Structural Change". Permit No. B415675, dated May 27, 1998, for a "New Garage to be located on the same spot as previous garage; and, Permit No. B419108, dated October 5, 1998, to "Build new porch roof as per plans".

The appellant also challenges the R-1-B zoning classification attributed to the property by the Zoning Administrator. These permits were issued for property located at premises 3020 43rd Street, N.W. (Square 1621, Lot 810).

All those planning to testify, will you please stand and raise your right hand.

(Witnesses sworn.)

Thank you.

VICE CHAIR KING: Madam Chair, there are a couple of questions that I have about this case that I would like to make sure are covered by the attorneys for both sides. Could I raise those?

CHAIRPERSON REID: Yes.

VICE CHAIR KING: Mr. Brown, there are two points of great interest to me and I hope that both you and Ms. Dwyer will address them in your presentations today. The first is is there any bar to somebody who is making alterations to their home getting a bunch of different permits for different pieces of it, or is it necessary -- are you arguing that Mr. Sisson should have gotten permits for the entire project in one piece instead of however many, five, or however many permits were achieved?

The other is what is your client's desired goal in this? Does she want Mr. Sisson to turn down her garage and his home and leave a vacant lot or what she want him to do at this time?

I hope that both sides in this controversy will address those two issues in their presentations. Thank you.

MR. BROWN: Good morning, Madam Chair and Members of the Board.

My name is Patrick Brown. I'm counsel for the Appellant, Ms. Crary. This is a case and I think the number of permits for a single project, which I'll go through in some detail, the individual permits, as well as the need to step back and look at the whole because at least three of those permits were remedial in nature.

CHAIRPERSON REID: Mr. Brown, before you speak, let me ask you a couple of questions. You have no witnesses?

MR. BROWN: No. Ms. Crary is out of the country right now.

CHAIRPERSON REID: Approximately how long do you anticipate?

MR. BROWN: It will take, subject to questions from the Board, which I freely invite, it will take me less than an hour to go through this. It will probably take me significantly less to make my presentation in chief, probably slightly over 30 minutes.

CHAIRPERSON REID: Okay, all right. Yes.

MS. DWYER: Madam Chair, if I can just make one statement for the record and I have no interest at all in delaying this hearing, but it is unusual not to have the Appellant testify.

Generally, in cases before the Board, the attorneys present legal arguments in the actual factual testimony is elicited by the witnesses, so I just want to state for the record that this is a little bit unusual, but in the interest of moving forward with this case, we have no objection to proceeding.

We just had hoped, actually, that Ms. Crary was here to present the facts as she knows them, since she is the property owner. She does abut the property and she has the most intimate knowledge of what actually transpired here. But again, we have no interest in delaying today's proceeding so we would like to go forward and hear what Mr. Brown has to say and reserve any objections or issues at a later time.

CHAIRPERSON REID: Your point is well taken. Is there any -- as far as the -- procedurally moving forward with the case, is there any legal nuance --

VICE CHAIR KING: Could I suggest one which gives me some concern?

CHAIRPERSON REID: Yes.

VICE CHAIR KING: We're dealing with timeliness, are we not?

MR. BROWN: Among other things.

VICE CHAIR KING: When Ms. Crary knew things is an issue, is it not, Mr. Brown?

MR. BROWN: Yes, it is. To the extent she's capable of knowing things. One of the issues is that during a significant portion of what I'll say, the contested period which is April through mid-June of 1998, she was, in fact, out of the country and first day, I believe, was actually extended because she was hospitalized in China. So during a critical period of this case she just physically wasn't there and so I put that on the record.

MS. DWYER: And may I suggest, Madam Chair, we would go on the basis of the facts in the record. The counsel for Ms. Crary has had ample opportunity in the various motions and responses to motions to rebut any of the facts that we have put in the record and I think right now we have undisputed facts of record and we can proceed on the basis of those facts which does indicate certain key dates by which construction proceeded in full view of the adjacent property owner and certain other actions.

So I think we've like to go on the basis of what's in the record that hasn't been disputed, move forward with the hearing today and get this case decided. And to the extent that Mr. Brown addresses the legal issues, laches and estoppel and timeliness, those are certainly issues --

VICE CHAIR KING: Estoppel has been denied, has been ruled to be not germane in this case.

MS. DWYER: Right.

VICE CHAIR KING: We announced that at our last meeting.

MS. DWYER: Right, I understand that. But to the extent that there are legal issues, then Mr. Brown is certainly the person to address those at today's hearing.

MR. BROWN: I would like to -- I'm certainly competent, I hope, to testify about legal issues. But the second part of any equation are the factual issues, particularly related to timeliness and laches and the issues having to do with the individual permits which then translate to legal or technical zoning issues.

I'm competent to testify to those. Anything I testify to I'll be testifying as to first hand knowledge and particularly in light of the extended absences of Ms. Crary, there are times when I'm the only person on her side of the street who can testify to that, perhaps.

I would like to move forward. Ms. Crary would have liked to have been here, but that was just not possible.

CHAIRPERSON REID: What about the motion to dismiss?

VICE CHAIR KING: The motion to dismiss we decided to hold in abeyance until we had heard the appeal. We're going to hear the appeal and then make a decision and maybe even dismiss. So that's held in abeyance until we've heard all the testimony.

Mr. Brown, when you say "on her side of the street" are you saying that you're a physical neighbor of hers, where you live?

MR. BROWN: I'm close by, but I was saying that figuratively.

VICE CHAIR KING: Figuratively.

MR. BROWN: I am a resident of Wesley Heights. I'm not an immediate neighbor of hers. I live up the street, closer to American University. So I have intimate knowledge of the neighborhood and I've gained intimate knowledge of the property. I feel comfortable to speak about it.

MR. GILREATH: The Appellant, as I understand, is also indicating or saying that the zoning classification was in error. Is that my understanding, the R-1-B, is she saying that was not correct either on the Zoning Administrator's document or --

MR. BROWN: In several of the permits and I'm going to go through them one by one, but in it, I believe at least three of the permits, the zoning classification imputed to the property by the Zoning Administrator's staff, when processing the permit was either R-1-A without the Wesley Heights Overlay District.

In several cases it was R-1-B. In several cases it was R-1-B and Wesley Heights Overlay District, I believe, but never did they -- with one exception at the end ever get the zoning classification correct in reviewing the

property.

The property is zoned R-1-A Wesley Heights Overlay District. I point that out -- the property and the zoning map are set forth there. I'd be happy and my apologies on the small size of this, but you'll notice here in the yellow dot, this is Cathedral Avenue. Going straight past the property is 43rd Street and then this is New Mexico Avenue which comes off I guess the north --

CHAIRPERSON REID: We can't see that and all of need to be able to see that.

MR. BROWN: Sure. I've marked the property with a yellow dot.

MS. DWYER: Do you have copies of that for us?

MR. BROWN: It is in exhibit to my --

VICE CHAIR KING: Where is north?

MR. BROWN: It is Exhibit B of my pre-hearing statement.

VICE CHAIR KING: Ward Circle. I see where it is. I see.

CHAIRPERSON REID: American University.

VICE CHAIR KING: Okay.

CHAIRPERSON REID: Ward Circle gives it the perspective.

VICE CHAIR KING: Right.

MR. GILREATH: Is that Appellant contending that the incorrect zoning invalidates the permit that was

issued by the Zoning Administrator? Is it an oversight or is this somehow she's arguing --

CHAIRPERSON REID: It's not that much difference.

MR. BROWN: When it relates to Wesley Heights Overlay District, which imposed zoning restrictions found nowhere else in either the R-1-A or the R-1-B zone and again the Overlay is mapped in addition and enforced in addition to the underlying zoning. So the failure to note the Wesley Heights Overlay District is critical for a whole host of issues that would not appear in an R-1-A or B plot. For instance, the Wesley Heights Overlay District imposes a front yard restriction where none exists in an R-1-A or R-1-B.

It imposes, in this case, a cap on lot occupancy of 2,000 square feet whereas in the R-1-A zone, it would just be 40 percent of the lot area. In this case, that's more restrictive than the R-1-A.

It imposes other restrictions, floor area ratio and other restrictions, but in this case critical elements are --

MR. CLARENS: The height is restricted also, isn't it?

MR. BROWN: Pardon?

MR. CLARENS: The height?

MR. BROWN: The height is the same as the underlying R-1-A District. So it's critical for the Wesley

Heights Overlay District. It's also critical for purposes of the distinction between R-1-A and R-1-B because this lot, for instance, in the R-1-A zone requires a minimum lot area of 7500 square feet. In the R-1-B, that minimum is 5,000 square feet. This lot happens to fall at 6800 square feet between 5,000 and 7500 so the difference between the two classifications is substantial for purposes of whether the lot is, in fact, conforming.

In this case, because the lot was less than 7500 square feet, in the R-1-A zone, the lot is nonconforming which again then makes, under certain circumstances, this being one of them, the matter a BZA case, a special exception or a variance in this case. So there are issues on all fronts that are relevant to the specifics here.

One of the difficulties that faced the Zoning Administrator, faced myself in reviewing this and will face the Board in trying to make some sense of five permits is that you do have five permits and in answer to Ms. King's question, there's nothing prohibiting you getting five permits. It's unusual, but that's not a legal requirement.

The issue arises because in getting five permits often conflicting permits, work that exceeded the permits that were issued, my strong view is that there was a conscious deliberate effort to evade, deceive and get around particularly the Wesley Heights Overlay District requirements because having taken the project in a piecemeal fashion and

the front porch is a good example. The original permit in January 29th of 1998 called for the construction of a rear addition, two story and a --

MR. CLARENS: Madam Chair, if I may interrupt. I'm not sure you are responding to the Board's request or if you are making your presentation.

MR. BROWN: Both.

MR. CLARENS: And because this is a very confusing case, at least so far, I think I would suggest to the Board that we let Mr. Brown make his presentation from the beginning and explain the whole thing as opposed to either asking questions at this point and waiting for him to make his whole presentation before we ask questions, so we don't get derailed.

In his beginning comments, my sense, Mr. Brown, your comments is that you're not giving us, you're not giving me in any case the -- sort of the historic development of this project and all of these categories and we're going off on little tangents which are going to then confuse the issue, so I may suggest that perhaps you might want to start at the beginning, how this project started and when it was first noticed, what is the scope of the project, all of those kinds of things.

MR. GILREATH: I agree with that in principal, but I think if we're considering timeliness and laches, this question of the zoning, I don't know whether that would be

under timeliness or laches, until that's clear in my mind -- and if the Zoning -- well, let's put it this way, that assuming there was no Wesley Heights Overlay District, the certificate --

VICE CHAIR KING: Building permit.

MR. GILREATH: Would the addition be valid had if they had not misread the Wesley Heights Overlay District. In other words, they don't exist and they got whatever zone is on the certificate, would these additions have been valid?

MR. BROWN: The answer to that is it depends on two circumstances. One, if they were, in fact, they being the Zoning Administrator, was applying anything other absent the Wesley Heights Overlay District, anything other than the R-1-A zone which the property is located, and that occurred in I believe three instances, that would be -- it would be incorrect because again as I mentioned, there are enough differences in those zones and their restrictions that a property that complied under -- incorrectly under the R-1-B would not, and did not in this case comply under R-1-A requirements. And then clearly because central issues in this case are the front yard requirement and the lot occupancy which again additional, more restrictive requirements are posed by the Wesley Heights Overlay District, that this property did not meet under -- does not meet.

MR. GILREATH: Well, if this had been an R-1-B District, but no Wesley Heights Overlay District, would the

additions be valid, the Zoning Administrator issued, would that have been valid?

MR. BROWN: They would have been more valid. There still would have been a question as to nonconformance on the side yard requirement and the parking issue and I believe those are the two that come to mind, even in the R-1-B.

MR. GILREATH: Okay, I think that clarifies it adequately for the time being and if you want to go ahead with your regular presentation. Thank you very much. Appreciate it.

MR. BROWN: What I'd like to do because it's important, the Board has before it an appeal, but that appeal includes five separate permits issued between January of 1998 and October 5th of 1998. And the Board needs to and I would request the Board to look at the individual permits, but then also look at the bundle, a single project, again because three of the permits are remedial going back to correct errors that were made, intentional errors, I believe on the part of the property owner who is building the property. So you need to look at it all together. I'm going to take you through and point out issues that I think transcend both.

The first permit that was issued and here we have before us, I'll refer to it as Permit No. 1, the number is too long, dated January 29, 1998. It was filed on behalf of Mr. Sisson and it was prepared by a licensed architect and looking -- these are the permit drawings prepared -- provided

by the Records Management Branch and you'll see on this cover sheet that from the original starting point of this project it included three main elements, a front porch, a rear two-story addition and the construction of a new garage.

Shown here, you can see underneath it and this is in your exhibit package, the existing garage is underneath it. So again, starting from the beginning three elements to that. That's important, obviously, for the substance of it, but it's also important to look at it in the context of the Wesley Heights Overlay District because given what occurred, the front porch which we'll discuss in more detail in the plans here was originally shown as an uncovered wood deck.

As that, when it was being considered by the Zoning Administrator's Office, that structure, not being four feet above grade or more does not count for front yard purposes. It does not count for lot occupancy purposes and so for purposes of the Wesley Heights Overlay District, two critical issues are missed. It becomes relevant because the fact of the matter is that Mr. Sisson went out and he built a covered porch here and having built a covered porch without permits until six or seven months later which clearly indicate that he'd already built it, it becomes an issue for the front yard requirement.

It doesn't meet the front yard requirement in the Wesley Heights Overlay District and for purposes of the garage which again, it's clear that despite the permits,

Permit No. 2 which we'll get to which said he was going to add to the garage, he tore the garage down and built a new garage. So for purposes of again lot occupancy, you've got a question of the garage, the addition and the front porch.

For lot occupancy purposes and I put the calculations here, if you add them all together as clearly was his intention when this was drawn by his architect and what he actually did, it exceeds the lot occupancy here by a number of 146 square feet for the Wesley Heights Overlay District.

Additionally here, he's showing on his drawing before the addition and this is a 1926 house that was built by the Miller Company and substantially the same, he's showing a 24.7 foot front yard. When he adds the front deck, his front yard goes to 17 feet and again, in this area, depending on how you interpret it and there's some confusion, there's either a 21.3 foot front yard requirement setback or 28 foot. Regardless of that, we'll get into the conflict that exists. Regardless of that, he violates the front yard setback.

If you look at and you'd see historically, there's the one car garage that was existing on the property. You'll see it here on the back. You'll notice on the plans again, this is the original plans that he was to raze and demo the entire garage. So that's that. So that clearly somebody's plans, the architect's was from the beginning was to demolish that garage.

If you look at here, this is the front deck, a

wood deck porch. It's not covered. It's 306 square feet which was used in the lot occupancy calculation. As we'll see later on, he built the deck and then put a roof on it which again becomes front yard and lot occupancy related.

You'll see here and I don't think this is a violation, but again it shows that this project wasn't built in the context of the plans. It shows a full, what I believe is a full rear deck here in the back. What was built was a much smaller deck coming out here, not across the whole back and certainly not as deep as that.

My understanding and I had no measurements of that deck, but it's probably not going to count for lot occupancy purposes, but again, the point is that what the plans say and what was built are very different in this case throughout.

You'll see here, again, this is the first permit. You'll show the garage, substantially as it was later actually built without a permit and you'll see again from the very beginning called for a new garage.

This first permit number one, again was issued as I pointed out, simply for the two story addition and the front porch uncovered, did not include, was not issued authorizing any work on the garage. As I pointed out previously, the violations, both the underlying R-1-A that made the lot nonconforming for side yard purposes which I've shown in an exhibit, a zoning calculation sheet attached to my

prehearing statement as Exhibit P --

MR. CLARENS: Just a point of clarification, so the original permit, the first permit that you have just reviewed that were accompanied by those plans, the garage which was shown there was deleted. You're claiming that the garage was crossed out and it was taken out of the permit and it is not included in the original permit, crossed out there. Is it crossed out in the side plans?

MR. BROWN: No.

MR. CLARENS: So the person at the zoning desk reviewing this application would they have been looking at this site plan and making the calculations based on that site plan?

MR. BROWN: Uh --

MR. CLARENS: And what was the property's identified as being zoned on this first permit?

MR. BROWN: On this first permit, the property was identified as R-1-B without any distinction as to the Wesley Heights Overlay District. Additionally, if you look at -- which is attached as Exhibit D to my package, the actual permit application which is the four page form, it simply says two story addition on rear and then goes through on the technical details.

So the best I can tell and I believe Mr. Bellow was the zoning reviewer and he's not here, the best I can tell is that the question of the garage or a covered front porch

because that's not what was he was saying he was going to build were not part of the zoning review in this first permit.

MR. CLARENS: The way the process works, the identification of the appropriate classification is made at the front desk when you submit your application. Is that correct? It's not done by the applicant. The applicant is actually, I can't remember now, Mr. Nunley is here. Maybe Mr. Nunley can answer that, but isn't it true that when -- I'm sorry, what was that?

VICE CHAIR KING: I was telling him that the mikes aren't working so this means to speak loud.

MR. CLARENS: So isn't it true, Mr. Nunley, that and I can't remember exactly, although I've done it many times that the actual writing of the appropriate zoning classification is done at the front desk at the time that you first come in and file the application, and the time that the different desk that you have to get reviews from are checked?

MR. NUNLEY: That's correct. The zoning technician references the plat book and puts in the zoning based on information from the plat book.

MR. CLARENS: So there was an error on the part apparently, so far, is what you're claiming is true, there was an error on the part of the District in classifying. It was not the Applicant's error.

MR. BROWN: That's correct to a point. I'm concerned and as part of the Board's fact-finding process, I'm

concerned factually in the context of this because (1) Mr. Sisson hired and had a professional architect, that the architect did not know the zoning of the property for which he was doing a plan strikes me and maybe perhaps you can shed some light on it, give me your background, as odd. And also, factually --

MR. CLARENS: Odd, but not out of the realm of possibility.

MR. BROWN: But also in the context of this and this is a difficult fact-finding mission the Board has is under all the facts, it certainly would appear that this project was designed and prosecuted to avoid through either construction beyond the permits, misleading permits or incomplete permits to skirt around the requirements that exist. Am I going to be able to prove that? No, but that's an issue that the Board will have to decide.

MR. CLARENS: We understand that. I'm just trying to clarify things as we move along. So R-1-B was the incorrect classification of this property which I believe is correctly zoned as R-1-A with the overlay.

VICE CHAIR KING: R-1-A.

MR. CLARENS: R-1-A, that's the classification, this property is in a R-1-A District.

CHAIRPERSON REID: Right.

MR. CLARENS: With the Wesley Heights Overlay. That the classification of R-1-B was incorrectly made and no

indication of it as being a Wesley Heights Overlay applying to it was also incorrectly made at the outset.

VICE CHAIR KING: We weren't going to ask questions.

MR. GILREATH: This is critical.

VICE CHAIR KING: Permit No. 1 that we're talking about was for the two story addition and the uncovered front porch?

MR. BROWN: That's correct.

VICE CHAIR KING: Thank you.

MR. GILREATH: Did the Zoning Administrator ever pick up the error or did they carry this R-1-B classification through all five permits?

CHAIRPERSON REID: Each one has a different zoning --

MR. BROWN: At some point they did or they partially did. The next permit, for instance, Permit No. 1, they classified as R-1-A, but not Wesley Heights Overlay District.

MR. GILREATH: Never picked up the Wesley Heights Overlay District?

MR. BROWN: I believe in the Permits 3 and 5, they did, in fact, finally get it right, R-1-A and Wesley Heights, but I'll confirm that as we go forward.

CHAIRPERSON REID: That is correct. I'm looking at it here.

MR. GILREATH: You contest any of the changes that occurred that were approved when they subsequently picked up the correct zoning, the changes they requested from the zoning was correct, are you contesting any of those? Was anything done inappropriately?

MR. BROWN: Absolutely, absolutely. Because then it becomes not only a question of whether they got the zoning right, but whether then they applied the zoning correctly, made more difficult, quite honestly for the zoning branch because in Permits 3, 4 and 5, we're talking about work being done before the permits were issued and it changes the context. I also would suggest, as I'll go forward that what the permits were asking for and what was actually built are not the same thing, so that you can have a difference.

And again, you go back to the context of Ms. King's question is is there anything against getting five permits? No. It's unusual. It's costly, it's time consuming and there had to be a purpose for it, I believe. But that's a fact finding mission.

VICE CHAIR KING: Did Mr. Sisson handle his own applications or did he have a fixer do it?

MR. BROWN: He with one exception, I believe, he had a fixer, an expediter. He had several. I think at least two, maybe three different ones throughout the process.

MR. CLARENS: As opposed to the architect who designed the project possessing the permit?

MR. BROWN: I do not see -- there's a Mr. Shelton who was involved in two. I know he's not an architect. There's a gentleman, Minerv, who I don't know or recognize the name, whether, in fact, he's the architect or just an expediter. That's a question Mr. Sisson perhaps can answer.

CHAIRPERSON REID: We can ask the Intervenor those questions.

Mr. Brown, here's what I'm grappling with, if, in fact, whoever represented Mr. Sisson went down there and applied for a permit, and notwithstanding the fact that we have four different categories of zoning of the same property, if in fact the Zoning Administrator's Office designated the zoning, is it incumbent upon the Applicant then to comply with what is on the permit as far as -- only in regard to the zoning, even if the zoning is incorrect, but isn't it what they have to go by?

MR. BROWN: I would have to answer no. There's some responsibility, I believe, on the Applicant, the property owner to get it right.

CHAIRPERSON REID: Wait a minute, Mr. Brown. Let's look at this realistically, okay? Now you have professionals, you have architects, and you have engineers and you have people whose profession it is to basically be aware of these things, a zoning attorney like yourself. But a lay person who applies for a permit, if they're not -- isn't that

what the auspices of their profession? I would think then they would have to rely on what is indicated on the permit. They would have to have reliance, the designation that it's given to them as to what, in fact, is permissible.

MR. BROWN: Well, and I'll agree with you with certain caveats. If you file for a permit and get a permit and they say, then absent other circumstances you have some right to rely on, I will agree with that.

In this case it's clear Mr. Sisson was -- with one exception -- wasn't processing the permit. He did not have lay people. He had professionals, people being paid and again the permits coming back and again, they're all over the place so the warning bell is there and then the added fact is that all that becomes moot. Your ability to rely on it.

If you file a permit and do something different, you know, you're subject to certain protections which are fair, but with that comes responsibilities and I don't think you get the protections and the process breaks down. If you want your protections, but you don't want the responsibility which is, in effect, to build what you said you were going to build. In every case, that's a factor as we'll go forth.

CHAIRPERSON REID: My second part of my question with regard to this new garage, now, the argument in your submission was that the -- while he had a permit for the addition, he did not have a permit to tear down the garage.

MR. BROWN: That's correct.

CHAIRPERSON REID: Now in the plan, did I not see, it stipulate that the garage was to be demolished?

MR. BROWN: And again, the plans say -- and this is the first permit, demolish the garage. He says that in --

CHAIRPERSON REID: Hold it right there. Those are on the plans. Are those plans not approved?

MR. BROWN: Each one of them is stamped down here and it's not --

CHAIRPERSON REID: It's signed off on.

MR. BROWN: Yes, by the permit processing branch. It's not the zoning branch. The application itself is signed off.

But again, given what with the permit that was issued --

CHAIRPERSON REID: Right, I saw that. But what I'm saying is that if, in fact, those permits were submitted and they were approved and they clearly indicate that that garage was supposed to be demolished, then in essence what you're saying is that that's another mistake by the Zoning Administrator not to have picked that up or not to have made sure that on the permit it reflects the fact that the garage was supposed to have been demolished.

MR. BROWN: And if that were the case that would be true. I don't believe it was the case because again

--

CHAIRPERSON REID: What do you believe?

MR. BROWN: That in the end all Mr. Sisson sought and received and understood was an uncovered front porch and the rear addition. And one -- critical because he turned around less than two weeks later and filed a permit to, in essence, take the process to the next step, for the addition to the garage.

So he didn't ask for and he didn't receive anything having to do with the garage because he came back and subsequently, less than two weeks later asked for it. If the question was did I misunderstand, but that's not the case because the actions through his professionals were clearly to come back and ask for issues that moot that question. I hope I'm trying to be clear.

MR. CLARENS: Do we have any factual -- or do you have a factual understanding or knowledge of why the garage was removed. It was drawn in the original set of plans. It's indicated in the site plan, the demolition of the existing garage is indicated and yet we see the big crosses of the garage elevations in the drawings and the garage is not part of the permit. Any reason, am I stating the facts as we understand them so far?

Do you have any theory or do you have any factual knowledge as to why the garage was deleted from the first application?

MR. BROWN: I have no factual knowledge --

MR. CLARENS: Would there be any reason why the garage would have been deleted from that application if it was incorrectly zoned as R-1-B without the overlay, then the lot occupancy would have been 40 percent of the lot and definitely 2146 seems to be less than 40 percent of the 6,000 square feet of the lot approximately. So nothing would have triggered in zoning the deletion of the garage from the original application.

MR. BROWN: With one exception. I think it would be the parking requirement. If you -- when you demolish the garage, then the parking issue raises its head. Whether you're in R-1-B, R-1-A, R-1-A Wesley Heights Overlay District.

What I think occurred is that again, the R-1-B tag for Permit 1 was not placed on the permit until it was being processed, in the process. My view is that the plans were prepared imposing internally the R-1-A Wesley Heights Overlay District and again, I piece that together from the facts.

What wasn't included and then what was later done and how the difference between the two crosses the boundary between R-1-A compliance and R-1-A Wesley Heights Overlay District compliance because when you look at this project as it was built and clearly was in somebody's mind from the very beginning you go from on the Wesley Heights Overlay District certainly, you go from compliance to

noncompliance.

MR. CLARENS: Can we go back to the site plan for a minute?

MR. BROWN: Sure.

MR. CLARENS: So you would say that the originator of this plan was aware or you're claiming that he was aware that this one in R-1-A with a zoning overlay that limited the lot occupancy to 2,000 square feet and that in view of that he planned a front porch, a front deck which would not have counted towards the lot occupancy and then in addition a garage which would get him below the 2,000 square feet.

MR. BROWN: That's correct.

MR. CLARENS: But that same person was not aware that this was in an R-1-A and therefore a nonconformed lot to begin with?

MR. BROWN: That I don't -- I can't -- the facts aren't there for me to speculate on that. I mean it's nonconforming even if it's R-1-A for various reasons.

MR. CLARENS: That's correct.

MR. BROWN: Now whether --

VICE CHAIR KING: Excuse me, do you mean the plan that's here is nonconforming for R-1-A?

MR. BROWN: I believe so.

VICE CHAIR KING: With the uncovered front porch --

MR. CLARENS: No, the lot, the lot. Is that what you're saying --

MR. BROWN: The lot occupancy, again, in R-1-A, you have a minimum lot of 7500 square feet. This is 6873 feet.

VICE CHAIR KING: That's because the corner is cut off by the street, right?

MR. BROWN: No, because you've got a square lot. You've got a square lot here. The corner is up in the next property. There's a square here. He's got a rectangular lot here.

MR. GILREATH: The R-1-B, what is the deficiency? How much over the lot occupancy does it go?

MR. BROWN: For R-1-B, you're below the lot occupancy. The minimum is 5,000 square feet in R-1-B. Here, the lot is 6800. So the lot occupancy you're fine. Now for purposes of your side yard and relying on his drawings, again, I think you've got a side yard problem here as well as the underlying parking question.

MR. CLARENS: Point of clarification. It's not lot occupancy. It's lot size. Minimum lot size. The minimum lot size is 5,000 in R-1-B; 7500 in an R-1-A. And this one is 6800 so in an R-1-B it would be a compliant lot. In an R-1-A, it is not.

CHAIRPERSON REID: Mr. Brown, basically, if I understand this correctly, you're contending that had the

Applicant once he received the incorrect zoning designation and gone back and gotten that corrected and also had it reflected and/or had it reflected in the permit when he received the permit, recognized that there was no indication that the garage was supposed to be demolished.

You're saying that they should have gone back and had that corrected immediately once they ascertained that it was incorrect. You're saying that they knew -- if I understand correctly, your case is based on a stipulation or conjecture that they could have known or should have known that it was incorrect.

MR. BROWN: As to the demolition?

CHAIRPERSON REID: That the permit was incorrect?

MR. BROWN: I believe that there are facts that would support that contention.

CHAIRPERSON REID: Now, if in fact, this is your position, what is your defense of that position? I'm not really clear on that. Other than I think that or it appears that, but what viable concrete proof can you proffer that would convince us that this is what they had in their mind?

MR. BROWN: I think the most concrete proof is what was actually done. If you look, in fact and done without permits, if you look at everything I'm conjecturing here, a covered front porch that was said as something other than that to get around the front yard requirement, the covered front

porch that exceeds the Wesley Heights Overlay District front yard requirement was actually built without permits.

CHAIRPERSON REID: But their permit said that it was a zone R-1-B, see? So you're going to have to get around that.

MR. BROWN: Well, but that's the Zoning Administrator talking R-1-B.

CHAIRPERSON REID: That's what they have. That's what they have to work on and --

MR. BROWN: But these plans, with all due respect, these plans were prepared and they're fairly detailed and they were prepared long before they ever arrived at the Zoning Administrator's Office for the permit processing.

So in other words, and again, maybe his architect didn't do his homework, but I think it's a reasonable presumption that had his architect had done his homework and prepared plans accordingly, but I think the real proof is what was the final product because if you look at it, everything that was on somebody's mind here was, in fact, subsequently built and all those items taken together, had they been properly before the Zoning Administrator, should have been found to not be in compliance to require a BZA case.

CHAIRPERSON REID: What do you say to the fact that the subsequent -- what you refer to as remedial permits were issued permitting what was built, what had been previously built. So how do you reconcile that with the

argument?

MR. BROWN: Well, you'll find three remedial permits. Permit No. 3 which was the garage. The construction of a new garage after the stop work order.

CHAIRPERSON REID: And No. 3 does have the correct zoning? Wesley Heights R-1-A.

MR. BROWN: Yes, it does. And again, the permit that was sought and obtained there, I don't believe is correct and I'd like to go over that.

CHAIRPERSON REID: Okay.

MR. BROWN: But also the Permit No. 4 which was to repair the roof of the front deck, well, I mean we have to face facts, he didn't have authorization to build the roof over the front deck, yet he's coming in --

MR. CLARENS: We'll get there. We'll get to Permit 4 when we get to Permit 4. One more thing on Permit 1. In your opinion, if this permit would have arrived at the zoning desk for review and if it had been properly classified as R-1-A, would that have triggered an automatic referral to the BZA for a variance because of the nonconforming nature of the lot?

MR. BROWN: If you're just saying strictly R-1-A or R-1-A Wesley Heights Overlay District?

MR. CLARENS: Let's say R-1-A.

MR. BROWN: Yes, my belief is that would have triggered a referral to the BZA.

MR. CLARENS: That no addition can be done to this building without a variance because of the nonconforming nature of the lot?

MR. BROWN: And then if you take it to the next step which is you apply the Wesley Heights Overlay District.

MR. CLARENS: That's okay, but that would have triggered -- the Wesley Heights would not have triggered the BZA variance. It is the R-1-A and the nonconforming nature.

MR. BROWN: Well, they both would have triggered. I mean they would have triggered different -- there's a nonconforming issue and then there's -- the existing property is nonconforming and then separate from that in the Wesley Heights Overlay District issue you would have had direct violations of the restrictions imposed by the Wesley Heights Overlay District.

Taking for a moment that the house was not nonconforming for Wesley Heights Overlay District purposes.

MR. CLARENS: Okay.

MR. BROWN: What would be proposed --

MR. CLARENS: The issue then and perhaps we might want to get clarification from Mr. Nunley or an agreement, it is my understanding, Mr. Nunley, that that is correct, that a nonconforming lot triggers any addition or modification to a building existing in an nonconforming lot, triggers a BZA variance review or not?

MR. NUNLEY: Not, only for structures, if the

lot is existing -- the lot itself is existing in a nonconforming condition, but the structures that occupy the lot are conforming with respect to lot occupancy, open spaces, etcetera, then an addition can be made so long as the addition is also consistent with the statutory requirements for that zone.

MR. CLARENS: For that, in this particular case, for the R-1-A. Okay, I see.

MR. NUNLEY: Notwithstanding the size of the lot. If it's an existing --

MR. CLARENS: I see, so the lot can be nonconforming, but as long as the structure is conforming to the zone, to the actual zone, to the R-1-A in this case --

MR. NUNLEY: That's correct.

MR. CLARENS: They can proceed.

MR. NUNLEY: That's correct.

MR. CLARENS: I see.

MR. BROWN: Assuming that there's no other nonconformance as part of the addition --

MR. NUNLEY: That's also correct.

MR. CLARENS: I see.

MR. BROWN: There are, in fact, the minimum side yard issue when they're building an addition in itself is not compliant with the 8 foot side yard.

Now it's difficult to tell here, because of the

scale, but it appears based on the scale and the dimensions that it's not and it certainly would have been an issue raised by the Zoning Review Branch. But you run into -- we run into great risk here by breaking out the R-1-A for the Wesley Heights Overlay District because the two go hand in hand and my conjecture here is with some strong factual support is that this was designed and implemented to get beyond the Wesley Heights Overlay District.

MR. CLARENS: I think this clarifies things for me. So if you have a nonconforming lot, you can still build on that lot up to the maximum that the zoning would allow with all its overlays and whatever --

MR. BROWN: You couldn't increase a nonconformance.

MR. CLARENS: You could not increase a nonconformance, that's correct.

MR. BROWN: I'd like to move on to Permit 2 which again is relevant, not solely by itself, but in the context of what came before and what comes after. As we mentioned, I believe, this one was zoned R-1-A.

VICE CHAIR KING: Without the overlay.

MR. BROWN: That's correct. And you can see we're back to a site plan, a different site plan which shows a garage addition.

VICE CHAIR KING: Does it show the house structure with a covered porch and a two story addition at the

rear?

MR. BROWN: No, it does not. No addition here and there's no front -- and again, in the context of, because the garage counts for lot occupancy purposes, the addition certain does and the front porch under the circumstances, I believe, existed which is you're building a covered one, counts for lot occupancy and front yard.

VICE CHAIR KING: So this is the same site plan as in the application, the papers submitted for Permit 1, but they've republished it without the additions that they got permits for in Permit 1.

And what they've done is they've taken tunnel vision and you'll see that throughout the permits. They've stripped off all the necessary data for the zoning branch to review this property because let's say in this case you've got some questions of lot occupancy. If you're not showing what's occupying it, Mr. Nunley and his people are just not going to make a calculation.

VICE CHAIR KING: And this permit was applied for how long after Permit No. 1?

MR. BROWN: It was issued on February 9th which is -- how many days in January? 30, 31 -- 10 days, 10, 11 days after the Permit No. 1 was issued.

MR. CLARENS: The first one was issued January --

MR. BROWN: 29th.

MR. CLARENS: 29th.

CHAIRPERSON REID: Mr. Brown, am I understanding you to say that the -- in the second submission of the same plan, that they were distorted so as to --

MR. BROWN: It's not accurate because --

CHAIRPERSON REID: Well, let me ask you this. When they submitted the first plan, right, they were approved and they got a permit. So Mr. Clarens, you can help me with this, with the submission of the second would that not be an embellishment, if you will, of the first?

MR. BROWN: I guess I don't understand exactly the determination.

VICE CHAIR KING: What you're suggesting is that they should have included what the permitted use, permitted additions, even if the work had not been done yet, is that what you're saying?

CHAIRPERSON REID: I'm asking. I don't know.

MR. BROWN: Absolutely. Because again then you've got a scenario which we actually see here where you've got individual permits for this and that where Mr. Nunley and his people aren't able to judge the whole.

CHAIRPERSON REID: Well, you have to do it -- there has to be an understanding of it and I'm not a zoning specialist, is the aggregate in regard to determining the lot occupancy or the setbacks, what have you. It has to be taken in its entirety, does it not?

MR. BROWN: What's there, everything that's there.

CHAIRPERSON REID: All right, the point I'm making is that in the second submission everything is not there.

MR. BROWN: Absolutely.

MR. CLARENS: Well, let's clarify the second submission. In the advertisement of this case it cites the first permit being Permit No. B413166 and it's dated January 29, 1998. And then it has a second, but that one in this and this might be wrong is not dated February 9th, but dated January 23rd, as it's advertised.

MR. BROWN: That must be incorrect because there's no January 23rd permit that I'm aware of. I hope there isn't.

MS. PRUITT: Mr. Brown, then for the record so that we correct that could you just read out the permit numbers and their dates, please?

MR. BROWN: Absolutely.

CHAIRPERSON REID: I have it right here. I can read it off. Permit No. 1 is 1/29/98.

MS. PRUITT: What date, what was it for and the date?

MR. BROWN: It was January 29, 1998 and it says "two story addition" and it's incorrectly spelled, but it says -- it should be on rear and then it proceeds "no crossing

sidewalks with construction vehicles, separate electrical/plumbing installation permits are required."

MR. GILREATH: This second permit was to legitimize that the original garage structure was torn down and a new one was built. What was the purpose of the second permit?

MR. BROWN: The second permit was to -- for the first time put forward a plan. In this case, they're saying they're going to make an addition to the existing garage. And again, the view being both based on what was before and the act of filing, that this is the first time they sought a permit for the garage.

CHAIRPERSON REID: Go back, go back to the first.

VICE CHAIR KING: This is the garage addition? Not a new garage?

MR. BROWN: That's correct. This is in addition to an existing garage is what -- and it says on that permit which is dated February 9, 1998 and it's B413424, it says "addition garage, length 20 feet, width 20 feet, height 14 feet, material of roof, shingle, material of side, siding, no blocking public alley with trucks."

So the first plan was showing a new garage. They were showing an addition to a garage and the reality is they built a new garage. But then again, the point is well taken and correct that the zoning people were forced to make

determination on compliance with incomplete information.

CHAIRPERSON REID: Can you go back to the first site plan. Let me look at that.

Okay, so --

MR. BROWN: Can I point out one thing here? It's saying two-car garage here. It's over the existing garage which is shown, so we're not talking about here they're contemplating an addition to the garage. They're talking about an entirely new garage and it becomes relevant because in fact when he goes get the permit for the new two-car garage it says in the same location and it's not the same location.

MR. CLARENS: And where is it on the site plan that you're showing us?

MR. GILREATH: When Permit 2 was issued, was the existing garage still intact or had it already been demolished?

CHAIRPERSON REID: Mr. Clarens, what is --

MR. GILREATH: When Permit 2 was issued?

MR. BROWN: I don't know the answer to that.

MR. GILREATH: We don't know whether or not they had torn down the existing garage or it was still there. We don't know.

MR. BROWN: We don't know.

CHAIRPERSON REID: Mr. Clarens, that's the proposed roof?

MR. CLARENS: This is the porch.

VICE CHAIR KING: The uncovered porch.

CHAIRPERSON REID: Uncovered porch. I'm sorry.

MR. CLARENS: This is the addition here.

CHAIRPERSON REID: Okay, now --

MR. CLARENS: And this is the garage which is deleted, according to Mr. Brown on the application.

On the second one the porch is not on here and the addition doesn't appear and the garage has changed from a new garage to an addition of a garage. This is the original garage which is shown here underneath this drawing and the garage has moved from this location to that location.

CHAIRPERSON REID: I see, the porch and the addition are missing from the second submission for the permit.

VICE CHAIR KING: So you know, in terms of determining lot occupancy --

CHAIRPERSON REID: In aggregate you couldn't really do it.

VICE CHAIR KING: Yes.

MR. CLARENS: A zoning specialist would have looked at this and would have added the square footage of that and the square footage of this to determine lot occupancy as they are required.

VICE CHAIR KING: Can you put that up higher? It seems to have slipped.

MR. BROWN: You will see here, this one

demo'ing the existing garage which is here.

VICE CHAIR KING: Now what is this, is this application 3?

MR. BROWN: 2. This is No. 2.

VICE CHAIR KING: And they're talking about demolishing?

MR. BROWN: Well, again, it's conflicting. But yes, you're still on Permit 2 and you're talking about as it was in the previous one, demolishing and building something.

MR. GILREATH: Permit 2 says an addition. You wouldn't demolish a building, you would simply add to it.

MR. BROWN: Yes.

MR. GILREATH: Okay.

MR. BROWN: I want to point out because it's relevant for lot occupancy purposes here, the plan here showing 23 by 21 feet which taking the plan, that's 483 square feet to be applied to lot occupancy. That's based on construction of a new garage.

But it's also important if you go out and I had occasion and the measurement here is actually probably closer to 21 feet 8 inches, somewhere between 7 and 8 inches. So regardless of what's said here, what the permit was issued, they built something different and that's pretty much a consistent theme --

CHAIRPERSON REID: You said that the measurements are not correct either?

MR. BROWN: That's my view.

CHAIRPERSON REID: What are the measurements on the side?

MR. BROWN: It's showing here on the plan here that the -- and we'll call this the length of the garage since the doors are here, is 21 feet even. If you measure it here, it's 21.7, almost --

MR. CLARENS: You physically measured?

MR. BROWN: I physically measured.

MR. CLARENS: But let's clarify that. That is an issue that is not really before this Board. Issues of what is actually built are issues of compliance with the permit and issues of enforcement by the Zoning Administrator and there are procedures by which you're client can avail herself of to enforce what is occurring. What is here are issues related to the issuance of the permit.

MR. BROWN: But it's important and I know Mr. Nunley is listening from compliance purposes, but what's important though is that again is a pattern and again you have to look at the whole and my view and the evidence that I'm presenting is that they're saying one thing and doing another and that's throughout. And that's a factual issue that this Board, outside the context of this specific question has to deal with. And so I think it's relevant.

Permit No. 3 which is dated May 27, 1998, permit number B415675 and it was issued the Wesley Heights

Overlay District R-1-A. It says "new garage to be located on same spot as previous garage." Now by way of background, the date here is May 27th. A stop work order was issued by this city when the original garage was demolished and work on the new car garage, the two car garage started without a permit.

So this is remedial. This is coming back and getting a permit for work that was already done. And again, we face the same situation. Here it's -- you've got no front porch. You have no rear addition and you're not even showing here a new garage.

MR. CLARENS: And at this point it is your client's contention and it is a problem not having her here to testify that the porch and the rear yard were under construction or not at this point? This is five months later. This is five months after or four months after the issuance of the -- three and a half months after the issuance of the first permit. Is construction proceeding on the rear addition and the front porch at this time?

MR. BROWN: I think Mr. Sisson has admitted in his pleadings that construction on all facets of this project was well underway by this period. So I would point out and we'll go through the details again. We've got the discrepancy between previous permits not being shown here. We've got a discrepancy about what's actually being done. Then you're showing what's actually being done, again noting that difference. Timing is important and it was after stop work

order.

Also important is you'll see the permit says in the same location. It's supposed to be in the same location. If you go back to the Plan No. 1 and I believe this is what was actually built based on physical inspection, the garage wasn't built in the same place. It was, in fact, brought out further which is important for a practical, Ms. King asks what concerns my client.

One of the things it restricts access on the private drive here which then goes to her property here. So they built a bigger garage in a different place without the proper permits.

CHAIRPERSON REID: Mr. Brown, go back to the second permit again so that we can see her driveway, whatever.

MR. BROWN: You can see and they're calling out here -- I can provide some more detailed information, but you've got -- and it runs approximately over 300 feet here and it's private. It's not a public alley. It's not a street. At best it's quote a driveway.

MR. CLARENS: Easements?

MR. BROWN: I'm not aware of any easements that exist.

CHAIRPERSON REID: Where is the driveway?

MR. BROWN: Ms. Crary's property is here, Lot 62.

VICE CHAIR KING: And does she use that

driveway for access as well?

MR. BROWN: No, she does, but not on a daily basis. She's got a driveway here where she parks her car. There's a very steep grade here, so you've got -- her property here is an upper level. And so her access to -- and there's no access from -- other than some steps, but there's no easy access from here, the main lot to the upper portion here other than through here. For instance --

MR. CLARENS: To change a water heater, somebody would come that way rather than trekking the water heat --

MR. BROWN: Potentially, or where you see it most often she tells me is when she has somebody doing some work in the back yard, landscaping or something like that. You can't get a truck --

MR. CLARENS: What is the width of that private alley?

MR. BROWN: I have an exhibit. It's shown on the land records as being 16 feet wide. It is certainly not paved to that extent. Here, again when the garage was built it's between a fence that's here and the garage which is now here. It's 9 feet and not all of that is paved. It gets a little wider as it goes down toward the street and I'll show you.

VICE CHAIR KING: Does the alley go -- is that whole thing at the -- excuse me, is this the alley or is this

the alley?

MR. BROWN: This is the alley.

VICE CHAIR KING: Okay, and it appears to end on this plan, site plan at the Sisson's, before the end of Mr. Sisson's property.

MR. CLARENS: No, this is not the line of the alley. I don't know what line -- that's a common concrete drive and it is indicated to be from there to there, is that correct?

MR. BROWN: That's right because you can see it here. And the property line is actually apparently halfway through that concrete driveway.

And the garage was built closer to the property line and some of this concrete driveway was demolished, is that what you're claiming?

MR. BROWN: Yes. And it's shown, again going back to Permit 1, it's shown being built right on the property line which a garage can be built on your property line.

MR. NUNLEY: Depending on the setback. The I'm sorry, the width of the access alley.

MR. BROWN: All right, and that's -- again, all you've got here and I just raised another issue I'd like to amend my appeal, but you've got here again and from what was built, you've got 9 feet from the corner of his garage to a fence here. Not all that's paved. I'd say 8 feet of that is paved. And I've got some pictures.

Just to put it in some context here. This is the upper portion of Ms. Crary's property looking to the back of the house, the garage that's being built in here.

VICE CHAIR KING: Now whose -- you mean his garage was being built in there?

MR. BROWN: Yes, and you can see here's along the side of the property, Ms. Crary's property is here. Here is --

MR. CLARENS: That's Ms. Crary's property here --

MR. BROWN: Well, no, we're standing right here.

MR. CLARENS: You mean her property?

MR. BROWN: Yes.

MR. CLARENS: Looking at what? This is Mr. Sisson's property?

MR. BROWN: Yes.

MR. CLARENS: Under construction?

MR. BROWN: Yes.

MR. CLARENS: This is the deck of the addition, the two story addition?

MR. BROWN: Yes.

MR. CLARENS: And that's the first floor deck?

MR. BROWN: Yes.

MR. CLARENS: I see.

MR. BROWN: And here, this is --

MR. CLARENS: And then this alley will be coming in this way?

MR. BROWN: No, see if you're here, you're standing here facing this way. This is what you're going to see, right down the side of -- here's the garage and facing down --

MR. CLARENS: The new garage.

MR. BROWN: Yes.

MR. CLARENS: I see.

MR. BROWN: There's the rear of it. You'll see that here, in some of these pictures --

MR. CLARENS: This is the side of it.

MR. BROWN: Yes, along the rear back property line. And you'll see here, you can make out, this is during construction of it, that some of the asphalt was pulled up.

MR. GILREATH: And this was on Mr. Sisson's property though?

MR. BROWN: It's not entirely clear. I've asked Mr. Sisson's for an as-built survey which he was not interested in providing, but it's a concern and the end result was, and if you measure here from that point right here to this fence, it's about 9 feet and you can see it's kind of hard. It's not paved the whole way.

CHAIRPERSON REID: So it's supposed to be 16 feet, so you're saying that he's an encroachment?

MR. BROWN: I don't know the answer to that.

That's not for this Board to settle. But clearly there's been a diminution of what was the private driveway because -- and you can see here new concrete.

VICE CHAIR KING: Is this Ms. Crary's property here?

MR. BROWN: Yes. That's not her house. That's another house.

VICE CHAIR KING: No, no, I'm just -- this is her property line and this is where the garage was built?

MR. GILREATH: As long as stays on his property line and is permitted, he's not obligated to keep this open 18 feet.

CHAIRPERSON REID: That was my question too, Mr. Gilreath, is there an encroachment on her property? Is there any encroachment on her property with that garage?

VICE CHAIR KING: No.

MR. BROWN: Not that I'm aware of. Not that I'm aware of and again, a survey would have --

CHAIRPERSON REID: So the contention is basically with this alley, her not having adequate access to her property from the alley.

VICE CHAIR KING: I don't think that's an issue for us. That's an entirely different issue.

MR. GILREATH: It's a motivation though.

MR. BROWN: You've asked what's motivating. And also there is --

VICE CHAIR KING: But you don't know whether that's his property or there's an easement.

MR. BROWN: We're not aware of any easement and Ms. Crary's been there a lot longer than Mr. Sisson, going again 30 years.

CHAIRPERSON REID: The alley is owned by the city?

MR. BROWN: No, it's in private ownership.

CHAIRPERSON REID: By who?

VICE CHAIR KING: By the home owners?

MR. BROWN: No, it looks like -- you can see here and this is from the Sandborn atlas, it appears, and this is essentially the alley, 16 feet width, it actually goes all the way down here, this is Ms. Crary and this is Mr. Sisson. It goes -- the property appears, given the squiggle lines that show boundaries being deleted, that the property goes this way.

It doesn't belong to Mr. Sisson, clearly, and doesn't belong to Ms. Crary and she's not claiming it does. It belongs to someone else. So it's private property which becomes important for driveway issues, for purposes of required parking.

VICE CHAIR KING: What you're saying is that this is the driveway?

MR. BROWN: Yes.

VICE CHAIR KING: It doesn't seem to go -- how

do you get out to a street?

MR. BROWN: And it actually goes straight down. As you can see on the picture and this is not shown on the atlas, but again, it's consistent. This is on private property. It's not Mr. Sisson's, it's not Ms. Crary's. It appears to belong to the people this way. But you can see it goes, from the pictures it goes all the way down to the next street which is

--

VICE CHAIR KING: Hawthorne.

MR. BROWN: Hawthorne, and it actually comes out here.

MR. CLARENS: That is not an uncommon occurrence in the city and definitely in Wesley Heights. And usually that's associated with -- there's an easement associated with it which allows, which establishes the right of people to use this private property.

MS. DWYER: We'll clarify this.

CHAIRPERSON REID: We will get that straightened out.

MS. BAILEY: Mr. Brown, are copies of these documents int he record?

MR. CLARENS: He will submit.

MR. BROWN: And I'll be happy to. This, this, I believe this is in. This is new, but I'll be happy to submit them.

MS. BAILEY: And the photographs.

MR. BROWN: The photographs I'm submitting. No, I don't believe there are any photographs.

MR. CLARENS: So we need to add those to the record.

CHAIRPERSON REID: Mr. Brown, what he's showing here -- these photographs over here, we've done this.

MR. BROWN: And this goes to Ms. King's question what is my client's concern? Among her concerns is -- and when you build a property that's bigger than it should be and places where it shouldn't be there are other effects. You'll see here and this is along the side of her property. She's got a driveway here.

You can see it here at the garage, common property line comes out here. You've got quite a bit of runoff here from not just from the construction site. When they built the house addition, a little further up, there's a downspout that goes right down the side and runs down the bank of her property.

MR. CLARENS: But that's not --

MR. BROWN: It is important because if you build something that isn't supposed to be there in the first place --

MR. CLARENS: You might have runoffs regardless of whether you build it --

MR. BROWN: It's a package of concerns she has.

CHAIRPERSON REID: Again, you need to respond to my question. What are those photographs?

MR. BROWN: This is the same. This runoff here occurs into a parking area which -- and here you've got the runoff.

CHAIRPERSON REID: You're showing runoff there?

MR. BROWN: Yes, it's into -- clogging up her drain in her driveway. The silt which continues and here you can see the construction in the background.

MR. CLARENS: That explains her dissatisfaction of what has gone on.

CHAIRPERSON REID: This picture -- this one, that one really shows us, demonstrates to us the situation in regard to that alley and her having access to her property. Are you saying that a normal size vehicle can negotiate that alley to get to her property?

MR. BROWN: Beyond this point, no.

CHAIRPERSON REID: Beyond what point?

MR. BROWN: Beyond the --

VICE CHAIR KING: The new garage.

MR. BROWN: Beyond the new garage.

CHAIRPERSON REID: That's where it becomes 9 feet?

MR. BROWN: Or less than 9 feet. The problem is then it's further than that, I guess, because of the presence of the garage.

CHAIRPERSON REID: You're saying a car can't get up that alley to her garage? I'm sorry, the path to the garage to her property?

MR. BROWN: My car can't get through and I drive a Jeep. I don't drive a big or a small car. I've got to stop here.

MR. GILREATH: Did you research the easement patterns? It's hard for me to believe that there's no kind of easement involved?

MR. BROWN: We attempted to. We did not do a title search, but I looked over Ms. Crary's records and found nothing in her title or settlement documents that indicate that an easement was ever formalized.

MR. GILREATH: If there's no easement in this and his property goes out, the line goes right out to what has been built, he's not violating any kind of zoning regulation, is he? If there's an easement there, like it's been said, I think there's a problem, but if it's the property line and no easement, I'm not sure what.

MR. BROWN: There may, in fact, be. Where is it built? Is it correctly built? I don't have the answer to that.

MR. CLARENS: In any case, the issue of access and the easement are really not issues that should be before this Board. Those are not issues -- there are other venues in which she can find that a right was violated. We're not

dealing with that. Is that correct? Yes.

MR. BROWN: It is not a determinating factor. I would note that if this case, as I believe it should have, should have come to this Board as a variance case. I believe those issues would have been very relevant, so for what we're doing here, your point is well taken, but again, going back to context this is -- and what's important to Ms. Crary and the ANC and others who are in the community that they were, in essence, the practical matter was cut out of a process that they should have --

MR. CLARENS: And the adversity fact would have come into play as part of the variance application.

MR. BROWN: We're at Permit 3, May 27th. I note several points. One, notwithstanding what they're showing --

MR. CLARENS: We're now at Permit No. 3 which is the one on May --

MR. BROWN: 27th, 1998.

MR. CLARENS: Okay. When was the --

VICE CHAIR KING: The new two-car garage.

MR. CLARENS: When was the stop work order issued?

MR. BROWN: I have not been able to get the documents. I think everybody agrees it was issued some time in April.

MR. CLARENS: So in April, so January 29th, the

original permit, the first permit. January 9th a second permit. April, let's say April 20th for --

MR. BROWN: I don't want to speculate. I would note that --

MR. CLARENS: The second half of April.

MR. BROWN: Well, it's hard to say. Attached to a permit is a note from Mr. Sisson dated March 31, 1998 saying I'm the sole owner of the property and I've undertaken to act as my own contractor for the two-car garage to be built at this house, blah, blah, blah. The cost is $9700 and it's dated March 31, 1998. So I just don't know.

MR. CLARENS: And the work order, the stop work order was issued as a result of a complaint to the Zoning Administrator from your client?

MR. BROWN: That complaint, I believe, came directly from Ms. Crary. It was before I was involved I believe.

MR. CLARENS: Ms. Crary called the Zoning Administrator -- the permit people and complained and it was inspected and the appropriate permits were not there and therefore a work order, stop work order was issued.

MR. BROWN: That's correct.

MR. CLARENS: And then after that on May what?

VICE CHAIR KING: 27th.

MR. CLARENS: On May 27th, another permit was issued for the garage, but according to you, not the garage

that was actually being built?

MR. BROWN: And not in the place they say it was going to be built because -- again, it's confusing, but this is what's being submitted and they're talking about here it's still an addition moving in toward the center of the site where in fact, you go back to -- again, this seamless web we have, if you go back to Permit 1 which I think is a more accurate depiction of what was built in their lines, you see it being brought right at the property line which is again further back and if you can see it's hard from a distance, that is superimposed under the existing garage, so you see the difference.

VICE CHAIR KING: So the second permit was for a new two-car garage, the third permit, sorry, that had already been built?

MR. BROWN: Had not been completed. It was -- I mean the old garage was clearly down and they were substantially under way and this was an involved, you saw the pictures of the foundation that involved process. I believe it was out of the ground, but I can't say, but it was clearly underway.

VICE CHAIR KING: Okay, and you are saying -- is this the site plan? Let's see for Permit No. 3.

Again, it omits the additions

CHAIRPERSON REED: It's about the same as number two, is it not, Mr. Brown?

MR. BROWN: Yes, yes, it is.

VICE CHAIR KING: And does it show the garage in the site that it actually is in?

MR. BROWN: No, no; because again, going back, the garage is actually being built more like here.

CHAIRPERSON REED: Mr. Brown, let me ask you something. To kind of piggy back on what Ms. King had said initially, and to kind of cut to the chase of this particular case, there was a proffer to you from the attorney for Mr. Sisson in regard to these issues that we're referring to now.

And one was an agreement, an open agreement to provide landscaping, fencing and fringe control along the shared property line, as well as agreement to allow Ms. Crary access to her property through the rear of his property.

That was not acceptable?

MR. BROWN: It was not satisfactory, no. The concept of landscaping and preps and screening mutually agreed upon is, I think, an issue that can be resolved. One of the important things to Ms. Crary, and you have to unfortunately -- you have to meet her and know her -- is compliance, for no other purpose than compliance is important to her.

And so that when I responded to that letter, I indicated some specific things that there's some basis for agreement, the landscaping, the fencing. I don't believe his offer of her maintaining access to her property is satisfactory.

It doesn't get her where she needs to go because, again, physically it's no longer possible. There are ways to do that other than that. But one of her important points and, you know, my marching orders are -- both for her and as a member of the community, is compliance.

And that she believes, and what I've responded back is that rather than sitting here -- and we've been sitting here for most of the morning and several days before -- is let's sit down and figure out a way where we find out what do we have here, we agree on that, and we agree on compliance, and then we go about doing that in such a way that the community, Ms. Crary and the process is vindicated.

And so I think that's a major stumbling block. There's some other issues. I mean, my letter -- there are financial issues for Ms. Crary that I believe we can work out. They're not -- I think fairly reasonable under the circumstances.

She's retired. You know, she doesn't have all the money in the world. And she's -- one of the things that scares her the most is that a property has been built right next to her house that is substantially larger than what she believes is allowed.

And in Wesley Heights, but all over the city, bigger houses are being built and people like Ms. Crary, who -- I have not asked, but I believe she's in her late 70s -- is getting squeezed. Her house goes up in value for tax

purposes.

She doesn't want to leave, and that scares Ms. Crary. And some sort of accommodation to help with that is a concern of hers. Whether that's viable or not, I don't know. But --

MR. CLARENS: Well, those are resolutions -- those are issues that are, once again, outside our jurisdiction and the scope of this hearing. We're not dealing with any of those issues. We're dealing in, you know -- her problems are her problems.

Our problem is whether the zoning has been applied properly or not and whether permits were issued correctly or not. Even issues of compliance to the permits is behind the scope of our board.

I mean, that's an issue with the zoning administrator and the appropriate DCRA people. All we care about is, you know, have the permits -- were the permits appropriately issued for what they were asking for.

MR. WATSON: And Ms. King asked have they responded to the proffer, so I think his response was perfectly appropriate giving some of the thinking.

MR. BROWN: Well, we've detailed that and Maureen Dwyer and I have exchanged letters. I mean, and I'm very much eager to sit down and resolve this. This is the absolute worst posture for this to be in. Appeals -- this case, in particular, I think we could work out to everyone's

benefit other than in this room.

But we haven't gotten there, even though I've made it clear that that's our goal.

CHAIRPERSON REED: I think that notwithstanding what Mr. Clarens had just said, I think that there could be no doubt in anyone's mind -- any intelligent person's mind that there is some type of error and you've got five different -- you've got four different categories for the same property.

I mean, you don't need to be a rocket scientist to figure out that there is an error here. Now, what we have to cut to is what do we do about it, you know. How did it get like it got to be is anyone's guess.

We could conjecture as to how this happened, but I think -- I don't think that it's one answer. I think that it's multifaceted. I think that we have a combination, you know, of errors here. And that being the case, we didn't look at what to do.

MR. CLARENS: Ms. Chairperson, with all due respect, we haven't finished hearing the case. I mean, I don't know how you're going to come to that conclusion. It seems to me that there might be some issues, but we haven't reached any conclusions.

CHAIRPERSON REED: I didn't -- I wasn't saying that we did. I'm giving my opinion, and that is that there are some -- there's some errors.

MR. CLARENS: We'll see. Could we proceed with

the applicants -- appellants?

MR. BROWN: And just quickly finishing up, the same as before, this is what they claim to be building. It's interestingly enough, in going back --

MR. CLARENS: This is the third application, correct?

MR. BROWN: Yes, this is the third. Where it says -- it says length 20 -- this is on the face of the permit. Length, 20 feet; width, ten feet, nine inches; height, eight feet; and that's what is put in the application form, I believe, that was filled out, the written form.

But again, that is again contrary to what's shown on the plans that were submitted. Again, we've got 21 -- putting aside the difference in as built, 21 by 23, and you're showing a ten feet height rather than, again, what's put on the application and the permit.

So it's important -- again, going back to this is a seamless web, if you're applying for something that's not accurate both with respect to the site condition, front porch, a rear addition are not accurate as to what you're seeing the permit, it's impossible for the zoning branch to make an accurate determination even in this case where they've got the zoning correct, R-1-A Wesley Heights district.

And again, the zoning branch can only rely on what the applicant and their professionals, in this case Mr. Sisson directly -- and he didn't prepare the plans, but he

submitted the application and acted as his own contractor what he submits.

VICE CHAIR KING: Excuse me, he did not have an expeditor on this application, is that correct?

MR. BROWN: There is attached to it, and it's in my pile of exhibits, and it would be -- it's Exhibit G. There's a letter here.

VICE CHAIR KING: Okay, so he applied for it himself. Now, they've got the zoning right, they've got the overlay right, is that correct?

MR. BROWN: Yes, on the face of the permit.

VICE CHAIR KING: The DCRA or the zoning administrator has all of that right. And even though they left off the front porch, the covered front porch addition, which was in -- or any addition on the front -- I mean, even though they left off the additions that had already been permitted, the uncovered front porch and the two story addition in the back, if those had been on there, was this -- now that they've got the zoning right, would this have exceeded the allowable zoning in an R-1-A Wesley Heights overlay?

MR. BROWN: Go back to here. And I just -- if you calculate --

MR. CLARENS: No, the question, I believe -- the question is, what the zoning technician was looking at on that third permit --

VICE CHAIR KING: No, no, that's not it. If Mr. Sisson had included a site plan that showed what he was permitted to do, that's an uncovered front porch which doesn't account for lot occupancy, a two story addition in the rear and this new garage, would he have exceeded lot occupancy?

MR. BROWN: I'll answer it --

VICE CHAIR KING: Uncovered front porch. What was permitted.

MR. BROWN: No, because again -- and to be accurate, the lot occupancy of the uncovered front -- the front porch, if it was counting, this 306 square feet, --

VICE CHAIR KING: Okay.

MR. BROWN: -- which the total is 2,145.

VICE CHAIR KING: Okay.

MR. BROWN: So the difference brings us below the $2,000.

VICE CHAIR KING: So the covering of the front porch is the wicked stepsister in this operation if -- I mean, given if he had put everything down that was permitted, he still would have gotten a permit to expand his garage or to build a new garage.

MR. BROWN: If you're strictly looking at lot occupancy and --

VICE CHAIR KING: Well, now what else does -- what else are you contending that the zoning administrator should have taken into consideration?

MR. BROWN: Well, Mr. Nunley mentioned that, in fact, there may be a rear yard setback requirement. I think he honestly answered and I'm going to say both, but we don't have the information to make that determination.

VICE CHAIR KING: Okay.

MR. BROWN: The thing is also, if you look at it, and it's important -- and I know you've tried to carve out the front porch, but it's -- you know, that became relevant, got to be a covered, which counted. But the garage --

VICE CHAIR KING: And therefore, Ms. Crary could have gotten the stop work order for that as well since it wasn't permitted?

MR. BROWN: Yes. And in fact -- well, requests were made and, you know, I can't speculate why that didn't occur. It did not occur.

VICE CHAIR KING: It is a great handicap not to have your client here.

CHAIRPERSON REED: It certainly is. I would definitely agree with that.

MR. BROWN: Well, and again, that's -- I think she understood that and she was regrettable, but she's a long, long way away in China right now and it was just -- we're doing the best we can, and my apologies.

If I could -- and May 27th is important. Digress briefly for purposes of several issues. One, as I mentioned, what the permit requests in the application itself

isn't what the plans say, isn't what was built. There's the whole question about having demolished the existing garage.

It becomes even more acutely an issue of whether, in fact, the property is supplying the required parking, off street parking. One parking space, and it doesn't make any difference R-1-B, R-1-A, Wesley Heights overlay district -- one parking space is required.

In this case, my view is that if we had been talking about correctly demolition of an existing garage and building a new one where, for lack of a more precise term, the grandfathering of that existing parking space is lost, that in fact this property doesn't provide the required parking.

Again, then we're talking about a variance.

VICE CHAIR KING: I beg your pardon? You're saying that with tearing down a one car garage and replacing it with a two car garage fails to meet their requirement?

MR. BROWN: Well, because the garage that was being built doesn't meet the requirements for purposes of new parking because -- and the regulations are very specific because it imposes restrictions on, one, it has to be a public street, access for a public street or a public alley.

That doesn't exist. Or a driveway, under certain conditions. In this case, there are restrictions on the grade, not more than 12%. I'm not able to make that determination. But if you look at those pictures and the steepness of it, I think I'd hazard to guess it exceeds 12%.

The width of the roadway is a requirement if, in fact, the driveway serves more than one house or one parking space. In this case, it serves parking spaces and houses all along the alley and it is, in effect, two way.

MR. CLARENS: And you think that that was -- that knowledge of that was what generated the application in terms of an addition to an existing garage as opposed to the building of a new garage?

MR. BROWN: That, in the context of lot occupancy; yes, I believe so. But, you know --

MR. CLARENS: It wouldn't be a failure of lot occupancy. The addition and the new garage would have counted the same. In fact, even that there would have been the same sites, obviously the size increase is different. But the addition versus a new garage by itself doesn't affect lot occupancy.

MR. BROWN: No, if the sizes were the same.

MR. CLARENS: If the sizes were the same.

MR. BROWN: Which, in this case, they weren't.

MR. CLARENS: Okay, fourth permit.

MR. BROWN: Pardon?

CHAIRPERSON REED: Number four.

MR. CLARENS: Fourth permit.

MR. BROWN: Well, --

MR. CLARENS: Are you through with the third permit or not?

MR. BROWN: And this is important to the timeliness argument. This permit was issued May 27th, '98. I did not become aware of this permit until the first week of January, 1999. Which surprised me. The standard is, you now, reasonably charged with knowledge.

In September, I believe 3rd and 8th of September, 1998, just before this appeal was originally filed, I and people at my firm searched the Records Management Branch, which is the sole depository of the permits, the permit files. And on both those dates, this permit was not found even though it had been in the pipeline or had been issued three months earlier.

Discussions with the zoning administrator's office -- I don't believe they were aware of it at that time. I did find -- you know, when we searched the permit records, I found permit number four, which I wasn't aware of.

I found that shortly after it was issued. So there's a -- and this process got way off track, I believe, because Mr. Sisson went and gained assistance from the 11th floor and the director of the Department of Consumer Regulatory Affairs, and I think it got taken out of the normal course, but that's speculation.

But I want it clear, because Mr. Sisson has indicated that somehow we were asleep at the switch. We weren't. We were looking and it just wasn't there, and there's no other place to get the permit.

Permit number four.

MR. CLARENS: So the appeal was filed in September 1st of '98?

MR. BROWN: The appeal was filed September 18th of '98, I believe is the correct date.

MR. CLARENS: September 18th.

MR. BROWN: And for purposes of that, shortly before, on an ongoing basis -- it occurred previously. But leading right up to the appeal, the permit records, Records Management Branch, which used to be in the basement of the 614, was checked -- and it's in my chronology -- September 3rd and September 8th.

On the 8th, I believe, that's when -- I may have it confused. But within those days, I found permit number four, but not permit number three, which would have been issued, you know, almost four months, three months earlier.

So, I mean, there was diligence going on looking for this permit. We found one we didn't expect, which is permit number four, which we're going to talk about which, once again, is remedial. So I just want to put it in some context --

MR. CLARENS: Okay.

MR. BROWN: -- because that's -- the timeliness is an issue.

MR. CLARENS: Okay, and permit number four is

August 17th?

MR. BROWN: August 17th. And I don't have the -- an exhibit except for in your package.

VICE CHAIR KING: Have they got the zoning correct?

MR. BROWN: No, R-1-B.

VICE CHAIR KING: R-1-A, but without the --

MR. BROWN: No, no; R-1-B, B as in boy. That's permit dated August 17th, '98 as B417814. And it says, "Repair existing roof, roof in place, no structural change as per plans, this permit does not authorize crossing public sidewalk with trucks."

It's noted as R-1-B. I'll note in the application -- and this is my Exhibit I, my bulky prehearing statement. This permit indicates that -- and this was by an expeditor -- that we're talking about repair the existing roof.

And then if you go through, you'll see, lo and behold, the front porch that had been built, which, by its own admission, has already been built on August 17th. Again, what was -- essentially what was built from a footprint standpoint was shown on the first permit.

Yet, eight months later, Mr. Sisson's getting around to getting a permit for work that he'd already done by its own admission. This is important because, one, from just strictly a timeliness standpoint, it's less than 30 days

between when the permit was issued and when the appeal was filed.

It's also important because it's for work that was done beyond the scope of previous permits, which is critical to the zoning compliance. And also you'll see that it doesn't include a -- because I've included the whole package of materials for the permit.

It doesn't include a site plan. So the fact that January 29th, 1998, except for the information that the zoning people needed, it isn't in the file, it isn't in the application. Because you've got a -- you know, an existing porch.

Now, why he's seeking a permit for repairs, but --

VICE CHAIR KING: On the roof of an uncovered porch?

MR. BROWN: I mean, it's --

VICE CHAIR KING: That's what it is? I mean, it's a permit for repairs on a porch that was permitted to be built without a cover.

MR. BROWN: And which he's showing as having been built as repair proof, and that's what was built. And he says it's there.

CHAIRPERSON REED: On the plan for permit number four, --

MR. BROWN: Yes.

CHAIRPERSON REED: -- do we have that?

MR. BROWN: There are no construction plans like this. All that was filed, you'll see, is the -- it's my Exhibit I.

CHAIRPERSON REED: Mr. Brown, I know you said that, but I guess this is probably a question for the zoning administrator, but it's not only -- for the permit to be issued, don't they have to submit the plans?

MR. NUNLEY: Depending on the scope of the work. From specifically the zoning perspective, to prepare something that's existing, repair it in kind, we wouldn't necessarily ask for plans. As it goes through the review process, the structural engineers that review from the various disciplines may have some issues depending on the nature of the repair.

But just to repair an existing roof, no change in size or location, is pretty much a rubber stamp under zoning, specifically zoning.

CHAIRPERSON REED: Okay

MR. BROWN: Madame Chair, I think your question will be answered with permit number five. Permit number five, it's my Exhibit K dated October 5, 1998. And it's permit B4191 --

CHAIRPERSON REED: Mr. Brown, hold on for one second.

Is there an Exhibit K in our package?

MS. PRUITT: Paul is checking.

CHAIRPERSON REED: And not I either, for that matter.

VICE CHAIR KING: Yeah, we don't have H, I, J, K.

MR. BROWN: My apologies. Can I share a copy here?

CHAIRPERSON REED: They're going to get the copy of it.

MS. PRUITT: Well, it should be in the actual file that you have, Ms. Reed.

CHAIRPERSON REED: Well, what is it, the permit?

MR. BROWN: I is permit number four, and K is permit number five.

CHAIRPERSON REED: Oh, we have that under F.

MR. BROWN: Well, except for it's critical because I attached everything, --

CHAIRPERSON REED: Oh, I see.

MR. BROWN: -- including the application form. So I think -- I've got a spare.

MS. BAILEY: So a copy of Exhibit K, Pat?

VICE CHAIR KING: H, I, J and K.

Is there anything after K?

MR. BROWN: Yes, there is -- we go through to P, I believe.

VICE CHAIR KING: Anything after G?

MR. BROWN: L, M, N, O and P.

MS. PRUITT: Ms. Reed, where does it stop in our file?

CHAIRPERSON REED: G.

MS. PRUITT: Okay. And you got what we had in the file?

CHAIRPERSON REED: Oh, you mean that other had not been submitted?

MS. PRUITT: Paul is checking.

CHAIRPERSON REED: Did you submit H, I and J? You say all the way up to P?

MR. BROWN: Pardon?

VICE CHAIR KING: Here it is. Here's H. Here's I.

MS. PRUITT: That's what I was asking.

VICE CHAIR KING: Here it is. It's all under G.

CHAIRPERSON REED: Your I is the permit number --

VICE CHAIR KING: And here's P. We just got lazy because you didn't have tabs.

CHAIRPERSON REED: B417814, that's your I. Okay, we talked about that, did we not?

MR. BROWN: I is the August 17th, '98 permit.

CHAIRPERSON REED: Yeah, the fourth one?

MR. BROWN: Yes.

CHAIRPERSON REED: All right. And so -- but as attached to your I, is that the application?

MR. BROWN: Yes.

CHAIRPERSON REED: Okay. Then do you want to discuss that?

MR. BROWN: Well, I think I've already gone through that. Well, let me -- I will just point out that -- and I think I did previously, that attached to it, this is -- you know, there was no site plan.

CHAIRPERSON REED: Oh, that was part of it.

MR. BROWN: But this is what -- a picture showing the --

MR. HART: Here's the picture he's showing.

CHAIRPERSON REED: I see. This is what they submitted with -- in order to get their permit?

MR. BROWN: It's a front --

VICE CHAIR KING: Existing second story stucco --

CHAIRPERSON REED: With windows.

VICE CHAIR KING: Oh, that's above it.

MR. BROWN: Yeah, that's --

VICE CHAIR KING: And this is the porch?

MR. BROWN: And it says shingle roof with an arrow pointing down. And then you've got a section, the next one. It says repair roof only and it's circled.

MR. WATSON: This is permit five or four?

MR. BROWN: This is four.

VICE CHAIR KING: Repair roof only is what it says.

MR. BROWN: And again, this is -- by the permit's own admission, a roof has been built as of August 17th, '98 for a front porch, but no permit was ever issued to build the covered porch, which, again, is critical, particularly for front yard and also for lot occupancy purposes.

Thirty days later, I filed the appeal. At that time, just -- I was only aware of permits one, two and four, permit three having not been available to me directly or indirectly from any source. Permit five, at the time I filed the appeal, didn't exist because it hadn't been filed.

Permit five.

VICE CHAIR KING: Tab K?

MR. BROWN: Yes.

VICE CHAIR KING: Exhibit K.

MR. BROWN: Where it's stated October 5, '98, B419108, and it says build new porch, roof is per plans, porch in place. So first we repaired the porch that hadn't been authorized, and now we're asking for permission to actually build it.

And again, it touches upon the same issues, front yard, lot occupancy. And again, a pattern and practice

that shows that starting from January '98, where they're going --

VICE CHAIR KING: And new porch roof as per plans.

MR. BROWN: -- and, you know, how he had to get there, and how that circumvents the Wesley Heights overlay and zoning.

VICE CHAIR KING: Now, have we got the zoning right here?

MR. BROWN: Yes, we do. Yes, the Wesley Heights overlay district R-1-A. But if you look at the -- what was submitted, --

MR. WATSON: Permit number four, the zoning is R-1-B.

VICE CHAIR KING: Pardon?

MR. WATSON: Permit four, the zoning went back to R-1-B.

VICE CHAIR KING: It goes back to R-1-B without the Wesley Heights overlay?

MR. CLARENS: Was a site plan submitted as part of permit five?

MR. BROWN: No, everything that was submitted with the application is attached as part of Exhibit K.

MR. CLARENS: Which is the same elevation that was submitted as part of permit four?

MR. BROWN: Yes, you're correct, which is --

VICE CHAIR KING: And attached to it is the Office of Surveyor piece, which shows the existing house.

Does that include the second story? It shows a 47 foot -- it shows no garage.

MR. BROWN: That's correct.

VICE CHAIR KING: You see, this is the application. There's the plan for the new roof on the existing porch. This is the same thing that was with it. And then you've got this that shows the existing house.

Does that -- no sign of the garage on the surveyor's --

MR. BROWN: And it's very hard to tell. I mean, it would appear, given the depth of the existing house, that it includes the addition, but there's no way of telling. It's not dimensioned as to the size. It's not dimensioned as to the front porch.

VICE CHAIR KING: And this -- the date of this is -- I can't read it really, '99?

MR. NUNLEY: October 5th, '98.

MR. CLARENS: 10-5-98.

VICE CHAIR KING: Oh, okay; 10-5-98.

On 10-5-98, was the garage standing or had it been torn down? It was standing, wasn't it?

MR. BROWN: Yes, standing, completed.

MR. CLARENS: And have we determined who signed this block?

VICE CHAIR KING: Fred Shelton.

MR. CLARENS: Paul Shelton?

MR. BROWN: I think it's Fred Shelton.

MR. CLARENS: Fred Shelton.

VICE CHAIR KING: Is that a --

MR. CLARENS: Fred Shelton is an expeditor.

VICE CHAIR KING: That doesn't look like an M to me.

MR. NUNLEY: The name is on the front.

VICE CHAIR KING: No, but, I mean, we're talking about the signature on --

MR. CLARENS: Fred Shelton.

VICE CHAIR KING: Oh, I see.

MR. BROWN: It appears similar to the signature previously.

VICE CHAIR KING: Okay, okay.

MR. CLARENS: Okay, and just for the board's understanding, Mr. Nunley, and we've been asking sort of technical questions of you, the plat, behind the outline of the property submitted by the office, is provided by the Office of Surveyor after you apply for it.

The actual drawing of the house is drawn by the applicant?

MR. BROWN: That's correct.

VICE CHAIR KING: And the porch doesn't go the full length of the house, width of the house?

MR. BROWN: I believe it does. It certainly doesn't set back to the extent shown there. The dimensions on the plan show the porch being 30 feet, which is approximately -- you can see, --

VICE CHAIR KING: The width of the house.

MR. BROWN: -- it's actually 36½ feet. So the drawing's not dimensioned in any direction and it doesn't show the garage. If you look at it, it's kind of -- again, going back for lot occupancy purposes, you've got the three elements here.

If you leave out the garage or you leave out the front deck, you fall below the 2,000 square foot threshold. Also interestingly, on the surveyor's plat, it's showing a dimension on the front yard requirement --

VICE CHAIR KING: Eighteen feet.

MR. BROWN: -- eighteen feet, and I'd like to discuss it briefly, and perhaps George Watson can shed some light on it. But when the Wesley Heights overlay district was passed, they're showing a map with the areas affected.

And the only number shown on this side of the street is 28 feet. Now, I've gotten a hold of this map, which -- George, was prepared by your society?

MR. WATSON: It was prepared by Sue Bramos.

MS. DWYER: Excuse me, excuse me. We weren't permitted to clarify something. I don't know why Mr. Watson is permitted to clarify something at this point.

MR. BROWN: Well, nevertheless, the Wesley Heights overlay district was sponsored and a major force behind it was the Wesley Heights Historical Society trying to maintain the scale and the massing and the look of the Wesley Heights community.

And they've come out with a brochure which there's a formula. This is what was provided in the order. There's a formula for calculating on any given block the front yard requirement based on the average set back of all the houses on the block.

They appear to be distinguishing here -- again, we've got the bend in the road. Here it's 28.3 feet. Here it's 21.3. Regardless of which one, and certainly the order would indicate 28 feet --

MR. CLARENS: And this is Ms. Crary's house and this is Mr. Sisson's?

MR. BROWN: Yes.

MR. CLARENS: I see. So it's 21 feet. The house faces -- that's how I would interpret it. It faces 43rd Street, and the house is clearly on that street. It's not on New Mexico. And this indication of the 28.3 and the way it's drawn, if we're going to use this drawing, applies to New Mexico Avenue and the 21.3 to 43rd Street.

That's how I would interpret that.

VICE CHAIR KING: And this is what the D.C. Register requires?

MR. BROWN: Yes.

VICE CHAIR KING: My eyes aren't good enough. What does it say in the D.C. Register is the front yard requirement for Mr. Sisson's property?

MR. BROWN: It appears to be 28 feet there. That's a 28 and a circle on that side of New Mexico/43rd.

MR. NUNLEY: And there's nothing going down there, so we have all -- we traditionally assume 28.

VICE CHAIR KING: So this surveyor's plat shows only 16 feet. Is that, in fact, what exists?

MR. BROWN: I believe, if you use Mr. Sisson's drawings, which I did, and the scale is accurate, 17 feet. But it's less than 21. At least certainly less than 28.

VICE CHAIR KING: Less than 28.

MR. BROWN: And, I mean, given -- and without giving a dissertation on the Wesley Heights overlay district, that was one of the components is to keep the properties from going too far forward, and also to keep scale for lot occupancy purposes in a little better balance with the community.

So these are important -- I mean, these are the important elements of the Wesley Heights overlay district and are contrary to what was done there.

MR. NUNLEY: May I? The application implied that the porch was in place, and that's why that 28 feet was not applied here.

MR. CLARENS: Are you basically done or getting close to it?

MR. BROWN: I am. I'll reserve closing remarks. And I would like to briefly touch upon Ms. King's two questions, the question of multiple permits ban. And the danger we see here in multiple permits is different results, incomplete information.

And we see from the beginning that we have an integrated project. There was going to be a front porch. There was going to be -- and it was going to be a covered front porch, is my assertion. There was going to be a two story rear addition, and there was going to be a new garage.

And that was known from the very beginning, yet we went through this exercise of multiple permits that were inaccurate, at best. Work was done beyond that, so we've got a situation where the zoning administrator kept getting half information, incomplete information while the project was going forward in a way that, if they had been properly processed, and it's -- you know, the applicant's got to give the correct information.

There's an issue about how they're reviewed and approved by the zoning -- but you've got to start with the right information, and that, historically, has not occurred. And then you have the whole question of, you know, you've got remedial permits where you're coming back time and time again.

Mr. Sisson complains because the appeal now

includes a permit that he filed after the appeal for work that he did prior to the appeal. And we get into this kind of catch 22 round and round. And that's -- it's not banned, but that's the danger of the multiple permits, and I think in particular with an agenda.

I think we've also discussed Ms. Crary's goals, which, you know, starting with compliance, because a lot of the issues resolve themselves with compliance by itself. And then there's some site specific issues, which I believe are reasonable and I wanted to discuss and really haven't been able to for lack of interest.

Because this is not the right place to settle this dispute, but that's where we are. I'll reserve my comments and obviously my cross examination rights and welcome any other questions from the board.

MR. CLARENS: One more question, and that has to do with your -- you referred at some point that the side yard requirement might not have been complied with, and that a non-conformance side yard might have been extended.

MR. BROWN: Or a side yard that was built -- and particularly as to the rear addition may, in fact -- and again, it's hard to tell, but it would appear, based on the scale and the other dimensions here, that the addition was built in violation of the side yard, which is eight feet.

My measurement is that that's seven feet. Again, the architect didn't call out a number on the plan; but

using his, it appears to be seven feet. There may be questions. It appears that this proceeds out much further than before, that there may be a side yard question as to the garage.

But again, it's hard to tell because none of these issues were ever vetted at the time, and they should have been, based on what the applicant filed.

CHAIRPERSON REED: Are you done?

VICE CHAIR KING: You're appealing the actions of the zoning administrator, is that correct?

MR. BROWN: That's correct.

VICE CHAIR KING: The grounds for your appeal of the zoning administrator's actions are that Mr. Sisson did not provide the zoning administrator with adequate information, is that correct?

MR. BROWN: No, that -- I mean, that's the factual background, but I'm appealing that the zoning administrator issued building permits that should not have been issued. Now, and it raises a question, and it's difficult to put the zoning administrator in a very difficult position because he wasn't getting the right information.

But if he didn't have the right information, at some point you've got to ask for it or the plans are incomplete. But ultimately, and fair or unfair, and I think largely unfair in this case, but the zoning administrator is the person making the decisions, and that's the person whose

decision has to be appealed.

Efforts were made for enforcement against not the zoning administrator, but the applicant. They were only marginally successful, and that's unfortunate because, as it's been pointed out, this is a case that cries out for enforcement actions and may still.

But the issue before us and the critical issue is the permits were issued and shouldn't have been.

CHAIRPERSON REED: Ms. Dwyer, approximately how long do you think you need for cross examination?

MS. DWYER: Just a couple of minutes.

CHAIRPERSON REED: Okay.

MS. DWYER: I have a few questions. What I'm putting up is in your package. It's just a blow up of the site plan that was part of the January permit.

VICE CHAIR KING: That's permit number one?

MS. DWYER: This is permit number one.

MR. BROWN: I think you got my exhibit tab on it.

CROSS EXAMINATION

MS. DWYER: It does. I wanted you to know that it was authentic. And I guess my questions very much relate to the question of timeliness and laches, and also to address some of the statements that have been made which will also be addressed by Mr. Sisson.

But I want to go back to something, Mr. Brown,

you just said, which is that we see from the very beginning that there would be an integrated project, and that it was known from the very beginning.

And you have consistently come back to this initial site plan which was filed with the permit application that was issued in January of '98. And you, in your earlier testimony, said that even with that initial permit, the permit was erroneously issued in part because of the zoning classification, in part because of the belief that the lot did not meet the minimum area requirements, that there were -- it was a parking issue.

You listed a host of reasons why this initial permit was invalidly issued. And you have also said that Ms. Crary, who lives right next door, --

MR. BROWN: Lot 62.

MS. DWYER: -- right here, is very concerned about the Wesley Heights overlay district and the enforcement of that.

And my question is: In January, why wasn't an appeal filed?

MR. BROWN: Well, I mean, I can only speak for myself.

MS. DWYER: Well, you're speaking for Ms. Crary. You're her agent.

MR. BROWN: No, I've never pretended to speak for Ms. Crary expect for in specific instances. I'm speaking

Pat Brown, my personal knowledge, and I don't think the board took it as anything else.

I wasn't involved in this case, was unaware of this case until initially put it in the filing March 25th, '98. I can't speculate on Ms. Crary, why she wasn't concerned in January of '98.

CHAIRPERSON REED: You were retained at that time?

MR. BROWN: No, I was not.

CHAIRPERSON REED: When were you retained?

MR. BROWN: I was -- actually, on March 25th, when I looked over the records the first time, I had not been retained. I was essentially doing it a favor.

CHAIRPERSON REED: Well, that's when you became involved, in March?

MS. DWYER: The favor was at the request of Ms. Crary?

MR. BROWN: No, I don't believe it was. It may have been in request to George Watson or others. I regularly do that. And this is, you know, my neighborhood. ANC 3D is my ANC. And I've --

CHAIRPERSON REED: So you became involved in March?

MR. BROWN: I looked at the permits at the records branch March 25th. Was I retained? No, I was not retained at that point. I really was not retained -- and

again, shortly after that, Ms. Crary went to China and didn't return until June.

I really wasn't retained in any way until her return in June. And you'll see shortly after that I sent a letter to Mr. Sisson, which had trouble finding him, but -- so that was really my first -- other than looking at the records and obtaining them.

And you'll recall back at that time frame I was still a sole practitioner, so I did a lot more of this being a good citizen back then. So --

MS. DWYER: Let me understand this. Back in March 25th, you researched the city records and determined that this permit had been issued and that it did not comply with the Wesley Heights overlay district?

MR. BROWN: I saw the permit, you know, the file. I didn't receive a copy of it then. I noted some discrepancies like it was in the wrong zoning. I mean, did I make a zoning calculation or computation sheet? The answer is no.

I didn't look through it. I was just looking around.

MS. DWYER: All right, so on that date --

MR. CLARENS: But Ms. Dwyer, it is also true that around that same time, in the second half of April and a long time before that happened, a request went to the zoning administrator to issue a work stop order.

MS. DWYER: Yes, I'm going to get to that.

MR. CLARENS: Oh, you're going to get to that?

MS. DWYER: I'm trying to understand myself the chronology. This is news to me.

So on March 25th you receive the city records. Did you then contact Ms. Crary?

MR. BROWN: I may have had contact. Yeah, in fact, I know I had contact with her before she left for China.

MS. DWYER: Did she indicate at that time that she had requested that a stop work order be issued?

MR. BROWN: She was -- and she didn't understand the stop work order from a Nobel Prize. She had made calls to the zoning administrator's office, I believe. And so other than that, she -- you know, I did not give her a copy of the plans, a copy of the permits at that time.

We didn't have any real substantive discussion about the matter until her return from China, and even that was difficult because she had just gotten out of the hospital. So --

MS. DWYER: You didn't see any sense of urgency in light of the fact that construction was well under way; that, in your opinion, the permits were invalidly issued; an abutting property owner had already raised a concern; and that this individual was proceeding with a substantial investment in the property and you didn't see any urgency in terms of

filing an appeal at that time or advising Ms. Crary?

MR. BROWN: Well, I'm not going to tell you how I advised Ms. Crary because that's between her and I. And my sense of urgency, I operate on her behalf, so, I mean, I'd be speculating.

I think, quite frankly, under all the circumstances and -- the need to be careful, to be accurate, to be careful, to understand what was going on. And also to allow the zoning administrator, in an enforcement, compliance measure, to some extent to have an opportunity, which I thought was more appropriate as we moved into June and July.

MS. DWYER: Let me just ask you. The stop work order was in April and then construction proceeded throughout the summer, and it was pretty much finished by the time you filed the appeal in September?

MR. BROWN: As to --

MS. DWYER: All of the work except the porch, I think you've indicated.

MR. BROWN: Yeah, it was pretty much complete. Again, I was looking for and had no knowledge of the permit number three for the garage being --

MS. DWYER: But the garage was being built. Did it occur to you that if the garage was being built, that a permit may have been issued particularly following a stop work order?

MR. BROWN: I mean, I was concerned more so,

quite frankly, that Mr. Sisson was once again building without a permit. And --

MS. DWYER: But you didn't do anything about that?

MR. BROWN: No, I had ongoing conversations with Mr. Nunley and his office, and --

MS. DWYER: But you didn't file an appeal?

MR. BROWN: I didn't have anything -- as to the garage, I didn't have anything to appeal.

MS. DWYER: Well, what about --

MR. BROWN: There's no such thing as a BZA appeal for --

MS. DWYER: What about the two story addition; at that time, it didn't occur to you to take an appeal of that and raise all of these issues in the context of one?

MR. BROWN: I'm suffering from, in this case, 20/20 hindsight. I've had the opportunity to see a pattern here. And in July of this year, were all the facts clear? No, they weren't as clear as they are now given what Mr. Sisson has done and the appeals -- the applications he's filed.

So yeah, I've got brilliant 20/20 hindsight now, but I've got the benefit of all the facts that have occurred long since --

MS. DWYER: Well, if I could just interrupt. You have 20/20 hindsight in terms of what you think his

motives were. But back in March, when you researched the city records, this is what you saw: everything that was being planned for this property, the integrated development plan, which you knew at that time violated the Wesley Heights overlay district, violated, according to you, the minimum lot area, raised parking issues, side yard issues, numerous issues.

MR. BROWN: How could I know that? The front porch was uncovered, so it didn't apply for front yard or occupancy purposes. The garage, depending on which --

MS. DWYER: Let's take the minimum lot area. At that time, --

MR. CLARENS: The garage was taken out of the first permit, so the garage doesn't count. And the --

MS. DWYER: But even the basic, the minimum lot area requirement that you say this was a nonconforming lot which should have immediately triggered zoning review, that was apparent back in March.

MR. CLARENS: No, that was clarified.

MS. DWYER: That was clarified by Mr. Nunley. But Mr. Brown, at that time, up until Mr. Nunley clarified it, believed that this did not meet the minimum lot area requirements and stated earlier today that, in his opinion, that triggered automatically zoning review.

So there was knowledge back in March that there were zoning issues. And construction --

MR. BROWN: Well, I disagree with that. There was concerns. There was some basic information. And I think it's unfair to Ms. Crary, more importantly, to try to impute to me in March of '98 things that took a long time and some detailed work to find out.

MR. CLARENS: And in fact, you were not engaged. So professionally -- I mean, as a good citizen, but, you know -- you know, we're not policemen looking over some of citizen's -- behave as that sometimes.

MS. DWYER: Well, Mr. Clarens, if I can clarify. The appellant is Ms. Crary, not Mr. Brown.

MR. CLARENS: Correct.

MS. DWYER: Ms. Crary lives right next door.

MR. CLARENS: Correct.

MS. DWYER: And beginning in January observed the construction. She went down to the city. She had stop work order issued. They came out and obviously had to inspect the work to decide whether or not to issue the stop work order.

All of the property, the construction, was known to the city and inspected at that time. The fact that Ms. Crary waited to formally retain Mr. Brown and then waited until September to file this appeal, I believe, goes very much to the issue of timeliness.

She had actual knowledge. She was observing the construction. She knew there were zoning issues. She had

gotten the city to intervene. And she waited until September.

MR. CLARENS: You're testifying. Okay.

MS. DWYER: But I think we have to separate this is not an appeal by Mr. Brown. Mr. Brown may not have been formally retained, but the appellant, Ms. Crary, is the one who is charged with not only notice --

CHAIRPERSON REED: Okay, now, Ms. Dwyer. Why don't you proceed with your questioning. And then, when you put on your case, then you can testify. I know that you were just responding to Mr. Clarens' questions, but we don't want you to get too far into your case.

MS. DWYER: The other questions I have -- you have raised a lot of issues about, I guess, permits three, four and five as to whether they included the site plan that showed all of the work on the site.

And I think your statement was if the city were to go on the basis of those drawings, they may not know the cumulative impact of what was being done here. But when the city issued the stop work order, is it not a fact that they had to go out and inspect the property at that time in order to issue a stop work order?

MR. BROWN: I mean, I assume so. I have no firsthand knowledge about -- and it's been very difficult to get any information. I have no firsthand knowledge about it other than I'm told the stop work order was issued. That's all I know.

MS. DWYER: And do you have any knowledge as to whether the city continued to inspect this property so that they did have knowledge of the work that was being done and you --

MR. BROWN: Quite frankly, my understanding is that, despite attempts particularly in the mid summer months, that the city was unable, unwilling to inspect other than -- I believe Mr. Nunley and Mr. Bellow went out sometime -- it had to have been in August.

I mean, I just don't -- it was after I wrote Mr. Sisson my July 10th letter.

MS. DWYER: So at least in August, your testimony is there was an inspection by the city of the property?

MR. BROWN: That's my understanding. I didn't make the inspection. I believe Mr. Nunley did. He can tell you what occurred.

MS. DWYER: All right, I think that may be all of my questions. I think I'll save the rest for direct in terms of our testimony.

Mr. Clarens, you've indicated the property tax issue.

CHAIRPERSON REED: Just one second.

MS. DWYER: I just wanted to clarify.

Mr. Clarens, you indicated the property tax issue was not before you.

VICE CHAIR KING: That what issue?

MS. DWYER: The property -- the concern that Ms. Crary has about her property tax assessment rising as a result of it. This is not germane to this proceeding. Because I was just going to ask Mr. Brown a question about that.

MR. CLARENS: I didn't think that it had anything to do with what we're looking at. I don't see any reason why it should. I mean --

VICE CHAIR KING: I agree with you, Mr. Clarens.

MS. DWYER: All right, so I'll leave that one out.

And then I just wanted to clarify that the -- that one of the issues for Ms. Crary is that she wants to be able, as I understand it, to access the rear of her property, for purposes perhaps of landscaping equipment, by traversing the rear of Mr. Sisson's property.

MR. BROWN: Her concern is that up until the garage was built here, other than where it was before, as you can see -- the large photo helps a great deal -- is that she could go right back here. She can't do that now.

So she's got a dilemma that she's looking to solve.

MS. DWYER: But her current -- just to clarify, her current access is from 43rd Street directly. She has a

driveway with access to her own two car garage?

MR. BROWN: I don't know if it's a two car garage. She has access here to a garage in the lower part. She has no access because of the grade change here.

And you know -- and George, you know better, but she's lived here 25 years and she's always had access to her property back there.

MS. DWYER: But let me just clarify. You researched and there's nothing in her title that gives her easement rights to use this private easement area to access the rear of her property?

MR. BROWN: That's the best I can tell. And to be honest, my understanding is that there's no easement, period, which would then affect Mr. Sisson as well.

MS. DWYER: Have you researched the title to Mr. Sisson's property?

MR. BROWN: No, not specifically.

MS. DWYER: All right, thank you.

No further questions.

CHAIRPERSON REED: Okay, now Mr. Clarens -- excuse me one second.

(Whereupon, the foregoing matter went off the record briefly.)

CHAIRPERSON REED: We'll now go to the zoning administrators.

MR. NUNLEY: Well, Madame Chairperson, I --

VICE CHAIR KING: You need to identify yourself to the record, Mr. Nunley.

MR. NUNLEY: All right, my name is Edgar Nunley. I'm Chief of the Zoning Review Branch within the Zoning Division of the Building and Land Regulation Administration in the Department of Consumer and Regulatory Affairs.

I have had some input in this case since the reviewers that issued the permits, all under my direct supervision. I've had a number of conversations with Ms. Crary and with Mr. Brown. I don't believe I've spoken directly with Mr. Sisson.

I just don't recall. I don't believe so. I know I have not spoken with Ms. Dwyer.

Going back to the chronology here of the permit issuance, back to the original permit that was issued January 29th of 1998 for the two story addition.

Now, when a permit application is submitted for an addition, whether it's a horizontal expansion or vertical expansion such as a story, a dormer or whatever, a D.C. surveyor's plat is required to be submitted along with that proposal.

I can only, at this point, assume that that was done for this and some of the other permits. I have the actual records here from the Records Management Branch within our administration. And with the exception of permit number

five, the last issued permit, none of them include copies of the plats.

The plat is what the zoning review person would ordinarily use to decide many of the issues that have been discussed today. We've got the exhibit up here that is sort of a generic representation or I'm assuming is what Mr. Sisson ultimately wanted.

I haven't been out to the property except that one visit. Much of this wasn't there at that time, some was. But it's not, to the best of my understanding, on the D.C. surveyor's plat, a representation.

Our technical people wouldn't even have looked at this on the plans. They would have looked at the actual copy of the D.C. surveyor's plat that was presented. It's, unfortunately, unavailable to me now.

But --

VICE CHAIR KING: Are you suggesting that it wasn't submitted?

MR. NUNLEY: No, I'm not suggesting that at all. I'm suggesting that, at some point between the zoning review and the time that the file got down to the Records Management Branch, that plat was no longer part of the package.

CHAIRPERSON REED: So you're saying it's not only that that -- rather, that in this particular instrument, they would have been looking at something entirely different,

the surveyor's plat, to make a determination?

MR. NUNLEY: That's correct.

The surveyor's plat, as we established earlier, is prepared by the Office of the D.C. Surveyor. The surveyor assigns it, attests to the accuracy of the lay of the land, so to speak, the dimensions of the lot and its -- well, the dimensions of the site itself.

On the other signature line, the applicant, through his -- either personally or through his architect or other agent, attests to the accuracy and validity of the infield. On that plat, the applicant is to show all existing and proposed structures.

And the information that goes on that plat is laid out in chapter 32 of -- I don't recall the exact section, I'm sorry. I think it's 3202. Just one moment. 3202.2(b). It's the responsibility of my staff to make sure that the plat is in sufficient detail to allow an accurate determination.

The plats aren't here, so I can't speak to whether or not that was done. I will admit to an error on this first application made by our technical staff in putting down the wrong zone. Not only did they not pick up the Wesley Heights overlay, but they also mis-indicated the underlying zone for this particular property, lot 810 in Square 1621.

And I apologize. Just going with the lot and the square beings up another --

MR. CLARENS: Mr. Nunley, --

MR. NUNLEY: -- area, if you will, but go ahead.

MR. CLARENS: -- let me ask for the clarification for the board that even though you're right and the plat is what is looked at, it is my experience that zoning technicians review the entire set of drawings in the process of approving an application.

MR. NUNLEY: That's correct.

MR. CLARENS: And they look at the entire scope to determine such things as, for example, if an office is going to be placed which might trigger the requirement for a home occupation license?

MR. NUNLEY: That again is correct. But in terms -- and so they may have very well looked at the plans; but if you look at the plans, you'll see that the issue of the garage -- the garage was omitted.

They would not have looked at this sheet on the plans. They would have looked at the plat. They would, of course, have looked at the structural drawings because use is one of the issues that we have to deal with, as you stated.

They would make sure that there's nothing shown on the floor plans that would imply some use other than single family, as was indicated on the application. They would look at the plans to assure that the dimensions on the actual drawings are consistent with the dimensions on the plat.

So yes, they do look at the plans for cross

reference. But in terms of the site itself, they would have looked at the D.C. surveyor's plat and the representations thereon as opposed to this piece that was an add on to the drawings that were submitted.

MR. CLARENS: And because we do not have that plat and you do not have that plat, you cannot say whether an error was made or not?

MR. NUNLEY: I cannot say whether an error was made as regard to set backs, etc. It's been brought up that this is showing seven feet for the addition as a side yard set back. I just did some very quick calculations.

The existing structure is nonconforming with respect to side yard. That would have had an impact both on the rear two story addition and also on the porch on the front, if it were any more than an open deck kind of a structure.

Side yard of eight foot would have been required both in the front and the rear in that instance. Again -- well, I'm getting ahead. I don't want to get to the garage until we get to the permit that relates to the garage.

But on the set of drawings that was submitted with the first application, the garage was not at issue. It didn't show on the application. Even though it showed on the plans, it was clearly -- it clearly stated omit.

MR. CLARENS: And the permit was not issued for a garage?

MR. NUNLEY: And the permit was not issued for a garage. I'm going back to something that was pointed out earlier. I don't know whether the technical person noticed. I know that in my first review of the drawings, I didn't notice that detail that said -- that had to do with removal of the existing garage.

It wasn't a part of the application. The new garage that was indicated in this site plan was omitted on the drawings. I doubt that I would have even noticed the little indicator of demolition.

If the garage -- ostensively, if the garage had been demo'd under this first permit, they should have gotten a stop work order then by the construction inspector that's out there being the eyes and ears for the city.

And they should have been required to come in and get a demo permit at that time. It would have come through zoning. We would have had that information before any of the subsequent permits were issued.

But the -- if the plat only showed the -- and it could not have shown -- in my opinion, it could not have shown the two car garage because it wasn't shown either on the permit drawings or the application.

And just by policy and practice, the technical person would not have approved a new garage structure on a site unless that garage structure showed -- unless you had both the application showing the structure, the plat showing

the structure, and the plans all showing the structure in a consistent manner.

So I'm sorry that I'm in a position to have to make an assumption on that, but I assume that the garage that's shown here did not show on the plat that was the basis for issuance of this permit.

Now, if that was the case, even with the error of the R-1-B zoning, the project would have been within the 40%, and I believe it probably would have been within the 30%. I haven't made that calculation at this point, quite honestly.

But looking at the numbers I see up here, I believe it would have been within the 30% of the Wesley Heights overlay. But admittedly, the Wesley Heights overlay district was not evaluated when this first permit was issued.

The only difference -- notwithstanding the Wesley Heights overlay, the only difference between a review in the R-1-A, which is the actual underlying zone, and the R-1-B that was mistakenly put on the application and subsequently the permit, is the lot area and width requirement.

Generically, the other requirements, the set back requirements, the lot occupancy requirements, there is no FAR generically in the R-1-A, R-1-B. Those would be the same. So the error of -- the error between the R-1-A and the R-1-B would have had really no substantive effect on the review of the first permit application.

MR. CLARENS: And the front porch would not have been an issue as far as the Wesley Heights overlay because it was just a porch and it would not have been -- less than four feet, it would not have been an encroachment on the front yard requirement?

MR. NUNLEY: That's right. And it would not have counted in building the area, so it wouldn't have been a part of the lot occupancy calculation either. And it would have been allowed as -- well, let's say I believe that it's a step below the first -- the level of the first floor.

I don't want to get my apples and oranges mixed up here. But the fact that it's no higher than four feet allows an encroachment, making the same mistake a lot of folks -- that I correct a lot of folks on every day.

Whether it counts in lot occupancy depends on its proximity with the main floor of the building, so I want to make that clear. I don't want to confuse an already confusing issue.

Now, if we can move on to permit number two, which is the permit issued February 9th of 1998. Again, our technical person made an error. They corrected one error, but maintained one other. They did note that the underlying zoning is, in fact, R-1-A.

However, they still did not pick up the Wesley Heights overlay. I believe that this is when I first became involved in this project. I believe that it was -- I'm sorry,

the property owner on lot 62, I've forgotten her name.

VICE CHAIR KING: Ms. Crary.

MR. NUNLEY: Yes, I believe Ms. Crary is the one that called me indicating that this was in the Wesley Heights overlay. I went to our plat books personally and it didn't show as being in a Wesley Heights overlay on our plat books either at the zoning counter or in the zoning administrator's office.

So I further researched. And this was not all in the same day, unfortunately. I do apologize for the length of time it took me to find out that this was, in fact, Wesley Heights. But I did research through the help of the Office of Zoning and got the actual order which clearly showed that this property is in the Wesley Heights overlay.

Now, the -- well, again, I'm getting ahead of myself. Going back to permit number two again, February 9 of '98, it says "addition to garage: length, 20 feet; width, 20 feet; height, 14 feet; material of roof, shingle; material of side, siding; no blocking public alley with trucks."

Again, this would -- this permit application would have been -- or would have required that a D.C. surveyor's plat be submitted again showing the existing conditions as well as proposed. Existing conditions as of February 2nd, '98 should have shown the addition that was approved January 29th, '97.

Whether it was built or not, it was approved to

be built, and so therefore it was part of the property even if it were still under construction. So it should have shown on the plat that was submitted with the February 9th permit.

Again, there was no plat with this document -- the permanent documents in the file, so I can only assume that the technical person asked for that because that is a longstanding policy and it's impossible for a zoning evaluation to be done without that document.

So I believe that that's a fair assumption, but I don't have the actual document. I don't have access to it. It just was not in the files.

Going back to --

CHAIRPERSON REED: Mr. Nunley, I'll ask you very quickly. If it's not in the files, then -- well, okay, the assumption is that for the determination to be made, there had to be one submitted.

MR. NUNLEY: That's correct, that's correct.

CHAIRPERSON REED: So that's a given, that there was one that was submitted. However, it is not in your files?

MR. NUNLEY: That's right. Now, so you'll understand the process, zoning -- before we moved into the new building, when we were still at 614 H Street, N.W., the permit process was in an open area with a series of desks manned by engineers, architects, technical persons.

Zoning was the first such technical station.

Once the zoning review had been done, the -- well, let's just say for any new structure or an addition to an existing structure, we would need a permit application, plats, three plats from the surveyor's office.

One package includes three plats. All three are required to have the infield. And four sets -- minimum four sets of the architectural plans. That's minimally required to a zoning review of an addition or a new building, whether it's accessory or otherwise.

Once the zoning person has completed the review, he would stamp the plans, ostensibly, stamp the plat and sign the back of the application, and the package would move down the line through the remaining number of stations required depending on the scope of the work.

When the permit gets down to engineering, engineering -- the structural engineer performs two functions for a walk through job. He not only does the structural evaluation, but he also does quality control to make sure all of the components are there.

And then it's passed over to permit typing where the permit is typed. The bill is typed. The person pays the fee and the permit is issued. And all of the supporting documents are packaged to go down to the file room. So it's unfortunate, but it's not rare, that at some point between the zoning station, the myriad other stations, and the point of filing, that one or more documents is -- becomes

missing.

It just went through too many hands.

MR. WATSON: Well, do you envision a circumstance whereby the technical person would stand the plans and so forth without a plat? In other words,--

MR. NUNLEY: No.

MR. WATSON: -- once they've signed that, that is put out to this person saying I know that all the documents here are complete, otherwise I will not stamp that, put my signature on it?

MR. NUNLEY: That's correct.

MR. WATSON: So we can assume the plats were there, but somehow were lost, misplaced as it was processed?

MR. NUNLEY: That's the assumption I'm making, they were not in the file.

MR. WATSON: Okay.

MR. CLARENS: Just a point of issue that if I'm not here when the intervenor speaks, it is also true, Mr. Nunley, that a plat is attached to the permit sets -- that the permit set is given to the owner or its agent at the time that the permit is issued?

MR. NUNLEY: That's correct.

MR. CLARENS: And it is also true that the surveyor's office issues a receipt through which you actually -- which you would pay in order to get the survey order?

MR. NUNLEY: That's also correct, yes.

MR. CLARENS: And that the intervenor should have copies of those --

MR. NUNLEY: Yes.

MR. CLARENS: -- if, in fact, the DCRA doesn't have them?

MR. NUNLEY: Yes.

MR. CLARENS: Okay.

MR. NUNLEY: Okay, so we did catch that it was R-1-A. But, as I indicated before, it was much later after issuance of permit number two and after research that we realized that the Wesley Heights overlay had not been placed in the books appropriately.

It did not extend to this square as it should have. We rectified that, and that's why the next -- well, at some point we did get it right and put the Wesley Heights in there.

CHAIRPERSON REED: So your staff were operating under insufficient information?

MR. NUNLEY: That's correct.

CHAIRPERSON REED: And least from this very issue.

MR. NUNLEY: That's correct.

CHAIRPERSON REED: And then --

MR. NUNLEY: The first one, when it says R-1-B, was just an error and I have no way of understanding how he could see that as an R-1-B.

CHAIRPERSON REED: But they were using -- they're currently using the same documents that you were using prior to your actually getting a copy of the zoning order, --

MR. NUNLEY: Yes, but it was quite clear that it was R-1-A. It was just unclear that it was Wesley Heights.

CHAIRPERSON REED: No, no, I understand that.

MR. NUNLEY: Okay, I'm sorry.

CHAIRPERSON REED: I'm saying in regard to the second one when they did do the -- they did designate it as R-1-A, but not Wesley Heights. But it appeared to me that not until Ms. Crary called you did you determine that something was amiss; and then, through your research, were able to ascertain that this, in fact, was a Wesley Heights overlay.

MR. NUNLEY: That's correct.

CHAIRPERSON REED: Now -- okay, well I hope that you can later explain how we get to number four and go back.

MR. NUNLEY: Well, I think I can. I think I can, but let's move on to number -- well, let's go back to number -- let's finish with number two. Because the only other issue there is the size of the garage and the fact that it came across as an addition to the existing garage.

So the implication there -- and again, notwithstanding a note on the drawing that implied demolition, because I think that that may show consistently throughout all of the sets. At least the three sets that I'm privy to here

today.

It shows as an addition which, just by its very nature, implies that the original garage was still there. And from the exhibits that I've seen here, again the plat, I don't have the plans that show that.

But from the exhibits I've seen here, it also implies that the garage addition was to be to the rear of the existing garage and have no impact on the common concrete drive, whether it's an easement or not or the set backs would have been the same as they were, just a larger garage.

MR. CLARENS: The addition would have been to the front -- towards the front of the house.

VICE CHAIR KING: From the bottom of the picture.

MR. NUNLEY: Well, again, not having the plat is a disadvantage, but on -- this drawing was later. On one of the drawings that was submitted along with permit number two, it shows the garage addition on the side going up toward the house.

MR. CLARENS: Towards the house?

MR. NUNLEY: Uh-huh.

MR. CLARENS: Okay.

MR. NUNLEY: And so the review, even under the R-1-A, they still would have been within the 40%. There would have been no set back issue because it only -- the garage was an accessory structure. There's no side yard set back

requirement for accessory structures.

So it didn't have substantive effect on issuance of permit number two given the information at hand at the time. Now we get to permit number three.

When we did realize that it was Wesley Heights overlay district, we -- and all during this process, incidentally, we were in touch back and forth with the building inspections division. They were our eyes and ears.

Our zoning inspectors aren't structure people, and the building inspector has responsibility for assuring that projects are built according to plans and that thing. And I'm not trying to cast dispersions.

I know that those guys are as understaffed as we are. And it may just have been that he didn't -- wasn't able to get by the property often enough to see what was going on until he was called by us. I can't speak for him. I'm just want to make it clear that I'm not assigning blame nor fault to anywhere other than -- I can't respond for any agency other than my own.

But we did realize that it was in the Wesley Heights overlay. And I believe that there was also -- I don't have anything written to --

VICE CHAIR KING: This was the one after the stop work order?

MR. NUNLEY: Yes. Just one moment. Yes, there were two stop work orders issued according to -- no, I'm

sorry, that's the exhibit number. Yes, this was after the stop work order was issued.

VICE CHAIR KING: And it also showed the addition being -- an addition to an existing garage, or was it --

MR. NUNLEY: Well, no, this one -- this one showed that the -- we had found that the original garage had been completely torn down.

VICE CHAIR KING: Oh, okay.

MR. NUNLEY: And we put -- asked a stop work order be placed so that they would come in and get the appropriate permit to build the new garage.

Now, the new garage to be located on the same spot as previous garage, no crossing sidewalk with construction vehicles; length, 20 feet; width, ten feet, nine inches; height, eight feet, which I believe is consistent with the original garage that was there.

And my understanding is that we approved this because -- and point of honesty, when the original garage was removed, we should not have approved a second garage. We should not have approved a replacement garage because there was no ingress/egress.

Now, I don't have a plat with this one, but what I do have is the plat that was submitted with permit number five. And even though it's -- I'm not trying to use it to show the structures, I can use this to show the site

itself.

And it's quite clear on this plat that the only access from a public right of way is through 43rd Street. When --

MR. CLARENS: Meaning that a plat -- if an easement was recorded in the surveyor's office and an easement that would access, that would have been shown as part of the plat?

MR. NUNLEY: No. What this plat should have triggered is denial by the zoning technician. And if there was an easement for ingress/egress, it would have been the responsibility of the applicant to provide us proof that that easement existed and was duly recorded to show that we had access from a public street or alley through a recorded easement to the properties.

CHAIRPERSON REED: So the responsibility lies on the ZA's office --

MR. NUNLEY: Yes.

CHAIRPERSON REED: -- to make sure that the right zoning was applied there, and also that the permit was in -- permitting was in compliance with zoning regulations, and it was not?

MR. NUNLEY: That's correct.

CHAIRPERSON REED: That's just a restatement.

MR. NUNLEY: That's correct.

CHAIRPERSON REED: All right.

MR. NUNLEY: All right, I believe that the only reason that this was approved is that there was three week -- the determination was, to the best of my judgement, is that there was a previously existing garage there. The size of the garage had been scaled back to what was originally existing.

The indication was that it was going to be placed in the same spot at the same size and it was -- so as not to -- and also that the construction had begun based on a permit that had been issued, however erroneously before.

There was consideration for both sides here. We considered that the -- that Ms. Crary's concern about being this monstrosity of a structure would no longer be there, so that would speak to her concern.

We were concerned that the applicant again had come through in good faith, we thought, and we still felt at the beginning. We made errors in determining the Wesley Heights overlay -- had moved forward in gaudy faith up to this point.

And if would just put back what was there in a more modern condition, that it would appease both sides and there would be no issue.

MR. WATSON: Did you or any of your people have reasons to believe that the intervenor or, at that time, the applicant was less than candid or forthright in giving information; that there was any kind of deception involved or he was acting in good faith and, because of this error of R-1-

B and so forth, he had no reason to believe otherwise.

So all these multiple permits that came subsequently were an attempt to rectify this problem as it unfolded, these e zoning mistakes were made. So do you see the multiple permits as a means of him trying to deviously get around the requirements, or is this simply an attempt to try to stay abreast of all these errors they developed to try to rectify and get this thing finally settled?

MR. NUNLEY: Well, let me say that, up to this point, I felt that it could be no -- it could be as simple as just mistakes, just errors. And up to this point, I didn't have any indication that there may or may not have been any devious or any misleading activity.

Looking at the site plans that are on the various drawings, you see that some show some things, some show other things, some are missing, this or that. That would have been the only indicator that there might have been something outside of the norm.

But that, as the only indicator, wouldn't have raised a flag with me. I don't have the plats, so I don't know how this thing evolved. As each permit was issued -- each of the three permits we've discussed so far would have required a completed plat.

If I were able to look at the three plats, one, two, three and all in the same room at the same time, then I'd have a more, a better idea as to whether or not to believe

something outside of the norm was taking place here.

MR. GRIMM: What you know of it, in looking at this, in your best judgement, this seems to be simply a matter of errors were made by your office and an attempt by the Applicant to try to get caught up and make sure he's complying with, as the new zoning classification became known in the Wesley Overlay District. As all these things unfolded, you made an attempt to try to comply with those. Is that your reasonable judgement?

MR NUNLEY: Well, based on the information I had at the time, yes, that's my assessment. I had nothing at this point in the process to indicate that there was anything amiss. After, it wasn't until just before the issuance of the third permit that I even knew there was a Wesley Heights Overlay. So I had nothing to raise the flag.

CHAIRPERSON REED: Mr. Nunley, in regard to the erection of the garage --

MR NUNLEY: Umm hmm.

CHAIRPERSON REED: -- the permit allows it to be a new garage in the same spot with no, no crosswalks, no crossing sidewalk with construction vehicles. Length 20 feet wide, 10.9 feet, 10.9 --

MR NUNLEY: Ten feet, nine inches, in width.

CHAIRPERSON REED: Oh, width.

MR NUNLEY: Yes.

CHAIRPERSON REED: 10.9, ten feet, nine inches

in width. And what's the other, I can't see that?

MR NUNLEY: Height, eight feet.

CHAIRPERSON REED: Eight feet height, okay. Now are you saying that although it was, this is what was permitted, that what was actually, actually built, exceeded what was permitted?

MR NUNLEY: In the final analysis it, it exceeded what shows on that permit. Again, my, in terms of chronology of when, when it was expanded to that side, I don't see a permit that would allow an expansion to that size.

CHAIRPERSON REED: So this, in this instance, this is a blatant violation of the permit?

MR NUNLEY: That's what I see by virtue of the issue, this issue here, yes.

CHAIRPERSON REED: And your statement was that while, yes, you would, you were in agreement with permitting the garage to be erected as it had been, but had you known, is that what I understand you're saying? Had you known that the place of the garage, the placement of the garage as well as the size was going to be increased, then the permit would have been denied?

MR NUNLEY: That's correct. We would have invoked the full weight of the regulations as regards to ingress/egress to a rear garage and we would have moved forward from there.

CHAIRPERSON REED: Well there's, well at what

point that you, were you made aware of the fact that, or realized what was put there was not in compliance?

MR NUNLEY: I believe it was when, now I had probably got, I believe I had gotten calls, I'm not sure whether I had gotten, was getting calls yet from Mr. Brown. I know I was getting calls from Ms. Crary. During the early summer months I believe, and I don't have the information with me here, but I believe that Mr. Bellow and I went out there to the site, because I just got, I was getting different versions of what was taking place out there and I decided to go see for myself.

And I believe that Mr. Brown is right, that that was in August. I don't have the exact date here with me now. And that's when I saw that it was more than what that permit had authorized.

MS. KING: That was August of 1999?

MR NUNLEY: '98.

MS. KING: '98, of course.

CHAIRPERSON REED: What do you do in a situation like that?

MR NUNLEY: We, again, worked through the, the Building Inspections Division to have work stopped, to have them brought into compliance with plans and plats.

CHAIRPERSON REED: You didn't make, but you didn't vote another Stop Work Order?

MR NUNLEY: Well again, we don't issue Stop

Work, we work with Building Inspections Division. They are in power to issue Stop Work Orders, we are not.

CHAIRPERSON REED: Okay, once you notify them that you --

MR NUNLEY: As soon as I knew.

CHAIRPERSON REED: All right. And then --

MR NUNLEY: Yes, we notified them.

CHAIRPERSON REED: -- you did and they didn't?

MR NUNLEY: Well, I honestly don't know, I didn't get any feedback. I don't know what action they took. I made the assumption that the work was stopped until they were to come in and correction the construction. The permit that was issued, the structure that was built was larger than the most recent permit that was issued.

The, that's an issue for the building code to have them bring it back into conformance with the structural, the --

CHAIRPERSON REED: And you notified them?

MR NUNLEY: Yes, we did.

CHAIRPERSON REED: But you don't, then once you notify them, you don't know whether or not they actually took, take action?

MR NUNLEY: When, if they give me feedback, I know. If they don't give me feedback or if I don't consistently go to them, I don't know.

CHAIRPERSON REED: So in this instance,

obviously, nothing was done?

MR NUNLEY: That's, that's, I don't have any indication that anything was done.

CHAIRPERSON REED: Okay. Go ahead.

MR NUNLEY: And now we move onto, oh, and incidentally, Mr. Brown mentioned earlier that permits, two of these permits were not part of the file when he reviewed it. But when I first starting getting information about this project, they weren't a part of the file when I reviewed it either. So, they came to my attention through his initiative, quite honestly.

But anyway, getting to Permit No. 4, we go back to the area that started the whole ball rolling, the R-1-B. The, this would have been a very, this would have been a very cursory kind of review for a Zoning Engineer. Repair existing roof, roof in place, no structural change as per plans. The, what they are requesting implies no zoning implication. You've got an existing structure, whether it's conforming or nonconforming.

You're allowed to make repairs to an existing structure. You're allowed to do basic modernizations. There's no indication of any sort of an addition, expansion or any other kind of structural movement that would increase or extend or otherwise exacerbate any existing non-conformity, if it were there in the first place. Very often, I've instructed staff not to do this, but very often an Applicant will come in

and they'll have, in the case of a commercial zone, they'll have a copy of their previous Certificate of Occupancy. And it will have the zone on it. Or they'll have a copy of a previous permit and it will have the zone on it

By the time that this permit was issued in August 18th of, August 17th of 1998, the plat books had been corrected to clearly show the Wesley Heights Overlay. The R-1-A zoning, I personally outlined the R-1-A zoning so that it would be clear and even if you left your glasses home that morning you could tell it was R-1-A with the Wesley Heights Overlay.

Ms. Mack, who is the technical person that, and Mr. Bellow, because of his input into the first three, was just as aware as I was of the history of this project and would not and could not have made this error again. Unfortunately, Ms. Mack was only aware of it by memo. When the person came through, my understanding is that they had a copy of the original permit. And they showed her that and she took the zoning from the original permit.

Instead of looking it up in the book. It's an expedient that used to be used on that counter but we've stopped using it because there have been a number of zone changes, both residential to residential consistency, the end of the UR, the Urban Renewal, a lot of zone changes have come through and it's just not safe to do that any longer. So we've put out a Directive that they not do that. She made an

error here and she did do that.

She looked at the previously issued permit and just perpetuated the error that had been made then. As regards the --

MS. KING: Excuse me a moment.

MR NUNLEY: Yes.

MS. KING: The original permit says nothing about a porch, is that correct?

MR NUNLEY: That's right.

MS. KING: Because it was a, it was an uncovered deck and --

MR NUNLEY: That's correct.

MS. KING: -- therefore they didn't need a permit to build it?

MR NUNLEY: That's right.

MS. KING: Thank you.

MR NUNLEY: This implies that there is an existing porch, that there is an existing roof and that there, all they're doing here is repairing the existing roof. Umm, so I can only say that in those cases I would not expect a Technician to go into a great, a great amount of detail in the review to do a repairing kind of an existing structure, it wouldn't entail a lot of zoning. So it would have been a fairly simply off-handed kind of approval for them to go down the line and continue the process.

Now at some point, and again I don't have the

actual dates, but at some point between August 17th and October 5th, it was determined that the roof was not in place. And I believe it was through the diligence either of Ms. Crary or Mr. Brown, because Mr. Brown and I had had a number of conversations off and on during this period. I had had a number of conversations with Building Inspections during this period.

And it came to our attention that the roof was not in place. So the Applicant was, the Owner was asked to get a permit to show actual conditions. This permit came through, it says, build new porch roof as per plans, porch in place. What this implies is that the porch is existing, that the roof is existing, but that they are going to take the roof off and replace it with some other construction method or some, but that the key point is that the implication here is that the porch is in place and that the roof is in place and that these are existing conditions.

MR. CLARENS: This is the fifth permit.

MR NUNLEY: This is the fifth permit.

MS. KING: The one that came with the plat, right?

MR NUNLEY: Yes. And in fact Ms. Mack, even though the, you know the plat that was submitted with the fifth permit happily did make it to the, the file room. And it shows that, well the house, if you look at this, this plat and then compare it with what's up here, you'll that the house

isn't located anywhere close to the way it shows on this plat that was submitted.

The porch, it doesn't meet any of the dimensions of what is actually out there. The setback in the front, I don't know, I actually don't know what this says. I can't tell whether this says 17 or 18 or what. But either way, that's not consistent with what's there. And Ms. Mack didn't do a very detailed review of this because, as I said, all the zoning issues would have, revolved around a new porch or a covering over an open deck which would have been, which would have added usable floor space, building area, gross floor area, etcetera.

Those zoning, those would have been the zoning issues. There would have been no zoning issues here. In fact, and she makes a notation on here under her approval signature. New roof on existing porch, to show that she reviewed it as an existing condition. It's, it was approved based on it being an existing condition.

The thing that bothers me somewhat is that Ms. Mack didn't bring this to my attention when it came through in October because we were aware of much of the chronology prior to the issuance of this permit. The only response I can give to why she didn't, is that, again, it was an innocuous kind of review. It was just replacing the roof, again, no change in size or location indicated, existing porch. I worked that counter for years. It's a very hectic place.

And when you get something small like this, you look at the address, it doesn't always register. We didn't have, at that time, any electric -- I had done an electronic holds database where you could just plug in the square and see if there were any hot items. But we had lost our LAN at that time and we, we didn't have that available to us. So I can only say that they did not raise a flag with her because of the nature of the permit review and the permit review room, when you have a long line of people in front of you, when you've got a small something like this, you do your best to move it forward so that you can take the next person in line and keep the process going.

But this should have raised a flag in light of the appeal that had been filed in September and the memoranda that I had written.

CHAIRPERSON REED: Okay.

MR NUNLEY: I don't have any, I don't have anything further.

CHAIRPERSON REED: Board Members, do you have any other questions? No, okay. Cross examination, Mr. Brown, did you have any questions?

MR. BROWN: You mentioned and I don't know if it was a misspeaking, you mentioned two Stop Work Orders?

MR NUNLEY: It was a misspeak. The note that I had on that permit application said two Stop Work Orders, but it was Exhibit 2 and the note was Stop Work Order. So to the

best of my understanding, there was only one Stop Work Order issued as of that time. And I don't know whether there was a subsequent one issued later or not.

MR. BROWN: So you're, as to Permit No. 3, which is the addition to the new garage, you and the Zoning Administrator's Office, exercised some discretionary authority, in effect gave Mr. Sisson a break by allowing him to basically add a new garage that was exactly the same as had been there previously, even though he demolished it without a permit, is that right?

MR NUNLEY: That's correct. We're talking about the May 27th, issuance?

MR. BROWN: That's correct.

MR NUNLEY: Yes.

MR. BROWN: So you --

MS. KING: But the permit was not for construction of what was subsequently constructed, is that correct, Mr. Nunley?

MR NUNLEY: That's correct.

MR. BROWN: So is that still an outstanding issue, the fact that the garage that was built exceeded the permit?

MR NUNLEY: I view it as an outstanding issue based on the record, yes.

MR. BROWN: Is that something that the Zoning Administrator's office would pursue enforcement through the

Building Department?

MR NUNLEY: Yes.

MR. BROWN: You indicated also and you were being polite. You said at this point, and this was about the time the Permit 3 was being filed, that mistakes were made that accounted for, for the progression of this through three permits to that point. You were being polite, I believe. Did your opinion change after that point, that this is not all a case of mistakes? And when I say mistakes, mistakes by others, the Applicants for the permits?

MR NUNLEY: In the sense that I believe that whether it was directly Mr. Sisson or whether he even knew about or whether he was even aware of it, I am of the opinion that in some cases we were knowledgeably misled.

MR. BROWN: Can I ask you, and this is more than a hypothetical. If you were on the Zoning Counter today and this project came in the door and assuming that the plats were there with the correct information and you had, what we know is the case, a covered front porch, rear addition and the garage where it was. Can you briefly tell me how you would handle that permit application? Can I help you, would it help you -- would you in fact find that the front porch violated with Wesley Heights Overlay District Front Yard Requirement?

MR NUNLEY: Yes. You know, again, I would have been, I would have made another error there because we would have said 28 feet instead of the 21. But we weren't privy to

the nice graphics that the gentleman has put out. But yes, it would have been an encroachment.

MR. BROWN: But in this case, because it went out 17 feet, it wouldn't make any difference?

MR NUNLEY: It wouldn't have made any difference, yes, it would have been an encroachment.

MR. BROWN: And then also --

MR NUNLEY: Also, it would have been an encroachment under Chapter 20, because it wouldn't have the appropriate side yard there.

MR. BROWN: You would have also made a lot occupancy calculation?

MR NUNLEY: Yes.

MR. BROWN: And --

MR NUNLEY: And at 30 percent, it would have been over.

MR. BROWN: Okay. And at the 2,000, the straight 2,000?

MR NUNLEY: At the straight 2,000, I think this does meet the straight 2,000, it would have been over.

MR. BROWN: Okay, so again, that would have been a variance?

MR NUNLEY: Yeah, yes.

MR. BROWN: So we're talking variance for the front yard requirement, correct?

MR NUNLEY: Yes.

MR. BROWN: Variance for the side yard requirement at least as respect to the front porch?

MR NUNLEY: Yes.

MR. BROWN: A variance from lot occupancy, correct?

MR NUNLEY: Yes.

MR. BROWN: As to the garage, assuming it was built as it was, larger than the existing garage, would that have been an issue of variances?

MR NUNLEY: Yes. The, it would have been an issue of access. The regulations do require that a, an accessory garage be accessible directly from an improved street or alley. And as the plat would have shown that there is no public street or alley that abuts this property where the garage is being built.

MR. BROWN: So that would have --

MR NUNLEY: That would have triggered, that would have triggered a variance.

MR. BROWN: Based on failure to meet the required one off-street parking space?

MR NUNLEY: Yes. That and well, the failure to meet the requirement that the garage be accessible directly from the street or alley. Assuming that variance, if they prevailed before the Board and that variance was granted, then they would have met the off-street parking requirement. If they did not -- or again, at this point we, I'm assuming that

the existing garage was still there, so the off-street parking requirement wouldn't have raised a flag with me.

Because I would assume that the original garage would be there until the new garage was built.

MR. BROWN: If in this case where the existing garage went down before the permit was applied for, you've got that break in the continuity so that there would be a problem --

MR NUNLEY: Yes.

MR. BROWN: -- as a result of that?

MR NUNLEY: Yes.

MR. BROWN: When you went out, you and Mr. Bellow went out and I think we share the same general recollection of August. You indicated that, one, you found the garage had been built in excess of the permit. What did you find as to the front porch, do you recall?

MR NUNLEY: To be honest with you, I don't recall. I know, and I apologize, I don't have the notes. Mr. Bellow made some notes on behalf, on my behalf, after our inspection. Those notes were turned into the Zoning Administrator, they never came back to me.

The problem that I have in terms of recollection is that on that same day, we had two similar projects in the Wesley Heights District and I don't want, and what's happening is I'm now confusing one with the other.

Both of them had to do with encroachment into

the front yard and I can't recall, from my recollection, which was which. I clearly recall the rear because there was that issue of easement, there was that issue of expansion of size. But when you're talking about the front on that, I can't remember now between 43rd Street and the property that we had a similar issue on on 44th Street. So I apologize about that.

MR. BROWN: And you indicated in your testimony that, you said between August 17th and October 5th, you became aware that the roof was, on the front porch was not in place. Was that a misspeaking because --

MR NUNLEY: Well, not, not so, that wasn't misspeaking in the sense that, not so much that the roof was not in place, but that they, the porch should not have, was not, was not existing as a covered structure. Existing, meaning that it predated the construction work. That's my understanding of, from the Inspector's reports that I got.

MR. BROWN: So that it was kind of --

MR NUNLEY: That is was in fact an open deck, was all that had been approved to be built. And therefore the covered structure was not, could not be considered existing for purposes of zoning determination.

MR. BROWN: But that's separate from what was actually on the spot here?

MR NUNLEY: Yeah, I'm not talking about what was actually there. Existing from the zoning review perspective means that it pre-existed some regulation that may

or may not impact on it.

MR. BROWN: Which basically allows you then to, to continue that without clearance?

MR NUNLEY: Exactly. Without imposition of any new or more stringent regulations.

CHAIRPERSON REED: Mr. Brown --

MR. BROWN: Thank you.

CHAIRPERSON REED: Are you done?

MR. BROWN: I'm done.

CHAIRPERSON REED: Okay, fine. The Reporter has to break now because, I'm sorry? Five minutes. All right, so Mr. Clarens has to leave and he has to say something and then after that we will continue with your cross examination.

MR. CLARENS: Okay, well, a couple of things that I want to say. The first is, the first is that I'm sorry that I have to go, this is a very interesting case. But I will participate, and that's the second part is that I would like to ask the Board to make sure that a decision, I mean sure, I mean obviously you can decide the case without me, but I would appreciate if I could have the opportunity to participate in the decision this case, in all decisions of the case, including the issue of dismissal.

So if we could postpone the decision on that until a meeting time when I can participate, I would appreciate it. The last issue is that I want to make a

disclosure, just in the event, I'm not sure is Mr. Watson planning to testify on this case?

MR. WATSON: I am and I'm going to have the same disclosure that you're about to say.

MR. CLARENS: That I, that we're neighbors. We're back, back-to-back neighbors in the same area of Wesley Heights. And I want to make sure that it is on the record that we have not spoken about this case in whatever manner. As a matter of fact, I was wondering why George wouldn't talk to me in the last few months and this explains it. And so we have not spoken about this case, whatsoever.

And that even though I live in the neighborhood, I am not aware of Mr. Sisson's particular building or things. So I'm looking at the record in the same way that any other member would look at the record. And with that, I will see you.

CHAIRPERSON REED: Thank you.

MR. GRIMM: I'd like to ask Mr. Nunley a question.

CHAIRPERSON REED: Well, we have to break because the Reporter went out. So we have to let him rewind and we'll come right back. We'll recess for five minutes.

(Whereupon, the foregoing matter went off the record at 1:06 p.m. and went back on the record at 1:45 p.m.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:45 p.m.)

CHAIRPERSON REID: We will resume the afternoon session.

MS. DWYER: What I have here is a copy of an existing authority in the record, and I thought it would be helpful as I'm asking Mr. Nunley some questions, just to --

CHAIRPERSON REID: Identify yourself, Ms. Dwyer, for the record.

MS. DWYER: For the record, Maureen Dwyer with Wilkes, Artis, Hedrick & Lane, Chartered, counsel for the property owner in this case.

Mr. Nunley, I just have a couple of questions. I just wanted to really walk through some of your testimony. I think that when you testified you acknowledged that with regard to Permit Number 1 that there was an error in terms of indicating the wrong zoning category on the permit.

But I believe that what you said was that the zoning classification, in and of itself, was what I would call a harmless error, that there was no zoning violation in terms of what the drawing showed, in terms of what was being proposed.

MR. NUNLEY: That's my belief. The setback requirements in the R-1-A and the R-1-B are essentially the same. If it had been reviewed from the perspective of the R-1-B, then that would have been sufficient for generic review

under the R-1-A.

MS. DWYER: Okay. So at least in terms of this first permit, as I said, we can probably agree that the zoning classification, in and of itself, was harmless.

CHAIRPERSON REID: Ms. Dwyer, could you please amplify your voice? Because we don't have mikes.

MS. DWYER: All right. What I was saying is that at least with regard to Permit Number 1, the fact that there was the wrong zoning classification did not affect the underlying review. In terms of the review of the plans, I think what Mr. Nunley said is that it would have complied -- the plan complied with the zoning requirements, whether or not they had the correct zoning classification on the permit. So when I --

VICE CHAIR KING: Yes. But the critical issue in whether it's R-1-B or R-1-A is the question of the overlay.

MS. DWYER: Right. And I think what you testified is that it would have been within the Woodley Heights overlay district requirements as well. That was part of your testimony as to Permit Number 1.

MR. NUNLEY: Permit Number 1, relating only to the addition. It's my belief that it would have been within the limits of the Wesley Heights overlay.

MS. DWYER: Right. Okay. I just wanted to confirm that for the record. So that takes care of Permit Number 1.

With regard to Permit Number 2, you, I think, again indicated that even though the zoning classification was in error that this, too, would have complied with the zoning requirements, both with the R-1-A and the Woodley Heights overlay?

MR. NUNLEY: I don't think that I had enough information to say that it would have complied with the Wesley Heights overlay, but I do know it would have -- I believe that I testified that it would have been the -- similar to the first one. It would have been the same review whether it was R-1-A or R-1-B. Now --

VICE CHAIR KING: That's the permit for the addition to the garage.

MS. DWYER: Right. That's Permit Number 2 for the garage addition.

MR. NUNLEY: I don't have my technician's calculations in front of me, but I believe that at the time that Permit Number 2 was issued the front porch, if you will, area was deemed to be uncovered, and, therefore, would not have counted in the lot occupancy. That being the case, the addition to the garage I believe would have kept it within the lot occupancy limitation of Wesley Heights, as well as being consistent with the R-1, zones A or B.

MS. DWYER: Right. That was my understanding of your testimony.

In the course of discussing that permit, you

also indicated at some point that Mrs. Crary called you to raise questions, and I was trying to understand whether it was before or after this permit. Was it between permits 2 and 3, and that -- was it that call that led to the stop work order? Do you recall approximately when you were first contacted by Mrs. Crary?

MR. NUNLEY: I'm sorry. I don't, other than to say that my recollection is that it was between permits 2 and 3.

MS. DWYER: Okay. Going now to Permit Number 3, which is the permit that followed the stop work order, and this was the permit that showed that, in fact, what had happened is the existing garage had been demolished and a new garage was being built in its place, I think you testified that the permit for Permit Number 3 indicated dimensions on the permit, and that when you went out to inspect the property your understanding was that the garage as built exceeded the dimensions on Permit Number 3.

MR. NUNLEY: That's correct.

MS. DWYER: And what I'd like to ask you to do is if you could refer to the plans that accompany that permit, and to say for the record what were the dimensions of the garage shown on the plans that were filed as part of Permit Number 3.

MR. NUNLEY: The plans that were filed with Permit Number 3 show a garage with a depth of 21 feet and a

width of approximately 26 feet. I'm sorry, let's see, that's 22 feet about.

MS. DWYER: So 21 by 22 feet --

MR. NUNLEY: Uh-huh.

MS. DWYER: -- based on the plans. Now, that's different than what's stated on the actual permit that the city issued.

MR. NUNLEY: That's different than what's stated on the application interior and on the permit, yes.

MS. DWYER: All right. When you went out and looked at the -- I think you testified in August that you went out to check the property, and you looked at the actual construction of the garage. Based on your inspection, was the garage built according to the dimensions on the plans, the 21 by 22 feet?

MR. NUNLEY: It was consistent with the dimensions on the plans but inconsistent with the dimensions on the permit itself, yes.

MS. DWYER: Is it possible that in typing the permit the wrong information was put on the permit, even though the plans clearly showed a 21 by 22-foot --

MR. NUNLEY: Well, the --

VICE CHAIR KING: I don't think that that's germane, Ms. Dwyer. I mean, if the owner or the architect or the -- you know, the expediter, discovered that there was something wrong with the permit, rather than violating the

permit they should clearly have gone back and gotten it corrected.

MS. DWYER: Well --

VICE CHAIR KING: I mean, surely they looked at it and said, "Oh, no, it's not 20 by 10 by 8. It's 20 by 21 by 14. Therefore, we cannot, under this permit, build the structure."

MS. DWYER: Well, I think it --

VICE CHAIR KING: So whether Mr. Nunley speculates that somebody made a typographical error in the permit or not, the permit was issued and it was violated.

MR. NUNLEY: Well, let me clear something up, if I might. It was a typing error because the information that's on the front of the permit is what was -- is information that was plugged into the permit application, and it was just taken from the application. So the implication is that the plans and the permit application are inconsistent for whatever reason.

MS. DWYER: All right. One other question about this third permit. I think you testified that in situations where a property owner wanted to construct a new garage that did not have street or public alley access that typically something would be triggered in your office, and then you would ask the applicant to provide evidence of a recorded easement showing that they at least had access rights through private easement. That was recorded in the city

records.

MR. NUNLEY: That's correct.

MS. DWYER: Okay. So in this instance, had the city asked Mr. Sisson for a copy of an easement, and were he able to provide that to the city, then a new garage could be built on the property even without street or public alley access, so long as it had private easement access?

MR. NUNLEY: From a public street or alley, yes.

MS. DWYER: Okay. I just wanted to confirm that. Thank you.

Okay. I think those are all the questions I have. Thank you very much.

CHAIRPERSON REID: Thank you.

Now, persons or parties -- obviously, there is no one else here -- persons or parties in opposition --

VICE CHAIR KING: No, in support. We've got Mr. --

CHAIRPERSON REID: I meant to say support. Persons or parties in support? Is there someone in support? Okay.

MS. BAILEY: Were you sworn in?

MR. WATSON: I have not been sworn in.

CHAIRPERSON REID: Oh. You know, I'm sorry. Right. I was looking at the regular cases rather than the procedure for an appeal. You're next, the Intervenor's case.

Then persons in support.

VICE CHAIR KING: Well, when does the --

CHAIRPERSON REID: Well, ANC -- right after the ANC. The ANC -- one second -- still has to be here for their segment, but they're not here, so the ANC report, Mrs. King will just give the ANC report.

VICE CHAIR KING: Well, let's see --

CHAIRPERSON REID: And then we'll have the Intervenor's case.

VICE CHAIR KING: I'm sorry. They urge us to hold a full evidentiary hearing, and that's what we're doing, so --

CHAIRPERSON REID: Yeah.

VICE CHAIR KING: -- I guess we don't have comments from the ANC on the merits of the case, unless Mr. Brown has something.

CHAIRPERSON REID: I never got the gist of their position, their final position. They never said whether they were in opposition or in support, so I guess they are going to give something to us later.

MR. BROWN: No. They've submitted it, and it came in -- they gave a letter dated April 13th from the Commission. I have a copy here in my file which I can provide for copying. It's my only copy. I'll let you -- if I can approach -- let you look at that.

CHAIRPERSON REID: I'm sure we've got it in

here. April 13th, you said?

MR. BROWN: It's dated April 13th.

CHAIRPERSON REID: Okay. I have it. Okay. They did. You voted to -- it was a quorum. They had their meeting on February 9th, and there was a quorum present. And at the quorum they voted to support the appeal for all -- unanimously to support the appeal of each of the five building permits issued for this subject property.

And they also emphasized that all of these five permits were internally inconsistent and should never have been issued by the city. Okay? And they go on to analyze each of the permits individually. And they asked for the great weight to which they are entitled, and that certainly would be afforded such.

See, I had forgotten about this one here. Okay. So that's the ANC report. I'm surprised that no one came to speak.

MR. BROWN: Unfortunately, I believe Commissioner Dan Rosenberg -- he's a practicing attorney, and he's got an appellate brief due today. So --

CHAIRPERSON REID: I think that basically they spell out pretty much the same issues that were proffered to us by Mr. Brown.

Okay. Now we have the Intervenor's case.

MS. DWYER: Good afternoon. When I started preparing this, I wrote "good morning," but we're now in the

afternoon. So, good afternoon, Madam Chair and members of the Board. For the record, I'm Maureen Dwyer with Wilkes, Artis, Hedrick & Lane, Chartered, and I have been asked to assist Mr. Sisson in defending his property rights in this appeal.

As you know, we have filed in the record a Motion to Dismiss. We filed that on April 22nd, outlining the reasons why we believe the case should be dismissed. The Appellant in this case has responded to that, so all of that is a matter of record before you. And we hope that at the conclusion of today's hearing that that motion is ripe for decision by you.

These are preliminary issues that Mr. Sisson attempted to raise back at the February 17th public hearing. As you know, this case has gone on for some time. There was a hearing in December that was postponed because Mr. Sisson was out of the country. The February hearing was postponed at the request of the Appellant. The April hearing -- and, again, I hope that today you have enough information at the conclusion of today's hearing to decide this case.

I would like to point out that in responding to our Motion to Dismiss, Mrs. Crary did not dispute any of the facts that we use as the basis for our motion. We set out a very detailed chronology of events and base that chronology primarily on the information filed in the record by Mrs. Crary. So I don't think there is any dispute as to the chronology of events and at what time things happened.

The question for you is, you know, what import or meaning to give to those events in terms of our issues regarding timeliness and laches.

But before getting into those issues, I very much want to give Mr. Sisson the opportunity, for the first time I think, to explain to you, you know, what his thinking was in looking at this property and in trying to add on to it, and to hopefully improve it for us use.

He has a prepared statement, and I'd like to file copies of that for the record, and there are two or several attachments to his statement, photographs that he will refer to in his testimony, showing what the property looks like today, as well as a land use map and a zoning map orienting you to where the property is.

But I think by now, with some of the information you have, you have a better understanding of where this property is. But nonetheless, I'd like to file this in the record.

All right. Would you go ahead, please?

MR. SISSON: Good afternoon, Madam Chair and members of the Board. It has been six months since --

MS. BAILEY: You need to identify yourself.

MR. SISSON: Okay. My name is Charles Sisson, and I own the home at 3020 43rd Street. I will leave you the witness cards for the information.

VICE CHAIR KING: Where do you live, Mr.

Sisson?

MR. SISSON: 9730 Maury Road, Fairfax, Virginia.

I might mention that in the six months that I have been coming here I feel that I know you a little better. I'm afraid this is your first opportunity to get to know me. I am a white collar worker downtown, and I'm not a professional builder.

I bought this home at 3020 43rd Street in November 1997, and from the beginning I had a view to enlarge it and to remodel it, similar to what my neighbors had done in their work on the south of the property. Several neighbors on the south of the property have all done this sort of thing.

To this end, I hired an architect and I engaged a builder to do the actual construction. My plans were actually to do four things. I had originally intended to put a porch on the front, put a deck on the back -- I'm sorry, put an addition to the building with a deck on the back, and a porch -- or a garage.

In the event, when the architect went to visit -- to meet with the people from the District, he concluded that I couldn't, in fact, put both a deck and a porch on the property. He said that I would have to choose between the two, that I -- I ran into problems with too much overlay, and so I opted to, in fact, put the porch. I thought it was more important.

Anyway, these were the plans that I had, again, along the lines of what my neighbors to the south of the property had done.

Mrs. Crary, the Appellant in this case, lives on the other side of my property, and she is the only one on this block that has not undertaken a similar renovation.

The architect got what I thought were the necessary permits from the District, and with plans in hand we started construction in January of 1998. And all work was subsequently completed in October of 1998.

As Ms. Dwyer mentioned, the statement that I have submitted has several photographs of the property at the back of the statement, and it shows you the nature of the construction. The first page provides a frontal view of the property, with the porch that has been added to the property.

The second page of photographs shows you the adjacent property, Mrs. Crary, on the side of the property.

And the third set of photographs, the third page of photographs, show you the actual construction of the addition on the back. And as you can see, whereas I had planned -- hoped to put a deck on, subsequently I just put a stoop so that you could go from the back door to the ground level.

And then the fourth page shows the side of the actual addition to the house, and the garage that was built at the rear of the property.

And the fifth page shows more views of garages. The first -- the top half is the actual garage itself, with a view towards Mrs. Crary's property, and the bottom of the page shows the garage addition that my neighbor immediately to the south had constructed.

And then you have the plats. You can see that -- on the next page that my property is the red shaded area, the cross-hatched area towards the bottom of the page, with Mrs. Crary owning the property towards the intersection.

VICE CHAIR KING: Excuse me, Mr. Sisson.

MR. SISSON: Yes, ma'am.

VICE CHAIR KING: Your property encompasses all of that driveway, private driveway?

MR. SISSON: That's my understanding, yes.

VICE CHAIR KING: Because it was suggested earlier that maybe -- that you owned to the middle of that driveway.

MR. SISSON: Actually, I believe I own all of it. But, I mean, I -- I could be misinformed, but my understanding is I own the whole --

VICE CHAIR KING: And the little piece of this property behind you, too, a sort of tooth out of it, is that correct?

MR. SISSON: Yes.

VICE CHAIR KING: I mean, you're saying that this is -- this diverges considerably from all of the other

plots that we've seen.

CHAIRPERSON REID: Do you have a surveyor's map of your property line?

MR. SISSON: I'm sure it's been submitted in various other forms here, because I did. But I don't have it with me at this point in time.

The point I would make is that -- one point that I think is at least at odds with what Mr. Brown has been suggesting is that there are easements across the properties that go from, what is it, Hawthorne Street north through the back of the properties on adjoining -- or fronting on 43rd Street.

There are easements all along those properties. There is --

VICE CHAIR KING: Including yours?

MR. SISSON: There is an easement on -- for eight feet into my property, but there is no easement through my property. It's a matter of -- it's on the plat. It's recorded on the deed. There has never been an easement completely through my property.

MS. DWYER: And, Mr. Sisson, this private easement provides access to the rear for all of these properties?

MR. SISSON: Yes, it does. That's why the garages are all at the back of these properties. They have access --

VICE CHAIR KING: But it does not extend through to Mrs. Crary's property?

MR. SISSON: No, I don't believe so. It certainly doesn't --

VICE CHAIR KING: And have you filed this easement as part of the record?

MR. SISSON: It's -- I'm sorry. I don't know. It's on the deed. It's on the deed to the property at 3020 --

VICE CHAIR KING: Ms. Dwyer, will you file the easement, please?

MS. DWYER: I'll file the deed restriction that he has showing that the eight foot easement comes into only a portion of his property and doesn't go all the way through. I'd be happy to do that.

CHAIRPERSON REID: You're saying that the easement -- this easement goes along the alley to allow each individual property owner access?

MR. SISSON: That's the --

CHAIRPERSON REID: And that the portion -- your portion of this easement is the eight feet. That's the only --

MR. SISSON: Just eight feet --

CHAIRPERSON REID: -- germane to your particular property.

MR. SISSON: That's right. And I, frankly, don't know why they even put the eight feet easement on my

property because it does -- abuts the easements to all of the properties below it. But for some reason, they did put an easement of a short distance in there.

I travel, unfortunately, on business a great deal, and I was not able to monitor the progress of the construction as closely as I would like to. My first inkling that there were any difficulties with the plans that I had for improving the property became -- was at the very beginning of April 1998 when the contractor informed me that there had been a stop work order that had been issued for the construction of the garage.

The portion of the garage -- Permit Number 2 -- was to renovate the existing garage. And what he had done -- the contractor had in his preliminary work to do this -- he had worked on the footings to the original garage, which proved to be rotten, and he just went ahead and pulled them out.

And this was a technical departure from the original permit, Permit Number 2, which said that it should be a renovation of the existing garage. You know, there's no dispute on that. I certainly understood the nature of the problem.

I was impressed, I must tell you, that my neighbor was following events so closely that they knew that -- a) that the permit was for renovation of an existing garage, and 2) that that was no longer valid. But be that as

it may, I did recognize that the stop work order existed, and I immediately moved to try to correct it. And I got a permit -- this is Permit Number 3 -- to construct a new garage.

The construction then proceeded without any further problems as far as I knew, and, as I say, the final work on the construction was completed in the middle of October of 1998. Then, in November of 1998, I was informed by you, the Board, that Mrs. Crary had filed a petition to have these permits revoked. And after the several postponements that we have had, here we are today.

I want the Board to know that from the very beginning I fully intended to comply with the legal process governing the permitting process, and I certainly never at all endeavored to impair the integrity of the zoning review process.

In fact, when there were any questions about my building plans, I went back to the District government and secured new authorizations. I'm not an expert in this area. I was away from Washington, as I said. But to the best of my knowledge, the work done on this home at 3020 43rd Street conformed to all applicable laws and regulations.

On several occasions, the work was inspected by District officials, and I have filed an affidavit in the record from one of those inspectors.

I should, I think, have been able to rely on the District government in my efforts to improve my property,

which I might add has been very favorably received by even complete strangers who are walking by the sidewalk. They have stopped me as I work in the yard, and they have said, "This is very, very nice."

There are a number of reasons why I think this appeal should be dismissed, and I guess probably the most important is that I don't understand in any way why there has been an undue delay in raising questions about these improvements. I didn't do this under the cover of night. I didn't do this behind a curtain. Mrs. Crary was next door. Mr. Brown evidently lives within a couple of blocks.

The construction took place over eight months, and Mrs. Crary was there all the -- almost all the time. Mrs. Crary had full view of all of the construction work. If there were any issues relating to the renovation, why didn't she do so at an earlier date, before I had spent a lot of money in making these improvements?

We know that Mr. Brown was involved from at least March 1998. In fact, I met with Mrs. Crary myself in April, and she told me that she had engaged counsel to monitor these events. So if they were aware of District zoning laws being broken at an early point in this process, why did they wait until September, and from my perspective October or November when I first learned that there had been a BZA filing, to raise these issues?

They surely knew how to get a stop work order.

As I said, they did that in April, early April.

Second, I have spent over a quarter of a million dollars to do these improvements, and I would expect that any problems would have been raised in a timely manner. It's my understanding that once construction is completed and all of the final permits have been issued, all of the final inspections have been made, the permits are final and stand.

Apart from the technical aspects of these issues, I find the timing of this request at such a very late date very hard to understand. If there were issues regarding the renovation, why weren't they raised when construction was still underway?

And I might mention that I have had a limited amount of experience in this area. At one point about 10 years ago I attempted to improve a home of mine in the District. By the way, Mr. Brown interestingly embellishes this experience to conclude that I'm a property developer, but this is my one previous experience in getting permits.

I owned a townhome down at 10th and C, Southeast, and I decided that I would like to put a small deck out on the second story of this to give some privacy -- some outside privacy area to the property. I got the permit.

It took me four months to do it, but I did get the permit and started construction. Within 30 minutes there were police cars outside, and the police officers telling me that I -- that there had been an objection raised to my filing

-- to my actually undertaking this work.

In fact, I did have all of the necessary permits, and there was a court hearing within a week and I was told that I could go ahead and progress. And I did go ahead and make the deck.

Now, in this case, the people who objected to these construction plans reacted within 30 minutes. Now we're responding after 10 months.

I don't know what motivates people. Mr. Brown is very good at telling you what motivates people. I don't know what motivates people. But I can only tell you that, in response to perhaps one of the questions that Mrs. King was raising, is that every time I've met with Mr. Brown to try to resolve this problem the topic invariably comes down to it would be not in my best interest to have this matter heard by the Board, and that Mrs. Crary does require some kind of financial compensation to rectify this situation.

But I'm the one who is out the money on this case. And, in fact, of course, these delays and hearings have cost me some money.

Fourth, I do resent the cavalier way Mr. Brown attributes the worst motives to my behavior in obtaining permits and insinuates that somehow my receiving five different permits for the construction reveals an intent to subvert the permitting procedure.

I find it hard to understand why my going

through the permitting procedure and addressing at each point any issue that came up in the construction plans can be anything but trying my best to conform to the District laws regarding construction.

And I find his accusations regarding the excessive number of permits a bit disingenuous, given the fact that he, or Mrs. Crary, was somehow -- was in some part responsible for the stop work order that necessitated one of the permits that I actually didn't get.

Fifth, I'm also perplexed that Mr. Brown says that he was unaware of some of the permits that have been issued, which is the reason that this Board continued this hearing from February. Can Mr. Brown really suggest that he didn't know about the permit that had been issued in May of 1998 until February of 1999? Is he really suggesting that this garage could have been built from the ground up in the months of May and June, right under his nose, in defiance of a stop work order, and that he had no recourse?

If there were, in fact, no permits, why didn't he just go to the courts? I mean, as I said, this is what happened to me in the case of my experience on Capitol Hill. When my neighbors thought that I didn't have a permit, they called the police, and within 10 minutes I was enjoined from doing any further construction.

So I don't understand his argument that he couldn't find this permit, and, therefore, he didn't act for

six months in trying to rectify what he saw as a mistake.

And, finally, if Mrs. Crary is so concerned about protecting the ambience of the Wesley Heights area, why didn't she stop the whole project while the footers were being done originally? Wouldn't that have been the best and fairest way to proceed? Especially since my improvements were really in keeping with what my neighbors had already done on the other side of their property -- or my property?

So to the best of my knowledge, the work done at this house confirmed to all applicable laws and regulations, and I question the intentions of those who have raised questions about this work at such a tardy fashion and at such a late date.

The project was known to Mrs. Crary, the stop work order had been issued, and I had no reason to expect that any issue would not have been identified and that all requirements would not have been met in my proceeding.

The proper course of action for Mrs. Crary to have taken was to have brought an immediate appeal. She did not. The record evidences that I acted in good faith and reliance on the affirmative action of the District of Columbia government and made expensive and permanent improvements on the subject premises.

Finally, I think reliance on me in this case was justifiable because the persons who approved the plans as to zoning compliance were the properly empowered

administrative officials to make such a decision. I reasonably assumed I was proceeding in full conformity with the zoning regulations and the building code.

All required plans were filed, and I thought -- to my knowledge were reviewed and determined to be in compliance by the appropriate city officials. Permits were obtained and substantial expenditures incurred as a result of that reliance.

So the record evidences that I acted in good faith and reliance on the affirmative action of the District of Columbia government and made expensive and permanent improvements on the subject premises. I think the equities clearly favor me as the owner of this property in this case, and that my reliance was justifiable.

Under the Board's rules and precedent, the person dissatisfied with the decision of the Zoning Administrator must act promptly to preserve their rights. There is no question that Mrs. Crary had actual knowledge of the work being done to my property in January of 1998.

Since this appeal was brought long after Mrs. Crary was aware of the decision she now challenges, it is untimely and it should be dismissed.

Thank you.

VICE CHAIR KING: Mr. Sisson?

MR. SISSON: Yes, ma'am.

VICE CHAIR KING: Do you have the final

inspections, and so forth, for your property?

MR. SISSON: Yes, ma'am, I do.

VICE CHAIR KING: And you've moved into it or not?

MR. SISSON: I have not moved into it.

VICE CHAIR KING: Is it vacant?

MR. SISSON: It is vacant, yes.

CHAIRPERSON REID: You said you had an affidavit from one of the inspectors.

MR. SISSON: Yes. It was filed --

CHAIRPERSON REID: Was it --

MR. SISSON: Ms. Dwyer is going to elaborate on some of these things, but it was filed --

MS. DWYER: It's attached to the Motion to Dismiss as Exhibit G, and it's Inspector Shelton.

MR. BROWN: Madam Chair, I'd like to object to that being entered. It's being entered, obviously, as evidence. The gentleman, Mr. Shelton, isn't available here for me to cross examine. He makes some very sweeping conclusions without opportunity for me to cross examine him, as I pointed out in one of my pleadings, and I think it should not be accepted into the record.

CHAIRPERSON REID: I think it's already in the record.

MR. BROWN: Well --

VICE CHAIR KING: It is.

MR. BROWN: -- then it should be excluded from the Board's consideration. Again, if we're going to introduce testimony, then that testimony has to be such that it can be subject to cross examination, so that the Board can make an assessment.

There are questions about the independence of Mr. Shelton, who, quite frankly, I don't have the answers to, but my understanding is that this Mr. Shelton, whom I know -- the inspector, I think, is Jimmy Shelton from Vince Ford's shop, is related to the permit expediter who handled two of the permits -- at least two, if not more, of the permits, in which case it raises questions there that we're just not going to be able to resolve here. And in fairness, it should be excluded.

MS. DWYER: Madam Chair, I would object. I think the Board can take the affidavit and give it whatever value and credence it would like to. It is a sworn affidavit. The Board typically accepts this kind of testimony. The fact that he's not here to cross examine is really no different than Mrs. Crary not being here for me to cross examine her.

The allegation -- the attack on the credibility of the inspector is unfounded as to whether there is a relationship or there is any conflict, and I think that that should be excluded. And I think the affidavit speaks for itself.

What it basically says is that he is a city

inspector, and he, on several occasions, inspected the property. And I think it speaks directly to the issues that are before you in terms of Mr. Sisson's reliance on actions of the District of Columbia government throughout this process.

CHAIRPERSON REID: I will overrule your objection, Mr. Brown. I agree with Ms. Dwyer that this is an affidavit that has been submitted as part of the package that the Intervenor had already given us. It's not anything new. And if, in fact, you wanted to respond to it, then when you initially put on your case, you could had -- you had the opportunity to have done so. So --

MR. BROWN: I did so in writing, Madam Chair.

CHAIRPERSON REID: Okay. All right. All right.

In regard to the size of the garage, I'm not clear on the aspect of the permit having one size and the garage being another size. So can you speak to that, please, Mr. Sisson?

MR. SISSON: To the best of my knowledge. I am the one who got that permit. I mean, basically, there was a stop work order issued. The issue had resolved. This was no longer renovation of an existing garage from one car to two cars, but an actual construction of a new two-car garage at this point in time because the footings had been ripped out from the existing garage.

I went down to the District Building, and I

talked to a number of the people down there, and they did grant me a new permit for a new two-car garage. Their argument was that you had gotten their permission to, in effect, install a two-car garage, and that whereas there had been some technical departure because of the problem with the footings, that you should be authorized to go ahead and construct a new two-car garage.

The plans were drawn up. I paid money to have the plans drawn up for a new two-car garage of dimensions approximately 21 feet by 22 feet. And I took them through, and they were stamped by each of the relevant authorities that govern this. I went through Structural, I went through Electrical. Again, I haven't done this often, but I did go through the second floor of the District Building there and get the permissions.

And, in fact, Mr. Nunley has a copy of those plans that were stamped as approved by all parties.

In the typing of the permit, which is after the fact, there was a -- the permit was evidently typed with -- well, it was, obviously, typed with the dimensions that you have there. But that is entirely inconsistent with the plans that were approved and with what I had been authorized to submit and have approved.

CHAIRPERSON REID: And what were --

VICE CHAIR KING: Well, what about the application?

CHAIRPERSON REID: Excuse me. Let me just finish.

MR. SISSON: I don't really know. I'm sorry. I don't really know. I mean, I don't know what happened there. I don't.

CHAIRPERSON REID: What do you mean, what about the application, Mrs. King?

VICE CHAIR KING: Mr. Sisson signed an application, and the permit parrots the dimensions of the building that he applied for.

CHAIRPERSON REID: On the application.

VICE CHAIR KING: On the application, he asked for --

CHAIRPERSON REID: 20 by 10 by 8.

VICE CHAIR KING: There's Mr. Sisson's signature, and the dimensions he asked for are 20 by 10 feet 9 inches by 8 feet. And his signature and his address, and that was on the 2nd of April of 19 --

MR. SISSON: What was the dimensions, please, ma'am?

VICE CHAIR KING: -- '98. In your handwriting, I presume it's your handwriting, length 20, width 10 feet 9 inches, or 10.9 feet, I guess, 10 feet 9 inches, and height 8 feet. Exactly what appears on the permit.

MR. SISSON: Can I look at that?

VICE CHAIR KING: Sure. And there's the

permit, parroting exactly what you asked for.

MR. SISSON: I see. That's exactly what is written there.

VICE CHAIR KING: So it's --

MR. SISSON: That is not my writing.

VICE CHAIR KING: -- not a typo.

MR. SISSON: That is not my writing, but --

VICE CHAIR KING: Who wrote it, then?

MR. SISSON: I --

VICE CHAIR KING: Who filled out your application?

MR. SISSON: As I recall -- that's certainly my signature. But it is not my writing. I have never -- I have been through the permitting process one time before. That was --

VICE CHAIR KING: Yes. But who filled out your application?

MR. SISSON: I think it was the lady at the front desk, as I recall. I just -- it was not -- that's not my writing. But, you know --

CHAIRPERSON REID: You're saying that you didn't fill it out, but you signed it?

MR. SISSON: I did sign it, yes.

CHAIRPERSON REID: Did you read what you signed?

MR. SISSON: Well, yes. But I guess I didn't

-- I just didn't know -- that was the size of the original garage. I don't know if I misunderstood originally that there was some problem, but it had -- the plans are very clear that they show that the garage should be 21 by 22 feet.

VICE CHAIR KING: And when you found that there was a discrepancy between the plans that you thought had been approved and the actual permit that you received, what did you do?

MR. SISSON: I didn't realize that until maybe two weeks ago.

VICE CHAIR KING: Two weeks what?

MR. SISSON: I didn't realize it until recently, very recently. I didn't understand the significance of that.

VICE CHAIR KING: But didn't you have an architect?

MR. SISSON: Not at that time, no.

CHAIRPERSON REID: Didn't you have a contractor, someone who -- who built the --

MR. SISSON: I did have a contractor.

CHAIRPERSON REID: Okay. That person -- would he have done the permit?

MR. SISSON: This permit I did, I did myself.

CHAIRPERSON REID: Okay. He --

VICE CHAIR KING: And you gave it to him?

CHAIRPERSON REID: You gave it -- you had it --

MR. SISSON: I gave it to him, yes, I did.

CHAIRPERSON REID: And he would have to rely on the permit for the actual construction of the garage, would he not?

MR. SISSON: I think he just followed the plans. I think he just opened -- I mean, I can only, you know, assume what he did. But I think he just looked at what the plans were that were -- the permit, as far as he was concerned, was irrelevant. What he wanted was the stamped plans that he would use as his guide for the actual construction. He certainly didn't mention it to me.

CHAIRPERSON REID: Okay. Mr. Nunley, is it uncommon for a staff person to fill out the application for the applicant, or is it something that occurs routinely?

MR. NUNLEY: The only time that that occurs is when -- or that is -- by policy should occur is if you have a person that cannot write, then you can assist in filling out the application. Or if you have someone who doesn't understand English very well, as we sometimes get people of Spanish or Asian descent; other than that, it's actually a conflict for someone to fill in the application for someone else.

VICE CHAIR KING: If somebody filled it out for you, they couldn't have simply made up those numbers, could they?

MR. SISSON: Well, I think they probably were

using the information relating to the original garage.

VICE CHAIR KING: In other words, you were given permission not to build a new two-car garage but to replace the garage that had -- that you had torn down.

MR. SISSON: No. I actually talked to the Director -- in fact, Mr. Nunley doesn't remember it, but I discussed this with Mr. Nunley at this time this was made.

VICE CHAIR KING: On the day that you made the application?

MR. SISSON: Back in May. No, I think probably a day or two before. I had discussed it with a couple of the people, and they had said that there was -- that they would authorize a new two-car garage, and that I should have the plans brought to the permitting level --

VICE CHAIR KING: Who are "they"? What are their names?

MR. SISSON: I wish I could give you the name. He is the Director of the department. He was -- I've forgotten what his name is now.

MS. PRUITT-WILLIAMS: David Watts?

MR. SISSON: Yes. I think -- anyway, I'm sorry. He's not there now. He was -- there was three or four people that left thereafter, but he was in charge.

CHAIRPERSON REID: But you also discussed it with Mr. Nunley.

MR. SISSON: I did discuss it with Mr. Nunley.

CHAIRPERSON REID: What did you discuss?

MR. SISSON: In fact, I think Mr. Nunley discussed it with him is my understanding.

CHAIRPERSON REID: Well, what did you discuss precisely?

MR. SISSON: Well, the fact that there was a problem relating to the construction of this garage. The problem was that it was supposed to be renovation. And as on this -- my understanding was that as it was not a dedicated -- not a bona fide or certified alley, that it had to be grandfathered to be a garage.

But that since the actual construction had already begun, and the footers -- the old footers had been torn out, then it was no longer grandfathered. And the question was: should -- you know, how do we go about constructing the new garage, new two-car garage on this spot?

And the argument was that, look, you had permission to put a two-car garage there through renovation, and the fact that we had footers that were rotten was a very technical point that shouldn't have been used to deny the construction of the actual garage itself.

So I discussed this with the man. He said, you know, "That it would be a miscarriage of justice if you were not allowed to put this two-car garage up, and we will authorize such a" --

VICE CHAIR KING: And in your conversation with

him, you told him that you were moving the site of the garage from where the previously proposed expanded garage was to a completely different place on your property?

MR. SISSON: No.

VICE CHAIR KING: You did not discuss that with him.

MR. SISSON: No, no. It was agreed that it should not be moved.

MS. DWYER: Ms. King, if you --

VICE CHAIR KING: That it should not be moved?

MR. SISSON: That's right.

VICE CHAIR KING: But it was moved.

MR. SISSON: I don't think so.

MS. DWYER: No. Ms. King, if you look at the second permit --

VICE CHAIR KING: I'd like to look at the drawing for the first permit because that's what you're saying you built. Is that not right? Could you remove this timeline or chronology? This is what you built, is it not?

MR. SISSON: That's right.

VICE CHAIR KING: Okay. You moved -- the original permit was to extend the shadow under that hatched box -- is where the old garage, one-car garage was, is it not?

MR. SISSON: No, no. No, ma'am. It was not.

VICE CHAIR KING: What is that square?

MR. SISSON: My -- I was there. This is the

existing -- it looks like an alley, but it --

VICE CHAIR KING: No, I'm not talking about the alley. I'm talking about the square, that square. Is that the old garage?

MR. SISSON: That is the -- it attempts to depict the old garage.

VICE CHAIR KING: Okay.

MR. SISSON: It isn't where it was. The old garage -- this alley, this concrete driveway, has an expansion joint right down the middle. The old garage had this side of the lane as its garage floor. So this garage was right there.

MS. PRUITT-WILLIAMS: So that drawing is not accurate?

MR. SISSON: That drawing is not accurate.

VICE CHAIR KING: But notwithstanding that that is not accurate, and you have still -- and you have permission to expand an existing garage. You tore down the existing garage rather than expanding it. And then you build it not on the footprint of the old -- you build a new garage not on the footprint of the old garage. I mean, even that's --

MR. SISSON: This is a common wall.

VICE CHAIR KING: -- the old garage then you are showing here, is that correct?

MR. SISSON: My understanding of the problem Mrs. Crary had was that she doesn't --

VICE CHAIR KING: No, no. I'm not talking

about Mrs. Crary's problem. I'm talking about the difference between what -- these are the plans -- this is the plan. This is part of the plan that you say, "Because it was all stamped, signed, and sealed, on this plan, regardless of what it said on the permit, I am permitted to build this." Right? Is that what you're saying?

MR. SISSON: Okay.

VICE CHAIR KING: Now, you had permission to build an extension to an existing garage. Whether it's slightly to the left, slightly to the right, slightly up, slightly down, nevertheless, it is not the footprint of the garage that now exists on your property, which you built. Is that correct?

MR. SISSON: Well, this wall is common to the old garage and the new garage. The southernmost wall is the common wall to the old garage and to the new garage. My point is that this drawing is inaccurate to the extent that this garage actually was --

VICE CHAIR KING: Do you have an accurate drawing of this garage?

MS. PRUITT-WILLIAMS: Mr. Sisson, do you have the plat, the surveyor's plat, that Zoning -- that the DCRA uses to approve this? Given that theirs is missing, and you get a copy at the end, do you have a copy of yours?

MR. SISSON: I really don't know. I really don't know.

VICE CHAIR KING: Okay. Do you have the plans that were signed, sealed, and delivered, you say, that authorize the garage that is now on your property?

MR. SISSON: I have a copy of the plans Mr. Nunley has.

MS. DWYER: Those are the same plans Mr. Nunley has.

VICE CHAIR KING: Okay. And do they bear any resemblance to what's on this thing here?

MR. SISSON: I'm not sure that I can respond.

MS. DWYER: Ms. King, if I could just maybe respond. The second permit authorized an expansion or extension to the existing garage to dimensions of approximately 20 by 20, and that's E-1 in what the Appellant has filed.

The replacement permit, number 3, is 20 by 22, so it's approximately the same footprint as the original garage plus addition that was permitted under Permit Number 2. The difference is it's called a new garage construction.

VICE CHAIR KING: And the difference is that that isn't what the permit is for.

MS. DWYER: The permit plans are. The plans that Mr. Nunley has --

VICE CHAIR KING: But the plans of which this is a part he says are not accurate.

MS. DWYER: This is not a part of the plans for

Permit Number 3. This is what was filed in January of '98.

VICE CHAIR KING: Well, the testimony this morning, which you did not contest, was that the plans for all three of the first three permits were identical.

MS. DWYER: No. What we testified to and brought out is that back in January -- and this is a piece of the January permit filing -- it was shown on the site plan, all of the work that was being proposed for the site. I did not say that those are the exact same dimensions as the additional permits.

VICE CHAIR KING: Mr. Nunley, do you have those plans?

MR. NUNLEY: Yes, I do.

CHAIRPERSON REID: Where does this come from, then?

MS. DWYER: This is the Appellant's Exhibit D-1, which was part of the January permit filing.

CHAIRPERSON REID: That is --

MS. DWYER: And this is a --

CHAIRPERSON REID: That was filed by Mr. Sisson.

MS. DWYER: Yes.

VICE CHAIR KING: Let me see that. I see. So, and this shows no -- okay. Now, are we agreed that this is what we're talking about?

MS. PRUITT-WILLIAMS: As the existing

condition.

VICE CHAIR KING: This is the site plan for --

MR. SISSON: That was originally filed, yes.

VICE CHAIR KING: This is the site plan for Permit Number 3.

MS. DWYER: Number 3.

VICE CHAIR KING: Which you filed yourself, personally. And it shows no porch, covered or otherwise, on the front of the house. It shows no addition on the back of the house.

MR. SISSON: That's right. That's right. I was just using -- I was just trying to build on Permit Number 2, frankly. I --

VICE CHAIR KING: Well, and Permit Number 2 had this on it?

MR. SISSON: I don't know.

CHAIRPERSON REID: I thought that that was submitted as what was in the file.

MR. SISSON: For Permit Number 1.

CHAIRPERSON REID: Permit Number 1. Okay. But now you're saying that you don't know where that came from?

MR. SISSON: No. It came from --

CHAIRPERSON REID: Well, why did they provide you the wrong --

MR. SISSON: That I don't know.

CHAIRPERSON REID: Did your architect draw it?

MR. SISSON: I don't think so. I'm sorry. I don't know.

CHAIRPERSON REID: You don't know who did it?

MS. DWYER: Are you talking about this being in the wrong --

CHAIRPERSON REID: Right, yes. Well, who did it?

MR. SISSON: It says here, "Drawing by," but we only see part of it. I don't know. We would have to go back to the original.

CHAIRPERSON REID: Okay. Wait a minute. We're looking at a different one.

VICE CHAIR KING: There is obviously -- there would be not a scintilla of difference between the -- to a site plan for 2, which is the original request for a garage, right, Mr. Sisson?

MR. SISSON: Yes.

VICE CHAIR KING: Okay.

MS. DWYER: For the addition.

VICE CHAIR KING: So there is no covered or uncovered porch on the front of the house and no addition at the back. So that is -- in other words, is not correct. And here is the garage, and you're asking for an addition. You show that this is where it is and that you're going there. Okay?

This is the application for number 3. Again,

although I presume that by the time you applied for number 3 that significant construction had taken place on the front and the back of your house.

MR. SISSON: On the back but not on the front.

VICE CHAIR KING: On the back. Okay. But that is completely left out, which is, of course, very germane to this -- to getting a permit to add additional stuff.

You also show -- and these are presumably the plans that you say so proudly were approved by DCRA -- that that's where the garage -- this is the footprint of the old garage, right? And that this is what you want to add to it, right? Whereas, suddenly it's transmuted into something that starts at the property line.

MR. SISSON: No, it doesn't start at the property line.

VICE CHAIR KING: There is no setaside.

MR. SISSON: There's five feet. There's five feet.

VICE CHAIR KING: Well, but it's not here. The existing garage that is on your property today is not here.

MR. SISSON: No.

CHAIRPERSON REID: Okay. Where are the other plans that show what's actually there?

VICE CHAIR KING: Is there another plan? Do you have another site thing, or anything that shows what is actually in place?

MS. DWYER: That drawings that Mr. Nunley has for Permit Number 3 are what was built on the site.

VICE CHAIR KING: I'm sorry. We have just looked at it. The garage is -- Mr. Sisson has just testified -- is not where it is on that. There is no addition at the back of the house, and there is no porch, covered or uncovered, in the front of the house, on that site map.

MR. SISSON: The garage is located exactly where it shows there.

VICE CHAIR KING: Not -- on the applications number 2 and number 3, the plans that you filed for 2 and 3 show no additions on the front of the house, no additions on the back of the house, and show the garage to be in quite a different place than this.

Now, 2 and 3 are the applications for the garage, are they not?

MS. DWYER: If I may add --

VICE CHAIR KING: The third one you applied for yourself for a structure which was permitted for what you applied for, 20 by 10 by 8.

CHAIRPERSON REID: Go ahead, Ms. Dwyer.

MS. DWYER: I want to ask him a couple of questions to clarify this. I think what Mr. --

Mr. Sisson, am I correct in understanding that what you were saying is that where the existing garage footprint is shown on here is not correct?

MR. SISSON: That's right.

MS. DWYER: But where the new garage dimensions are shown, that is correct?

MR. SISSON: That is correct.

MS. DWYER: So the new garage is built to the dimensions shown here, which are the same dimensions that were on Permit Number 2 and Permit Number 3.

VICE CHAIR KING: Untrue.

MS. DWYER: That is his testimony.

VICE CHAIR KING: We just looked a it.

MS. DWYER: But the dimensions --

VICE CHAIR KING: That's not on the site plan for 2 and 3.

MS. DWYER: The dimensions of the new garage are on the site plan for Permit Number 3.

VICE CHAIR KING: But not in that position.

CHAIRPERSON REID: Not in that siting. It's sited differently.

MS. DWYER: What Mr. Sisson has testified is that the drawing that accompanied Permit Number 3, that the garage is built to those dimensions, and that's --

VICE CHAIR KING: But not to the dimensions of the permit, and not to the site plan.

MS. DWYER: The dimensions to the plans that were part of Permit Number 3.

VICE CHAIR KING: But not to the site plan and

not to the building permit.

MS. DWYER: Can you pull out the -- not to what was said on the actual printing of the building permit, no.

VICE CHAIR KING: Or the application which he signed.

MS. DWYER: Right. But the plans that were approved and stamped by all of -- those are the plans that have been built.

VICE CHAIR KING: Okay. We're going to take the plans in toto. We have to have the site plan in there as well as part of what was approved, and the garage is not situated there on the site plan.

MS. DWYER: I'm not following what you're saying. The plans that are approved are the actual --

CHAIRPERSON REID: Okay. Ms. Dwyer, in actuality, that garage is set back five feet from the property line, correct?

MR. SISSON: That's correct. Yes, ma'am.

CHAIRPERSON REID: But that's not what -- well, that's what I don't understand. Why is this before us, when this is not really what's actually --

MS. DWYER: This was up here earlier just to show you that what --

CHAIRPERSON REID: But it doesn't. And also, the dimensions --

VICE CHAIR KING: This went with number 3, Ms.

Dwyer. This went with number 3.

MS. DWYER: All right. Then, I would ask Mr. Sisson to look at this and to state for the record whether this is the drawing that shows how the garage is built today.

VICE CHAIR KING: Let's go further. Let's say -- ask if it's the site plan as of today.

MR. SISSON: It goes back just a little bit further, but it's essentially that, yes, ma'am.

VICE CHAIR KING: And the rest of the site plan is accurate?

MR. SISSON: As of now, no. There's a porch and there is an addition on the back.

VICE CHAIR KING: And those were in construction or constructed when you filed these papers with DCRA?

MR. SISSON: No. The addition on the back was under construction.

VICE CHAIR KING: And can you explain why it was omitted from the site plan?

MR. SISSON: Frankly, you know, I mean, I'm sorry, I'm not an expert. This was what had been done before. They were just saying, "Look, it's trying to" --

VICE CHAIR KING: Yeah. But had been done before was --

CHAIRPERSON REID: Ms. King, please let him respond. I'd like to hear what he has to say.

MR. SISSON: Permit Number 2 had been the original permit that had been gotten, that had been obtained by the architect. I assumed that it was correct or at least it was operable as far as I was concerned.

When I went and talked to the administrator of the building process, he said, "Look, we understand that you have a technical departure from what you had originally gotten the permit to do. We are sympathetic to your view, but you shouldn't be penalized for, again, a technical departure. And, therefore, we are going to grant you a permit to get a new garage in place of the renovation that you had originally intended to do."

So I just used the information that had been generated for Permit Number 2 by the architect and put some new drawings at the back, which I had hired a draftsman to produce, which would reflect the new garage that was in the renovation that had been authorized under Permit Number 2.

That was -- again, the idea was that, "Look, it was a technical departure. It shouldn't be a big issue. We're going to go ahead and grant the permit. You can continue construction."

MS. PRUITT-WILLIAMS: Mr. Sisson, the dimensions are 21 by 20, is that correct?

MR. SISSON: I think it's 21 by 20. Mr. Nunley, you said 22?

MR. NUNLEY: I think it was closer to 22.

VICE CHAIR KING: And it's 14.9, not 8 --

MR. SISSON: That's correct.

CHAIRPERSON REID: Okay. No further questions? Ms. King? Mr. Gilreath? I think that's all I had as well.

BOARD MEMBER GILREATH: Am I free to ask him a question?

CHAIRPERSON REID: Yes. Oh, yes.

BOARD MEMBER GILREATH: I understand from your earlier testimony that the way they were talking about the original site plan for the garage and what he built, that they weren't compatible and that the building inspection people might investigate this. Did I understand that correctly? Is this in compliance with the permit that was granted? That the building exceeded what he was allowed to build for the garage?

MR. NUNLEY: That's correct. The Building Inspections Division -- because they are the field arm -- are charged with that responsibility, yes.

BOARD MEMBER GILREATH: Well, do you feel that they -- when you said -- I got the impression you had actually -- you understood that perhaps they would go out there and check this out to make sure, indeed, it was in compliance or in non-compliance. Do you expect to follow through this, or is that -- how do you feel about this? Is the building in compliance with the permit, or do you think it's larger than the permit allowed?

MR. NUNLEY: Are you talking about the garage

at this point?

BOARD MEMBER GILREATH: The garage. The garage, yes.

MR. NUNLEY: Well, to be very honest with you, if it follows the -- either this plan or the other plans, notwithstanding the location or proximity of the property lines, it's consistent with the drawing but inconsistent with the permit.

Now, that -- even though I agree it should have been raised by Mr. Sisson or his people, it also should have been raised by our Building Inspections Division. The inspector has a copy of the permit. It shows those dimensions on it. He also has a set of the plans, or he goes to -- and the contractor is required to keep a set of stamped plans on the job, so he can check that the construction is being done appropriately.

It seems that that would be the kind of discrepancy that would just jump right at a building inspector. So the only way I know to respond is that my understanding from calculations that my staff has done is that with the garage that size, the addition that size, the front porch -- the new front porch of that size, then there are inconsistencies with the Wesley Heights overlay. And in my opinion, it's too big because of that, if for no other reason.

BOARD MEMBER GILREATH: Well, do you -- say we dismiss the appeal. Would the inspection people go out there

and inspect all of this and make -- could make the determination that it's not in compliance with the Wesley Heights Overlay Act and action be taken to say, "Hey, you're out of compliance. You've got to adjust this"? Or what -- if we don't do anything, what kind of action would you undertake, if any, or do you anticipate might be undertaken?

MR. NUNLEY: I could, and most probably would, recommend reevaluation of it to our Zoning Administrator, who is also our Building and Land Regulation Administrator.

I don't know what enforcement steps would be taken after that. I can't, of course, surmise his decision. But I would indicate to him just the facts as I see them, and he would make that determination whether to attempt to go forward or whether to not go forward.

I don't have any better way to answer that, to be honest with you.

BOARD MEMBER GILREATH: Well, no, that's a fair answer.

CHAIRPERSON REID: Well, in other words, Mr. Nunley, you're saying that we have a situation here where, notwithstanding all of the other aspects of this particular case, one glaring mistake is the fact that the garage has been built larger than what is supposed to be there.

Now, arguably, it could be said that, well, it's on the plan, and what the intent was here. But the permit was -- the writing on the permit was in conflict with

the plan. Okay? In a situation like that, then who is the --

VICE CHAIR KING: It was absolutely parrot to what Mr. Sisson applied for. His application calls for the dimensions that appear on the building permit.

CHAIRPERSON REID: Mr. Sisson testified here today that those were not the dimensions that he put on the application. He said -- well, Mr. Nunley, what I want to find out is: in a situation like that, where you have that kind of conflict, then how is it reconciled?

MR. NUNLEY: It's reconciled within our administration initially. I have to say the broader -- because when you look -- I don't want to look at just the garage, because we have more than just the garage as an issue here under zoning. We have an issue of side yard here. We have an issue of encroachment into the front yard here.

We have an issue with the permits, the discrepancies on the permits. We have an issue of plats not being here. So the responsibility is throughout our administration, but various levels of responsibility, or various areas of responsibility as opposed to levels, within the administration.

We also have intervention by a director who apparently made a determination outside of what we may or may -- may have determined in zoning at that time.

CHAIRPERSON REID: But if he -- excuse me. Mr. Nunley, not to cut you off, but if that -- that being the

case, wouldn't you have to have something like that in writing signed by the Director?

MR. NUNLEY: It would seem to me, and I've seen nothing, but I do know that there was some input from our then Director because I don't believe that -- you and I may have spoken very briefly, but I think most of your conversations may have been with Mr. Bellow, who is my staff person who was doing the work on this.

And he -- when he briefed me, he indicated that one of the reasons that we made the determination on the second garage was because of input from our Director. So there is a lot more -- I don't want to -- it's difficult for me, and I don't think anyone should look at this one aspect exclusive of the others. You've got to look at this in the totality, not only the chronology but the totality of the site.

CHAIRPERSON REID: Okay. This plat map, Mr. Sisson, is what we have in the file. But even though it's dated 10/02, it's 10/02/99, for starters, it does not show -- can you see it? You can come up and look at it. It does not show any of the -- it does not show the garage. And I don't know if it's done to scale or what, but this is what was in the record.

MS. PRUITT-WILLIAMS: Is that correct for the fifth permit?

MR. SISSON: No. There were some -- I hired a

surveyor to go out and to do a wall check, what's called a wall check. And I did it twice. I did in context of the addition to the existing house, and I did it in context of the garage. He was registered with the District of Columbia. I paid him for both surveys.

MS. PRUITT-WILLIAMS: Do you have those drawings, sir?

MR. SISSON: He submitted them directly to the District of Columbia.

VICE CHAIR KING: And you've got no copies?

MR. SISSON: I don't have a copy, no. Again, it was after the fact, frankly. It was done -- one was done in -- I don't know -- when the wall was -- again, I'm sorry. I'm just trying to recollect -- but you do it, as I understand it, when the footings are put in, to give -- so one of them was done probably in March.

CHAIRPERSON REID: So it should have been on here, right?

VICE CHAIR KING: This accompanied your application, your application for Permit Number 5, to build a roof on an existing porch.

MS. PRUITT-WILLIAMS: Is that the location of your house, sir? Or can you -- I mean, can you tell us --

MR. SISSON: Well, roughly. I don't think it is accurate, to be honest with you.

CHAIRPERSON REID: Did you submit this?

MR. SISSON: Not directly, no. But --

CHAIRPERSON REID: Because it doesn't have the garage, it doesn't have the addition. It just has the -- nothing -- all it indicates here is the roof.

And here is what I don't understand. In your submissions, each time it appears that rather than submitting the entire project, all of the different things that you were asking for, that you kind of only show that part that was germane to the application or the permit you were requesting at that time. Why did you do that? Why is it so disjointed?

MR. SISSON: Well, I'm trying to think. There was no real reason to do it. I mean, the reason for the garage being separated was, as I said, originally it was our intention to put a new garage there. It was my intention to put a new garage there.

But the architect came back and said, "Look, we can only do a renovation of an existing garage." And so that's why that got separated out. The rest of it, I don't know.

CHAIRPERSON REID: Okay. Now, in regard to your discussion with the Director --

MS. DWYER: Yes.

CHAIRPERSON REID: -- who --

VICE CHAIR KING: Was that David Watts?

MR. SISSON: I think so. I don't remember his name.

CHAIRPERSON REID: What year was it?

MR. SISSON: It was -- well, it was in May of 1998.

CHAIRPERSON REID: Oh, May of 1998.

MR. SISSON: Just before I got the permit.

CHAIRPERSON REID: And so that was Mr. --

VICE CHAIR KING: No, it was not.

CHAIRPERSON REID: Dwight Reeves?

MR. SISSON: Mr. Reeves.

CHAIRPERSON REID: Okay.

MS. DWYER: The signature on the first three permits is David Watts. Mr. Reeves' signature is in August of '98.

CHAIRPERSON REID: So up until May, did you deal with Mr. Watts? Is that when you had the conversation?

MR. SISSON: Yeah. I'm sorry. I don't remember his name. I don't --

CHAIRPERSON REID: Okay. But just the date, because we know --

MR. SISSON: It was before May 27th because this was --

CHAIRPERSON REID: If it was before May, then it was Mr. Watts.

MR. SISSON: Yes.

CHAIRPERSON REID: Of last year.

MR. SISSON: Sure.

CHAIRPERSON REID: Anyway --

VICE CHAIR KING: I'm not sure. When did David leave?

MR. NUNLEY: I don't remember exactly, but I do know that Mr. Reeves was on board when David Watts was the Director. He took over for David when he left. I don't believe that these are signatures on the --

VICE CHAIR KING: I mean, is it possible that the forms were all typed up with David's name, even though he had --

MR. SISSON: Yes, very possible.

VICE CHAIR KING: I don't think that Mr. Watts was there then. I think he left the previous year.

CHAIRPERSON REID: My question was -- I remember we met with him last year. It was in the spring of last year, late spring, so somewhere about -- it was either he or Mr. Reeves. Okay? We can just -- suffice it to say.

In that conversation, you're contending that he gave you some assurance that even though what was happening with your property was a bit irregular that because of the circumstances surrounding it that he would permit you to proceed.

MR. SISSON: Well, his comment was, frankly, it was just -- he simply said, "Look, you had a permit to build a two -- in effect, a two-car garage." Well, to renovate an existing garage, to make it a two-car garage. "When you

undertook the construction and found that the footings for this -- under the original garage were rotten and wouldn't support the actual renovation, then it was -- you did the right thing by taking them out because there is no purpose served to having a rotten foundation under your garage."

He said, "That I understand. There is -- you have a technical departure. You no longer are amending or renovating an existing garage. You are now, by definition, constructing a new garage."

"But," he said, "as far as we're concerned, it would be a miscarriage of justice" -- and that was the phrase that he used -- "to deny you the right to construct a two-car garage because of this technical problem you encountered in the construction, and that we will go ahead and issue a permit for a new two-car garage."

And he told me to go down and go through the permitting process, which, again, I did, kind of, I'll admit, not very effectively, evidently. But I did go through and they knew that I was coming. They were familiar with the case, and they signed off and I got what I thought was a valid permit to put a new two-car garage on the property.

CHAIRPERSON REID: That was based upon your assessment and the fact that you had spoken to the Director and the Director had --

MR. SISSON: Whoever had called down. He was --

CHAIRPERSON REID: He called down?

MR. SISSON: He called down.

CHAIRPERSON REID: Oh. Mr. Nunley?

MR. NUNLEY: Yes.

CHAIRPERSON REID: Excuse me, Mrs. King.

Is this something that occurred occasionally, where you have a citizen who desires having something done, and they're having problems, they go to the Director, and the Director then will call and say, "This is okay. I have given permission for this to be done?" Irrespective of the fact that this is not what is typically allowed within the zoning regulations, but he has the wherewithal to be able to do that?

MR. NUNLEY: This is something that doesn't happen often. Well, I haven't seen it very often in my 30 years, I'll put it that way. But there are occasions when the Director may override a decision. It's rare for them to override a decision relating to zoning because of the nature of zoning. But there have been cases where the Director has given an opinion that you'll want to follow.

CHAIRPERSON REID: Okay. And once you -- once that phone call comes in, then you're satisfied with that decision, and so this is why you said earlier that it was rather -- a little bit more involved because of the intervention of the Director, is that not correct?

MR. NUNLEY: That is correct. And the call didn't come directly to me. I didn't find out about the call,

quite honestly, until after I got called from citizens. I can't remember now exactly whether it was Mr. Brown or Ms. Crary, or whom, complaining about the second permit. And in my research, talking to Mr. Bellow, I found that he had gotten a directive from the top, so to speak.

CHAIRPERSON REID: Okay. So you were aware of that call?

MR. NUNLEY: I was aware that some -- yes, that that call had come down, yes.

CHAIRPERSON REID: All right. Thank you.

VICE CHAIR KING: Mr. Nunley, the call from David Watts, or whoever was the Director at the time, covered only the question of the garage, not roofing the porch, or in any other way violating the Wesley Heights overlay, is that correct?

MR. NUNLEY: That's correct, to the best of my understanding. Yes.

VICE CHAIR KING: Thank you.

MS. PRUITT-WILLIAMS: Mr. Sisson, when you started your renovation on the garage and found that the foundation was no longer good, did you replace the -- did you actually put the foundation in the same location of the old garage?

MR. SISSON: Yes, on that one wall. On the one wall towards the --

MS. PRUITT-WILLIAMS: Did you use the existing

foundation location?

MR. SISSON: That's right. Yes, ma'am.

MS. PRUITT-WILLIAMS: You just replaced them.

MR. SISSON: Yes, ma'am.

MS. PRUITT-WILLIAMS: Thank you.

CHAIRPERSON REID: Okay. I have no further questions.

Now, persons or parties --

MS. DWYER: I have some statements that I want to make on the legal issues.

CHAIRPERSON REID: Now, you do have -- oh, okay. Go ahead. I'm sorry. Go ahead.

MS. DWYER: As I said earlier, I wanted to give Mr. Sisson the opportunity to relate to you the chronology of events, and as he lived through them, I guess. But now I do want to get back to the grounds of our Motion to Dismiss and --

CHAIRPERSON REID: Mr. Brown?

MR. BROWN: Are we going to wait for examination of Mr. Sisson?

MS. DWYER: Do you want to continue?

CHAIRPERSON REID: Well, they're not done. My understanding is that --

MS. DWYER: No, I don't know why they would --

MR. BROWN: That's fine.

CHAIRPERSON REID: Are you done with the

presentation of your case?

MS. DWYER: No. Mr. Sisson is done with his testimony. So if this is the time to allow cross examination --

CHAIRPERSON REID: All right. Mr. Brown, do you want to cross examine?

MR. BROWN: Sure.

Mr. Sisson, you indicated that when you got started you were hoping to do four things -- the porch, the front porch -- was that going to be a covered front porch?

MR. SISSON: Yes.

MR. BROWN: Okay. An addition -- a two-story addition to the back. That would also have a deck, so that was item 3, deck coming out. And a garage. So are the four elements.

MR. SISSON: That's correct. Yes, sir.

MR. BROWN: And you indicated that you were only able to do three of those items, correct?

MR. SISSON: My -- that was my request to the architect. The architect met with the authorities at the District of Columbia, and he came back and said, "You have to make a choice between a back deck and a front porch, because you cannot have both. You have some problem" -- again, with coverage, lot coverage, or something like that. I don't remember what it was. But he said -- in essence, he said, "You have to make a choice between one or the other."

And at that time I said, "The porch is more important to me than the back deck. And, therefore, we'll just go ahead with the porch."

MR. BROWN: So at that point, you were making -- on the advice of your architect, you were making tough decisions to bring your property into compliance with zoning, is that correct, based on the original plan?

MR. SISSON: That was my understanding.

MR. BROWN: Okay. So in January of '98 -- if I could, I'm going to borrow my colleague's exhibit. In January of '98, in Permit Number, you wanted to do three things. Based on your wish list and compliance with zoning, you wanted to build a covered front porch, a two-story addition, and a new garage, right?

MR. SISSON: Yes.

MR. BROWN: Why, at that point, did you only file a permit for an uncovered front porch, a two-story addition, and not at that time anything having to do with the garage?

MR. SISSON: I didn't directly file for the permits. This was what my request was to the architect. The architect -- I really can't answer what his motivations were, what his --

MR. BROWN: So you didn't look at the plans before the permits were filed?

MR. SISSON: I'm sure I did look at the plans.

Whether I recognized the significance, I don't know.

MR. BROWN: But, again, you wanted a covered front porch.

MR. SISSON: Yes.

MR. BROWN: That was what you were aiming for.

MR. SISSON: Yes.

MR. BROWN: All right. And you knew that if you had a covered front porch, you had to make choices for lot occupancy. You said lot coverage.

MR. SISSON: That's what the architect told me, yes.

MR. BROWN: All right. So at that point, from the first day, you knew, and your architect certainly knew, that the Wesley Heights overlay district -- you may not have known it that way -- but you were subject to restrictions on this development.

MR. SISSON: Well, I knew I was subject to some restrictions. I mean, every property in the District of Columbia is subject to restrictions. I didn't know if they were Wesley Heights overlay. But, yes, I knew that there were restrictions.

MR. BROWN: So in order to get what you wanted, you had to comply, correct?

MR. SISSON: That was my -- yes, that was what I thought I was doing.

MR. BROWN: And so you have no idea why, even

though you wanted a front -- covered front porch, why a permit was submitted for an uncovered front porch?

MR. SISSON: No. I -- which permit are we talking about?

MS. DWYER: Which is the --

MR. BROWN: Any up until 4 and 5. Because, again, you're saying that -- and you bought the property in November of '97, correct?

MR. SISSON: Yes.

MR. BROWN: And you went through, and in January, late January of '98, you went forward on a project that you say has cost you $250,000, correct?

MR. SISSON: That's correct. Yes.

MR. BROWN: Okay. So at that point, before you got started, you had these plans drawn up by an architect. You reviewed them. He conformed those plans to zoning decisions you had to make for compliance, correct?

And your choice was, as you've said, you wanted a covered porch out front. That was very important to you.

MR. SISSON: Yes.

MR. BROWN: All right. And you can't tell me why your permit didn't request a covered porch. Okay.

MS. DWYER: If I may clarify --

MR. BROWN: No, wait.

MS. DWYER: No, you --

MR. BROWN: I'm asking --

MR. SISSON: Well, I mean, I don't -- you know, it might have been -- I don't know what the costs of permits are. I don't know if there is any -- you know, if you save money by -- I have no idea. I have no idea. I don't know.

MR. BROWN: You also wanted a garage, but that wasn't included in your plans, correct? The first plan, Permit Number 1, it was just --

MR. SISSON: Permit Number 1 doesn't include the garage?

MR. BROWN: Here, in Permit Number 1, you saw these plans before they were filed, didn't you?

MR. SISSON: I'm sure I have seen them, yes.

MR. BROWN: Okay. And so you're showing a new garage. You're showing the demolition of the old, existing garage here, correct? There's your uncovered front porch. And you're showing that you're not going to build the garage, correct?

MR. SISSON: Again, my -- I can only speculate because I don't really recall what happened there. But my impression is that the -- I told the architect that I wanted a new garage, and I think it was not a zoning issue that was an issue with regard to the garage. I think it was an issue of egress.

The question is whether you could build a new garage on an access that was not a dedicated right-of-way, i.e. by definition "alley" as the District of Columbia

certifies.

MR. BROWN: Okay. So --

MR. SISSON: There was a dedicated right-of-way, but there was not an alley. And my understanding and my recollection is that, yes, we intended to build a new garage. The architect said, "We can't do it," because of egress. Not because of zoning or anything like that. That was never -- or lot coverage, or anything like that.

MR. BROWN: So in Permit 2 --

MR. SISSON: Yes.

MR. BROWN: -- which you were submitting to renovate the existing garage, correct?

MR. SISSON: Correct. Yes. He said that this was something that we could do; that whereas you cannot build a new two-car garage, you can build a one-car garage with renovation to a two-car garage, which is exactly what my neighbor did to the south.

MR. BROWN: Did the architect develop plans showing the renovation of the garage?

MR. SISSON: I think the Permit Number 2 was exactly about that. In fact, if you look at the diagram -- and, in fact, I'm sorry -- if you look back, he shows the existing garage and the addition. So I think that's what he was after, yes.

MR. BROWN: And only after you got the stop work order did you find the need to go out and hire somebody

to draw up plans for the new garage?

MR. SISSON: Well, my understanding was the permit two applied. Therefore, we were going to renovate the existing one-car garage and have the addition to a two-car garage. That's why we had the permit.

When the contractor was trying to do the renovation, he found the foundations to the existing garage were rotten and would not support any change to the structure. It was at that time that I think through your intervention or Mrs. Crary, that a stop work order was issued. That is when I went back to get the third permit.

That also explains, by the way, why you spent 10 minutes this morning talking about how these plans don't apply to the existing garage. That's true. Permit two has no governance over the actual construction of the garage, because it was superseded by permit number three.

MR. BROWN: Let's look at permit number two, which we're looking at now. You are talking about renovating, correct?

MR. SISSON: Yes.

MR. BROWN: You are going to add on to the existing. Yet the plans, why do they show only the construction of a new garage? There's nothing else there, they only show why.

MR. SISSON: I don't know if they would show only the construction of a new garage. Does it say that the -

- I think the footings and doesn't it say something about the old footings?

MR. BROWN: No. It says new garage front elevation, new garage cross section, garage plan. It doesn't mention footings. It says raise demo entire garage.

MR. SISSON: It says existing footing foundation here. It says new foundation over here. I think that's the renovation concept.

MR. BROWN: But here you have got a 21 call-out by 23 foot garage. Correct?

MR. SISSON: Yes.

MR. BROWN: And that was for a renovation?

MR. SISSON: It was a renovation and remodeling to a two-car garage, yes.

MR. BROWN: Permit number three. Did you file?

MR. SISSON: I filed this, yes.

MR. BROWN: And this was for a new garage?

MR. SISSON: Well, as I say, it wasn't kind of from the ground up new garage. I mean it wasn't that a garage work had never been envisioned before. This was again, as I have explained to the Board, this was a garage that was -- the plans were initiated when there was a problem with permit number two. I attempted to address the issues that had been raised about the fact that it would in fact be a new garage.

MR. BROWN: So it is a new garage?

MR. SISSON: It is a new garage.

MR. BROWN: Yet the plans are the same as they were for the other one.

MR. SISSON: It's interesting that this says "new footing" over here on this plan.

MR. BROWN: But essentially they are the same. It's the same --

MR. SISSON: Well, I didn't have anything in mind to make it a three-car garage, no.

CHAIRPERSON REID: Mr. Brown, if you are satisfied with that answer?

MR. BROWN: No. But we're not going to get any better than that. I think that's fine.

Can I ask you, and this is -- I am going to use the larger drawing because I didn't follow your description. If you could once again point out your easement restriction on your property.

MR. SISSON: There is in the deed to my property, there is an easement for I think it's eight feet, something like this. It's an area something like this.

MR. BROWN: This way? In this way?

MR. SISSON: Yes.

MS. PRUITT-WILLIAMS: For the record, could you describe that? It's eight feet north, going north?

MR. SISSON: I'm sorry. I don't really have the legal description. I don't know. But it's something like eight feet.

CHAIRPERSON REID: It's east-west, so isn't it west?

MS. PRUITT-WILLIAMS: That's north. So from there, Mr. Sisson, it goes from your property line up on this drawing, which is east.

MR. SISSON: Again, I haven't looked at it, but it's 25 feet and eight feet. I presume that it's eight feet here. Maybe it's 25 feet this way.

CHAIRPERSON REID: Isn't that west?

MS. PRUITT-WILLIAMS: Okay. So it's 25 feet from north to south or south to north, and then eight feet from east to west.

MR. SISSON: I think that's correct.

MS. PRUITT-WILLIAMS: From the property line.

MR. SISSON: That's right. That's right.

VICE CHAIR KING: And where is the property line? Where is your property line?

MR. SISSON: I think it's right here.

VICE CHAIR KING: So it encompasses part of the driveway?

MR. SISSON: Yes. I think it encompasses this part right here.

VICE CHAIR KING: That part. In other words, half of the driveway?

MR. SISSON: That's my understanding.

VICE CHAIR KING: Therefore, just because I had

asked a question about it earlier, therefore the map that you presented with your testimony today is not quite accurate as to that part of the map.

MR. SISSON: I'm sorry. Which one?

VICE CHAIR KING: It shows you own the whole alley.

MR. SISSON: I see your point. I'm really -- you are probably right. I really don't know.

VICE CHAIR KING: Also, on the map that you gave me, there's no yellow line for 5(1)(a) zoning designation. I don't know if it's on anybody else's, but it's not on mine. Just so that is part of the record.

CHAIRPERSON REID: Whose map are you referring to?

VICE CHAIR KING: I am referring to the map that Mr. Sisson presented.

MR. SISSON: I see what you are saying. There is a yellow block there, but it isn't blocked in here, sure.

VICE CHAIR KING: You see, it says over here R-1-A in yellow. There is no yellow on it. Also, according to what he just testified, he does not own the entire alley and beyond.

CHAIRPERSON REID: Okay, but on the next page --

VICE CHAIR KING: No. I'm not talking about that. I am talking about but on this one, you see, there is

no yellow on this one. Also, he has just testified that he in fact, the alley goes 25 feet into his property and eight feet up, and that he only owns to the middle of the alley, so that his red and white striped property line is not correct.

MR. SISSON: But, Mrs. King, strictly speaking, that is not an alley. I mean that's the whole source of the whole problem, is that had it been an alley, there would have never been any issue here.

VICE CHAIR KING: No, no, the driveway, the private driveway. But I just wanted to point out that the map that you had submitted for part of the record today should not be accepted as being definitive, because there are errors in it.

CHAIRPERSON REID: So you only go to half of that driveway, not the whole -- it doesn't go over the whole.

VICE CHAIR KING: And in fact, the driveway easement intrudes into his property beyond the -- I don't know, is it southern boundary of that?

MR. SISSON: The southwest point of the property, yes. It intrudes 25 --

VICE CHAIR KING: Twenty five feet in?

MR. SISSON: Twenty five.

VICE CHAIR KING: That way. And eight feet up, okay.

MR. BROWN: Mr. Sisson, I'll be brief. You began the project wanting to build a covered front porch.

That was your plan?

MR. SISSON: That's right.

MR. BROWN: The plans didn't include a covered front porch. When did you discover that?

MR. SISSON: I'm trying to think. I think it was in -- that was the reason for the fifth permit, frankly, or at least my impression was that there had been a mistake made on the fourth permit. That is when I -- I didn't realize it. I had asked the builder to get a permit for the porch because we were ready to construct it. I think even for a number of times that it was already constructed, earlier in the year, it was not. In fact we had not begun construction in August. That was the last thing to be built. In August of 1998, and I said it's time to get a permit. We have the lady next door that's not very happy. Let's make sure that we do this right.

He got a permit. I said, "Did you get the permit?" He said, "Yes, I did." Two weeks later, I saw it and I didn't think it was correct. So I said we need to get another permit. We need to get the right permit. This does not raise the question of a new roof. We have a porch with a new roof.

So he went back to -- and as far as I know, I mean I think Mr. Nunley testified that this was done at some instigation by the D.C. Government, but to the best of my knowledge, I discovered it when I looked at the permits for

the first time two weeks after they had been granted, and said this is not the right permit. Let's go back and get another permit and get it correct. I thought with the fifth permit, we had done that.

VICE CHAIR KING: Okay. The first permit was issued at the end of January, and you say two weeks after that, you told your people to go and get the proper permit for the front porch?

MR. SISSON: No, no, no. In August. The permit, I said, we're ready to construct. We're almost finished with the construction. It's August. Get the permit for the porch. I thought that it would have been covered under the original plan, that everyone knew that there was a porch that was going to be constructed. The contractor went out and got permit number four, which was granted in the middle of August.

MS. PRUITT-WILLIAMS: Yes.

MR. SISSON: I thought that was the end of the story. Again, two weeks later, for the first time saw the permit. He had said, he had told me verbally that he had a permit. I said this doesn't look like what we're building. Go back and get it right. That was why the fifth permit was issued.

MR. BROWN: So you are indicating that on August 17th is when permit number four was issued, that the roof, the covering of the porch had not been completed?

MR. SISSON: That's right.

MR. BROWN: Okay. Then why did the permit say existing roof?

MR. SISSON: This is a good question. That's what I asked the contractor when I said, look, this permit is not correct. Go back and get the permit to build this porch correctly. As I said, that was about the first of September when I actually did see the fact that the permit four was not correct.

MR. BROWN: So you authorized him to go get permit five.

MR. SISSON: Yes. In fact, I instructed him. I didn't authorize him, I told him, "Go get the right permit."

MR. BROWN: So that October 5th, and that was a walk-through permit, correct?

MR. SISSON: I didn't do it. I have no idea. But I told him, "Look, this is not correct. You have to resolve this."

MR. BROWN: On October fifth, that fifth permit was issued?

MR. SISSON: Again, that's a matter of record.

MR. BROWN: You told your builder, constructor, whoever, to do it?

MR. SISSON: The contractor, yes.

MR. BROWN: To do it when? To get a new permit?

MR. SISSON: I don't know. It was some time after the fourth permit was issued because I didn't see it immediately. I asked him verbally if he had gotten a permit. He said that he had. I didn't actually see it for two or three weeks. But then I said, "This doesn't look right. Go back and address it correctly."

MR. BROWN: But sometime between August 17th, when -- you have indicated that you were finished completely in October.

MR. SISSON: That's right.

MR. BROWN: Including the covered porch.

MR. SISSON: That's right.

MR. BROWN: The covered porch was completed prior to the permit number five?

MR. SISSON: I presume it was, yes. I mean because basically we had started construction when the contractor said that he had the permit. Basically a porch doesn't take very long. Really, the porch was done in a couple of weeks.

MR. BROWN: So even with permit four, you knew it was incomplete or inaccurate or insufficient, yet you continued construction?

MR. SISSON: I don't think that's correct, no. As I told you, I said there was two or three weeks before I realized that there was a problem, or at least in my mind there was a problem with permit four. I said, "I don't think

this is right." By that time, the construction was virtually complete. I said go back and get a permit that was correct.

MR. BROWN: So that you are saying that the roof was almost finished prior to permit --

MR. SISSON: Permit five.

MR. BROWN: Okay. All right.

MR. SISSON: Not permit four. Permit four, construction had not begun.

MR. BROWN: At all?

MR. SISSON: At all. I know you have said the opposite, but it is not true.

MR. BROWN: You indicate that it says "existing roof." "Roof in place, no structural change." It includes diagrams. Had you ever seen these? I have shown you these.

MR. SISSON: Yes. Certainly I have seen them.

MR. BROWN: Did you see them before they were filed?

MR. SISSON: I saw them before they were filed, yes.

MR. BROWN: So that you are indicating that you were repairing an existing roof. Correct?

MR. SISSON: Actually this is -- what is this?

MR. BROWN: This is permit number four.

MR. SISSON: Permit number four, the drawings attached to permit number four, I think it is pretty obvious that this repair roof only has been added very -- it was not

part of the original drawings. I think you can see that some things that were in part of the original drawings were crossed out.

I think the actual drawings themselves are very clear that it is to be an addition of an additional porch, porch addition, front, it says.

MR. BROWN: But by the time this was filed, this is indicating to your mind that it was already done, because they are having to change what is a plan to be, to repairing something.

MR. SISSON: All I can tell you is there was no construction that had taken place by the time permit four was authorized.

MR. BROWN: But the roof was completed or substantially completed before permit five?

MR. SISSON: Yes. That is correct.

MR. BROWN: And you were aware of that?

MR. SISSON: Yes. Well, again, I was under the assumption that permit four would have authorized a roof. It wasn't until after the fact that I realized that it did not.

MR. BROWN: That's all the questions I have.

CHAIRPERSON REID: Thank you.

Mrs. Dwyer, as a part of your case that the Intervenor is putting on, the gentleman who is here, is he here to testify with your particular case?

MS. DWYER: No.

MS. PRUITT-WILLIAMS: He is a party in support of the Appellant.

CHAIRPERSON REID: Oh, okay. I didn't know what his position was.

Mr. Brown, were you going to have him speak?

MS. PRUITT-WILLIAMS: Madam Chair, I believe Mr. Watson is going to speak, just testify as an individual after the Intervenor gave his case.

CHAIRPERSON REID: I understand that. But the point I am making is that the appeal cases are a little different. After the Intervenor's case, then there is closing remarks by the Applicant -- I'm sorry, by the Appellant. If in fact there were going to be some testifying, it should have been done when you were putting on your case.

MR. BROWN: He is not a witness as part of my case. He is a --

CHAIRPERSON REID: There is no provision for persons in support or persons in opposition. So the only way we can get him in is when you do your closing remarks, we can just waive the rules and have him come up. That's what I was just trying to ascertain.

MR. BROWN: That will be fine. I hope it's okay with Mr. Watson.

MR. WATSON: I don't understand. I came on the 21st of April all prepared with the testimony.

CHAIRPERSON REID: Don't speak from the

audience. Come up.

VICE CHAIR KING: You are going to be allowed to testify, Mr. Watson.

MS. DWYER: What I would like to address are issues --

CHAIRPERSON REID: Give your name.

MS. DWYER: Maureen Dwyer. Wilkes, Artis, Hedrick and Lane, Chartered.

I plan at this moment to address issues that were raised on numerous prior occasions, but are clearly set forth in our motion to dismiss. Specifically, we cited three grounds for dismissal of this appeal. One, that the appeal was not timely filed. Two, that it is barred by laches. Three, that is barred by estoppel.

I know at the last meeting, that corporation counsel had advised the Board that corporation counsel did not believe that estoppel applied in this instance. We believe it does. But rather than address that verbally, I am going to stand on the basis of what we filed in the record. But we clearly believe that we meet the requirements for the application of equitable estoppel.

I want to start by saying that what you have before you is not a commercial developer, but a homeowner, a resident of the District of Columbia who purchased a home and then proceeded to renovate it, much like his neighbors had done. He did so with permits.

Mr. Sisson did not attempt to circumvent D.C. law and regulation, and he does not come before you with unclean hands. I know that this Board has heard many cases where property owners are before you having not filed for or received the necessary permits. In this case, Mr. Sisson is being faulted for getting too many permits.

He filed for and received all of the necessary permits, not just one, but five permits in total. Each time, the District government reviewed his plans, inspected the property, and approved the work.

As Mr. Sisson testified, there was one occasion where the District government determined that the work to the property exceeded the permit. A stop work order was issued because the contractor had taken out the foundation of the existing garage. Mr. Sisson immediately filed for a third permit, permit number three, for the new garage, and the work proceeded.

At that time, Mr. Sisson assumed full responsibility for the work. Prior to then, he had relied on his architect and his contractor. At that point, he himself went down to the District, filed for the new permit. The City issued the permit and lifted the stop work order. That was back in May of 1998.

In his filing and in his testimony this morning, Mrs. Crary tries to paint a pattern of deception, and states that not until all permits were issued was the full

extent of the work known. Nothing is further from the facts.

As we have indicated, back in January of 1998, when the first permit was filed, the site plan filed with that permit showed all of the work that was being proposed for this property. There was no hiding of the truth and there was no deception.

The Appellant also argues that even though it waited until September to file the appeal, that was timely. This too is not supported by the facts or the case law.

The first permit, let me walk up to this chronology which you have attached to our motion to dismiss. The first permit was issued in January of 1998, and construction began in February of 1998. In the file, you have photographs showing that Mrs. Crary lived right next door to the property and fully observed all of the construction. By May of 1998, the exterior work had been completed, and interior work was ongoing. Regardless, Mrs. Crary waited eight months until filing an appeal.

The second permit was issued for the garage addition. Initially it was keep the existing garage and add onto it to make it from the one-car to two-car garage. That permit was issued in February. Construction began in February. The Appellant, who lives right next door, had noticed. She had even at that point started calling the City to check on this, raising questions about zoning violations. A stop work order was issued. Nonetheless, the appeal was not

filed until September 18, a seven month delay.

This building permit, for all of the discussion about it this morning, was mooted by permit number three. This is the permit that now governs the garage that's on the property. This permit was issued in May of 1998. Work was already in progress. The whole reason that this permit had to be issued was because of existing site conditions that the contractor discovered. Construction was completed. The appeal as to this permit was not filed until January of 1999, which is an 11-month delay.

The fourth permit for repair of the porch roof was issued in August of 1998, and construction began that same time. As Mr. Sisson has testified, for the porch it was a matter of a few weeks, and construction was completed. The appeal was filed on September 18, which is only one month after the issuance of this permit.

So arguably, as to this permit, there may not be a timeliness argument except for two facts. One, that this work was known back in January when the initial permit application was filed. So constructive notice was provided to Mrs. Crary. Secondly, this permit has been mooted by the fifth permit. This is the permit that now governs construction on the porch. This permit, appeal was filed in January of 1999, which is a five-month delay.

VICE CHAIR KING: The fifth permit was to replace a roof on an existing porch?

MS. DWYER: Yes.

VICE CHAIR KING: And when was the existing porch built and the roof built on it?

MS. DWYER: The existing porch was part of the permit number four. The repair was in fact --

VICE CHAIR KING: That was for the repair of an existing roof. So presumably it predated that. Is that correct?

MS. DWYER: What Mr. Sisson has testified is that the fifth permit corrected the errors that he saw with permit number four.

VICE CHAIR KING: But it says on the permit that it's to replace a roof, an existing roof on an existing porch.

MS. DWYER: Right.

VICE CHAIR KING: What you are saying now is that no work was done on the porch or any roof of the porch until he got permit number five?

MS. DWYER: No, what I'm saying, what Mr. Sisson has testified, is that the work had proceeded under permit number four. When he looked at the permit and realized that it was repair of an existing roof as opposed to new construction, he immediately went down and filed permit number five to correct the records.

VICE CHAIR KING: Now, Ms. Dwyer, are you arguing that the covered porch, the two-story addition at the

rear, and the two-car garage in no way violate the Wesley Heights Overlay?

MS. DWYER: No, I am not. What I am saying, my --

VICE CHAIR KING: But you admit that there is a violation of the Wesley Heights Overlay?

MS. DWYER: At this point, I am addressing the motion to dismiss and the issue of timeliness.

VICE CHAIR KING: Okay. But before you finish your presentation, you will deal with the Wesley Heights Overlay and whether or not there is a violation.

MS. DWYER: I believe the Wesley Heights Overlay issue has been dealt with by the zoning administrator, who testified that as to the first three permits, and his testimony is that those permits did not violate even the Wesley Heights Overlay district. Even though they didn't show the correct zoning classification on those permits, that those did not violate the district.

VICE CHAIR KING: Based on what was submitted by the Applicant? By the site plans and the plats and so forth?

MS. DWYER: Based on the plans that were approved by the City, the two-story rear addition, the garage addition. Those two components of this project did not violate the Wesley Heights Overlay district.

The issue seems to be with the final permit for

the porch at the front of the property. That's when Mr. Nunley testified that there are issues in terms of the set-back. At that time, lot occupancy issues, given the cumulative impact.

VICE CHAIR KING: So you do agree that there is a violation of the Wesley Heights Overlay?

MS. DWYER: I agree that there is a question as to the permit for the porch. I agree with Mr. Nunley that as to the two-story addition and the garage addition, that those are in compliance with zoning, regardless of the discrepancy in the zoning classification on the permits.

As this chronology shows and as the testimony as pointed out, the Appellant in this case lives right next door to Mr. Sisson. Mr. Sisson has testified that he was not there on a day-to-day basis supervising the activities, that he does work, and is occasionally out of the country. Yet at every point when an issue was brought to his attention, he immediately went down to the City and sought to rectify it.

By her own admission, the Appellant at some point retained counsel, in this case Mr. Brown. By March 25th, he had gone down to the City records. He had pulled the permits, and he had reviewed the plans. By his own admission, and this is in his filing, his pre-hearing submission, Mr. Brown stated that he believed at that time that even the first permit had been wrongfully issued. He lists on page 15 of his pre-hearing filing the reasons why. Yet Mrs. Crary did not

file an appeal until September, a full eight months after the permit had been issued and work begun. In fact, by the time the appeal was filed, with the exception of the porch, all of the work on the site was completed.

If there is any pattern here, it is a pattern by Mrs. Crary, the Appellant, to wait until all of the work has been completed at substantial cost to Mr. Sisson, before filing the appeal.

As several Board members have noted at prior hearings and meetings on this case, the regulations do not require or provide a specified time period for filing an appeal. Yet this Board and the Office of Corporation Counsel and the courts have applied a standard of reasonableness.

What is a reasonable time period to wait in order to invoke the Appellant jurisdiction of this Board? As we indicated in our motion in appeal number 11158, in 1976, this Board held that a seven-month delay was unreasonable. In the Goto v. D.C. BZA case, the D.C. Court of Appeals upheld the Board's finding that a two-month delay was reasonable. In appeal number 14054 in 1984, the Board held that a four-and-a-half month delay was unreasonable.

In 1988, the Office of Corporation Counsel advised the Board that a delay longer than 90 days, three months, would be unreasonable. We attached a copy of that opinion to our motion as Exhibit E.

In recent court decisions, the courts have

imposed stricter standards, and even suggested that 60 days is a reasonable time. What this Board and the Corporation Counsel and the courts have held is that at some point, the holder of a permit is entitled to rely on that permit. Neighbors who delay in filing an appeal lose their rights to challenge it.

The issue is jurisdictional and cannot be waived. If the appeal is not timely filed, this Board has no authority to hear the case. Applying that law to the facts of this case, we believe that the appeal should be dismissed as to all permits.

As the chart indicates, the delays in this case range from seven months, to eight months, to five months, to 11 months. The one month delay for permit number four is not an issue because that permit is moot and has been superseded by permit number five. Even if the Board were to look at that, as I indicated earlier, back in January, the Appellant, the next door neighbor was on notice as to what was being proposed for this property.

Based on the facts and based on the law, we believe that this appeal should be dismissed as not timely.

A second ground for dismissal, which is separate from the timeliness argument, is that the appeal is barred by laches. The leading case on laches in the District of Columbia is GOTO v. D.C. Board of Zoning Adjustment.

Laches requires a finding that the property

owner has been prejudiced by the delay, and that the delay was unreasonable. In the GOTO case, the D.C. Court of Appeals reviewed the case law, and noted that the principal element is the prejudice to the defendant rather than the delay itself.

We have indicated in our filing the relatively short time periods that the courts have applied when it comes to appeals of building permits by neighbors. On page 926 of the GOTO decision, the court reviews other court decisions and points out that in one case, a delay of four months was barred by the doctrine of laches.

In another instance, a delay of three months after issuance of a building permit was held to be barred by laches. In another, a plaintiff neighbor suit filed three months after commencement of construction, was barred by laches.

What the courts have looked at is what is the prejudice to the property owner. In this case, Mr. Sisson is going forward with substantial construction on his property at substantial cost to himself, and given those, that substantial prejudice to him, the adjacent property owner has the responsibility in order to exercise his or her right to proceed quickly. Otherwise, they lose their rights. They are considered to have slept on their rights to the point where they no longer have the right to take an appeal.

In the instance case again, Mrs. Crary had constructive and actual knowledge of the work being done as

early as January 1998, and chose to wait eight months before filing the appeal. Mr. Sisson has been substantially prejudiced in the cost of the improvements of over a quarter million dollars. In addition to the additional delays and carrying costs as a result of defending this appeal.

This is not a situation where the adjacent property owner was not knowledgeable of the zoning restrictions and did not have competent counsel. The record indicates that she raised the issue of the Wesley Heights Overlay. She was very familiar with its requirements. She knew the people to contact in the City government. She retained counsel to represent her. All of the filings by the Appellant talk about their monitoring the construction process, meeting with City officials, and pursuing the issues with regard to zoning.

The one thing they failed to do, which we believe is fatal to this appeal, is to take the appropriate course of action, which is to file an appeal with this Board and put the issue before you before construction is completed, and before you have a situation where Mr. Sisson has a vacant property fully constructed, all of the work completed, all of the permits issued, and nothing pending, even before the District of Columbia Government. All of the final sign-offs have been made, and the property is just sitting. For these reasons, we believe that the appeal is barred by laches.

As I mentioned, we also believe as a third

ground that the appeal is barred by the doctrine of equitable estoppel. I will not go into those arguments. I will, however, say that we believe that Mr. Sisson was entitled to rely on the expert knowledge of City officials, the individuals who reviewed the plans, who stamped the plans, who came out and inspected the property, who issued the stop work order, and then removed the stop work order.

This was not a situation where the District government was not aware of what was going on with this property. It was out there on a continuing basis, and often at the request of a neighbor. Each time, Mr. Sisson was told that he had to do a certain thing to bring the project into compliance. He did that. He had no reason to second guess what he was being advised by the zoning officials. He was entitled to rely on their knowledge. He was entitled to rely on five permits that he received to do the work on his property.

For all of these reasons, we believe that the appeal should be dismissed. That it was not timely filed. As a second ground, that it is barred by laches. Then as a third ground, that it is barred by estoppel.

CHAIRPERSON REID: Thank you.

VICE CHAIR KING: I understand your argument in terms of timeliness. I do not understand it in terms of laches. I don't see that there has been any delay either in the construction or the permitting of this property because of

Mrs. Crary's actions. In fact, I don't understand why Mr. Sisson isn't living in his house now. Is there some bar to his moving in? Is there some reason because of the appeal that makes it impossible for him to use his house?

MS. DWYER: The laches goes to not to delay in him going forward with the work. The delay that Mrs. Crary --

VICE CHAIR KING: But I mean why, you say that he's invested all this money.

MS. DWYER: That's correct.

VICE CHAIR KING: And a quarter of a million dollars in fixing up the place and he can't use it. Why can't he use it?

MS. DWYER: No. I am not saying that he can't use it. I am saying that if for any reason, if this appeal is found to be timely filed and if laches doesn't bar it, and this Board decides for whatever reason that all of this work that the City approved was wrong and needs to be taken down, Mr. Sisson is out that one-quarter of a million dollars.

VICE CHAIR KING: I understand that.

MS. DWYER: That is the laches.

VICE CHAIR KING: You talked about delay. You kept using the word "delay," because I wrote it down.

MS. DWYER: It is her delay in taking the appeal. If she had filed the appeal in January or February or March, he would only have spent perhaps $20,000 on preliminary architecture drawings. That is the argument. It is her

delay. It's not his delay.

VICE CHAIR KING: I understand. You mentioned that he was denied the use of this property, that he had invested all this money and it was standing there vacant. I don't understand how that relates to laches, his not having -- I mean he testified that he had all of his permits. I don't understand why he hasn't moved in.

MS. DWYER: He has not been denied the use of his property. He can certainly move into the property. I guess the question is, would someone move into a property with this kind of cloud on it at this point in time, knowing that you are going to have to move out or that potentially you will have to take off substantial improvements you have made to the property.

The question then for him is, what he is trying to do is resolve this now through an administrative process and get a decision so he knows what he can or can't do with that property.

CHAIRPERSON REID: Mrs. King, my understanding of the doctrine of laches is that when a citizen delays as far as filing an appeal for objection to something that is of adverse impact in their community or their neighbor, it causes the intervenor undue expense or hardship or some detriment. Had it been done earlier, then it would have been short circuited.

VICE CHAIR KING: I understand that very well,

Mrs. Reid. What I was asking was what delays had occurred. I mean there was no delay. He went forward with his permit. He went forward with his construction before some of the permits were available. There was no delay there. I understand.

My question relates to the inference that I drew from something that Mrs. Dwyer said that indicated he was being denied the use of his property by Mrs. Crary's appeal. She has clarified that that is not true, that he is not denied the use of his property.

MS. DWYER: I am sorry if I left that impression.

CHAIRPERSON REID: The delay is on Mrs. Crary not acting.

VICE CHAIR KING: It's the timeliness issue. But there was no delay in his waiting for permits before work was done or anything. He went forward with the construction with and without permits.

MS. DWYER: I am going to clarify this. The delay issue has nothing to do with Mr. Sisson. The delay is the delay of the person taking the appeal. What the court said in GOTO is the neighbor stood by and watched GOTO spend time and money months before pressing the objections before the BZA. Whereas GOTO relied on the actions of zoning officials which were reasonable, the unexplained delays by her neighbors in instituting an appeal to her substantial prejudice were not reasonable. That is the same argument we

are making here.

CHAIRPERSON REID: Mr. Clarens, before he left, asked us not to make any decision today because he would like to participate. So we will not be able to make a judgement on that or give you a ruling today.

MS. DWYER: I understand that after listening to his remarks before he left. I would hope that given the amount of time this has already taken, that this could be put on the Board's agenda for its June meeting and be decided at that time.

MS. PRUITT-WILLIAMS: A lot of that will depend on our being able to get the transcript. We can try to expedite it, but I can't guarantee we can put it on for the June meeting because of that. Mr. Clarens has to not only get the transcript. Then he has to be able to read it and digest it.

CHAIRPERSON REID: Could we perhaps put it on for the hearing date, a special meeting?

MS. PRUITT-WILLIAMS: You may do that, yes.

CHAIRPERSON REID: By the day of the hearing in June, our regular hearing we could perhaps have a special meeting at 9:00 to --

MS. PRUITT-WILLIAMS: I would suggest since there's not many parties that once you discuss with Mr. Clarens, we will let you know. We can call you and let you know exactly when.

CHAIRPERSON REID: That would be the next available date. Obviously it's impossible to do it next week because of the fact that Mr. Clarens has to read the testimony, and the transcript will not be out until 10 days, something like that.

MS. PRUITT-WILLIAMS: Even if we expedite it, it is still going to be -- even if we expedite it, it is still difficult because not only BZA, there is a holiday, but the Zoning Commission has to be able to get it and read it.

CHAIRPERSON REID: The next earliest time would be the hour, regular hearing date, which is the third Wednesday in the month. We will try to have a special meeting on that date to deliberate on this particular issue.

MS. PRUITT-WILLIAMS: We will confer with Mr. Clarens and we will call you and confirm.

MS. DWYER: As soon as possible, whatever.

MS. PRUITT-WILLIAMS: But we will expedite getting the transcript.

CHAIRPERSON REID: All right. Does that conclude your part?

MS. DWYER: Yes, it does. Thank you very much.

CHAIRPERSON REID: Thank you.

Mr. Brown, do you have rebuttal and closing remarks?

MR. BROWN: I would like to make some brief remarks, but I would like to let Mr. Watson join me in making

his.

CHAIRPERSON REID: In that regard, Mr. Brown, we will have to waive our rules to allow Mr. Watson to testify at this segment of the proceedings. If there's no objection, we will allow him to do so.

MEMBER GILREATH: No.

VICE CHAIR KING: No.

Whereupon,

GEORGE WATSON

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. WATSON: Good afternoon, ladies and gentlemen. I am going to try to be quite brief about this. I have been prepared --

CHAIRPERSON REID: Give your name and your address, please.

MR. WATSON: I am George Watson. I am president of the Wesley Heights Historical Society. I am also a 30-year resident of Cathedral Avenue in Wesley Heights.

CHAIRPERSON REID: And your address would be?

MR. WATSON: 4323 Cathedral Avenue. My home is less than 300 feet from the property in question at 3020 43rd Street. I have known the Appellant, Mrs. Mildred Crary, her late husband Albert, and her son Frank, and the three Davans, two of them now deceased, who occupied the house at 3020 43rd Street, and has recently been altered. I have known them for

some 27 years. I have been a frequent guest in both homes and I know the properties well.

At the outset, I should state that I am also the backyard neighbor of Mr. Angel Clarens, who sat as a member of the BZA at your 21st April meeting, when I was prepared to testify previously. It was my impression that he was no longer on the BZA, but served on the Zoning Commission. Incidently, we share a common private driveway that is analogous to the driveway in question.

My wife and I know the Clarens family very well socially, including their parents. We have been guests in their home. Nevertheless, I have not discussed the property in question at any time with Mr. Clarens as he indicated previously. Nor have I spoken with him at all since our last meeting. My only contact with the Clarens family during that period has been two friendly greetings with his eight-year-old son Nicholas, and I have exchanged those this month.

The Wesley Heights Historical Society was established in 1989 in response to perceived over development that threatened to change the character of our neighborhood. Our members sponsored the zoning overlay that you have heard about that was adopted in 1992 by the City as a means for keeping new building or additions to existing homes to a reasonable level.

We are therefore interested in seeing to it that the existing zoning regulations as well as the Wesley

Heights Zoning Overlay are followed and enforced in an even-handed manner, that also allows residents to make reasonable additions to existing homes, but does not impact negatively on the character of the neighborhood or the quality of life of the immediate neighbors. The Society supports Mrs. Crary's appeal.

In March of last year, Mrs. Crary told me about her concerns with the alterations that were taking place at 3020. Just before she left for an extended trip to the Orient in April, she asked me to examine the property with her. We were not able to take precise measurements. It was raining, and we did not want to trespass.

But based on my personal observations on that visit, and measurements which I did take with a measuring reel, I drew a sketch of the property showing the foundations that had been poured at that time for the addition to the back of the house and the replacement garage. That allowed me to make some rough calculations based on the 6563 square footage of the already non-conforming small lot. That information was published in the then current edition of the Lusk List, i.e. the 6563 square feet.

Incidently, all properties from the north side of Cathedral Avenue south in Wesley Heights are zoned R1A, and have a minimum lot size of 7500 square feet. I told Mrs. Crary at that time that it appears that the provisions of the R1A zoning regulations and the Wesley Heights Overlay were

followed so closely in respect to the footprint and the floor area ratio of the house itself, that the architect must have had them at hand.

In addition, I noted that the side yard set-back of the existing house, at least on the north side facing Mrs. Crary's property, seemed to be non-conforming, i.e. less than eight feet. But that the non-conformity of that existing house was grandfathered because the house was constructed before the current R1A zoning was enforced.

My eyeball calculation of the south side yard setback, that is on the side south of Mrs. Crary's, not Mrs. Crary's side, was less than four feet from an irregular fence. I also noted that the garage foundation appeared to be on or beyond the property line in the private alley. The footings, based on my measurements, and remember without trespassing, I could have access to the alley and access to Mrs. Crary's property. The footings for the garage were 26 by 25 feet at that time for a total footprint of 650 square feet.

I therefore told her that there seemed to be no cause for action by the Society. That was of course before the first and second floors of the addition and the walls of the garage were built.

After that time, the nearly full width, eight foot deep roof porch in front of the house was added, which significantly increased the footprint and thus, the construction was no longer in conformity with the Wesley

Heights Overlay on the basis of either the allowed 2,000 square foot lot coverage or the 21.3 footprint -- front yard setback for the west side of 43rd Street mandated under the overlay. My rough measurement is 2,390 square feet of coverage. The plans show a 17-foot setback for a portion of the front porch.

In addition, the north wall of the new construction, that is on Mrs. Crary's side, the new construction on the back of the house is less than eight feet from the property line, something that was not clear from the poured concrete basement walls or the plans. There was a little jag in there, at least in the poured foundation.

Mr. Brown has provided details of the measurements based on the construction plans that are on file. I have listened to his presentation before ANC 3D, and offered some comments to the ANC on behalf of the Wesley Heights Historical Society at their meetings, one of which was attended by the new owner.

In addition, I might just mention that I sent a fax to Mr. Brown giving essentially those conclusions that I presented to Mrs. Crary. The date of that is April 21, 1998. It's a handwritten one. It was sent to him at his former single practitioner address.

This is my drawing of the floor plan for the existing house, the two-story addition, and the garage footings, measurements only, based on measurements that

Mildred Crary and I made over the weekend. It seems to me that the footprint is just within the overlay limit. The floor area ratio is below the limit.

The only problem seems to be the side yard setback on the north, i.e. Mildred's side, but that depends on where Mildred's line is. The house itself seems to be less than eight feet from the line on both sides, but the addition may be okay.

Thank you very much.

CHAIRPERSON REID: Thank you. Questions?

MEMBER GILREATH: I'm not sure. It sounded like to me he is saying everything is okay.

VICE CHAIR KING: That sounds like it to me too.

MR. WATSON: Let me say that was on the 21st of April.

MEMBER GILREATH: Okay.

MR. WATSON: I noted that was before the porch went up. I am only saying that at that time, the only problem I perceived was the side yard setback between the existing -- the addition on the back of the house. Note that that side yard setback is still less than eight feet, both for the existing house with is grandfathered, and for the addition on the back of the house, and for the non-conforming porch on the front of the house.

The porch is what tips it over as far as the

zoning overlay is concerned.

VICE CHAIR KING: And it also violates the distance from the front property line?

MR. WATSON: That's what I meant.

CHAIRPERSON REID: That's the setback.

MR. WATSON: But it does also increase the footprint so that that too is about 390 square feet.

MEMBER GILREATH: How precise were your measurements? You frequently say approximately and so forth. Do you feel that your measurements are definitive? Are you saying this is a pretty good estimate?

MR. WATSON: I had mechanical drawing when I was in school. I had higher mathematics in college. I am able to figure out the sides of a parallelogram. I can pace off. Mildred held one end of the measurement as I was sitting in the alley or standing in the alley. So that measurement of 26 by 25 for the garage, I will stand by that for the footings.

Now of course the siding on the garage must hang over the footings, otherwise the footings will decay as the previous footings seem to.

MEMBER GILREATH: Okay.

VICE CHAIR KING: That's quite clear.

MR. BROWN: I would like to conclude with brief remarks. We are in a situation, and I was subject to some questioning and scrutiny early on where I was trying to put

together a case based on the facts that there was a plan to build a certain project, not what was being shown on the plans.

It is clear from Mr. Sisson's testimony, one, that he had a plan from the very beginning, that included a covered porch on the front, a two-story addition, and a new garage, two-car garage in the rear. He made that decision, and this is a critical element, he made that decision not based on just simply a wish list. He had a wish list of things he wanted, and he couldn't have them all because his architect who, he may not have explained the name to Mr. Sisson, but he knew about the Wesley Heights Overlay district in R1A. Mr. Sisson made some choices.

But instead of making choices and living with them, what he did was he made the choices and then went ahead and did what he pleased any how. It is pretty clear that he couldn't have the front porch and the garage, but he wanted the front porch so he built it anyway. That may be harsh in sound, but that's where we're at.

Mr. Sisson's counsel says that Mrs. Crary should have known that on January 29, 1998, when he got his first permit and started working. Well, that's impossible, because by his own admission, as to the front porch, he didn't start work on that, and the dates vary, but taking him at his word for a moment, until sometime in August of 1998. So there is no way Mrs. Crary, myself, could have known about that very

relevant issue, which in the scheme of choices in life, is pivotal, because you can have the garage, but you can't have the front porch, the covered front porch.

To say that she knew in January of 1998, but by the way it wasn't on the plans until August of 1998, and oh by the way, that was wrong too, and I got around to correcting it in October of 1998, but geez we were already done then. This, whether you are talking about the facts or difficulty of applying the law, this body and the whole purpose of our exercise today is the integrity and enforcement of zoning regulations.

Laches, equitable estoppel, and timeliness are to give protections to people. But you don't get them for free. You have to earn them. In this case, it's pretty clear that Mr. Sisson didn't earn his protections. That he has gone about in a pattern and practice. In fairness to Mr. Sisson, he may not -- in some of these things he was directly hands-on involved. He made the decisions, but he hired the people that acted as his agent, and he is responsible.

So he wants the protections without having fulfilled the responsibility. We have got a situation that's very difficult because we have got five permits, three of which are clearly remedial, one of which Mr. Sisson says he didn't get it right then, and so he had to have another one.

There are questions about the existing permits and what was actually being done. So the timeliness issue

falls, crumbles on an individual basis of the permits because the flaws with each one, and the clear pattern and practice that he has admitted what he was doing.

So without belaboring it any further, I would leave it at that. There is enough legal argument in the briefs. I think you have had a fairly clear finally understanding of the facts. So I'll take any last questions.

VICE CHAIR KING: Yes. If you succeed in your appeal, you want him to take the roof off the porch? Is that what you want? That appears to be the only thing that violates.

MR. BROWN: Well, no --

VICE CHAIR KING: I mean accumulation of all the things that if he removed the roof from the porch, he would not be in violation of the Wesley Heights Overlay District. Is that correct? I mean Mr. Watson has essentially attested to that.

MR. BROWN: Yes, as to that element. There are plenty of other issues that have been raised by the Zoning Administrator.

The garage is an issue, not just strictly as a zoning matter, but the implications of the use of the alley and the property.

So the goal has always been --

VICE CHAIR KING: Well, we have asked Ms. Dwyer and Mr. Sisson to file the easement as part of the record, and

we will receive that before we make our final decision. So you know, if your client doesn't enjoy the benefits of an easement, I am afraid there is no redress you can come to us for under any circumstances with regard to that.

MR. BROWN: I understand. But compliance. And also to Mrs. Crary it's very important that she was left out. These were issues that should have come and she participated in, and she didn't. She was left out. To participate, she had to do this at great expense.

Do I know whether she would pick the garage or the front --

VICE CHAIR KING: I know what she would pick, but I mean what we have heard from your own friend, an expert, Mr. Watson, is that the roof off the front porch would satisfy the Wesley Heights Overlay District. Right?

MR. BROWN: That's right. If Mr. Sisson were to agree to remove the roof today, we could probably -- that would moot some of the appeal.

As you can see, there are a whole host of issues. The garage as built, as Mr. Nunley has indicated, and I'm sorry he is no longer here, may in fact not be in compliance with the access provisions.

CHAIRPERSON REID: Mr. Brown, let me ask you something in regard to the resolution of this. Mrs. King prefaced her questioning with asking you what in fact does Mrs. Crary -- what would she like? What is the purpose of her

bringing this appeal, given the fact that there is some question as to the timeliness of the filing of the appeal in regard to laches or estoppel, and that there has been some discussion about some settlement, some reconciliation of this particular issue. The buildings have been built, the addition is there. The garage is there.

There has been some discussion that somehow they broke down as a result of Mrs. Crary not being satisfied. What was the nature? In the agreement, Mr. Sisson proffered to her some type of resolution in regard to the water runoff, and with regard to the access to her property through the rear, which was not satisfactory. What was the nature of it as far as what Mr. Sisson has testified that there was some discussion about some compensation? I need to understand how that came about as a resolution to this particular issue.

MS. PRUITT-WILLIAMS: While I understand this is interesting information, that has no bearing on the case and the appeal. You need to make your decision on what's on the record. That was not on the record, nor is it something that was discussed. In fact, Mr. Clarens brought that whole point up and cut that testimony short. I just would like to remind you of that.

MR. BROWN: Can I just interject? I think your point is well taken.

CHAIRPERSON REID: Okay. Well, let me rephrase the question. What does -- back to Mrs. King's initial

question. What is it, what would she like to see?

MR. BROWN: It falls broadly under, I guess, peaceful coexistence, but measured in two ways. One, the concept of compliance with the zoning regulations. Now that doesn't necessarily mean exact compliance, strict compliance. There may be some flexibility. But again, it's got to be compliance more so than we have seen to date.

Also, so that hand in hand with the second issue, that Mrs. Crary, who is by far the innocent here. Her only crime is she bought this house 20 or 30 years ago and lived there. So that she not suffer any prejudice. Quite frankly, there are monetary issues. There are quality of life issues. There are physical property issues. I think by letter of laying those out is in the file I believe. There is certainly a reasonableness from her approach, but it's got to work. It has got to be a two-way street.

Mr. Sisson stands to make a fair amount of money in this property. I mean that's what this is about. That is fine. But he is doing so to a large extent at Mrs. Crary's expense. So that's a fact of life. She shouldn't be prejudiced by his money-making enterprise.

MS. DWYER: Madam Chair, I would just object to that last statement. I think that goes far beyond the issues that are before you. It is inflammatory to suggest that Mr. Sisson is going through this process to make money off of Mrs. Crary.

CHAIRPERSON REID: Sustained. Ms. Pruitt-Williams had earlier objected to the question that I had about the monetary aspect of it, so I eradicated that so we could just deal with the zoning issues that we have before us. In conclusion basically, do I understand you to say that Mrs. Crary would like to have Mr. Sisson comply with the zoning regulations?

MR. BROWN: Yes.

CHAIRPERSON REID: Now that's a little nebulous, because on the one hand you say not strictly, but if not strictly, Mrs. King suggested that perhaps you would want him to remove the roof on the porch. But I am not clear, we're still not clear as to what in fact it is that she would like to see happen.

MS. PRUITT-WILLIAMS: Excuse me, Madam Chair, I would also like to interject. While it is nice to know what she wants, the decision still should not be based on what she wants. It should be based on the facts of how the permits were issued, the sequencing, and notice and all of that.

What Mrs. Crary or Sisson gets out of this, or what they would like to see, while nice and interesting, is not germane to your decision that you have to make.

CHAIRPERSON REID: I disagree. I think it is because unless I understand what it is that we're doing here, I have no basis for which to make the decision, other than going strictly by the zoning regulations. But if that were

the case, we wouldn't even be here. So I need to understand what it is.

MS. PRUITT-WILLIAMS: Madam Chair, that's what the decision should be made on strictly. That is what the decision should be made on.

CHAIRPERSON REID: I need to understand what it is, you know, typically at the end of a case, the Applicant or the Appellant will take a position. That is all I wanted to hear.

MR. BROWN: As position as to?

CHAIRPERSON REID: As to what the basis of your case is.

MR. BROWN: I mean as far as -- I mean I think the appeal has been laid out as to the individual permits as a bundle, which I think is critical.

I mean one of the things, and it's in the context of the settlement discussions that we have attempted to have, is that I have asked Mr. Sisson for an as-built survey of the property, because again, when we start talking about peaceful coexistence, we have got to know where we live. I am not able to do that. His survey is less than clear. And so we can find out and work out those issues.

I can't advise my client about the impacts on her, whether she has rights, not rights, she's lost them, definitively until we do that. There may be a way, and again, this is without her -- there may be a way based on solid

information, an as-built survey, to have a peaceful coexistence where we're not ripping things down. But I can't make that decision now because I don't know.

I mean everything I have seen here and the evidence I have presented shows substantial violations. But maybe some violations are worse than others, and some can be lived with and some can't. I don't have any idea if I said, "Mrs. Crary, you pick. You can have the garage gone or the front porch." I mean it's either or. I have no idea how she would decide that.

MS. DWYER: Madam Chair, I would just object to this whole discussion about settlement discussions. I mean either the case, the appeal is granted or it's denied. It's either dismiss on timeliness, which means you have no jurisdiction, and whatever decision you make, then these two neighbors are going to work out whatever their agreement is in the future to coexist peacefully at this property. I don't think that should be part of this.

CHAIRPERSON REID: Sustained.

MEMBER GILREATH: Mr. Brown, you seem to imply, in fact you indicate, Mr. Sisson really even though we don't have external evidence, but implicitly you are assuming that he had this planned and so forth, and he was going to go through all this, all these machinations and so forth. It is incredible to me that he would make a plan like that and go through all of these different zonings R-1-B, 5-1-A. If he

had had a scheme whereby he says I'm going to try to run around zoning regulations, he would have been much more systematic. This is so disjointed and haphazardous to me. It suggests that this was very sloppy and maybe he wasn't experienced in some of his filling out a complete plan and so forth for his changes.

But I really have a real problem. I'm not saying that zoning violations haven't occurred. But to say that he had an ulterior motive that was less than commendable, I am having real problems with that.

MR. BROWN: I mean ultimately that's your decision. I mean I think he stated very clearly that he had one objective, where he wanted A, B, C, which is shown on the first plan, but he didn't do A, B, and C. He did something less than that. He had professionals. If I want to do A, B, and C, then I do A, B, and C, is the way I would operate.

Why we have five permits is not because Mr. Sisson in my view set about and his architect said I need five separate permits. I think it's for a purpose. Three of those permits are remedial. There is no other reason than to make good something that wasn't right as a result of firmative acts of omission or commission by him.

MEMBER GILREATH: You believe it's unreasonable if you get a permit to put an addition on this garage, and discover that the foundation or the supports, what have you, are either termite damaged or eroded, and the architect comes

to him and says really it's absurd to go along with this. We have got to have some kind of remediation, and he goes to get a permit to remedy that?

MR. BROWN: But you have to take it in the context of the second permit and what was there and not there. Then the fact that, all right, it's the best I can tell 1926 garage. It was old. But when you, as he's indicated, he had an early on respect for the need for permits. I assume his contractors were licensed and had the same. When you find out that your site conditions are different, you stop. You stop and you go get the proper permit.

VICE CHAIR KING: Which would have involved his coming before the BZA to get a variance, that's all.

CHAIRPERSON REID: If he had been so directed by the Zoning Administrator. He wasn't.

MEMBER GILREATH: I agree.

CHAIRPERSON REID: That's where it gets to be very complicated.

MR. BROWN: But then you get into a situation that he did something. Number one, he demolished a garage that was existing without permission, which is a separate permit, which is probably not within this Board's purview. Then he affirmatively went to build something he didn't have a permit for otherwise. To somehow say that he gets brownie points, for lack of a better term, for coming in and getting a permit to make that right because he got a stop work order, I

think is bending over backwards, and not the way the process should work.

MEMBER GILREATH: Well, I think some of the arguments, I mean you have so much activity, I must admit, I have difficulty with your theory. I haven't made a final decision, but I don't feel that there was an ulterior motive. There were some other factors involved whether or not zoning was fully complied with and so forth. That's something we still have to assess and determine. But I must admit, I can't accept your conspiracy theory.

MR. BROWN: It raises difficult questions, but first, and I keep coming back to this, it's important, because it's Mr. Sisson, what was in his mind. I have tried to impute --

MS. DWYER: Excuse me. Can Mr. Sisson then testify as to what was in his mind if we are going to continue on?

MR. BROWN: Well then we get back to revising it.

MS. DWYER: He is the best one to know I think.

VICE CHAIR KING: I think you should sustain the objection.

CHAIRPERSON REID: Mrs. King, did you have any further comments?

VICE CHAIR KING: No comments. No questions. Let's go home.

MR. BROWN: Have a nice holiday weekend.

CHAIRPERSON REID: Same to you. So this will then conclude today's hearing. We will try to be able to have deliberations prior to our hearing on --

MR. BROWN: Third Wednesday of June?

MS. PRUITT-WILLIAMS: I thought we were going to check with Mr. Clarens. We'll try to --

CHAIRPERSON REID: I said we'll try to.

MS. PRUITT-WILLIAMS: Right. And then we'll confirm.

CHAIRPERSON REID: We'll apprise you.

One at a time.

MS. DWYER: The easement.

CHAIRPERSON REID: The easement.

MR. BROWN: Was there a request from Mr. Sisson for his copies of his surveyor's plats, if he has them.

MS. PRUITT-WILLIAMS: Any that he has, if he has them. At that point, he was unsure of what he had. But if he has them, to submit them to us.

CHAIRPERSON REID: Okay. Thank you.

(Whereupon, at 4:30 p.m., the proceedings were concluded.)