GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 2, 2000

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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WITNESSES

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

(1:11 p.m.)

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

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

BOARD MEMBER RENSHAW: Renshaw.

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

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

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

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

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

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

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

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

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

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

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

remaining on the agenda.

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, or 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.

Are there any preliminary matters?

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

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

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

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

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

MR. MARK: What was the date again?

CHAIRPERSON REID: What was the date?

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

believe it's the Third.

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

MR. MARK: That's fine, yes.

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

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

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

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

MS. PRUITT: Correct.

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

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

MR. MARK: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. CLARK: Yes.

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

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

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

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

CHAIRPERSON REID: The owner is the intervenor.

Right?

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

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

MR. BROWN: Before.

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

MR. CLARK: No problem here.

CHAIRPERSON REID: All right.

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

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

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

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

would be an appropriate handling of the matter.

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

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

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

CHAIRPERSON REID: Go ahead.

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

today.

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

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

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

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

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

CHAIRPERSON REID: I think that --

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

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

I think we're talking about two permits.

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

CHAIRPERSON REID: Are we not?

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

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

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

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

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

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

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

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

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

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

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

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

challenge of that.

So again, not only did the appellants not act in a timely manner with extraordinary levels of knowledge, but they also allowed my clients to proceed to their substantial detriment. So I think the Board has everything before it necessary to rule favorably that the appeal is untimely.

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

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

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

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

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

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

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

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

MR. CLARK: He said he was misled.

CHAIRPERSON REID: Do you have that in writing?

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

MR. BROWN: Madam Chair, I --

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

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

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

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

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

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

MS. PRUITT: Madam Chair, I would endorse your recommendation. I mean, it's clear from just what we've heard so far that, at a minimum, we need testimony on the timeliness issue. And since there is so much interplay between those issues and the merits of the case that I think your recommendation is right on point.

CHAIRPERSON REID: Mr. Sockwell?

MR. SOCKWELL: No.

MS. RENSHAW: I agree.

CHAIRPERSON REID: All right.

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

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

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

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

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

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

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

that they cannot allege that someone said something.

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

MR. CLARK: Clark.

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

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

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

CHAIRPERSON REID: Thank you. Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Mr. Brown, just to

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

CHAIRPERSON REID: All right. Thank you very much.

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

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

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

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

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

Come forward, please.

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

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

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

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

MR. BROWN: No objection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(WITNESSES SWORN.)

CHAIRPERSON REID: Go ahead.

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

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

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

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

MR. GUZY: The adjacent side neighbors.

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

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

This, as I mentioned before, is a very modest addition to extend the side yard set-back line of an existing porch out to the front by 12 feet. T here's ample space between

that side extension and the neighboring adjacent property owner.

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

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

CHAIRPERSON REID: All right.

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

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

It shows the context of the neighborhood, which is

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

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

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

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

CHAIRPERSON REID: Do we have that?

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

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

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

CHAIRPERSON REID: It was taken from Sanborne?

MR. SNOWBER: This sketch right here.

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

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

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

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

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

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

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

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

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

MR. SNOWBER: Exactly right.

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

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

CHAIRPERSON REID: What year was it constructed?

MR. SNOWBER: About 1928.

CHAIRPERSON REID: Thank you. go ahead.

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

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

This is why we have to seek a variance. It's not having anything to do with filling in the room. It's only the extension of the porch that requires the variance. The reason it requires the variance is that, as you can see, the existing property is 50 feet. The building is approximately 40 feet and has about a seven-foot side yard on one, three feet on the other. Both of them are less than zoning requirements current.

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

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

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

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

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

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

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

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

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

MR. SNOWBER: That's correct.

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

That concludes your --

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

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

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

MR. GUZY: Yes.

BOARD MEMBER RENSHAW: And how did they vote?

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

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

MR. GUZY: I did not. I'm certain my wife did not. I don't believe that --

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

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

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

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

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

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

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

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

MR. GUZY: That's all correct.

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

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

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

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

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

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

MR. GUZY: We appreciate that.

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

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

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

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

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

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

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

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

MR. GUZY: We would very much appreciate that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

which are not being altered per se.

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

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

CHAIRPERSON REID: Is there a second?

ZONING COMMISSIONER MITTEN: Second.

CHAIRPERSON REID: Did you have any comments?

BOARD MEMBER RENSHAW: No.

CHAIRPERSON REID: All in favor? Opposed?

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

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

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

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

CHAIRPERSON REID: Both.

VICE CHAIRPERSON SOCKWELL: It's both?

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

VICE CHAIRPERSON SOCKWELL: Thank you.

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

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

VICE CHAIRPERSON SOCKWELL: Thank you.

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

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

(WITNESS SWORN.)

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

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

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

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

issues that you're here for today.

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

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

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

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

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

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

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

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

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

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

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

everything out to find the records.

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

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

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

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

MR. KROOTH: No, there was not.

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

The use of penthouses in this case is not such as

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

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

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

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

VICE CHAIRPERSON SOCKWELL: Yes.

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

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

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

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

MR. KROOTH: Yes, it was.

VICE CHAIRPERSON SOCKWELL: And could you produce a

copy of that for us?

MR. KROOTH: Yes, sir.

VICE CHAIRPERSON SOCKWELL: Okay.

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

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

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

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

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

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

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

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

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

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

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

VICE CHAIRPERSON SOCKWELL: Yes. I would refer you

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

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

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

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

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

MR. KROOTH: Yes, sir.

CHAIRPERSON REID: All right.

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

CHAIRPERSON REID: Okay.

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

This is the outline of the existing penthouse?

MR. KROOTH: Yes, that's correct.

ZONING COMMISSIONER MITTEN: What's all in here?

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

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

ZONING COMMISSIONER MITTEN: Its' a corridor?

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

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

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

ZONING COMMISSIONER MITTEN: Are there windows anywhere in here?

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

ZONING COMMISSIONER MITTEN: Maybe you could just -

-

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

ZONING COMMISSIONER MITTEN: That would be here?

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

ZONING COMMISSIONER MITTEN: This here?

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

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

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

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

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

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

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

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

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

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

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

ZONING COMMISSIONER MITTEN: Thank you.

MR. KROOTH: Sure.

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

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

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

CHAIRPERSON REID: Mr. Sockwell?

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

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

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

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

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

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

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

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

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

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

MR. KROOTH: Absolutely. Absolutely.

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

MR. KROOTH: His stamp is on there.

VICE CHAIRPERSON SOCKWELL: Okay.

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

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

VICE CHAIRPERSON SOCKWELL: I understand.

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

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

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

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

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

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

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

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

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

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

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

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

MR. KROOTH: No, I'm --

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

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

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

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

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

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

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

BOARD MEMBER RENSHAW: Present situation.

MR. KROOTH: Did I talk to --

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

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

BOARD MEMBER RENSHAW: All right, sir.

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

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

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

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

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

CHAIRPERSON REID: For storage? Okay.

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

CHAIRPERSON REID: Right. Well, for storage, if

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

MS. PRUITT: Yes, you do.

CHAIRPERSON REID: The order has not been issued.

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

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

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

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

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

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

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

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

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

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

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

MR. KROOTH: Thank you all very much.

CHAIRPERSON REID: Thank you for coming back today.

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

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

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

CHAIRPERSON REID: Yes. Thank you very much.

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

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

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

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

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

(WITNESSES SWORN.)

MS. PRUITT: Thank you. Please be seated.

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

CHAIRPERSON REID: Right, but Mr. Johnson --

MS. PRUITT: Mr. Lourenco is here.

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

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

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

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

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

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

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

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

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

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

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

the adjacent properties. Those are two related issues.

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

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

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

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

In fact, it sends a chill up the spine of

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

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

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

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

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

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

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

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

In other words, is this conjecture?

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

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

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

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

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

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

In this statement I'm referring to the berm.

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

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

CHAIRPERSON REID: I understand that.

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

CHAIRPERSON REID: I understand that.

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

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

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

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

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

BOARD MEMBER RENSHAW: I think, Madam Chair--

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

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

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

MR. KOGAN: Can I amend my --

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

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

BOARD MEMBER RENSHAW: Madam Chair.

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

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

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

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

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

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

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

CHAIRPERSON REID: We? We?

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

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

BOARD MEMBER RENSHAW: Exactly. I am.

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

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

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

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

now have us see as a cellar.

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: Have you met with the appellant? I'm sorry, with the intervenor or his attorney to try to reconcile or to mitigate some of these differences or to try to come to any meeting of the minds?

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

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

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

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

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

ZONING COMMISSIONER MITTEN: Thank you.

MR. HART: Excuse me, Madam Chair.

CHAIRPERSON REID: Yes, Mr. Hart?

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: Everyone was sworn.

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

CHAIRPERSON REID: Oh, okay.

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

CHAIRPERSON REID: You are wearing two hats.

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

CHAIRPERSON REID: Three.

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

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

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

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

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

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

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

correctly procedurally.

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

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

MR. CLARK: That's correct.

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

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

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

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

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

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

CHAIRPERSON REID: Very well.

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

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

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

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

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

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

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

In any event, we had a meeting. We had a meeting that night. Mr. Cohen brought the renderings along of the property, which are Exhibit 5. We asked to have copies of those. My wife went upstairs and made them.

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

CHAIRPERSON REID: Wait a minute.

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

CHAIRPERSON REID: Got it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: When was the stop order issued?

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

CHAIRPERSON REID: Wait. Wait, excuse me, please. I have to get clarification for this. Okay?

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

VICE CHAIRPERSON SOCKWELL: It should be given in writing.

CHAIRPERSON REID: I've never heard of one.

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

something.

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

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

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

CHAIRPERSON REID: How do we know that?

MR. CLARK: He says in his brief.

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

ZONING COMMISSIONER MITTEN: Madam Chair.

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

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

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

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

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

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

CHAIRPERSON REID: Work stopped when?

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

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

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

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

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

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

MR. CLARK: So we started to call DCRA.

CHAIRPERSON REID: How did that happen?

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

CHAIRPERSON REID: MR. Bello?

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

CHAIRPERSON REID: Please.

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

CHAIRPERSON REID: Sure. Sure.

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

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

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

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

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

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

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

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

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

Now I'd like to proceed with testimony regarding

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: Excuse me. Yes?

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

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

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

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

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

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

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

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

say. Hold questions until after he gets it out.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VICE CHAIRPERSON SOCKWELL: Is this an objection?

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

CHAIRPERSON REID: Well, Mr. Brown --

MR. BROWN: -- to consider hypotheticals.

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: And your position.

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

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

MR. JOHNSON: I believe I was.

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

MR. JOHNSON: And I stepped out.

CHAIRPERSON REID: Stand, please.

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

(WITNESS SWORN.)

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

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

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

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

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

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

a new building.

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

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

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

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

CHAIRPERSON REID: To ask him?

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

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

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

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

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

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

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

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

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

MR. JOHNSON: Thank you, Madam Chair.

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

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

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

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

MR. CLARK: Demolish.

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

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

CHAIRPERSON REID: Who said that?

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

CHAIRPERSON REID: I got you.

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

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

Thereafter, I contacted the BZA. At this point,

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

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

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

MR. CLARK: Robert.

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

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

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

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

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

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

MR. CLARK: As of August 31 --

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

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

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

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

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

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

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

CHAIRPERSON REID: Yes. Mr. Sockwell?

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

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

floors.

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: Thank you.

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

CHAIRPERSON REID: Very helpful.

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

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

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

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

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

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

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

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

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

Okay, Mr. Sloame.

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

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

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

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

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

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

At that point on August 25th --

CHAIRPERSON REID: All right. Sorry.

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

CHAIRPERSON REID: So that wasn't there?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

You will notice that nothing has been done with

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

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

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

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

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

On October 24 Mr. Clark FAX'ed to me a rough draft of the completed appeal form. On October 25 Mr. Clark wrote a letter to a zoning attorney. We are -- Neither one of us are zoning attorneys. He wrote a letter to a zoning attorney enclosing a copy of the draft form, and he got the comments back. Finally, on November 3 I filed the appeal.

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

ZONING COMMISSIONER MITTEN: Could I just -- There

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

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

ZONING COMMISSIONER MITTEN: That would be very helpful.

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

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

CHAIRPERSON REID: Let us resume.

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

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

MR. SLOAME: I do have --

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

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

CHAIRPERSON REID: This is 28?

MR. CLARK: Yes, ma'am.

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

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

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

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

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

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

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

CHAIRPERSON REID: Is your house in this picture?

MR. SLOAME: Pardon me?

CHAIRPERSON REID: Is this your house?

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

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

MR. SLOAME: Right.

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

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

CHAIRPERSON REID: I see that, but --

MR. SLOAME: If you extended this over --

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

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

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

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

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

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

CHAIRPERSON REID: All right.

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

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

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

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

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

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

CHAIRPERSON REID: Oh, Exhibit 20.

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

CHAIRPERSON REID: What picture are you looking at?

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

CHAIRPERSON REID: Exhibit 20?

MR. CLARK: Two-zero.

CHAIRPERSON REID: Okay. This page? Okay.

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

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

MR. CLARK: That's the subject property.

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

MR. CLARK: On the top.

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

MR. SLOAME: The one in the shadows.

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

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

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

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

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

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

MR. SLOAME: Absolutely right.

CHAIRPERSON REID: Thank you.

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

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

MR. SLOAME: Thank you.

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

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

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

CHAIRPERSON REID: No. I said Mr. Brown.

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

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

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

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

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

MR. SLOAME: Yes.

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

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

MR. BROWN: But construction was still ongoing?

MR. SLOAME: Yes.

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

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

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

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

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

MR. SLOAME: Yes.

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

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

MR. BROWN: It's your 10.

MR. SLOAME: Our September 8th letter?

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

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

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

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

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

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

CHAIRPERSON REID: Yes, definitely.

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

MR. CLARK: Yes.

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

MR. CLARK: That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. SLOAME: I own the wall.

BOARD MEMBER RENSHAW: You own the wall. And again, how tall is the wall?

MR. SLOAME: I'm going to estimate that it's approximately the height of this --

BOARD MEMBER RENSHAW: Would that be eight feet?

MR. SLOAME: No.

BOARD MEMBER RENSHAW: Because you can go up to a maximum, I think, of eight feet for a side -- Eight feet for side yard fences. Seven feet for side yard fences.

MR. SLOAME: Probably close to seven feet.

BOARD MEMBER RENSHAW: All right. So you're at the maximum, and there is not much more you can do with any kind of a wall between your properties and stay within the law?

MR. SLOAME: That's correct.

BOARD MEMBER RENSHAW: All right.

VICE CHAIRPERSON SOCKWELL: Mr. Sloame, you're aware that in a single family R-1 residence district that a house can be built to a height of 40 feet, regardless of the number of stories.

MR. SLOAME: Yes. Well, excuse me. My understanding is it could be built to a height of 40 feet, so long as it's not more than three stories.

VICE CHAIRPERSON SOCKWELL: Yes, but I'm saying, regardless of number of stories, it could be a one-story 40-foot

high house.

MR. SLOAME: Yes.

VICE CHAIRPERSON SOCKWELL: Which means that the house could exist at its current height as a two-story house and would still cause the same changes in both your view and the amount of building that you would be subjected to.

MR. SLOAME: Yes.

VICE CHAIRPERSON SOCKWELL: Okay. I just want you to be aware that the number of stories and the actual bulk of the building are not necessarily relevant to one another.

MR. SLOAME: As a practical matter, however--

VICE CHAIRPERSON SOCKWELL: As a practical matter, money would make the difference.

MR. SLOAME: -- no builder is going to build with 20-foot high ceilings.

VICE CHAIRPERSON SOCKWELL: Well, that's not quite true. I have a client who is putting $40 million into a single family residence.

MR. SLOAME: How big is the size of the lot?

VICE CHAIRPERSON SOCKWELL: 566,000 square feet.

MR. SLOAME: This is 7500 square feet.

VICE CHAIRPERSON SOCKWELL: But he's not using but three percent of the lot.

MR. SLOAME: I think, with all due respect, I think it would be a stretch to suggest --

VICE CHAIRPERSON SOCKWELL: But I'm saying that people with various kinds of cathedral ceilings and what-not and with a fair amount of money to spend could produce a property of that size, depending upon what their needs are. It's not necessarily based on practicality when you get over a certain amount.

MR. SLOAME: I agree.

CHAIRPERSON REID: Okay, thank you very much.

MR. BROWN: Can I ask Mr. Sloame one follow-up question, just to clarity.

You indicated that you obtained from the BZA the forms necessary and got guidance from staff on filing an appeal. That was in September?

MR. SLOAME: It was September 23 -- 22 -- I got the FAX'ed forms.

MR. BROWN: That's all I have.

CHAIRPERSON REID: Thank you. All right, the Zoning Administrator testimony, please.

MR. CLARK: We might have more in our case, Madam Chair.

CHAIRPERSON REID: Wait. After you present your case, then we have cross-examination. I thought that you had finished.

MR. CLARK: No, I thought that we had cross-exam of each witness as we did it.

CHAIRPERSON REID: Oh, no. Once you have presented your case, then we have cross-examination, and also you have now had about -- how much time in the presentation? Over an hour in your presentation, not including the cross-examination.

MR. CLARK: The clock showed 22 minutes left when we took the break.

MS. PRUITT: Because I thought that their case was over, I set it back to 60. So they have 22 minutes left, because cross-examination does not count against their case, and we were stopping it when questions came up, as best as we could to only allow testimony to be counted against time.

CHAIRPERSON REID: Well, didn't they start about 2:30?

MS. PRUITT: But there was a lot of interchanging of questions between their testimony.

CHAIRPERSON REID: Did you stop the clock?

MS. PRUITT: Yes. So they still have -- I'm glad you were able to remember the 22 minutes, so we can set it back to that.

CHAIRPERSON REID: Okay. Go ahead and proceed then. I'm sorry. I didn't realize that you were not finished with your case.

MR. CLARK: I understand that. I'm going to call, if I may, Emily Baker.

MR. BROWN: Madam Chair, just strictly logistical.

We're now getting on toward five o'clock, and we'll take at least the balance of this hour and into the next to finish their case. Could I get some sense of the Board's schedule and pleasure and convenience, because I think it's almost assured now that we're going to go beyond 6:00 P.M.

CHAIRPERSON REID: You would like to do an assessment at this time?

MR. BROWN: Well, I mean, I guess I think, if in fact we don't think at this point we're going to go beyond 6:00 P.M. --

CHAIRPERSON REID: No, I think that it's a foregone conclusion that we will go beyond 6:00 P.M. Typically, we take an assessment at six o'clock. However, if you have some reason to want to do it now, we can.

MR. BROWN: Well, the problem is I'm afraid of -- since I come at the end and Mr. Lourenco and the Zoning Administrator's case, that somehow we not front end all our time in the appellant's case and then get caught short at the end, that if we think we're going to have to fit into a shorter period of time, that we allocate that time. I'm being cautious.

CHAIRPERSON REID: All right. Then let's do this, Mr. Brown. Let us take an assessment of the time and to see if, in fact, it's doable to complete the case today, giving you your adequate amount of time that you're entitled to to put on the intervenor/owner's case as well as the testimony from the Zoning

Administrator's office, and the cross-examination, if we should perhaps do the second part on another day or what time we feel that we can get through today.

Do the Board members have any constraints for this afternoon, this evening, to complete the case?

BOARD MEMBER RENSHAW: Yes, I do. I really should be leaving here by six o'clock. I think it would be a good idea for the Board to consider the intervenor's case another day when we can be fresh on it.

MR. BROWN: I don't know what the Board's schedule is for other dates. I understand your concern, Ms. Renshaw. That does -- and that's why I'm asking the question. It does impose a hardship on my client.

CHAIRPERSON REID: I understand that, Mr. Brown, but let me continue. We still have a quorum, and Ms. Renshaw would be able to read the record if she has to leave at six o'clock. I am here for the long run. So I'm going to complete it, if the other Board members --

ZONING COMMISSIONER MITTEN: Well, I don't want to be here past eight. I mean, if we're close to finishing at eight --

CHAIRPERSON REID: You think we can wrap it by eight o'clock?

MR. CLARK: Absolutely, Madam Chair.

CHAIRPERSON REID: What about the reporter? How is

your time? Okay, then we can continue. Mr. Johnson?

MR. JOHNSON: Thank you, Madam Chairman. With all due respect, I think it's important that I let the Board know that Mr. Toye Bello who was summoned here somewhat unscheduled will have to leave by 5:30 today.

In addition, I have a public meeting that I have to attend at 6:00 P.M. which normally, negotiating traffic, I usually leave 45 minutes in advance. I will wait later, but there are two other previous commitments that staff has as well.

CHAIRPERSON REID: Okay. Let me see.

MR. CLARK: We'll finish in our 23 minutes.

CHAIRPERSON REID: Mr. Clark, do you need -- Even though you have been allotted that time, do you need -- Is it possible to expedite?

MR. CLARK: I will expedite as much as possible, but with the issues that Mr. Brown has raised about timeliness and about pursuit of this, I mean, I've got a whole street full of neighbors who have been pursuing this, and I think that I've got to put it in, because it's Mr. Brown's defense.

CHAIRPERSON REID: Well, that will come after you've made your presentation. Then after the Zoning Administrator --

MR. CLARK: I'm sorry. I don't understand. I mean, Mr. Brown is saying that I filed unreasonably late, and I'm saying what took place. He thinks -- I'm just trying to put that

in. I want Mr. Bello to say something today, too. I mean, I'd like him to be on.

CHAIRPERSON REID: We want to get Mr. Bello to speak, definitely. So --

MR. CLARK: I've had people who have been here since one o'clock as well waiting to testify.

CHAIRPERSON REID: Right.

ZONING COMMISSIONER MITTEN: Is it -- I mean, in the interest of accommodating everybody in the best possible way -- I mean, I know we've had a lot of shuffling going on -- is it possible to reserve your 23 minutes and have the folks from DCRA come now and then you get to go back on? I mean, I know it's a lot of shuffling.

MR. CLARK: Well, I know that I'm going to lose my witnesses, too. I mean, this witness is very brief.

CHAIRPERSON REID: Okay. Well, let's just try to do the best we can. How many more witnesses do you have?

MR. CLARK: Well, one more, and then I have some pictures I just want to show you, which I've already handed to Ms. Pruitt.

CHAIRPERSON REID: Okay. This is the last witness you have?

MR. CLARK: No, Mr. Magee also as well.

CHAIRPERSON REID: Okay, two.

MR. CLARK: I haven't asked Mr. Magee what his

availability is, if he could --

CHAIRPERSON REID: All right, let's just try to get through, and then I'll have the Zoning Administrator come up with Mr. Bello and try to get that part of it done and get to the intervenor around six o'clock.

MR. BROWN: That's fine.

CHAIRPERSON REID: And then have you complete your case, and then rebuttal from the applicant, and we're out of here.

MR. BROWN: Thank you, Madam Chair.

CHAIRPERSON REID: From the appellant. Okay.

MR. CLARK: Ms. Baker, could you please state your name and address?

MS. BAKER: My name is Emily Lind Baker, and I live at 4531 28th Street, N.W.

MR. CLARK: Where is that with respect to 4512?

MS. BAKER: It's across the street. It's next to the Clark's house and across the street. The street curves, as may or may not be clear from those pictures. So I'm at a slight angle to the 4512 property.

MR. CLARK: Back in August of 1999, can you tell us what, if anything, you were doing to try to find out what the city was doing with respect to 4512?

MS. BAKER: I was participating in the effort that a number of the neighbors were to get information from various

branches of the -- or offices of DCRA about what was happening. I was calling Inspector Neals who was very responsive in returning my calls, and trying to be in daily or every other day touch with him about what the progress was of this question of whether a new permit was being issued.

I got the same response from him that Mr. Sloame was getting from Mr. Bello, that no decision -- as I checked with him virtually daily, that no decision had been reached. Then there was a silence, and then I also heard from Mr. Clark that he had gotten the message of Council Member Patterson's office.

MR. CLARK: What had you heard as of September 2nd?

MS. BAKER: On September 2nd, that was the last day I talked to Inspector Neals, and he told me that no decision had been reached.

MR. CLARK: Did you also talk to the ANC during August of '99?

MS. BAKER: Yes. I called the ANC office. The person who returned my call was Douglas Mitchell, who is an ANC Commissioner and, since our Commissioner was out of town at that point, I talked to him several times about getting our item on the ANC agenda.

MR. CLARK: Did you talk to Council Member Patterson's office during August as well?

MS. BAKER: I did. Yes, several times. I talked to Michelle Cole, and I believe I talked to someone else whose

name I don't recall.

MR. CLARK: Joanne Ginsberg?

MS. BAKER: Yes, I think so.

MR. CLARK: Did you observe work taking place at 4512 on the weekends?

MS. BAKER: Yes.

MR. CLARK: Did you ever have to call the police to try to get the work stopped?

MS. BAKER: Yes. There was work on Saturdays which, of course, is permitted. There was also work on Sundays, which is not permitted, and since I like to sleep late and I'm very irritated when I'm awakened early, to be awakened at seven on Sunday morning was not pleasing to me; and I called several times on Sunday at that time and also later.

There was also an occasion when work was being performed on a holiday that I objected to.

MR. CLARK: Did you observe work in inclement weather?

MS. BAKER: Yes. There was work every day.

MR. CLARK: There was a hurricane in August. Were they working then?

MS. BAKER: I was actually not here during the hurricane.

MR. CLARK: I don't have any other questions for Ms. Baker.

CHAIRPERSON REID: Thank you. Next witness, please.

MR. CLARK: Mr. Magee.

CHAIRPERSON REID: Thank you.

MR. BROWN: Madam Chair, I'm not going to have any cross-examination.

CHAIRPERSON REID: I was going to wait until they both spoke, and then allow you to do your cross-examination. But you have none for her? Okay. That's fine.

MR. CLARK: Mr. Magee, could you please tell us your full name and where you live?

MR. MAGEE: James Walton Magee. I live at 4334 Klingle Street, N.W.

MR. CLARK: How long have you lived in Washington?

MR. MAGEE: I'm a seventh generation Washingtonian.

MR. CLARK: I guess it's now February. Last month was there a meeting with the Mayor, and was the height at which issues were raised about DCRA approving construction on so called tear-down properties in violation of the zoning regulations?

MR. MAGEE: Yes, there was.

MR. BROWN: Excuse me, Madam Chair. I think this goes pretty far afield. I actually known Mr. Magee. He lives in Wesley Heights, but discussions about, you know, other things don't have anything to do with this property, and I think we've got a time crunch, and I think, in all due respect to Mr. Magee,

that it's not relevant.

Now he may have other testimony.

MR. CLARK: We might have finished by now, but I will say this, and that is that this commission is obligated to consider the issues raised by the ANC. One of the ANC issues which has been raised and which this commission must address is, in fact, the tear-down property issue. It's in the resolution. It's something that must be addressed. You can act on it as you will, but I'm offering testimony on that issue.

CHAIRPERSON REID: Overruled. Mr. Magee, did you give your address?

MR. MAGEE: Yes, I gave my address.

CHAIRPERSON REID: I'm sorry. I was probably reading something. But go ahead.

MR. CLARK: I'm going to hand Mr. Magee an exhibit which I haven't premarked as the number but which I think is going to turn out to be 41, and I'll hand copies up to Ms. Pruitt as well and to Mr. Brown.

Sir, is that, in fact, a letter which the Mayor's office sent after the meeting in Wesley Heights?

MR. MAGEE: Yes, I believe it is.

MR. CLARK: Are you personally familiar with any of the sites mentioned in the letter?

MR. MAGEE: Yes, I am.

MR. CLARK: Has the city admitted zoning violations

at any of those sites?

MR. MAGEE: A number of them.

MR. CLARK: Were you promised a response from Lloyd Jordan as to those violations?

MR. MAGEE: Yes, we were.

MR. CLARK: Have you received one?

MR. MAGEE: No.

MR. CLARK: Has construction continued even while stop orders have been in effect?

MR. MAGEE: Yes, it has.

MR. CLARK: Let me hand you, which I'll mark then as Exhibit 42, and could you tell us what that is?

MR. MAGEE: This is a listing of some of the affected properties in Wesley Heights.

MR. CLARK: Mr. Magee, has there been any impact on the character of your Wesley Heights neighborhood as a result of these projects which the city has not stopped, even though it has admitted that they violate the zoning laws?

MR. MAGEE: Yes. They violate the streetscapes. If our neighborhood were a historic district, which it nearly was, these would be landmark properties, and the change to these properties represents an attempt to alter the scale of the neighborhood.

MR. CLARK: Is it fair to say that one of these properties in the neighborhood is referred to as "the hotel"?

MR. MAGEE: Several of them are.

MR. CLARK: I have no other questions for Mr. Magee at this point.

CHAIRPERSON REID: Where did this list come from?

MR. CLARK: The second list -- I mean the first list is from the Mayor's office. The second list -- Why don't you tell us who prepared that, Mr. Magee?

MR. MAGEE: I'm not sure who prepared this, but this is --

MR. CLARK: I can tell you who gave it to me. It was Bill Timmonds who is also one of the neighbors in Wesley Heights who has been upset about this.

MR. MAGEE: This is either part of Mr. Timmonds' letter to the Mayor regarding these properties or it is from the President of the Wesley Heights Historic Society as preparation and explanation of some of the affected properties.

There are some ten affected properties.

MR. CLARK: I have no other questions of Mr. Magee.

ZONING COMMISSIONER MITTEN: Madam Chair, I have a quick question. What action has been taken regarding the properties where the violations have been admitted?

MR. MAGEE: None. There have been no true corrections made in any of the cases.

ZONING COMMISSIONER MITTEN: Thank you.

MR. CLARK: Mr. Brown, I don't know if -- I'm

sorry.

CHAIRPERSON REID: Well, all right. You gave us this list, these two properties that have violations. Right? Now maybe I missed something when I was reading, but how does this relate to the subject property?

MR. CLARK: It relates to the subject property because of the issue that we have raised and that the ANC has raised, and that is the refusal of DCRA to enforce the zoning regulations, especially in the case of tear-down and reconstruct properties, and it's changing the character of a lot of neighborhoods in Washington, D.C.

I can tell you that I've been contacted by people all over the city about this.

CHAIRPERSON REID: Well, it seems to me they would also have included in this list the subject property.

MR. CLARK: It's not in Wesley Heights. This is a Wesley Heights issue. Those issues -- These properties are all in Wesley Heights. There was a meeting in Wesley Heights with the Mayor.

CHAIRPERSON REID: So what is it doing here then? Is this trying to draw a correlation between what's happening in Wesley Heights and what's happening here on 28th Street?

MR. CLARK: Just as the ANC has done. That's correct.

VICE CHAIRPERSON SOCKWELL: Would we want to also

bring in Fairfax County and Arlington and maybe Carillo, Texas, or would you like to -- The witness is not in the subject neighborhood, sir.

MR. CLARK: I understand, sir.

VICE CHAIRPERSON SOCKWELL: And relative to issues that are city-wide, we may have something to discuss, but we're not here to talk about city-wide issues. We're talking about a specific piece of property, and only a specific piece of property and the affected neighbors to that specific piece of property.

What happens in Wesley Heights may be the case for other hearings, but it is not germane here.

MR. CLARK: I will only point out this, Mr. Sockwell, and you can consult corporation counsel on --

VICE CHAIRPERSON SOCKWELL: I'm not asking to consult corporation counsel. I am telling you, Mr. Clark, it is not germane here today.

MR. CLARK: I understand, Mr. Sockwell, but I can tell you this, that failure to address --

VICE CHAIRPERSON SOCKWELL: Please. We're not failing to do anything. We're not failing to do anything. Would you prefer that we discuss Wesley Heights or would you prefer that we hear this case and deal with this issue?

MR. CLARK: Sir, I'm finished with --

VICE CHAIRPERSON SOCKWELL: I asked you a question. I expect an answer.

MR. CLARK: I would prefer to deal with this issue. I'm finished, sir.

VICE CHAIRPERSON SOCKWELL: Thank you.

CHAIRPERSON REID: Okay, thank you very much. All right now, the Zoning Administrator. You are done. I'm sorry, Mr. Brown, did you have cross-examination?

MR. BROWN: No, Madam Chair, no cross-examination. Nothing relevant to this case.

MR. CLARK: I have the photos which I handed up before, but why don't we get the Zoning people on, and then I'll show the photos. That makes more sense.

CHAIRPERSON REID: Okay. Just don't forget. Remind us, just in case as we get onto it.

MR. CLARK: I will.

CHAIRPERSON REID: Now you need to let them come up, Mr. Johnson, Mr. Bello, Mr. Lourenco.

Mr. Bello, I want to particularly thank you for coming over today, to drop whatever you were doing to accommodate us. We much appreciate that.

Now, Mr. Clark, at this point, if you would then take your seat back and allow them only at the table.

MR. CLARK: Well, I thought Mr. Brown had -- I thought it was just convenient. I mean, if you want me to --

CHAIRPERSON REID: I think he came up for the cross-examination segment.

MR. CLARK: I'm happy to go back.

CHAIRPERSON REID: Thank you.

MR. LOURENCO: Madam Chair, good afternoon, members of the Board, good afternoon. I'd like to take this opportunity to welcome the new member of the Board, who happens to be my ANC Chair. That's secondary.

I have a question. Because of the time constraints, would the Board like to start by asking the questions that are pertinent to Mr. Bello before I get into my description of what I think happened.

CHAIRPERSON REID: Will you be able to stay later?

MR. LOURENCO: I'll stay until midnight.

CHAIRPERSON REID: That's great. Then let's allow Mr. Bello to testify or, if you don't have any testimony, just basically to answer questions that we have.

MS. PRUITT: Excuse me, Madam Chair. Mr. Bello needs to be sworn in.

CHAIRPERSON REID: Mr. Lourenco, have you been sworn?

MR. LOURENCO: Yes.

MS. PRUITT: Do you swear that the testimony you will give today is the truth?

(WITNESS SWORN.)

CHAIRPERSON REID: Okay. Now, Mr. Bello, here's the first question I'd like for you to answer for me. Is there

any such thing as a verbal stop order -- stop work order?

MR. BELLO: There's no such thing.

CHAIRPERSON REID: Okay. Did you verbally say to Mr. Sloame that there was a stop work order, there would be a stop work order for 4512 28th Street, N.W.?

MR. BELLO: Well, procedurally, if a violation is found through the proper channels, a stop work order could be issued.

CHAIRPERSON REID: Just answer this question, yes or no. Did you tell him that there would be one?

MR. BELLO: Not specifically, no.

CHAIRPERSON REID: Okay. Was there a stop work order -- Well, if there was no stop work order, then there could not be a recision of the stop work order. You weren't here, but through testimony today it was stipulated that there was an oral stop work order, and then the next day it was withdrawn.

So I guess the essence of my question to you then is was the work ever stopped?

MR. BELLO: Not to my knowledge, ma'am, no.

CHAIRPERSON REID: Okay. I'm reading from my notes.

ZONING COMMISSIONER MITTEN: Maybe just to get the ball rolling a little bit, you know, there was a series of contacts made with your office, and I think you were the point person in your office, and there was an issue regarding what the

application in this case said as to the number of stories and what the plans showed.

We heard some testimony earlier that, once the discrepancy between what was on the application and what was on the plans was called to your attention, that you took some action. Do you recall this, and can you tell us what action you took?

MR. BELLO: Well, Mr. Sloame's initial issue was not with the number of stories as it was with the setback of the subject property and the fact that it was a new construction. When I took a look at the application, the application indicated the proposal was for alteration or repair, and that prompted me to tell Mr. Sloame that I will take another look at the plans and, if I found an issue with it, then we would move to the next step of enforcement, if one was necessary.

ZONING COMMISSIONER MITTEN: Okay. Then was it when you took another look at the plans that you noticed that there was this discrepancy in the number of stories?

MR. BELLO: Well, given the elevation shown on the plans and the number of stories indicated on the application, there was a discrepancy there. But as is usual for all applications, that may be because of lack of understanding of how the number of stories is arrived at by the applicant. So I called the applicant in.

ZONING COMMISSIONER MITTEN: Then just maybe keep going then. Then what happened as a consequence of you meeting

with the applicant?

MR. BELLO: Well, I kept in contact with Mr. Sloame, just to apprise him of what the situation was as it evolved. I also informed him what remedy was possible in order to bring the application in concert with the plans that had been submitted.

ZONING COMMISSIONER MITTEN: So I'm inferring from what you just said that there was a discrepancy and then some action needed to be taken to remedy the discrepancy.

MR. BELLO: That's correct.

ZONING COMMISSIONER MITTEN: Was the permit -- Given that you understand the discrepancy, was the permit that was issued improper because of the discrepancy?

MR. BELLO: Well, insofar as the number of stories was concerned, yes.

ZONING COMMISSIONER MITTEN: Well, so the number of stories was four. Is that correct?

MR. BELLO: Given the definition of the number of stories, of what constitutes a story, yews.

ZONING COMMISSIONER MITTEN: Okay. And then this is R-1-B.

MR. BELLO: This is R-1-B -- R-1-A.

ZONING COMMISSIONER MITTEN: I'm sorry. Right. Three stories are permitted.

MR. BELLO: Yes.

ZONING COMMISSIONER MITTEN: Four stories were on the plan. So I'm going to say again, was the permit improper? It's kind of a yes or no, really.

MR. BELLO: Well, it's really a little bit more intricate than that, because from a definition standpoint, a basement counts towards a story, while a cellar does not. And in this case, they had a basement and three stories, and the difference between a cellar and a basement is simply the measurement between finished grade and the first floor level of a proposal.

ZONING COMMISSIONER MITTEN: Right. And I understand all that, and they had on their plans for the first permit a basement and three stories in an R-1-A zone. So was the permit improper?

MR. BELLO: Well, yes.

ZONING COMMISSIONER MITTEN: Okay.

MR. BELLO: In that context.

ZONING COMMISSIONER MITTEN: Okay, great. So given that the permit was improper, what did you do?

MR. BELLO: Well, it was one of two things. The applicant is given an opportunity to remedy the situation or, if they wanted to keep it the way it was, then they will be referred to the BZA.

ZONING COMMISSIONER MITTEN: And in the meantime, do they just keep building or there's no sort of just stopping

perhaps while some resolution is -- I mean, there's two courses of action they could take. They both require some time, and if the permit is improper, would it be appropriate for them to continue construction under an improper permit?

MR. BELLO: Well, as long as the applicant indicated by action that they were going to be responsive to what the remedy was, then it wouldn't be unusual to not necessarily stop them.

ZONING COMMISSIONER MITTEN: What action did they take that showed that they were going to be responsive?

MR. BELLO: By changing the finished grade.

ZONING COMMISSIONER MITTEN: Well, okay. The meeting that -- We heard testimony that the meeting with you that sort of brought this all to a head was August 11th.

MR. BELLO: Well, I don't have a date. So I don't know.

ZONING COMMISSIONER MITTEN: Okay. Well, just trust me on it. We're trusting the folks who testified to that date.

The date that the application was made for the second permit that would resolve the issue regarding the grade -- that was made the 25th of August.

MR. BELLO: That's correct.

ZONING COMMISSIONER MITTEN: So that amount of time is allowed to elapse before you do anything about resolving the

issue of the permit? I mean, was there something going on in the meantime that indicated what action they were going to take? I mean, how did you know they wouldn't go to BZA, and then at that point you wouldn't know what BZA was going to decide.

I'm just trying to understand. Wouldn't it have been appropriate to issue a stop work order, given that the permit that authorized the construction wasn't properly issued?

MR. BELLO: Well, the necessity for that would only have been triggered by the applicant's either inability or willingness to comply.

ZONING COMMISSIONER MITTEN: Do you have regulations regarding when stop work orders should be issued?

MR. BELLO: No, I don't. It's not the purview of the zoning regulations.

ZONING COMMISSIONER MITTEN: You don't have any regulations, DCRA regulations?

MR. BELLO: Well, you probably do, but I don't have that. I don't know that.

ZONING COMMISSIONER MITTEN: Would you have the authority to issue a stop work order?

MR. BELLO: Through the Zoning Administrator's office and through the Construction Inspection Branch.

ZONING COMMISSIONER MITTEN: So that's something you would have to run by some people?

MR. BELLO: Absolutely.

ZONING COMMISSIONER MITTEN: Okay.

BOARD MEMBER RENSHAW: Who would you run that through?

CHAIRPERSON REID: Okay. Let me get back to -- There was testimony today to the effect that subsequent discussion about the issuance of the permit that was incorrect. Did you at anytime state that it was done, because you were initially misled?

MR. BELLO: Absolutely not.

CHAIRPERSON REID: You never made a statement that you were misled and that's the reason why it was issued?

MR. BELLO: Absolutely not.

CHAIRPERSON REID: All right. The other thing is: Did you state that -- In testimony today it was alleged that you stated that you would lift the stop order if the builder would submit revised plans; but since there was no stop order issued, in the first place, I guess that's moot. Okay.

Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Mr. Bello, in t he normal circumstance of a partial demolition of an existing property, the applicant can take the building down to a certain point and build back up again, as long as he's within conformance on the construction.

MR. BELLO: That's correct.

VICE CHAIRPERSON SOCKWELL: In this case, the applicant demolished the roof and first floor flooring down to the

subfloor, which would constitute the framing above the ceiling of the basement.

In the original house the basement was considered to be a floor, because the original house was a two-story house, the first floor of which was actually the basement.

MR. BELLO: That is correct.

VICE CHAIRPERSON SOCKWELL: In the actual construction of the new work, the basement was left essentially intact as a frame, as a box, and the permit said construct three floors, which would under most circumstances mean construct floors over the existing floor, and the existing floor was already a floor by zoning's definition of the original house.

So it would have to have become a four-story house under the circumstances, would it not?

MR. BELLO: That's correct, yes.

VICE CHAIRPERSON SOCKWELL: Thank you. And therefore, to correct the problem of being out of conformance with the ordinance by berming up would have altered a condition that was established in 1956 when the original house was built, because that portion of the original house was still intact, would you assume?

MR. BELLO: Yes, that's correct.

VICE CHAIRPERSON SOCKWELL: Yes. Had they demolished to the slab on grade, they would be starting virtually from scratch with a foundation, and building three floors from

that point would have created a three-story house.

MR. BELLO: That is correct.

VICE CHAIRPERSON SOCKWELL: And I have one more question to raise to you, because you are considered to be one of the more expert people in the Zoning Division.

The sections 20 -- and I know you won't know them by heart, because I don't know them by heart -- Sections 2001.1-5 discuss nonconforming structures devoted to conforming uses. The only issue that really allows the demolition of a nonconforming structure that's written into the Code states that, if it is demolished by fire or other natural occurrences to beyond 75 percent of its value, then that which is built to replace it must conform to the zoning ordinance.

MR. BELLO: That's correct.

VICE CHAIRPERSON SOCKWELL: There is nothing that I know of in the ordinance that states that, if one voluntarily demolishes said property to a point of 75 percent, 50 percent of 25 percent of its original value, that it could be expanded and altered in any way other than that which would be consistent with the current zoning ordinance.

MR. BELLO: Right.

VICE CHAIRPERSON SOCKWELL: Okay. Then I really don't have anymore questions for you. Thank you.

CHAIRPERSON REID: All right.

BOARD MEMBER RENSHAW: Madam Chair, just a few

questions at this end.

Mr. Bello, what is your title, please?

MR. BELLO: I'm a zoning technician in the Zoning Review Branch.

BOARD MEMBER RENSHAW: Zoning technician in the Zoning Review Branch. How many of them are there, in other words, like you?

MR. BELLO: One other.

BOARD MEMBER RENSHAW: One other? All right. Are you responsible for sending out inspectors on properties where there has been a complaint? Who sends the inspectors?

MR. BELLO: Well, it's centrally generated, but I can be in on that decision, yes.

BOARD MEMBER RENSHAW: Did you send any inspectors out to this site when the complaints came into your office?

MR. BELLO: If my recollection serves me right, I probably looked at the plans first and then, yes, generated some sort of an inspection through the Construction Inspection Branch.

BOARD MEMBER RENSHAW: How many?

MR. BELLO: I don't recollect, but probably once or twice I spoke to Mr. Ford about it.

BOARD MEMBER RENSHAW: Once or twice? When this case seemed to generate quite a few letters coming into the office, there seems to be a steady stream of protests on behalf of the neighbors, and you only sent inspectors out once or twice?

MR. BELLO: Well, I don't think that Mr. Sloame would suggest that I wasn't responsive to his--

BOARD MEMBER RENSHAW: I'm not saying you weren't responsive. I'm just trying to get at the procedure of the office in reacting to a neighborhood complaint, a neighborhood problem. In other words, what did DCRA do to try to, shall we say, satisfy the neighbors?

MR. LOURENCO: Can I interject here, please? Mr. Bello is not the only person with authority to generate such an inspection. This case is probably, of all the cases that we're handling now in our office, the one that has been monitored the closest in all the cases that are now being handled in my office. There are hundreds of them.

The Zoning Administrator has done an inspection himself. I did two inspections to the site. I have been to the site, not inspecting, but I have been to the site four or five times already. So I don't see you can infer by the number of times that Mr. Bello would request an inspector to go out, how much attention DCRA has been paying to the scrutiny of this case.

BOARD MEMBER RENSHAW: Very good. Well, it's good to have your analysis of it, Mr. Lourenco. But that brings to mind another question.

Obviously, when you talked to the neighbors, there has been a complaint issued to your office, you're talking to them, do you keep minutes of your conversations? Do you write up

any reviews, Mr. Lourenco, when you talk to Mr. Bello, when you have had some discussion? Is there anything in writing in your department that you could share with the BZA that would glean -- would help us glean how you arrived at the decisions you arrived at?

MR. LOURENCO: The record contains two letters that were sent by our department, one signed by me, one signed by Lloyd Jordan, to Council Member Patterson who took a special interest in this case at some point.

There are, obviously, the records of the permits that were issued. This site has presently three permits that are valid that are out there. There is plenty of information on the plans that accompany those permits.

I think the record is very extensively documented, and I really would like to focus on the record and on the case.

BOARD MEMBER RENSHAW: You said that there were three permits for this property?

MR. LOURENCO: Yes. Yes, ma'am.

BOARD MEMBER RENSHAW: I have two. What is the other one?

MR. LOURENCO: There's the initial permit issued in June 7th. There is the revision to that permit issued in September 17th, and there's a third one to revise the access stairways in the front and to construct some retaining walls.

BOARD MEMBER RENSHAW: We don't have a copy of that

one, of the third permit.

MR. LOURENCO: I have a copy of the permit with me, but not the drawings, just the permit, and it's not a certified copy. If you want, I can produce a certified copy.

BOARD MEMBER RENSHAW: Yes. All right.

MR. BROWN: If it would help, Ms. Renshaw, Exhibit 22 to our opposition statement includes that.

MR. CLARK: It was issued in December of '99.

MR. BROWN: December 9th.

VICE CHAIRPERSON SOCKWELL: Let me ask one question, Mr. Lourenco. I had noticed, and I'm glad that --

CHAIRPERSON REID: Excuse me, Mr. Sockwell. Let's save Mr. Lourenco, and use this time for Mr. Bello, and Mr. Johnson has to leave. Then we can question Mr. Lourenco.

Are there any other questions for Mr. Bello?

ZONING COMMISSIONER MITTEN: I have one further question, Madam Chair. Consistent with what Ms. Renshaw asked, and notwithstanding the answer that Mr. Lourenco gave, Mr. Bello, do you keep notes of conversations that you have with applicants or folks that come down and complain about something that's going on, conversations that you have with other folks in your office, just like notes that would give us some insight?

There's a timeliness issue here, and then there is also, you know, just the issue of what was said when and so forth. Do you have notes?

MR. BELLO: No, I don't.

ZONING COMMISSIONER MITTEN: There are no notes that are maintained in your file regarding any conversations that you have with other staff members, applicants or folks that come to the office to complain about matters?

MR. BELLO: No, I don't, because a lot of the information that we share is said verbally, and the correspondence that comes out of the office comes through the Zoning Administrator's office.

ZONING COMMISSIONER MITTEN: Thank you.

CHAIRPERSON REID: MR. Brown, did you have questions for Mr. Bello?

MR. BROWN: Yes.

CHAIRPERSON REID: Then I would allow Mr. Clark to cross-examine as well.

MR. BROWN: Mr. Bello, you indicated that there was no attempt -- I want to clarify this -- no attempt on the part of the building permit applicant to mislead you in their application or their plans that were submitted? I just want to verify that.

MR. BELLO: Yes, I stated such.

CHAIRPERSON REID: Mr. Bello, can you speak louder into the mike, please?

MR. BELLO: Yes, I stated such.

MR. BROWN: When you identified that there was a discrepancy and you were in contact with the building permit

applicant, the property owner -- correct?

MR. BELLO: That's correct.

MR. BROWN: -- and you discussed their options as far as what you considered needed remedial work?

MR. BELLO: That's correct. I stated the issue of noncompliance, as I saw it, relative to the building permit application as filed, and the plans that they filed, and I told them to come on in to discuss the possible remedies for them.

MR. BROWN: And the remedy you discussed with them was?

MR. BELLO: Well, it was either to berm the property in order to make the basement a cellar, which would then remove it from being counted as a story, or if they wanted to keep the proposal the way that they had it, that then I would have to embark on issuing a stop work order and issue a BZA memo. But the only way they could keep it the way they had it was to go seek redress before the BZA.

MR. BROWN: And when you met with the property owner, they indicated to you that they were going to make the suggested changes to finished grade?

MR. BELLO: That's correct.

MR. BROWN: And you were satisfied based on that commitment that that would bring the property into compliance?

MR. BELLO: That's correct.

MR. BROWN: And that subsequently the applicant

filed the revised building permit showing the revised grade?

MR. BELLO: That is correct.

MR. BROWN: And then that permit was in due course reviewed and approved by your office?

MR. BELLO: That's correct, sir.

MR. BROWN: If permit number two, the revised one -- If that permit as it relates to the front elevation had been the original permit, would that permit have been issued in the normal course as in compliance?

MR. BELLO: Yes, it would.

MR. BROWN: So that the revised permit, again, achieved the only obligation which was compliance with the zoning regulations?

MR. BELLO: That's correct.

MR. BROWN: Going to the question and the issue that Mr. Sockwell raised, this was a partial demolition, in your view.

MR. BELLO: According to the plans presented, yes. It wasn't a complete demolition.

MR. BROWN: And as a result of that, you judged the compliance with the zoning regulations, because this was an addition to an existing structure?

MR. BELLO: That is correct.

MR. BROWN: In particular, as to the question of the side yard, for a side yard of a pre-1958 building for which

you are making an addition, is there a rule other than the eight-foot side yard setback?

MR. BELLO: You are allowed to extend a nonconforming side yard insofar as you have five feet or more in existence.

MR. BROWN: And in this case the existing house had a five-foot or greater side yard. Correct?

MR. BELLO: As reflected on the surveyor's plans, yes.

MR. BROWN: Did you see the wall check?

MR. BELLO: Yes, I did.

MR. BROWN: And that also reflected the five or greater foot side yard on either side?

MR. BELLO: It did.

MR. BROWN: I think that's it.

CHAIRPERSON REID: Thank you.

BOARD MEMBER RENSHAW: Question, Madam Chair. For Mr. Bello, I'd like to know how often cellars have been created by berming, how many times in the District? Then I have a follow-up question.

MR. BELLO: How many times?

BOARD MEMBER RENSHAW: Yes. Do you know?

MR. BELLO: Well, it's really a function of what the definition of a cellar is as opposed to a basement. And the pertinent language is that the measurement determines what

constitutes a cellar or basement is from finished grade to the first floor level.

BOARD MEMBER RENSHAW: Go ahead, and then I'll come back.

VICE CHAIRPERSON SOCKWELL: Is it, to your knowledge, in residential construction or, to your knowledge, in commercial construction C zones -- is it something that you have seen done often to change an existing building of one type to a building of another type? In other words, would you say that it is a regular practice of the zoning office to allow one to berm up against an existing building to make one story disappear for the purpose of adding additional stories?

MR. BELLO: That's done regularly.

VICE CHAIRPERSON SOCKWELL: It is done regularly?

MR. BELLO: Regularly.

VICE CHAIRPERSON SOCKWELL: With existing buildings? So I can regularly take a two-story or three-story or four-story building and convert it to a five or six or seven-story building by berming up against the walls, as long as I change the finished grade to that which I want it to be?

MR. BELLO: As an example, in commercial zones, if you have an existing basement floor that counts toward you gross floor area which is perhaps 25,000 square feet, you can make the 25,000 square feet disappear by changing that basement to a cellar.

CHAIRPERSON REID: This is done routinely, and it's not illegal?

MR. BELLO: It is not.

BOARD MEMBER RENSHAW: Question, Madam Chair. In the September 20, 1999, letter from Lloyd Jordan, the Director of DCRA, to Council Member Cathy Patterson he writes that the regulations do allow property owners to regrade their lots as they see fit, including raising the finished grade. This has been a practice allowed by the Zoning Administrator for years. How many years? Is the practice written down? Is it a regulation? Is it just someone's whim that this is one way that we're going to get around, you know, calling a basement a basement, not a cellar?

The choice of words here is peculiar. Go ahead.

MR. LOURENCO: If I may answer, I guess that practice goes at least as far back as 1958, because that's the date of the regulation. The regulations are moot in relation to limitations on regrading.

We have to understand that. We can be speculating here about burying seven floors under a hill, but there is a practicality limit to that. I have with me -- I took pictures this morning of this house, because I wanted to make sure of where it stood right now and whether I could stand here and say there is no violation.

You're going to be surprised by my answer when I get to that point. But the issue here is that there is a

practicality limit. There is only certain things one can regulate and should regulate.

If I build a hill that's seven story high, I'm going to have a problem getting to the front door of my house. Some houses that are built on hills in this same Forest Hills area have 20, 30, 35 steps to the front door, and guess what? That's the point from where you measure the height of that house.

As you go down the street, and you don't even need to leave the block where this house is -- as you go down the street, you see houses where the first floor is way up there.

Now in this particular case, the case at hand here, we are not talking about changing the natural grade to that extent. We're talking about changing the natural grade probably by one or two feet.

The question of what in the zoning regulations limits my ability to regrade my lot, I do not think there is any provision anywhere. There are other regulations that regulate that, because by changing the grade I'm changing the natural flow of the water.

There are storm water management and soil erosion provisions that would prevent me from building that hill. If my lot is so big that I can build a hill seven story high with a slope that is acceptable to the soil erosion folks to their regulations, sure, I can do that.

It's not the case here, and I think we should try

to -- rather than -- and my office, and I want to state that for the record -- my office, Lloyd Jordan committed to making a proposal to send to the Zoning Commission to try to address this issue, because I'm not saying this issue is not a problem for the neighbors, but I think what we should be focusing on here is this case, what it is that the zoning regulations state, how we are applying them; because we in the Zoning Division -- and I say we for the record; again when the first permit was issued, I was the Acting Zoning Administrator, and then Michael Johnson inherited this whole issue. So that's why we are both here sharing the table.

We are not saying that there aren't problems that need to be addressed, especially with these issues of infill development, which I believe this is what it is. There's a lot of properties in the District that are underdeveloped for what the zoning regulations allow, and that is an issue that neighbors are going to raise over and over again.

This isn't the only issue in the city where the same type of problems has been raised, but we cannot in the Zoning Division change the zoning regulations. We can only enforce the zoning regulations.

We believe in this case we did it correctly. We believe in this case everything is by the book, because if it wasn't by the book -- You just heard what Mr. Bello said. If it wasn't by the book, the applicants would get a stop work order and

a letter to come here before you, plead his case to get a variance order, special exception or whatever was necessary.

So I guess it may sound very surprising to you, but I do not see anything in the zoning regulations that would allow me to tell an owner you cannot change the grade of your property.

VICE CHAIRPERSON SOCKWELL: Mr. Lourenco--

CHAIRPERSON REID: Okay. Let me jump in here, Mr. Sockwell, because I'm watching the time, but you can ask him after we finish with Mr. Bello and allow him to go, and Mr. Johnson has to leave also.

Mr. Clark, you --

MR. CLARK: I have questions for Mr. Bello.

CHAIRPERSON REID: No questions?

MR. CLARK: I do have some.

CHAIRPERSON REID: All right.

MR. BROWN: Madam Chair, can I ask one follow-up question to Mr. Bello, since he was the technician in charge?

CHAIRPERSON REID: Quickly.

MR. BROWN: Going through this permit application -- Excuse me. First, did this lot comply with the lot area requirement? Did you find it in compliance?

MR. BELLO: That it was in compliance? I'm not sure what the lot size was, but that wasn't relevant to that review process.

MR. BROWN: Okay. Did you find it in compliance

with the side yard requirements?

VICE CHAIRPERSON SOCKWELL; Mr. Brown, you're asking Mr. Bello questions that he doesn't have direct access to information to support, and I think that you should be cognizant of the fact that he doesn't have his records directly in front of him, and he deals with any number of cases during the day.

You cannot force him to remember like that. He's not clairvoyant.

MR. BROWN: Point well taken, Mr. Sockwell. I guess the question is: At any point that you continuously scrutinized this case at several times, permit one, two and three, do you recall -- Other than the one issue that was corrected, do you ever recall seeing a violation of the zoning regulations?

MR. BELLO: There wasn't any.

MR. BROWN: Thank you.

CHAIRPERSON REID: Thank you. Mr. Clark?

MR. CLARK: Mr. Bello, didn't the four-story issue come up because Mr. Sloame raised it with you?

MR. BELLO: No. I actually brought it to Mr. Sloame's attention.

MR. CLARK: Okay. And when you brought it to Mr. Sloame's attention, you told him, as a matter of fact, that you were going to contact Robert Shelton about it, didn't you?

MR. BELLO: As a matter of procedure, if there was a need for on-field verification, then in fact I would contact the

Construction Inspection Branch. That's correct.

MR. CLARK: My question -- I understand. My question is, in this instance didn't you tell Mr. Sloame you were going to contact Mr. Shelton about this?

MR. BELLO: Possibly. I can't recollect definitely.

MR. CLARK: And didn't you tell him that Mr. Shelton was going to go out there and that he was going to issue a stop work order?

MR. BELLO: No, I didn't.

MR. CLARK: Now whose suggestion was it to put the berm in front of the property? Yours?

MR. BELLO: As a remedy, yes.

MR. CLARK: And why did you make that suggestion?

MR. BELLO: Because it's allowed as a matter of right.

MR. CLARK: Well, was one of the other things that would have been allowed to make this only a three-story house by having the existing basement plus two stories on top of it? Did you ever suggest that?

MR. BELLO: If you would rephrase your question -- I don't understand.

MR. CLARK: Okay. At the time -- You met with somebody from the developer. Right? Do you remember who it was you met with?

MR. BELLO: I met with perhaps the builder and the permit expediter.

MR. CLARK: Okay. Can you tell me who you mean by the builder? Mr. Cohen and Mr. Berman are here, and I just wonder who you mean.

MR. BELLO: The gentleman here.

MR. CLARK: That's Mr. Cohen. You met with him. Right? When you met with him, was there any suggestion made that why don't we just have three stories?

MR. BELLO: No. Well, part of my job also involves advising applicants about the ability to come into compliance. In terms of this issue, I laid down what their options were.

MR. CLARK: And one of the options you laid down wasn't just to make it three stories, was it?

MR. BELLO: Well, in this context berming it up would make it three stories, which would bring it into compliance which would only be my focus.

MR. CLARK: Sir, when you were meeting with Mr. Cohen and his permit expediter, didn't they come in to meet with you, because they had heard that a stop order was going to issue?

MR. BELLO: No. The permit expediter, who is a regular at the permit center, was informed that there possibly might be a problem with the application that he had run through the division, and that he needed to bring that in and bring it into compliance.

MR. CLARK: Okay. So indeed there was a discussion with the permit expediter that there was a problem, and that's why they came in?

MR. BELLO: That's correct.

MR. CLARK: All right. Now did Mr. Cohen or the permit expediter ever tell you how come they wrote down three stories on the application instead of four?

MR. BELLO: I wouldn't find that to be unusual, because again the definition of what constitutes a story may be lost on the average applicant.

MR. CLARK: Well, the average applicant here had a certified architect licensed and registered in the District of Columbia to submit plans, didn't he?

CHAIRPERSON REID: You're not allowed to give extraneous testimony as you are questioning a witness. Just pose your questions to the witness without your interjecting your own testimony.

MR. CLARK: I'm cross-examining.

CHAIRPERSON REID: I know what you're doing. I understand clearly. I'm just cautioning you that you must keep your questions germane to his testimony and not interject your own testimony while you're doing your cross-examination.

MR. CLARK: Let me ask Mr. Bello. Do you know whether the applicant here had an architect?

MR. BELLO: It would have had one, yes.

MR. CLARK: And did you check whether that architect happened to be licensed and registered in the District of Columbia?

MR. BELLO: I'm not required to check that.

MR. CLARK: In fact, on the plans it says that he's licensed, doesn't it?

MR. BELLO: I'm sure that it did.

MR. CLARK: Yes, I know we both agree on that. And did you ever ask how come the architect got it wrong? I understand that, if I walked in for a building application, that I might get it wrong, because I'm not a zoning lawyer. I'm certainly not an architect.

My question is did you ever ask him how come he got it wrong?

MR. BELLO: Well, I mean, I've been in zoning ten years, and I mean no slight to architects. Very few architects have good working knowledge of the zoning regulations.

MR. CLARK: Do you know, in fact, whether the plans in this case that were submitted to you for our approval back in April of 1999 said they were in compliance with the D.C. zoning regulations?

MR. BELLO: By issuance of the building permit, yes.

MR. CLARK: And so that was the representation made by the builder?

MR. BELLO: What was?

MR. CLARK: Now I've got in front of me, and you don't have the benefit of it, and I don't know if Mr. Brown has an extra copy of his brief, but I'm referring to page 5 of Mr. Brown's brief where he has his little chronology. If you've got it there, just to help follow -- Pat, do you have a copy you could show Mr. Bello there at page 5?

Thank you. Mr. Bello, this is just so you have the benefit of knowing where I'm asking my questions from. If you see, it says there July 27, 1999, intervenor -- that's the builder, Mr. Cohen here -- is informed by its permit expediter that a stop work order was issued. No record of any stop work order is ever produced.

Do you know whether, in fact, that happened?

MR. BELLO: No stop work order, to my knowledge, was issued. I can't speak for the expediter for that.

MR. CLARK: Okay, I understand. Now two lines later, two dates later, it says July 28, 1999. That's the next day. It said, in response to the reported stop work order, intervenor meets with Mr. Toye Bello, zoning technician, to review side yard and height issues.

Now in fact, did they come in, in response to a stop work -- a reported stop work order?

MR. BELLO: To my knowledge, that's not what they were responding to. They were responding to my request to revisit

the application.

MR. CLARK: And you called them and made that request?

MR. BELLO: Through the expediter.

MR. CLARK: Who is this expediter by name, if you know, sir?

MR. BELLO: I believe it is Rick Ganglow.

MR. CLARK: And you deal with him on a regular basis. Right?

MR. BELLO: That's correct.

MR. CLARK: What did you tell him about why you were bringing him in?

MR. BELLO: Well, as a matter of procedure, when there's a complaint about any application, I do an overview of the application; and if there is an issue of noncompliance, then my natural next step will be to see about contacting the applicants and making remedies or moving forward with enforcements from there.

MR. CLARK: Okay. Now the last line of that same section we're looking at, July 28, 1999, the last sentence, it says, Mr. Bello advises intervenor that it is permitted to continue construction at the site while the revised building permit application is submitted and approved by DCRA.

Did you do that?

MR. BELLO: Well, I mean, insofar as the applicant

demonstrates their willingness to come into compliance, yes, I may have told him that, in order not to be unusually punitive of the situation, then as long as they demonstrate that they are going to come into compliance, then there will be no necessity to stop their work.

MR. CLARK: Now did you call Mr. Sloame and tell him that's what you were doing?

MR. BELLO: I had several contacts with Mr. Sloame, and I kept him abreast of every development along the way.

MR. CLARK: I understand, sir, but could you answer my question. Did you tell him that you had told Mr. Cohen that he could continue to build?

MR. BELLO: I don't recollect that specifically, but I might have.

MR. CLARK: But you don't know?

MR. BELLO: I don't recollect specifically.

MR. CLARK: You don't remember that you did do it, do you?

CHAIRPERSON REID: He answered your question. Move to the next question.

MR. CLARK: Now I see this is July 28, 1999. You were satisfied that he was making good faith efforts towards coming into compliance. Right?

MR. BELLO: That's correct.

(6:00 p.m.)

MR. CLARK: And so he filed the application, what, a day later, two days later, a week later?

MR. BELLO: This was in August?

MR. CLARK: No, this is July 28, 1999, sir.

MR. BELLO: Are you talking about the revision permit or the original permit?

MR. CLARK: I'm sorry. Obviously, we're past the original permit. I mean, you said now that he's showing steps that he's doing all this stuff, and he's coming into compliance right away. Didn't he wait a month before he filed his application, August 25, 1999?

MR. BELLO: Well, if the date is there, then yes.

MR. CLARK: Well, let me try to make this easy for you. I think I've got it in an exhibit here. I can show it to you.

ZONING COMMISSIONER MITTEN: It's Number 16, if that will help you find it.

MR. CLARK: I appreciate the help on that.

Mr. Bello, you've got Exhibit 16 in front of you. Does that show that the date of the application is August 25, 1999?

MR. BELLO: Yes, it does.

MR. CLARK: Okay. Now that's four weeks in between the date of your meeting. What happened in that four weeks to

demonstrate to you that there was a good faith effort towards compliance?

MR. BELLO: Well, I ascribe that time to the time it would take the architect to present the revised plans.

MR. CLARK: And how extensive were those revised plans that the architect presented?

MR. BELLO: Well, there were probably discussions over that time as to what would be acceptable before final plans were presented.

MR. CLARK: You say there was probably. Do you remember whether there were or not?

MR. BELLO: I'm sure that there was, because their permit expediter was in constant contact with me.

MR. CLARK: And did you ever see any revised plans? Just if you remember, one way or the other?

MR. BELLO: Relative to the final approval of the revision permit or prior to that?

MR. CLARK: Well, I suppose you probably couldn't approve --

VICE CHAIRPERSON SOCKWELL: Excuse me just a second. Madam Chair, I would like to clarify one thing with regard to Exhibit 16. The date shown as an application date, 8/25/99, is not a date that can be held as a certain date for the application. It is what is placed on the last page of the application by a technician in the permit office that determines

most effectively the date at which anything is filed.

The applicant -- and I don't have that page in my booklet. So I just want to make sure that we are clear that that can be substantiated.

MR. CLARK: It is the same date.

CHAIRPERSON REID: What is the date at the top?

VICE CHAIRPERSON SOCKWELL: It's one that the applicant puts in. It could be put in a month --

CHAIRPERSON REID: Not the 8/25; the 9/17.

VICE CHAIRPERSON SOCKWELL: The 9/17 is the date that the permit was recorded as having been issued, I do believe.

MR. CLARK: I believe that's correct. And that is the date of the permit, in fact.

Mr. Bello, looking at Exhibit 16, it's also -- A more complete copy of the application, I think, is Exhibit 8 to MR. Brown's submission. But just at that first page in Exhibit 16, you see a box 14 where it says existing number of stories of building? Box 14, you see it?

MR. BELLO: Yes.

MR. CLARK: And you see it says three, and then there's a 1/2 that's crossed out. You see that?

MR. BELLO: Yes.

MR. CLARK: Did you cross out that 1/2?

MR. BELLO: No, I don't believe I did.

MR. CLARK: Do you know who did?

MR. BELLO: Probably the expediter.

MR. CLARK: And why did he do that, if you know? The question is why did the expediter cross of the 1/2, if Mr. Bello knows?

MR. BELLO: Probably because it doesn't correspond to the plans that he presented.

MR. CLARK: Did you tell him that?

MR. BELLO: Possibly, yes.

MR. CLARK: What do you mean, possibly? Did you or didn't you?

MR. BELLO: I don't recollect specifically that I would have told him that, but part of my review job would be to look at the application in connection with the plans that he was presenting and, if I didn't see three and a half floors, then I would tell him to correct it. Further, there's no such thing as a half-floor.

MR. CLARK: Okay. Now look at Box 17. You see that? Same thing, three with the one-half crossed off. That says proposed number of stories of building. Right?

MR. BELLO: Yes.

MR. CLARK: Now it couldn't be three and a half and be legal in that zone, could it?

MR. BELLO: No, it couldn't be three and a half and be legal. That's correct.

MR. CLARK: And so did you tell him to cross that off?

MR. BELLO: Possibly, again.

MR. CLARK: Do you remember whether you did, sir?

MR. BELLO: No, I don't recall.

MR. CLARK: It's likely you did, isn't it?

MR. BELLO: It is likely that I did, because again there is -- they didn't present plans with three and a half floors, and there wasn't any such thing as a half-floor.

MR. CLARK: Now did you go to Mr. Sloame and tell him that I've been presented plans for three and a half floors, do you want to come in and comment on this? Did you advise him of that when you were keeping him informed of everything that took place?

MR. BELLO: Well, I mean, you have to understand that, even though I was being responsive to Mr. Sloame's concern, the issue here was not one of public redress. So I couldn't possibly hold the applicant's application up until Mr. Sloame cleared it for review.

MR. CLARK: Well, you never even told him, did you?

VICE CHAIRPERSON SOCKWELL: Mr. Clark, let me interrupt again, if I may, Madam Chair.

In looking at the application, the alteration to the application actually appears to be twofold. It looks like it originally said two and a half stories and was changed to say

three, rather than three and a half changed to say three.

It certainly appears from the way it was written that it was two and a half, and then the two was curliqued to make a three.

MR. CLARK: Well, let me ask you about that. Do you remember that? Do you think -- Did they come in and call that four-story house two and half stories?

MR. BELLO: Do I think that they could come in and call --

MR. CLARK: No, not would they. Did they?

MR. BELLO: No, I don't remember.

MR. CLARK: So, no, but you don't remember?

CHAIRPERSON REID: How many more questions do you have, Mr. Clark?

MR. CLARK: I have questions on two sections here that I'd like to ask Mr. Bello about.

First of all, are you familiar with 12 DCMR Section 105.2 that deals with what happens when a structure is demolished and the restoration of established grades? I can show it to you, sir.

MR. LOURENCO: Madam Chair, I don't know if this is appropriate to make this comment at this point, but this section is in a portion of the regulations that Mr. Bello does not deal with, does not enforce.

CHAIRPERSON REID: Then the answer to the question

is no.

MR. CLARK: So you've never had occasion to see whether -- to look at this to see whether, when there is a demolition, that restoration of established grades is required?

CHAIRPERSON REID: He answered the question already, MR. Clark. Move to the next question.

MR. CLARK: I asked whether he had ever looked at it, but thank you, Madam Chair. I will move on.

MR. BELLO: No.

MR. CLARK: That is, sir, have you ever looked at Section 223 of 11 DCMR?

MR. BELLO: More than likely, yes.

MR. CLARK: Just to try to help you out, I'll hand you another copy. Now this property, 4512, was less than the 7500 square feet that's required to build a house in an R-1-A zone, wasn't it?

MR. BELLO: Yes.

MR. CLARK: And in fact, it was a nonconforming structure, because its side yards were less than eight feet. Isn't that correct?

MR. BELLO: With regard to that aspect, yes.

MR. CLARK: All right. Now my question is, sir, why section 223.1, which says that an addition to a one-family dwelling which does not comply with the lot size or side yard requirements shall be permitted only if approved by the Board of

Zoning Adjustment?

MR. BELLO: Which of the 223? 223.1 is what you're referring to?

MR. CLARK: I was reading in 223.1, yes, sir, and I was putting in the words rather than the sections there with respect to lots size and side yard requirements. You've never read this section before, have you, sir?

MR. BELLO: Well, because this is a recent -- This is -- I'm sure that I've read it. This is a recent amendment to the zoning code, relatively. But it's saying an addition to one-family dwelling or flat in those residential districts where a flat is permitted. A flat is not permitted in this district.

MR. CLARK: Well, let me ask you, sir, was this a one-family dwelling?

MR. BELLO: Yes, sir, a single family dwelling.

MR. CLARK: Okay. And if it's a one-family dwelling, then why didn't you require compliance with 223.1 before you issued the permit?

MR. BELLO: Because this is not a district in which a flat is allowed.

MR. CLARK: So you're saying that it says -- that this reads "an addition to a one-family dwelling and flat." Is that the way you're reading it? Could he answer the question?

MR. BELLO: Yes, the way I'm reading it is that this applies to those districts in which a flat is permitted, and

a flat is not permitted in the R-1-A zone.

VICE CHAIRPERSON SOCKWELL: Excuse me. Since we are on this section, I will read from paragraph 4 of page 1446 dated March 13, 1998.

"The Zoning Commission received comments from Arcadia Residential and Commercial Design Services, the law firm of Jackson and Campbell, Lindsey Williams and ANC-3C. After reviewing and discussing the comments received and the testimony presented during the public hearing, the Commission determined that the term single family dwelling should be changed to one-family dwelling to conform to the zoning regulations."

MR. CLARK: Thank you, sir. Is this a one-family dwelling?

MR. BELLO: It is a one-family dwelling, yes.

CHAIRPERSON REID: Thank you, Mr. Clark. We are going to move Mr. Johnson. Mr. Johnson, did you prepare testimony that could be -- that Mr. Lourenco could present for you?

MR. JOHNSON: I'm sorry. I didn't hear the question.

CHAIRPERSON REID: Did you prepare any testimony for today?

MR. JOHNSON: No, Madam Chair, I did not.

CHAIRPERSON REID: Were you just here to answer questions or did you have a particular statement to make?

MR. JOHNSON: I did not have a particular statement

to make. However, I wanted to make myself available for these proceedings.

CHAIRPERSON REID: Okay. The questions that would be proffered could be perhaps answered by Mr. Lourenco?

MR. JOHNSON: No doubt.

CHAIRPERSON REID: All right. Then thank you very much. I apologize for your having spent almost an entire day here and your time running out that you could not participate, but I certainly appreciate your indulgence. Since Mr. Lourenco can stay, we would address whatever questions we have with regard to the DCRA or the Zoning Administrator's office directly to him.

MR. JOHNSON: That would be fine, and I would just like --

CHAIRPERSON REID: Is there any objection to this by any of the parties here?

MR. CLARK: If Mr. Johnson doesn't want to say anything, that's fine by me.

CHAIRPERSON REID: All right. Thank you, Mr. Johnson. Board members?

VICE CHAIRPERSON SOCKWELL: Mr. Johnson, thank you very much for securing Mr. Bello for us this evening. He may not thank you, but we do.

MR. JOHNSON: Thank you all, and have a good evening.

ZONING COMMISSIONER MITTEN: Madam Chair, if I

could help to maybe clarify that Mr. Clark's question is on point for the subject property, if Mr. Bello would -- I don't think we're done. There's still a question on the table.

On page 1447 of the second page of the handout, it says this is an amendment or a new section 223, additions to one-family dwellings or flats (R-1). Okay? And the clause that says "in those residential districts where a flat is permitted" modifies the word flat, not one-family dwelling. So -- Okay?

MR. BELLO: Okay, okay.

MR. CLARK: So perhaps if I could go back, Mr. Bello, why wasn't this section applicable? Why did you issue a permit, even though, according to 223.1, the developer was required to come to the BZA first?

MR. BELLO: Well, I feel that it complies with this other section. Why do you feel that it doesn't comply?

MR. CLARK: Well, I guess my question, sir, as I read it -- and it says that an addition shall be permitted if approved by the Board of Zoning Adjustment. Are you the Board of Zoning Adjustment ?

MR. BELLO: No. My question -- My answer to you is that I think that it complies with all these other relevant sections. It complies with minimum lot size requirement. It complies with width of lot. It complies with side yard requirement in terms of its protection offered under the grandfather clause.

MR. CLARK: Oh, so your testimony is, sir, that in fact this lot is more than 7500 square feet?

MR. BELLO: That is correct.

MR. CLARK: All right. Now let's look at Exhibit 3 in front of you.

MR. BELLO: Here's the lot. The lot is 7500, I think.

MR. CLARK: It's not 7500 square feet, is it, sir?

MR. BELLO: Well, but also if you refer to DCMR 401.2, it says except as provided in 401.3, in the case of an unimproved lot. This lot already has an improvement in single ownership as of '57, which has an area of lot less than that specified under 401.3.

MR. CLARK: So you're saying that I can build on a lot of less than 7500 square feet as of right?

MR. BELLO: If it's vacant, you need redress before the BZA, but this is not a vacant lot. You look under 401.1. 401.1 says except as provided in Chapters 20-25 of this title, in the case of a building located on May 12, 1958, on a lot or area with a lot or both less than is prescribed under 401.3 for which the district in which it is located the building may not be enlarged or replaced by a new building unless it complies with all other provisions of the title.

MR. CLARK: And this one didn't, did it?

MR. BELLO: It does.

MR. CLARK: Oh, so you're telling me that the side yard -- Is your understanding of a nonconforming structure is that, if it was built prior to this zoning code, that it is conforming today?

MR. BELLO: Well, with respect to nonconformity of side yard, if you have five feet or more you can increase in that nonconforming aspect.

MR. CLARK: I understand what you're saying about Section 405.8, but my question is completely different, sir. My question is: Isn't it true that, in fact, this structure -- this place did not conform with either the minimum lot size or the side yard requirement in the current code today?

MR. BELLO: Well, it does not comply with the minimum lot size, but that's hardly relevant to the review issue, because it's already improved.

MR. CLARK: Now was this a -- This was a partial demolition, in your view?

MR. BELLO: That's correct.

MR. CLARK: I want to know, how far down do I have to go to have this demolition partial? If I've got one brick left, is it a partial demolition?

MR. BELLO: Well, total demolition. Obviously, there was one-floor framing left in this building.

MR. CLARK: What do you mean by framing?

MR. BELLO: The entire basement which really

projected beyond the finished grade was left standing.

MR. CLARK: The entire basement? Did you ever look and see what happened inside that basement, sir?

MR. BELLO: Inside?

MR. CLARK: Or outside?

MR. BELLO: Well, the frame of the basement was left untouched and was not razed, according to the raze plans presented.

CHAIRPERSON REID: How many more questions do you have?

MR. CLARK: Well, I've got a witness now who's testified as to some facts I have some pictures about.

CHAIRPERSON REID: All right. Then does that conclude your cross-examination?

MR. CLARK: I hope that it will. I think my points have otherwise been made.

VICE CHAIRPERSON SOCKWELL; Mr. Clark, while you're looking for something, let me ask you this question.

Section 223, you are applying to this case. Right?

MR. CLARK: Yes, sir.

VICE CHAIRPERSON SOCKWELL: And Section 223.1 does apply strictly to those residential districts where a flat is permitted.

MR. CLARK: I think that's in the disjunctive. I think that, in fact, it applies in the R-1 zone, and this is R-1-

A.

VICE CHAIRPERSON SOCKWELL: Well, it says an addition to a one-family dwelling or flat in those residential districts where a flat is permitted, and it does qualify by saying in those residential districts where a flat is permitted.

ZONING COMMISSIONER MITTEN: Mr. Sockwell, that's what we were trying to --

VICE CHAIRPERSON SOCKWELL: I understand that, but I had to look at it carefully, because this package was not in my code, and I have just about everything, but I have a mark that says it needed a revision piece, and I didn't have it. So I had to look through. But flat appears first in R-4, and regardless of what Section 223 says, flat appears as a matter of right in R-4, and it doesn't seem to appear anywhere else before R-4.

I wanted to make sure that the application of Section 223 is correct, because it has to be modified by those other portions of the Code, and there are sometimes typographical and other unusual aspects that we have to put up with.

MR. CLARK: Let me tell you how I read it. How I read that section is very simple.

VICE CHAIRPERSON SOCKWELL: I'm listening.

MR. CLARK: That is, it says if you have a single family dwelling or single family house, okay, if you got that situation or if it's a flat in a district in which a flat is involved, that's the way that reads. It's either/or. That's why

you have to do it.

ZONING COMMISSIONER MITTEN: Mr. Sockwell, because -- I'm just going to fall back on the fact that I was an English major in college.

VICE CHAIRPERSON SOCKWELL: Yes, and you have to look for the commas, and I understand that. I just want to make sure.

ZONING COMMISSIONER MITTEN: The commas.

VICE CHAIRPERSON SOCKWELL: I mean, I'm not naive to that, but I have to read these things -- In this code you have to read everything two or three times, just to make sure you understand it when they are very important issues.

MR. CLARK: And I think I read it a lot more than two or three before I decided, in fact, that I was right about that, because that was my initial reading.

VICE CHAIRPERSON SOCKWELL: And this is the first time I've seen this one. They leave out commas all the time in this code.

CHAIRPERSON REID: All right.

MR. BROWN: Madam Chair, could I interject. On this issue, Mr. Bello has testified that Section 223 is not applicable. So while I understand the concern about the language, if it's not applicable, I think we could move on.

MR. CLARK: I'm not going to ask anymore about 223, but I'll remind Mr. Brown that Mr. Bello is hardly the final word

on the meaning of the zoning regulations and, in fact, the BZA is the final word on the meaning of the zoning regulations. That's what the law is.

CHAIRPERSON REID: Clarify for me the aspect of it not being applicable. I mean, I'm sorry, staff have been talking to me. Why is not?

MR. BROWN: Because the property --

ZONING COMMISSIONER MITTEN: Perhaps Mr. Bello could convey it to her.

BOARD MEMBER RENSHAW: Madam Chair, I have got to leave at this point, and I really hate to break away from this very intense hearing today. It is fascinating, and it is very important, and I will catch up with all of your remarks in the record. But I do want to reserve my right to vote after reading the rest of the record that will be left over.

CHAIRPERSON REID: By all means, Ms. Renshaw.

BOARD MEMBER RENSHAW: But before I go, I want to just ask Mr. Lourenco. He said that he took pictures at the site today, and he had something to tell us. I'm afraid I can't leave until I find out what you have to tell us.

CHAIRPERSON REID: Okay, but let us -- If you have a moment, let us wrap this up. Mr. Bello, do you have a response to the question?

MR. BELLO: Yes, ma'am, because I believe the sections in the code, that deals with lots that already have

improvements upon them.

CHAIRPERSON REID: Okay. So you think that it differs if the lot is a vacant lot rather than a lot that has an improvement, and the fact that this was -- the first floor was framed, in your opinion, would then define that particular property as having been improved or not being vacant?

MR. BELLO: Well, the property would already be improved, and also if your addition is not in any nonconforming aspects or enlarging any nonconforming aspect. In this case, the only nonconforming aspects of the property that was enlarged a -- there was a side yard setback requirement, and that's provided for under a different section.

CHAIRPERSON REID: Okay. Mr. Clark, while you're doing that, you gave us these pictures.

MR. CLARK: That's what I want to ask Mr. Bello about, but I've only got one more copy. So I was going to stand over and hand them next to him, if I can.

CHAIRPERSON REID: Well, we have these you gave staff. So we have this.

MR. CLARK: Those are for you.

CHAIRPERSON REID: Yes, but what I'm saying is that we have our copies.

MR. CLARK: I just wanted the witness to be able to see one. That's all. I want to ask him about them.

CHAIRPERSON REID: All right.

MR. CLARK: Why don't -- Can you get me on that now or not? I don't want to lose Mr. Bello.

Mr. Bello, I think the picture you've got now in front of you there, I have marked as Exhibit 41. Do you know if, in fact, that's -- I think that you're now -- Mr. Lourenco is looking at what has been marked as Exhibit 42, and those are two different views of the same spot.

It's your testimony that, in fact, the entire foundation remained as it was before? Do those pictures show that?

MR. BELLO: Well, my review is based on presented plans and field verification by wall check, and the wall check that was approved indicated that that remained.

MR. CLARK: So did you ever see this change to the foundation before you, sitting here today?

MR. BELLO: Not by picture.

MR. CLARK: Well, has it ever been described to you before today?

MR. BELLO: Again, my review process again hinges on field verification by the construction inspection branch.

MR. CLARK: And did you ask the construction branch to go out and see whether there had been any changes to the foundation?

MR. BELLO: This part of the information is provided on the wall test.

MR. CLARK: Well, let me show you what's been marked as Exhibit 43, and let me ask if that shows no change to the foundation. Doesn't it show 2 x 4's on top of the I-beam down there? Doesn't it show the basement floor destroyed in several places? I just want to know when it's a demolition, Mr. Bello. That's all. What has to be left?

VICE CHAIRPERSON SOCKWELL: Mr. Clark, if I might - -

MR. CLARK: I will stop.

VICE CHAIRPERSON SOCKWELL: No. I just want to say that a review of the three photographs that you've provided shows that in one instance the floor has been penetrated for new plumbing lines to be installed, which would be normal to a renovation.

In one instance probably the supporting structure for the original joists was replaced with a steel structure, because it had to support something new up above, which probably this photograph shows only the final condition of but does not show that the floor joists were resupported temporarily during the removal of the original supporting structure and the installation of the new steel structure, because what you see right now is a steel beam that probably was not the same height as the original multiple wood joists that existed prior to this.

Therefore, there has to be a spacer installed to bring them back up to the level where they will pick up the floor

joists above. If you notice carefully, looking into the picture, there are half-joists running up to this thing, and then the other joists look like they go over it and stop. It's too long a span, but the joists appear to be original wood. They are a variety of colors. They're stained. They show the effects of moisture, things like that.

MR. CLARK: I have a number of other pictures about that.

VICE CHAIRPERSON SOCKWELL: Oh, I'm sure you probably do.

MR. CLARK: But isn't the point, sir -- didn't you say that the floor joists were left as it was? Didn't you say the basement was left as it was?

VICE CHAIRPERSON SOCKWELL: As long as the basement was left intact, it would probably be similar to leaving a roof intact. You can take the structure out from underneath, leave the roof there, and in effect still have the roof. These things are not so specific that you can't make changes and still be within the requirements of the law.

You have to know a little bit more about how these things are done as a professional.

ZONING COMMISSIONER MITTEN: Mr. Sockwell, with all due respect, those are answers that Mr. Bello should give, if that's the correct answer.

VICE CHAIRPERSON SOCKWELL: Yes, but you all have

to be as Board members able to see what exists, and one of the things that I'm here for is to show you things that you would not normally be able to see, and from my experience to be able to give you some sort of read on what is in a context that I can help you with. Where you can help me, that's exactly what I expect to get back.

CHAIRPERSON REID: That's absolutely correct. All of us bring to this Board a different set of credentials, of expertise, of professionality, and wherever we can bolster this Board or embellish it with that expertise, it's what we need to do.

ZONING COMMISSIONER MITTEN: Madam Chair, I couldn't agree more. I just would hope that that would not circumvent someone who has a legitimate question in cross-examination from getting the answer from the person that they posed the question to.

CHAIRPERSON REID: I understand that. I don't think that Mr. Sockwell jeopardized that. I think that it was a technical question that could be answered by --

VICE CHAIRPERSON SOCKWELL: And remember, Mr. Bello is neither an architect, an engineer nor a contractor.

ZONING COMMISSIONER MITTEN: Then that's the answer that he should give when a question like that is posed. That's all I'm saying.

VICE CHAIRPERSON SOCKWELL: Well, Mr. Bello, would

you give that answer so that Ms. Mitten will be satisfied? Thank you.

MR. BELLO: Well, again my review procedure is based on the field verification by construction inspection, which is reported back in a wall test report, and the wall test report that was approved by me reflected the existence of that basement.

MR. CLARK: And the wall test report in this case, sir, wasn't even done until after the -- until -- When was it? -- August 27, 1999. Right? Never mind, sir. I'll withdraw that question.

Let me ask you, sir, what is --

CHAIRPERSON REID: Mr. Clark, you said about 20 minutes ago that you had a couple of more questions.

MR. CLARK: We asked about the pictures, and I had asked as a preliminary to that how much demolition is it before it's a demolition. I want to ask him that question.

CHAIRPERSON REID: Okay. I heard you ask that question, and then we had some more discussion.

MR. CLARK: When is it only a partial demolition, Mr. Bello? How much has to be left to make it a partial demolition?

CHAIRPERSON REID: Do you have expertise?

MR. BELLO: No, it isn't.

CHAIRPERSON REID: All right then.

MR. CLARK: I have no other questions.

CHAIRPERSON REID: Thank you very much. All right. At this point let's do another status. Staff members, I'm sorry, I neglected to ask you about your time. I did everybody else, but I forgot. Do any of you have to leave?

MS. PRUITT: I have cleared my schedule.

CHAIRPERSON REID: All right. Then Mr. Lourenco. Mr. Bello, thank you so much for having accommodated us today.

MR. LOURENCO: Madam Chair, members of the Board, I have a -- When I started here, I had more or less structured presentation on this that's all out of whack right now. I would start by dealing with the photos that Board Member Renshaw wants to take a look at.

These were pictures I took this morning. I actually came here. I thought this hearing was at nine o'clock, and so I ended up with time on my hands. I took pictures of the property in question, which is -- they are stapled together now. I'll give them to you.

I also took pictures of the house, two houses north of this property, and three houses north of this property. Those are 4536 and 4542 28th Street, because I think they make some of the points that I want to make.

First, let me tell you that --

CHAIRPERSON REID: How many sets did you give us?

MR. LOURENCO: I only have one set. I wasn't prepared to make it.

MS. PRUITT: I'm sorry, Madam Chair. I thought these were three individual sets.

MR. LOURENCO: No. Those are -- Each little package is one building.

CHAIRPERSON REID: Thank you. All right, Mr. Lourenco. We have the pictures.

MR. LOURENCO: Okay. I went back today to make sure I knew exactly what the situation was I was talking about. I didn't enter the structure. I just checked it from the outside, because I believe all the issues that are being raised are exterior issues.

MS. PRUITT: Excuse me, Mr. Lourenco. Before you proceed, do you have another copy that we can maybe try to make copies so that both the appellant and --

MR. LOURENCO: I can provide copies, because those are --

MS. PRUITT: We're going to try to Xerox them now so that they would have them while you're talking.

MR. LOURENCO: They probably won't come out very well, but I can get you some more copies, not right now, I mean.

I went to the property today to take a look at the solution that was in place in relation to the berming at the front of the building. I noticed that in the same block that these two other houses, 4536 and 4542 -- 4542 is very interesting, because that fairly large house, sizeable house that you see there really

has a main room in the front that has maybe 30-foot high ceiling. That whole box that is there has no floor from the bottom to the top at the front.

From the sidewalk to the front door of 4542 there is at least 33 steps. The other house, which is one house closer to the house in question, which is 4536, has 28 steps to the podium that's at the top and, as you can see from the picture, obviously, that's the point from where the number of stories is counted; because it certainly has three stories above that podium.

Then there's another house which is lower, and then there is this 4512. So we're talking about the same block, the same neighborhood. We also have to understand the topography of the area.

This lot is awkward shaped. It looks like the last slice of a pizza with a little bit of cheese at the top, and so it's not an easy lot to work with. I visited the site for the first time on the 7th of September before I wrote my letter that's on the record to Council Member Patterson.

There was some -- a good portion of the structure was up by then, but the roof wasn't on. They were still placing some parts of the roof framing, and the thing that impressed me the most is that not only that this lot is sloped at the front, fairly sloped at the front, it continues like that all the way to the back.

If you stand at the rear of the lot, your feet are

almost at the level of the third floor of the current house. So this is the reality that's there. This is the house that is built on a terrace that was created on a very steep slope.

Now all of this, obviously -- I understand that the -- I think I understand the way the neighbors feel about this. I'm not sure if the neighbor immediately across the street from this house is here, but certainly if I had a house that sits, say, 50 feet back from the street and maybe 20 feet below the street -- when you stand on the street you're well at the level of the top floor of the house.

If I had a house there and across the street they had a slope that continues to go up fairly steep and somebody put a house with three full stories, well, where before I was used to seeing a one-level rambler, I probably would be here before you with the same arguments.

This being said, that doesn't mean --

MR. CLARK: Just for the record, that's me.

MR. LOURENCO: Oh, I had no idea.

So as I said, I understand that. As I said before, this is not the only case where infill development has been raising issues in the neighborhood. There I can point a couple more of cases, at least two or three, where these issues have come up. However, the duty of my office, when we review an application submitted by an applicant, is to apply as best we can the zoning regulations in the particular case.

We do not have the authority to change the zoning regulations. We only interpret them for purposes of enforcement. In the particular case of this project, there was an initial permit issued in June 7th -- on June 7th. That permit, upon further review, was determined to have -- and we received correspondence from the neighbors raising issues about side yard, number of stories, height. There were several issues being raised at that point.

We went back and re-reviewed the whole project. There's not a lot of projects in this city where the Administrator -- I guess I should have started by stating my name and position.

My name is Armando Lourenco -- better late than never -- and I am the Administrator for Building and Land Regulation Administration, and for a period until the second of August of 1999 I was the Acting Zoning Administrator while I was waiting for Mr. Johnson to come in.

So there's not a lot of projects in this city that receive this much attention from the Administrator, the Director, the Zoning Administrator. We issued maybe 12,000 permits last year. This is just one of them. It's not even one of the big ones.

As I said, I went to the field to see the field conditions. We reviewed the drawings. We reviewed what was submitted. Obviously, there is a discrepancy between the first

application and the first set of drawings, and I can -- Even though Mr. Bello stated that he didn't feel misled, I can understand how someone reasonably can infer that there's something there that may mislead someone.

My interaction with the applicant after we found the discrepancy is such that I do not believe there was any intent to mislead. There were some questions before on whether the permit was -- I can't remember exactly what the word is -- anyway, incorrect or something like that.

ZONING COMMISSIONER MITTEN: I think I might have said improper.

MR. LOURENCO: Improper. Okay. As far as I am concerned, the permit is issued or revoked, and there's no in between. It may have been issued with an error, and there are several ways of fixing an error once the permit is issued with an error.

Our first line of duty is to try to get the applicant into compliance. We are not interested in starting a war with every single person that has a discrepancy between an application and a plan. We would never get around to doing our job. I believe that the applicant was cooperative in trying to get to a solution.

There have been several questions about whether or not there was a stop work order. I can check on that. I don't have the answer to that in my hand. I do not believe there was a

stop work order. There may have been talked about a stop work order.

A stop work order is basically the tool we use when we don't get cooperation from the applicant. I know that sometime in August this issue was brought to my attention, and I can't precise the date, but sometime in August this issue was brought to my attention, and I believe that through Mr. Toye Bello contacts were made to the permit agent, permit application agent to get the applicant to come to our office, because we needed to have that thing resolved.

Now in relation to the important points in this project, the way our office looked at it was here is an existing lot with an existing building which is a two-story building, and I'm going to try to be as precise as possible with these terms. We can't just throw a story and floor in the existing building that had two stories, a basement and a first floor.

We received an application to demolish a portion of the building, leaving the basement. So it's basically removing the roof and the top floor, and then to build three stories on top, and the application did state going from two stories to three stories.

We have to be cognizant also that it's difficult to get an applicant to get this issue of the stories right, as Mr. Sockwell very well knows, because depending on who you are talking to, you get different answers.

If you talk to the structural engineer who is reviewing your building based on the building code, he is going to look at this building, and he may come up with a totally different conclusion than the conclusion that the zoning technician will come up, and both are right; because the criteria to define what's a basement, what's a story above grade in the building code is different from the criteria used in the zoning regulations to determine what's a cellar, what's a basement and what's a story on top of a cellar, what's a story to count the number of stories.

It is just the way things are. The application is an application for a building permit. It's not an application for a zoning approval. So even the information that's on the front page where you state the number of stories I could write two or three, and we could come to the conclusion that it was correct zoning-wise and it was incorrect building code-wise.

Normally, boxes 14 and 17 are there for the applicant to state the number of stories based on the building code, not on the zoning regulations. So let's not put a lot of weight on this.

The most important document, to me, are the plans.

VICE CHAIRPERSON SOCKWELL: Mr. Lourenco, let me just interrupt you there. You said that those two boxes are generally for the placement of the building permit related -- the building code related stories. That's not correct. That is absolutely not correct.

We have, in all the years that I have been involved, never used -- We always use the number of stories based upon the zoning ordinance. We only deal with the number of stories in building code related issues with regard to gross square footage in establishing on page 2 the real elements to be constructed, but when it comes to number of stories, it has never been my understanding in countless meetings with your predecessors, with countless building codes behind me, that we used those to indicate anything other than the zoning code height or number of stories of the building, and I do disagree with you on that.

MR. LOURENCO: Do you know when that application was revised?

VICE CHAIRPERSON SOCKWELL: I have both the original and the current versions.

MR. LOURENCO: 1991. I revised that application. So I know what those boxes are for.

VICE CHAIRPERSON SOCKWELL: Well, but let me explain to you. I can bring you -- I could bring to your office probably 100 building permit applications, and not one of them for any building has ever had anything in those boxes other than the building stories for zoning purposes -- never, ever, not one.

I can bring to you people from the Building Code Advisory Committee, the most senior people in our firm. They would tell you exactly the same thing. I disagree with you

entirely.

MR. LOURENCO: We, obviously, disagree.

VICE CHAIRPERSON SOCKWELL: And you don't file building permits. I'm only saying this, because we couldn't do that. Our clients would lose their shirts if we ever put anything on there other than what's zoning. If we put 12 stories and we're talking about four cellars and eight floors, it wouldn't fly, because a zoning technician is expecting to see the number of stories for zoning.

MR. LOURENCO: If you have four cellars in zoning, you don't have four stories in building code.

VICE CHAIRPERSON SOCKWELL: I know. What I'm saying is --

MR. LOURENCO: Because it's stories above grade.

VICE CHAIRPERSON SOCKWELL; Yes, I know. The only stories that we are concerned with in those things are the stories above grade for zoning purposes, period.

MR. LOURENCO: We disagree on that point. But the important document for this purpose are the drawings, the plans. The plans did show a four-story building, because there was no change on the elevation or there was no significant change on the elevation from the original condition of the building that would make that basement be anything other than a basement, therefore be counted as a story under the zoning regulations.

That is the discrepancy that was found. That was

what was brought to the attention of the applicant. He could not have a four-story building. The options that the applicant had at that point were, one, leave everything as it was and come before the Board of Zoning Adjustment to get relief; two, change the grade so as to make the lower level of the building become a cellar; three, modify, the project so as to make the top floor disappear. Those were the three options that were on the table.

One of the reasons why we let the construction continue while this issue was being resolved was because the construction had not reached the point where we couldn't force the applicant to take some remedial steps, and we felt that the applicant was diligently pursuing one such solution.

That application to relief the noncompliance came into our office on August 25th, and was processed through September 13th, I think it was, and basically it was pending a decision on the zoning. It took us a little while to make the decision, because I had to go out in the field, see what was there, discuss it with other people, etcetera.

Now there are some other issues that have been raised here such as the side yard, size of the side yard. The height of the building is related to the number of stories. Even though I don't think, with the berm as it is now or as it was before, there is no issue of reaching the 40 feet. I think the building is well below that.

Remember, all of these heights above this finished

grade at the center of the front of the building -- that's the level from where you measure the height, and you don't measure the height to the top floor. You measure the height to the ceiling in the cellar or basement. And you don't measure the height to the top of the roof; you measure the height to the ceiling of the topmost floor. Just, I think there was a little bit of confusion.

VICE CHAIRPERSON SOCKWELL: There really wasn't any confusion there. The original -- if I might just say this, just so we get that clear. The original finished grade was at 108. The original basement slab was at 106. Adding all the floors and all of the interstitial space up to the ceiling of the top story, the building complied with zoning for height under any circumstance.

MR. LOURENCO: Yes. So that was really a nonissue. Obviously, there is this issue of does the lower level count as a story or not. My contention is that -- I'm sorry that Ms. Renshaw is not here, because my contention is that at this point no one can tell.

The construction isn't finished. I don't know where the ceiling of the basement or cellar is going to be. So I don't know where to measure, but certainly, I believe that where the grade is now, the finished grade, to the floor of the first story, there is less than four feet, which means that, no matter where you put the ceiling of the cellar, it will be a cellar, not a story. Therefore, this building has three stories.

The issue of -- Okay, now comes the issue of building on top of the previous footprint or expanding from the footprint. This application was very clear from the start. He would be building three stories on top of the existing footprint, plus an addition to the rear and a slight addition extending to the front overhang into the front.

The zoning regulations on, I believe, 405.8 contain provisions to deal with these cases where a building that predates May 12, 1958, has side yards smaller than eight feet, and allows expanding on that aspect as long as you do not reduce the size of the side yard, which I don't believe happened in this case, and as long as those side yards are at least five feet.

There are, obviously, lot occupancy percentages that I don't think are at issue here. The issue that was also raised is the fact that the lot is about five feet or just over five feet square feet short of 7500, and new Section 223 was brought up. I would like, for the record, to read the second paragraph of the introduction of this order of the Zoning Commission which says:

"The purposes of the amendments are to provide a legal basis for making reasonable additions to single family dwellings where the street tests associated with an area variance are unobtainable and to authorize the Zoning Administrator to allow very minor de minimis deviations from the area standards of the zone districts."

First of all, clearly from the introduction, the purpose of this section 223 is to provide an alternative criteria when the BZA has to deal with a variance and, due to the criteria being too strict, this is intended, I think, to relax what was before contained in the zoning regulations.

A second part of that sentence is that it states that it authorized the Zoning Administrator to allow minor variations. If we turn to the second page, Section 407, which was also added, it gives Zoning Administrator flexibility to some very minor deviations from t he requirements of 401 and 403.

I believe it's in 401 that the 7500 square feet is. Five or six square feet is well, well below two percent of 7500 square feet. Therefore, I think we need to read all these sections in conjunction with the intent of them and not forgetting that 407 is there.

I was the Zoning Administrator when this first permit was issued. I think it was my prerogative to rule that five square feet short of 7500 is not an unreasonable relief to provide without coming to the Board of Zoning Adjustment.

In sum, I think that our office did not err in giving the applicant the opportunity to come up with a solution to the issue of the three stories which, in my view, was the only issue that was questionable in the initial permit.

I believe that this project stretches to the limit, almost to the limit, the ability to develop this property.

Personally, I'm not very happy with the end result and, as I stated before, we will be preparing some documentation to forward to the Office of Zoning, to the Zoning Commission, with some of our ideas of the result of the zoning regulations as they stand right now, and some ideas on how the Zoning Commission can address that.

Until then, both the Office of the Zoning Administrator and the Board of Zoning Adjustment can only apply what's in the regs, and I think we applied them correctly, accurately, and consistent with the way we have been applying the regulations for many years.

VICE CHAIRPERSON SOCKWELL: Mr. Lourenco, a couple of questions. First, were your communications with the development group in the presence of Mr. Cohen at anytime?

MR. LOURENCO: First let me make sure I understand who we are talking about.

VICE CHAIRPERSON SOCKWELL: That guy.

MR. LOURENCO: I only had -- That I can recall, I only had one contact with Mr. Cohen. It wasn't even in the context of discussing this issue. I had been to a meeting. I can't recall if I had to make a presentation or something, a meeting of the -- I believe it was the Home Builders Association, some industry meeting where I go very often to make presentations on what we are doing.

At the end of the meeting, Mr. Cohen approached me

and asked me if I knew where the project was. This was, I believe, if the dates in this summary that I read are correct, this was the day after I went to the field to do the inspection.

I should note for the record that every time I was in the field to do an inspection, there was no work going on. There was no one in the area except this morning. There was someone working on the third floor, some worker. So I've been basically rambling through the property alone.

VICE CHAIRPERSON SOCKWELL: Most of your communication with the developer was with whom? Mr. Gangloff as their representative?

MR. LOURENCO: Most of my communication was with Cathy Patterson in writing. I wasn't at any meeting with the developer on this issue. I don't recall having been in any meeting directly on this issue. Most of my communication was with my staff, discussing it with Mr. Bello and --

VICE CHAIRPERSON SOCKWELL; Okay. So your responses were primarily technical assistance and management decision making on this particular issue?

MR. LOURENCO: Exactly, and firsthand knowledge of the field situation, because I wanted to know what we were talking about.

VICE CHAIRPERSON SOCKWELL: In your estimation, a project of this type -- Now this is a house that would retail for more than a million dollars, based on advertised costs that are

part of the record.

You felt that this property could not effectively be developed without somewhat more flexibility in regulatory oversight than some other projects, because of the shape and basic topography.

Obviously, the site is sufficiently valid for construction to produce a house of the top five percent cost in the District of Columbia, probably, in terms of property value, for sale and assessment.

So the site really does have a great deal of utility at virtually the highest level of use in terms of value of construction. So I would say that the site probably is not anywhere near limited personally, based on what is being built there.

It would be one thing if they were building a $30,000 house for a very low income family and were just barely eking out something. But this is a major piece of construction that really the topography and lay of the land were incidental to, because we're talking about something for the upper echelon.

So I would tend to disagree on that particular point. I do want to know whether or not you feel that the applicant disclosed to you effectively costs and other issues, because the permits that I see applications for are notorious -- I won't use that -- are very specifically blank where costs are involved.

The permit for berming was merely an earthwork permit that did not respond to what had to be done to the building in order to berm up against it. In other words, the taking out of existing windows, the bricking up of the facades, possible waterproofing issues. There were certainly going to be an extreme change to the front and stone and block work to be accomplished.

None of that was shown on the berm permit and, therefore, the berm permit was issued for $60. The next permit was issued for a total of $450, 50 of which was for a projection. Fifty of it was for something else, but no justification for the other $350.

I don't understand why those lines are so vacant when the permits were signed off by the final reviewer, and -- the application was signed off by the final reviewer, and the permits were issued. It's as if there's something missing, and I am not sure why those dollars aren't there, and how these things can get through our system without those figures.

MR. LOURENCO: I think I have an explanation for the second permit, for the revision to berm up. That is purely a revision permit. A revision permit, as you know, are fees based on the amount of review that's necessary.

The fee for the work shown on the revision permit is considered to have been paid with the main permit, the initial permit. So unless the revision is such that, for instance, you are adding another wing to the building or doing something that

would add to the cost that wasn't included on the original permit, we would fee it only for the value of our review, which was very limited, because it had specifically just one purpose, which was to regrade the front.

The second revision permit -- I believe it's a revision permit. I lost my permits up there. The second revision permit had some changes to the front. So some of the -- I can figure out how --

VICE CHAIRPERSON SOCKWELL: $15,000 worth of work maybe minimum.

MR. LOURENCO: Yes. So that's a little bit of the fee that is to the time of revision, and the rest is based on the cost of the retaining walls and whatever is there. The steps were there, one way or the other.

Now I didn't get into that detail.

VICE CHAIRPERSON SOCKWELL: I know that you personally don't see those. You issue --

MR. LOURENCO: I try to stay away as much as I can.

VICE CHAIRPERSON SOCKWELL: But I do find that the lack of completeness on some of the applications is disturbing, because it makes it more difficult for us to get a good picture of what has taken place, and it can always lead us to believe that perhaps the applicant was not being forthcoming with proper information, as preferred by DCRA in doing its business and creating effective assessments and the things that bring money to

the District of Columbia as tax base goes.

So those are things that are just documentation, and I know that you're trying to move into a more computer based system, and maybe at some point that will require certain lines to always be filled in, and those things will be generated as a matter of course.

MR. LOURENCO: That's correct. We are dealing in that.

VICE CHAIRPERSON SOCKWELL: I guess my last question is that I am still somewhat uncomfortable with how this whole process evolved, and I do think that it is going to require more staff.

MR. LOURENCO: I couldn't agree more.

VICE CHAIRPERSON SOCKWELL: And training and all of the things that prevent this kind of occurrence, because I'm just -- You hate to tell somebody they've got to lop off a floor on a nice building. It's been done, and it will be done again.

Okay, thank you.

CHAIRPERSON REID: Thank you.

ZONING COMMISSIONER MITTEN: I just have a quick question.

Mr. Lourenco, at the end of Mr. Bello's time with us, Mr. Clark had asked him a question about what constitutes -- how far can you go and still be just doing partial demolition. Mr. Bello said that was not in his purview.

I was wondering if you could shed any light on that for us, because in order to -- as a zoning technician, to understand when you're supposed to apply the rules for addition versus new construction, I would think you would have to understand when you've gone too far on a partial demolition.

Are there any standards in your office by which that would be judged?

MR. LOURENCO: We have -- There are no strict standards to speak of. We have certain areas of our activity where we use some rules of thumb. Those areas were created because of the need to enforce certain other laws.

Someone had to make a decision on what constituted a -- I guess it's a raze. I guess raze is the word that's used -- of a historic property, and some criteria were developed for that to be applied strictly on cases of enforcement of law 2144 which is our possession act.

We do not have strict rules for any of the other disciplines, for zoning, for building. Certainly, if you remove a building to the ground, if you remove it so that there's nothing left, you flatten out the lot, that's a raze, and no one is going to say that there's any structure left.

In this particular case, I think the essence of the first floor remained intact. This is what some of these pictures show. So I have no problems in determining that this building wasn't razed to the ground, that a portion of the building was

retained, and then an addition to it was built.

ZONING COMMISSIONER MITTEN: You just used -- I know you were going to be real careful in the use of your terms, and you said just now that the main structure of the first floor remained, I believe you said.

MR. LOURENCO: Yes, that's correct.

ZONING COMMISSIONER MITTEN: Is that literally what you mean?

MR. LOURENCO: The first floor --When I say first floor, I'm talking about the basement, the old basement.

ZONING COMMISSIONER MITTEN: Okay.

MR. LOURENCO: Essentially, that old basement remained standing. It was the only portion of the building that was brick masonry construction, and it remained essentially intact. Obviously, there was some addition, some changes, some infills on some windows to make them less high and on some of those pictures -- I think it's 41 and 42, if I still remember correctly -- it shows a wood frame here in the front. I'm talking about this one.

I'm guessing this is where the garage door is, and as you can see from my pictures today, this wood framing is not there. It was temporarily erected to hold the projecting portion at the front.

There is, obviously, some demolition of a piece above the lintel of the door, if I'm in the right corner of the

house. I'll have to -- I don't know exactly where this is in the house. I'm just guessing, but on the inside I believe the floor joists of the floor above remained and the subflooring. I don't think anyone contested that.

This picture seems to indicate that there was a reinforcement of the floor support, because, obviously, a wall was removed from there. You can see where the wall was removed. This happens all the time. It's interior alteration.

One has to understand that all of this damage in here inside could have been done without even setting foot in our office. Someone can actually get a postcard permit which is allowable under this MR-12 and demolish everything inside this basement.

So not only Toye wouldn't look at it. No one in my office would look at it until they call us to come and take a look at it. That's the way the regulation is written. That's the way --

ZONING COMMISSIONER MITTEN: I understand that, and I was just trying to get at -- You know, there has to come a point where you've sort of torn down too much to qualify for an addition.

MR. LOURENCO: I don't think that point was reached here.

ZONING COMMISSIONER MITTEN: Okay. And does it concern you at all that Mr. Bello thinks that' snot in his

purview?

MR. LOURENCO: It's not in his purview to make that decision, but he has plenty of stuff next to him to ask these questions. We have engineers of several disciplines, and they are familiar with the building code. Mr. Toye is not very familiar with the building code. He's very familiar with the zoning regulations.

We have a team approach to everything. So, obviously, I would like people to be as cross-trained as possible and know about the adjoining disciplines as much as possible, but it doesn't really bother me that he is not particularly familiar with the criteria in this area.

I think this is more of a common sense issue than having a specific wording for what constitutes, or doesn't, raze or partial demolition

ZONING COMMISSIONER MITTEN: Thank you.

CHAIRPERSON REID: All right. We come now to seven o'clock, and we have to do cross-examination for Mr. Lourenco. Mr. Brown and Mr. Clark, did you want to cross-examine him?

MR. CLARK: I have a question.

CHAIRPERSON REID: Do you have many questions?

MR. CLARK: It will take at least 15 or 20 minutes.

MR. BROWN: I have very few questions, and I defer to Mr. Clark.

CHAIRPERSON REID: Okay.

MR. BROWN: Madam Chair, I've been asked if we could take just a two-minute break.

CHAIRPERSON REID: Sure. That was my next statement, was that we would take a ten-minute break, because everyone is tired, and we need to kind of stretch and, you know, just take a little break.

Sir, come forward.

MR. BARDIN: Madam Chair, I'm the Chairman of ANC-3F. My name is David J. Bardin. I have four questions for my friend, Mr. Lourenco, and I assume, since you said that we are now a party to the case, that you would allow us to ask questions.

CHAIRPERSON REID: The ANC is always a party to the case. Okay.

MR. BARDIN: I only have four questions.

CHAIRPERSON REID: Sure. What we'll do is -- Now let us go from the -- Take the break, and then come back, and we'll have cross-examination of Mr. Lourenco, and then the intervenor. Mr. Brown, how long do you think you need?

MR. BROWN: I think we can expedite it and present our case in probably the 45 minute range.

CHAIRPERSON REID: Okay. Do you have a lot of witnesses?

MR. BROWN: I have two.

CHAIRPERSON REID: Two witnesses to testify? All right. Then we'll have rebuttal by the appellant.

MR. CLARK: I think, Madam Chair, that I had a few pictures also to show. Remember, we were going to put that off until after the BZA people.

CHAIRPERSON REID: Well, can you do it with your rebuttal?

MR. CLARK: If you'll accept it as part of the case then, that's fine.

CHAIRPERSON REID: We will do that.

MR. CLARK: Mr. Bardin on the ANC may have more to present as well. I don't know.

CHAIRPERSON REID: All right.

MR. CLARK: He does not.

CHAIRPERSON REID: You know, I'm sorry. What was your name, sir?

MR. BARDIN: David Bardin, B-a-r-d-i-n.

CHAIRPERSON REID: Mr. Bardin, what happened was when we took the ANC out of sequence -- Did you have a statement to make as well?

MR. BARDIN: No, Madam Chair. Commissioner Kogan made the statement on behalf of the ANC. I will just have the four questions. I will not make a statement.

CHAIRPERSON REID: All right. Very well. Okay, let's now take a ten-minute break and come back, and then we can finish up this case as quickly as we can. We'll have to make calls and do whatever.

(Whereupon, the foregoing matter went off the record at 7:03 p.m. and went back on the record at 7:18 p.m.)

CHAIRPERSON REID: Shortly after eight o'clock, give or take a few more minutes, I'll lose a quorum, and I'm not trying to rush anyone. So I just wanted to kind of right at this point just discuss with everyone whether or not you think that we could possibly do the cross, go in the case, and rebuttal in an hour and 15 minutes or so.

Does that sound reasonable or, in the alternative, we can reschedule this segment for another day. That is completely up to -- It doesn't matter to me. I'll stay or -- We can do it today or we can do it on a subsequent day.

MR. BROWN: We'd like to proceed and try to finish today.

CHAIRPERSON REID: Would the appellant like to try to finish today?

MR. CLARK: I think that's going to be hard.

CHAIRPERSON REID: That's a given, that it's going to be hard.

MR. CLARK: Well, I'm not sure it can be done is what I'm saying. I mean, I'll work for it to try to get done, but as you said, I'm not going to shortcut the case in order to do that nor am I going to prolong it.

CHAIRPERSON REID: Also, I think they turn the heat off, because it's freezing in here.

MR. CLARK: I am always concerned about the health and welfare of my panel.

MS. PRUITT: Madam Chair, I believe, to inform the public, that there is a hearing on the 23rd that only has one case in the morning agenda that's already scheduled, the 23rd of February. Unless you do a separate day, another day, that would be the first available and the closest one. I just wanted, for information's sake.

MR. BROWN: My concern, Madam Chair, is that in the time we have allotted to be in a disadvantage of breaking up my presentation. One, I think that's unfair to my clients in their presentation. Two, I think it makes it very difficult for the Board to hear the thing in pieces.

So I'd like to respect that. I know delaying it further is not --

CHAIRPERSON REID: All right. Well, let's go. Mr. Clark, can you -- Initially, you said you needed about 20 minutes. Can you truncate that and get the responses that you want, you know, just elicit it as expeditiously as you can for Mr. Lourenco.

MR. CLARK: The answer is I don't know. Maybe Mr. Bardin, with his four questions -- I'll let him go first, and maybe he will truncate it.

CHAIRPERSON REID: Okay. Mr. Bardin. maybe some of the questions he will ask will take care of some of your questions as well.

MR. BARDIN: Thank you, Madam Chairman.

Mr. Lourenco, considering the application for the first permit, the permit that was actually issued in June, did your department give notice to the ANC of that application, either by directly communicating the information to the ANC or by publishing the fact of the application in some general place such as the D.C. Register?

MR. LOURENCO: No.

MR. BARDIN: Did your department give notice to the ANC of the second application, the application that resulted in the revised permit in September?

MR. LOURENCO: No.

MR. BARDIN: Did your department give notice to the ANC of the third permit, which I heard about for the first time in this room today -- I think somebody said it was issued in December?

MR. LOURENCO: I don't believe either, no. We're talking about applications, not permits, right?

MR. BARDIN: We're talking about applications. That's right.

MR. LOURENCO: No.

MR. BARDIN: Does the D.C. Code require notification to the ANCs of demolition and construction permits?

MR. LOURENCO: I don't believe so. Applications, certainly not. We issue about 8500 to 10,000 permits every year

on the same day the application comes through the door. So that would be an impossibility. It's not the case of these three, but there is in the ANC law provisions for mandatory notification. I do not believe that they cover building permit applications.

MR. BARDIN: Isn't it a fact that your department used to issue an A list of applications for building permits?

MR. LOURENCO: Building permits issued. I believe we used to give notice of building permits issued.

MR. BARDIN: No, I'm asking about applications.

MR. LOURENCO; Not applications. Only those that go through a public hearing process, applications that go to Historic Preservation Review Board, applications that come through -- well, to the Board of Zoning Adjustment. That notification is given by the Office of Zoning, and applications for -- we used to give notice of applications for raze of buildings, razing a building, removing a building down to the ground. That's correct.

We are now reinstituting the same practice, not in relation to applications but in relation to issued permits. We are even starting to use e-mail files, if that's to e-mail messages, to distribute that more expeditiously; but that's a distribution of permits already issued, not applications taken in.

At this point we do not have a process in place that would effectively do that, but I guess the short answer to your question is I don't think the D.C. Code requires that.

MR. BARDIN: Madam Chairman, just for the record,

the letter that we submitted to you and which, I assume, is part of the public record dated 16th of January on page 3, Section C, cites Section 1-261(c)(3) of the D.C. Code, and my interpretation is it did require the kind of notice we used to get, the A list of applications, and it goes to the heart, Madam Chairman, not only of the legal niceties but of the question you asked, which I think was pretty much to the point, as what can the ANC do to try to help resolve, broker, mediate these kinds of disputes.

The answer is, obviously, if we get into these issues early at the point where things are still possibly flexible, we have much more chance to listen, study, learn, try to bring the sides together than if we get into the situation that you're in now with an appellate kind of process. But --

CHAIRPERSON REID: Your point is well taken. The ultimate authority or responsibility for that being complied with, the regulation in regard to the notice to the ANC, lies with who?

MR. LOURENCO: And for this hearing, of what is required to be part of the notice. Can I read that section?

CHAIRPERSON REID: But you're saying that you didn't think that in this instance that that was a requirement to notify. Did you not say that?

MR. LOURENCO: We do not give notification about applications. As I mentioned, we process most of our applications on the same day they come in through the door. We process and issue the permits. Obviously, we can't give 30 day notification

on an over-the-counter permit.

I don't think that section states what Mr. Bardin thinks it does.

MR. BARDIN: Speaking for the future, I'm going to meet and discuss with Mr. Lourenco what I think and hope we ought to do for the future, and to some extent the D.C. Council's considering these issues. But for this case before this distinguished Board, what I urge you if you, reading the section, agree with my reading that the ANC was denied notice that it was legally entitled to and with all the concomitant of I then giving notice to the entire community, then that you should reject Mr. Brown's argument that this case is too late, that you have no jurisdiction, because it's too late to do anything about it.

CHAIRPERSON REID: No. What we will do is have corp. counsel give us a read on that particular regulation, and whatever the outcome of their research is will be made available to you and to us as well.

MR. BARDIN: Thank you, Madam Chair.

CHAIRPERSON REID: We really don't know at this time -- and to Mr. Lourenco as well. Thank you. Mr. Clark?

MR. CLARK: Actually, I think these are Mr. Brown's copies, sir.

Mr. Lourenco, when did the Zoning Administrator give a minor variation under Section 407? Where is the record of that?

MR. LOURENCO: I didn't say the Zoning Administrator gave a minor variation. I said a six square foot variation on a 7500 square foot requirement seems to be like a reasonable application of the new sections that the Zoning Commission passed last year.

MR. CLARK: But it wasn't done in this case?

MR. LOURENCO: I guess you can infer that automatically it was done, given the fact that the 7500 square feet wasn't an issue.

MR. CLARK: Well, doesn't it say that the Zoning Administrator is supposed to do something, not we're supposed to assume it was done automatically?

MR. LOURENCO: I would have to read the regulations. I don't know off the top of my head.

MR. CLARK: I won't make you do that now, sir. Isn't it true that, in your opinion, one of the reasons this project was okay was because the existing lower level foundation and the walls and the first floor joists and first floor subfloor were retained?

MR. LOURENCO: Can you rephrase the question?

MR. CLARK: Isn't it true that one of the reasons you thought this project was okay was because the existing lower level foundation, the first floor joists and the first floor subfloor were retained?

MR. LOURENCO: Oh, I didn't state that. Did I

state that?

MR. CLARK: I thought you did, sir.

MR. LOURENCO; No, I didn't. What I said is in response to a question from the Board on what is the criteria on when a building disappears, I said that with the retention to the extent that it was retained as we can see it here, it clearly did not disappear, clearly wasn't razed.

CHAIRPERSON REID: I think Mr. Bello responded to that question.

MR. CLARK: The record will reflect whatever Mr. Lourenco said, but is it your understanding that, in fact, the first floor joists and first floor subfloor were retained?

MR. LOURENCO: I stated that it had been stated before. No one had contested it.

MR. CLARK: Let me hand you what's been marked as Exhibit 39.

CHAIRPERSON REID: Are these the pictures that you referred to earlier?

MR. CLARK: No. These are exhibits which I've given to Ms. Pruitt during one of the breaks that we had here. These are pictures that I was actually going to use in cross-examining Mr. Cohen, but I'm tipping my hand and showing them to Mr. Lourenco.

MR. LOURENCO; Okay. What is this?

ZONING COMMISSIONER MITTEN: Can you say what

number?

MR. CLARK: Thirty-nine. That's 40, I think. Or I can tell you what that is, Mr. Lourenco. It's a picture I took out at the property after the demolition was done there. Does that show that, in fact -- Doesn't that, in fact, show that there are new first floor joists and a new subfloor?

MR. LOURENCO: What location is this? Where is this in relation to the property? I need references.

MR. CLARK: I understand what you're saying, sir. If you see right here where there's a break in the joists on the back, that's where the newly expanded 6 1/2 foot expansion in the back is.

MR. LOURENCO: To the back?

MR. CLARK: That's to the back.

MR. LOURENCO: So that would be the existing -- initial existing building?

MR. CLARK: To the top of the picture is the front.

MR. LOURENCO: Okay. So what is the question again?

MR. CLARK: Doesn't, in fact, that show new joists over on the left side of the --

MR. LOURENCO: Sure, it does.

MR. CLARK: And doesn't it show, in fact, that there's no subfloor over a portion of the existing footprint?

MR. LOURENCO: Sure, it does.

MR. CLARK: Let me hand you what's been marked as Exhibit 40, which is another picture taken on the property. This one is now taken from basically over the garage.

MR. LOURENCO: Over the garage?

MR. CLARK: Just to try to put a little perspective --

MR. LOURENCO: So that is south?

MR. CLARK: That's Mr. Sloame's house. Right, and that's at the top of the picture is what Mr. Lourenco was referring to.

I think you see the hole -- I'm not certain that's the stairway down. So I won't say that, but doesn't, in fact -- I think, Mr. Lourenco, I'm going to point now to the very top of the picture where you can see a difference in the color between the floor joists at the very top of where you can see it.

MR. LOURENCO: That's correct.

MR. CLARK: And I think right there to the right of that is the new expansion to the old foundation, and everything to the left --

MR. LOURENCO: To the right of this line?

MR. CLARK: To the right of that line, you're right. Everything to the right of that was the preexisting footprint. Doesn't it show on the preexisting footprint that there is a large portion of the subfloor missing that's going to be new?

MR. LOURENCO: Sure.

MR. CLARK: And doesn't it show a large number of new floor joists?

MR. LOURENCO: Sure, it does.

MR. CLARK: And does that have any effect on your decision whether, in fact, there was a demolition?

MR. LOURENCO: No, it doesn't.

MR. CLARK: I want to ask you about a building. Doesn't a building have a roof? We wanted to be careful about our definitions. Doesn't the D.C. Building Code say that a building has a roof?

MR. LOURENCO: Once it's finished, yes.

MR. CLARK: Where does it say once it's finished?

MR. LOURENCO: Obviously, when you are building it, what do you call it?

MR. CLARK: Well, let's talk about this. That's not what was said here, though, was it? I mean, we're talking about Section 405.8, aren't we? Isn't that the section we're talking about? Doesn't that talk about an expansion or an addition to an existing building?

MR. LOURENCO: Sure.

MR. CLARK: And so does that mean that you can completely take off the roof, take away the building, and still call it an expansion or addition to a building?

MR. LOURENCO: It's our inference that when you

take away the roof, you take away the building. I never saw an addition that could be performed without removing a portion of the building to which you do the addition. Otherwise, it would be a separate building.

MR. CLARK: You ever see an addition made to the back of a house? I see them in my neighborhood all the time.

MR. LOURENCO: Sure.

MR. CLARK: Do you have to take the roof off to do that?

MR. LOURENCO: Sometimes, portions of it. You have to connect the addition to the existing construction.

MR. CLARK: Well, you have to connect -- What if the addition doesn't go all the way up to the existing roof? You don't have to do anything.

MR. LOURENCO: Then you don't touch the roof. Of course. You would be stupid.

MR. CLARK: Okay. So your interpretation, and I understand you're interpreting technical regulations, but your interpretation is that, with respect to a nonconforming structure, that the word building doesn't really mean what it says; it means something else.

MR. LOURENCO: I didn't say that. That's your inference.

MR. CLARK: I think that will be the inference that will be drawn.

Let me ask, sir, whether DCRA relies on the honesty and integrity of representations made in permit applications?

MR. LOURENCO; Very much so, yes.

MR. CLARK: I've opened in front of you, sir, to Exhibit 3 in our book, and I've opened to page 2. I've got it right open there for you to try to shortcut things a little bit here.

Now you see a building there. You see a black line on the drawing for a building?

MR. LOURENCO: It's all black lines. Which one do you mean?

MR. CLARK: Okay. A dark black outline?

MR. LOURENCO: Oh, the outline here?

MR. CLARK: Yes, up at the top of the page there. Do you see that?

MR. LOURENCO: Yes.

MR. CLARK: I'll wait until the --

CHAIRPERSON REID: We have it.

MR. CLARK: Okay, thank you. Why don't you turn back to that page that I'm showing you. I'll ask you about that one in a second, but why don't you go back to the one I'm showing you here.

Let me ask you -- You can look at that one. Let me ask you, doesn't the black outline indicate that that is, in fact, the existing footprint?

MR. LOURENCO: It's not conclusive.

MR. CLARK: Do you know what the zoning regulations say that it's supposed to be in dark ink when it's the existing outline?

MR. LOURENCO: What document is this?

MR. CLARK: That's the plat that was submitted with the plans for the original permit application. That's part of the page.

MR. LOURENCO: So this is the original plat, the original --

MR. CLARK: That's what was submitted by the developer.

MR. LOURENCO: Okay. Now I see a thin outline for the one-story addition in back and the one story garage which is not going to be built anymore. Isn't that -- Doesn't that indicate under normal zoning practice that that's a new structure?

MR. LOURENCO: It's normal practice to -- When you do the outline of a building like this, it's normal practice to have the portion that has X number of stories and the portion that has different number of stories outlined separately. It's a convention like any other convention.

MR. CLARK: Okay. Well, in my post-hearing submission I'll point to the zoning regulations that talk about that.

VICE CHAIRPERSON SOCKWELL: May I interrupt just

briefly. It does not have to hold true what you're saying, Mr. Clark. When we as architects provide buildings that have varying roof heights, we sometimes represent the higher roof in a darker, heavier line and the lower roof in a lighter, thinner line, which is what I think I see here, as opposed to what you're saying.

The labeling of the structure would determine what is existing and what is not, as opposed to a line wave. A line wave is not the issue.

MR. CLARK: I understand. I'll submit it in my post-hearing brief, but let me ask Mr. Lourenco that question.

VICE CHAIRPERSON SOCKWELL: But I'm looking at the full-size drawing here.

MR. CLARK: I understand, and that's what that comes from.

VICE CHAIRPERSON SOCKWELL: Right. But I think your assertion may be an assumption more than a fact.

MR. CLARK: I understand what you're saying, sir.

Mr. Lourenco, what did your department take from that drawing to mean the existing footprint was?

MR. LOURENCO: This is not the only drawing. That's why I was asking what is this. There's a complete set of drawings that has information on other parts. I don't know exactly what the other drawings show, but I hope they are more clear on where was the original footprint.

MR. CLARK: Did you ever look at those?

MR. LOURENCO: I am sure I looked at them, but I look at hundreds of drawings. I don't have that kind of memory. If you want to show them to me, we can talk about it.

MR. CLARK: I understand. Well, I understand it, sir, but let me try to shortcut it rather than have you look through all those thick plans.

MR. LOURENCO: I looked at them very quickly.

MR. CLARK: You already said that this case involved an enormous amount of scrutiny. My question is, in giving it then an enormous amount of scrutiny, did you ever look at the plans?

MR. LOURENCO: I'm sure I looked at the plans. I'm saying I do not recall from memory what those plans showed, because I've seen many other plans after that.

MR. CLARK: When you make a ruling that a particular construction conforms with the zoning regulations, you're aware that your ruling may set a precedent for future applications, aren't you?

MR. LOURENCO: Sure.

MR. CLARK: Why don't we talk about my house across the street. I'm the guy, as I said, who lives down below there across the street, and you could understand why I'm upset. But let me ask you something.

Let's say that I was a smart enough guy to have bought AOL at 88 cents or whatever it was, and now I'm a multi-

millionaire from Northern Virginia, and I see Clark's house over here, and what I say is this: I'm going to take Clark's house, and I'm going to tear it down to the existing foundation. Okay? You understand where I am so far?

He's going to come to you and ask for a permit to tear down --

MR. LOURENCO: That's a hypothetical scenario? And what are you doing to your house?

MR. CLARK: We're going to take down everything to the existing foundation.

MR. BROWN: Madam Chair, I object. It's late. We're not even talking about hypotheticals with respect to this property now. I think it's unfair to the Board and to Mr. Lourenco.

CHAIRPERSON REID: Sustained.

MR. CLARK: Madam Chair, I must protest, because, in fact, this gentleman has said that what happens in this case is precedent for future cases. If we can't explore what the extent of the zoning regulations is, then I think we've got a real serious problem here, and I think that this Board is unduly cutting off cross-examination to try to prejudice the case of the appellants.

VICE CHAIRPERSON SOCKWELL; It's nice of you to think that way, and we'd love to comply, but we're just not that -- We're not that nasty. We're actually really nice people.

MR. CLARK: I hadn't had a problem, Mr. Sockwell, with you, but I object, and I have to object to cutting off my cross-examination.

CHAIRPERSON REID: No, no, no.

VICE CHAIRPERSON SOCKWELL: We just would like you to get to the point, because we're not sure where you're going. I'm not sure where you're going.

CHAIRPERSON REID: Yes. So we didn't cut you. We just asked that you -- How many more questions do you have now?

MR. CLARK: Ms. Reid, I'm not going to -- When I've been trying to cut down on my examination -- I've already done it -- I think it's unfair when I'm only a couple of minutes into it to say how many more questions.

CHAIRPERSON REID: Oh, no, no, no. You've been at it now for about 15 minutes. So that's what I'm saying. It may seem like a couple of minutes, but actually, you know, we weren't cutting you. We're just asking you to just move it along.

MR. CLARK: Let me ask another question.

Mr. Lourenco, isn't it true that no decision was reached by DCRA that 4512 was in zoning compliance until September 1999?

MR. LOURENCO: What's the question again, that DCRA made no decision?

MR. CLARK: You didn't make your final decision that it was in compliance until September 1999, did you?

MR. LOURENCO: I didn't make my final decision until, yes, September, sometime in September. Yes, that's correct.

MR. CLARK: Yes, and if you look at Exhibit 1 in there, you'll see your letter dated September 10, 1999.

MR. LOURENCO: That's correct.

MR. CLARK: And in that letter don't you say --

MR. LOURENCO: I wasn't at the site until September 7th, and I'm pretty sure I didn't make any final decision before that date.

MR. CLARK: Okay. When a builder undertakes construction without a permit but on the expectation that a permit will be granted, even though no application has been filed, doesn't he do so at his own risk?

MR. LOURENCO: I guess your question in general, the answer is yes.

MR. CLARK: Well, did DCRA tell or warn Mr. Cohen that if he built before a permit review was completed, he did so at his own risk?

MR. LOURENCO: In this particular case, I don't believe so.

MR. CLARK: He's an experienced builder. Right?

MR. LOURENCO: Yes. He was working another permit, a permit that we did not revoke. So it was a valid permit, had a floor had to be fixed. We called him in to make sure he fixed it.

MR. CLARK: And so if it wasn't fixed, he did it at his own risk. Right?

MR. LOURENCO: Oh, if it wasn't fixed, he did it at his own risk. That's correct.

MR. CLARK: And if you didn't agree on his fix, it was at his own risk. Right?

MR. LOURENCO: That's correct.

MR. CLARK: Well, aren't you required to apply Section 223 to this property?

MR. LOURENCO: I don't believe os.

MR. CLARK: Why not?

MR. LOURENCO: Because this is not the case before the Board of Zoning Adjustment requiring an area variance, which is clearly the intent of the Zoning Commission when these provisions were passed, to provide a legal basis for making reasonable additions to single family dwellings where the strict test associated with an area variance are unattainable.

In order to apply 223.1, first you have to make a determination that the project does not comply with -- that the addition does not comply with Sections 401, 403, 404, 405 or 406.

MR. CLARK: And, of course, this one didn't comply with the lot size, did it?

MR. LOURENCO: Why do you say that?

MR. CLARK: Well, because it's less than 7500 square feet.

MR. LOURENCO: Why do you read the top of the page and not the bottom? 407.1 gives the Zoning Administration authorization to permit the deviation.

MR. CLARK: Okay, let's look at that. We got 407 in front of us now. Why don't we look at it there? Okay. He's authorized to permit a deviation. Where did you approve a deviation?

MR. LOURENCO: The permit was issued, a signature on the zoning box, which means it's approved by zoning. That approval is done under the authority delegated from the Zoning Administrator. So formally the size of the lot for this project was approved.

MR. CLARK: So are you saying that, when you issue minor deviations under 407, there's absolutely no record of it anywhere?

MR. LOURENCO: The permit is the record. There's a signature with a date on the application. If you look at the application, you're going to see the record.

MR. CLARK: Does it say anywhere on there issued pursuant to 407, a little deviation?

MR. LOURENCO: I don't think so.

CHAIRPERSON REID: Would it have to?

MR. LOURENCO: 6/26/99 -- I don't see anywhere in the regulations where it states that.

CHAIRPERSON REID: Mr. Clark, where are you going

with this?

MR. CLARK: I'm going with it -- It says the Zoning Administrator is authorized to permit, but the Zoning -- He admitted what that means, ma'am, is that the Zoning Administrator must, in fact, consider it. He can't come back later on and say I meant to, I thought to, but I never did.

CHAIRPERSON REID: I thought he said that he did. I thought he said that he --

MR. CLARK: He said the issuance of the permit was the same thing, and I say you can't say I have complied with the law by reading between the lines somewhere to see something that isn't there. That's all I'm saying.

CHAIRPERSON REID: No. What I understood him to say is that he invokes his privilege to, in this instance, apply some leverage with some allowance to deviate from the strict compliance with the regulations, and he did that.

MR. CLARK: Let me ask. When is the first time you did that, Mr. Lourenco? Wasn't it sitting here this afternoon?

MR. LOURENCO: You're assuming that. Did I say that?

MR. CLARK: Mr. Lourenco, I'm asking you a question. Can you please answer it, sir?

MR. LOURENCO: No.

MR. CLARK: Okay. Where is the record that you did it?

MR. LOURENCO: It's here. This application was approved on 6/26/99.

MR. CLARK: And you are testifying here today that you gave consideration to Section 407 when that was approved? Testifying under oath to that?

MR. LOURENCO: I'm testifying under oath. I'm testifying under oath that I have the authority to do that, and I'm testifying under oath that the zoning approval of the application is done under all -- That's not the only authority that the Zoning Administrator has. The permit was approved entirely under the authority of the Zoning Administrator. The approval had a flaw.

MR. CLARK: How do citizens of the District of Columbia or the BZA sitting in review know that you exercised that authority if you don't make any record of it?

MR. LOURENCO: The record is here. How many times do I need to repeat? The record is here.

MR. CLARK: Well, I understand. So are you saying --

MR. LOURENCO: As long as -- Two percent of 7500 square feet is what, 150 square feet? As long as the size of the lot complies with less than 150 square feet --

VICE CHAIRPERSON SOCKWELL: Mr. Clark --

MR. LOURENCO: AS long as it complies with less than 150 square feet difference --

VICE CHAIRPERSON SOCKWELL: Let me just say this very briefly. There is nothing in this regulation that states a procedure by which the Zoning Administrator might make such a minute deviation ruling. It does not say that it has to be written down or recorded specifically. It doesn't say that someone has to file a recommendation or request for a variance that would then be ruled upon by the Zoning Administrator.

It gives the Administrator the ability, apparently by not stating a procedure, to do it somewhat off the cuff, if one might use the term. But it would be recommended in more cases than not that the Administrator, for the sake of protecting the applicant for the building permit, do a written record so that, should such an appeal as this one come forth, that the record would be addressable.

MR. CLARK: Thank you, sir. Mr. Lourenco, I think that Mr. Brown's exhibits are on the table in front of you, and I want to ask you to look at Exhibit 14. I think that's the file. It's the one in your left hand there, not in your right hand, your left hand.

MR. LOURENCO: This one?

MR. CLARK: Yes. The September 10 letter from Mr. Cohen to you. You see that? Do you recognize that letter? It's Exhibit 14 to Mr. Brown's exhibits. Have you ever seen this before?

MR. LOURENCO: I'm pretty sure I did.

MR. CLARK: And doesn't Mr. Cohen indicate that your input was needed, because the neighbors had questioned the side yard requirements and the finished grade elements?

MR. LOURENCO: That's what Mr. Cohen states, yes.

MR. CLARK: Well, let me ask. Was that true?

MR. LOURENCO: You're asking me if what Mr. Cohen wrote is true about something that he heard from Mr. Bello? I don't know.

MR. CLARK: I'm asking -- Let me ask. Well, let me ask you a question. Did Mr. Bello indicate that your approval was necessary?

MR. LOURENCO: I don't know. I wasn't present at this conversation between Mr. Bello and Mr. Cohen.

MR. CLARK: Didn't you get involved? Wasn't your input necessary?

MR. LOURENCO: I was involved.

MR. CLARK: Wasn't your input necessary?

MR. LOURENCO: I gave my input. That's correct.

MR. CLARK: And wasn't your input necessary?

MR. LOURENCO: Necessary? Not necessarily, but --

MR. CLARK: But somebody at your level had to decide. Right?

MR. LOURENCO: Not necessarily.

MR. CLARK: Somebody did. Right?

MR. LOURENCO: I did make decisions. That's

correct.

MR. CLARK: Didn't you make that decision as it indicates here somewhere in the time frame of September 7th, 8th, 9th, 10th?

MR. LOURENCO: What decision?

MR. CLARK: The decision that the property could go ahead? The building could go ahead?

MR. LOURENCO: No, no, no. The decision was about the revision of the permit, berming up the building. If you read the rest of the letter, it doesn't talk about size of the property. It talks about the house location and sideline setbacks.

MR. CLARK: I'm not saying size of the property, sir. That's not what I'm saying. We're not on Section 407 anymore. Don't worry about that. We're past that.

My question to you, sir, is: Isn't it true that the final approval that you gave for this to go forward was somewhere September 7th, 8th, 9th, 10th, somewhere in there?

MR. LOURENCO: Probably around that date, yes.

MR. CLARK: And then you wrote a letter to Council Member Patterson dated September 10 that we looked at before. Right?

MR. LOURENCO: That's correct.

MR. CLARK: Mr. Lourenco, isn't it true -- and I don't know if you were here when Mr. Sloame testified. Were you

here during that?

MR. LOURENCO: Yes, I was here the whole time.

MR. CLARK: Okay. Isn't it true that, in fact, as Mr. Sloame testified, that Mr. Lourenco -- I'm sorry; we're getting late -- that Mr. Bello told him that, in fact, that you could have a ten-story house with a seven-story berm in the R-1-A zone under the interpretation you have given to the zoning regulations?

MR. LOURENCO: What is your question? Did Mr. Sloame say that?

MR. CLARK: No. My question is, isn't that true under the interpretation you've given here today?

MR. LOURENCO: I explained before that this issue of berming up has some inherent automatic controls. Common sense will say that no one is going to build a 70 foot high mound just to put the house on top of the mound and then have to climb up 70 foot of steps to get to the front door.

MR. CLARK: But let's put it the other way.

MR. LOURENCO: Common sense will state that.

MR. CLARK: Let's put it the other way, Mr. Lourenco. Let's go to my house across the street.

MR. LOURENCO: Okay, your house.

MR. CLARK: Okay. Now you've put it exactly in point. If I put a 70 foot high mound on my property, I could walk in level. I wouldn't have to walk down. Isn't that right?

MR. LOURENCO: You probably would need a 20 foot mound or something.

MR. CLARK: Okay. I agree, 70 is too much.

MR. LOURENCO: But you probably wouldn't be allowed to do that.

MR. CLARK: Why not?

MR. LOURENCO: Because there are other regulations other than zoning regulations. There are regulations that pertain to soil erosion. There are regulations that pertain to storm water management that do not allow you to simply plant a 20 foot mound wherever you want.

MR. CLARK: I thought that I could regrade to whatever height I wanted.

MR. LOURENCO: Under the zoning regulations, there are no limitations. That's what I said.

MR. CLARK: Okay. Well, so you're guess is that -- Let's say that I've got all that AOL money, and I can spend whatever money I want on this property, and I can take care of whatever drainage I want, which wasn't done here. But let's say that I do that.

You're telling me that I can regrade, I can put in that 20 foot mound, tear down my house, put up however many stories, three stories in front, and I can do that with no zoning approval other than the building permit.

MR. LOURENCO: Well, there's a lot of ifs here.

I'm assuming your lot is the right size and you got enough land all around and all that.

MR. CLARK: I agree that -- We have 17,000 square feet, but I agree, sir, that's a consideration.

MR. LOURENCO: So we're assuming the only issue here is where you, so to speak, plant your house. I think so. I think you can regrade your lot to bring it at the level -- the house at the level of the street. Where it is now, it probably -- the height is measured from maybe 20 feet below, something like that.

VICE CHAIRPERSON SOCKWELL: If I might interrupt just briefly, again the contextual issues here are such that I think what has been made apparent is that the zoning regulation does not specifically prohibit the use of a berming situation, does not specifically limit the extent of berming but would in context with other regulatory issues and other law possibly be contextually not possible in certain circumstances.

MR. CLARK: That may be, but I will say that it's up to this BZA to determine what those zoning regulations say, and not Mr. Lourenco. I understand, Mr. Sockwell, you will make the ruling and be one of the members voting on that, but I do point out that it is this responsibility here, and not with Mr. Lourenco to do that.

Could you look, Mr. Lourenco --

CHAIRPERSON REID: Mr. Clark, before you started

your cross-examination, we talked about the fact that it was late and that we needed to try to have some type of constraints on time, at which time you said it would take you about 15 or 20 minutes now.

You have now taken approximately 20 -- almost 30 minutes, and just in cross-examination. I explained that I was going to lose a quorum shortly after eight o'clock.

MR. CLARK: I'm sorry, ma'am. I told you that I would do it as quickly as I could. I've been interrupted, and I've had long answers, and I'm trying to move as quickly as I can.

CHAIRPERSON REID: No, no. You have not. You have not. I don't think that the sensitivity to the fact that in a few minutes we will not be able to continue is being considered by you.

MR. CLARK: Then we ought to adjourn, if that's the case. I don't care, but the fact is that I don't think that my cross-examination has gone too long. We've just spent more time discussing that than doing it.

CHAIRPERSON REID: But what you just did, whether you care or not, there are other people to consider in this room other than just yourself; and whether you care or not, the issue that you just got through bantering around had been thoroughly addressed earlier today, the same issue, and you had the same questions. The same questions got the same answer.

MR. CLARK: I'm asking DCRA.

CHAIRPERSON REID: It took you about ten minutes just to frame that question and get the same answer. So why would you take us through asking that same question when you had already received an answer to that question earlier today?

MR. CLARK: Thank you, ma'am. I hope that I would have the opportunity to ask DCRA that question, which --

CHAIRPERSON REID: Why? Mr. Bello and Mr. Sockwell answered that question for you earlier today. Can you just move on, because we don't want to have to be here all night, because you don't care about the fact that this hearing is going on much longer than it should.

VICE CHAIRPERSON SOCKWELL: Mr. Clark, I realize that you are looking for some kind of specific answer, but you are asking the same question eight or nine different ways rather than taking a path that seems to lead to uncovering new ground.

I would like to think that you are most astute, most professional, most well prepared, and know exactly where you want to end up. Maybe we should start there and work back and see what we can eliminate.

MR. CLARK: I have two pictures to ask Mr. Lourenco about. They are Exhibit 20.

CHAIRPERSON REID: Is that it? Are you done when you finish with these two pictures?

MR. CLARK: Yes, ma'am, I will be.

CHAIRPERSON REID: Thank you.

VICE CHAIRPERSON SOCKWELL: That sounds very good. Thank you.

MR. CLARK: Twenty, sir, 2-0.

VICE CHAIRPERSON SOCKWELL: 20 is Section 20 of the --

MR. CLARK: No, I'm sorry, it's Exhibit 19.

VICE CHAIRPERSON SOCKWELL: Thank you.

MR. CLARK: Would you look at the bottom of the first page of Exhibit 19? Does that show any erosion on the berm? On the bottom picture, sir, the bottom picture.

MR. LOURENCO: I'm sorry. Okay. Yes, I guess you can say so.

MR. CLARK: Would you look at the next page, the last page to Exhibit 19? That's the berm at the left side of the house, the part that faces Mr. Sloame's property. Does that show erosion there?

MR. LOURENCO: This is the southeast corner of the house, right?

MR. CLARK: That's right.

MR. LOURENCO: What was the question again?

MR. CLARK: Does that show erosion there?

MR. LOURENCO: It looks like there's some erosion here. That's correct.

MR. CLARK: No more questions, ma'am.

CHAIRPERSON REID: Thank you. Mr. Brown?

MR. BROWN: You indicated that -- and you had gone out to the site and visited and seen the unique conditions, both on the side as well as the adjoining properties, and factored in the concerns of the neighbors. Is that correct?

MR. LOURENCO: Other than the fact that I don't have a lot of latitude to factor in the concerns of the neighbors because I'm bound by very strict rules, I do think I understand the concerns of the neighbors, and I wish we could reach some agreeable solution here.

MR. BROWN: Having recognized and understood their concerns, your responsibility, duty, was to enforce the zoning regulations.

MR. LOURENCO: That's correct.

MR. BROWN: And in doing so, other considerations were not relevant beyond the zoning regulations and the --

MR. LOURENCO: I'm not sure where you're going with that question, because there's all sorts of other considerations that are relevant.

MR. BROWN: Going to the concerns of the neighbors, in particular, that your job, both as Director, DLRA, and Acting Zoning Administrator, was to enforce the zoning regulations.

MR. LOURENCO: Yes, that's one of my -- That's correct.

MR. BROWN: Those zoning regulations, and particularly as they relate to these issues, go back to 1958. Is

that correct?

MR. LOURENCO: Yes, that's my understanding. I wasn't around.

MR. BROWN: Literally, neither was I.

VICE CHAIRPERSON SOCKWELL: Let's clarify one thing. The ordinance in 1958 was this thick, only that thick. Today, it is that thick. The regulations have changed considerably, and I just want everyone in this room to understand that they don't go back to '58. They started in '58, have been modified since '58. It's not the same regulation.

MR. BROWN: As a complete package, but certain provisions which I think are relevant here have their birth in the original version.

VICE CHAIRPERSON SOCKWELL: Born but not still infants.

MR. BROWN: Thank you. Point well taken.

In your experience, the zoning regulation that we have in issue here, particularly finish grade, have a longstanding pattern of enforcement in the manner in which you enforce the regulations?

MR. LOURENCO: Yes. The zoning regulations are a very brief sized document that needs to be read very carefully, and you can't take provisions out of context and just look at a couple of lines. I have to figure out in what context they are.

At the same time, they are provisions that --

taking just the height of the building, the height of the building is measured in different ways depending on what building we're talking about. You measure the height of a garage differently from the height of the main single family dwelling, different from the height of a commercial building.

So we have to be very careful and precise in that. In the particular case that you alluded to of the finish grade, that is the way the regs read, finished grade. That's why I said before that, if you ask me today does that building that I saw this morning comply with the zoning regulations, I really can't tell it, because it's not finished. I don't know.

MR. BROWN: But you also indicated that, while it's not finished, that at this point -- and making the assumption that the grade wasn't lowered, that it was currently less than the four feet.

MR. LOURENCO: It looks like it's going the right direction. That's correct.

MR. BROWN: And would it be relevant to your review of the finished grade issue if, in researching this case, you found out through the original building plans for the 1956 house, that in fact the grade to build the 1956 house was lowered and that the return here in 1999 of finished grade was actually returning it to approximately the 1956 preconstruction level? Would that be relevant to your--

MR. LOURENCO: Frankly, no. I think it's a very

interesting point. I noticed yesterday reviewing the plans from the 1956 construction that the grade had been lowered on the southeast side of the site by about a foot and change in the front and about three feet in the back of the original house. But quite frankly, I don't think that's relevant, because we're talking about finished grade. We're not talking about the grade in 1955. We're not talking about the grade in 1997. We're talking about the finished grade, which will be in the year 2000 when the construction is finished.

MR. BROWN: And that's the point I was trying to make.

I don't think I have any further questions for the witness.

CHAIRPERSON REID: Thank you.

ZONING COMMISSIONER MITTEN: Madam Chair, can I ask one very simple question?

Is this the only drawing that was attached to the second -- the application for the second permit? Are there more drawings or is this it?

MR. LOURENCO: I can't respond to that, because, as I said, I was counting on coming to this hearing this morning. I went to look for the official record, and it was in the remote storage. So I couldn't grab it. But I think, for the -- It's a good assumption to make for the extent of revision of the permit that was issued in September, that would be all that's necessary.

MR. BROWN: Can I assist? I'm told by my clients that, in addition to the multi-page application form, that that was the extent of the filing for permit number two.

VICE CHAIRPERSON SOCKWELL: Let me make one closure on this finished grade issue. That is that, regardless what finished grade existed in '56 and what finished grade might exist in 2000, the finished grade that was applied for with regard to the permit that was initially issued is the one that would have been at question.

That finished grade was not correct for the existence of a there-story building. It was correct for the existence of a four-story building.

MR. LOURENCO: As shown in the first permit.

VICE CHAIRPERSON SOCKWELL: As shown in the first permit.

MR. BROWN: Which gave occasion for the revision in permit number two.

VICE CHAIRPERSON SOCKWELL: Which gave occasion for the application for a revision in permit number two.

MR. BROWN: Madam Chair, I don't think I'm going to have a major dispute on this. I'm looking at the clock. It's five after eight and, given your schedule and the fact that I have not put on any of my case, I think this is a good time to break, continue until the 23rd.

It will allow me to make my presentation

completely, and I think that would be, certainly from my perspective and, I think, the Board's perspective, probably the most efficient way to proceed, with the hope of -- At this point, I can't compress my presentation in fairness to what I need to do into, I think, your time frame nor allow for cross-examination.

CHAIRPERSON REID: I think that makes all the sense in the world, because, obviously, it was ambitious for us to try to finish it today, and we did put forth a Herculean effort to do so. Nonetheless, I guess prudence would dictate that we adjourn here this evening and allow you to put on your case and then cross-examination, and then for the rebuttal by the appellant.

MR. CLARK: Which will include my pictures that didn't get in the main part of the case, but that's not an issue.

CHAIRPERSON REID: Which would include your pictures that did not get into the main part of the case.

MR. BROWN: Madam Chair, one thing. It's a logistical issue. A lot of exhibits have been passed back and forth. I'm not so sure I've got a complete set or that I can properly identify them by number. If there's some way that, through staff and Mr. Clark, that we can make sure that the Board, myself, Mr. Lourenco is on the same sheet of music.

CHAIRPERSON REID: Okay.

MR. BROWN: The other thing would be --

MR. CLARK: I'm happy to do that for Mr. Brown.

MR. BROWN: -- is in looking forward to the 23rd,

it would be in the morning that day. Given the delay, I think procedures to move forward at that point to expedite the decision and order process would be in the best interest of everybody involved. So I would ask that the Board keep that in mind as we move forward to that process.

ZONING COMMISSIONER MITTEN: I just want to clarify. I think it's in the afternoon, that there was already something scheduled for the morning. Is that correct?

MS. PRUITT: That is correct. There is one case in the morning. That's also a continuation from last week or week before last, and this would be the only case on the afternoon agenda. Hopefully, we would be able to start at one.

MR. BROWN: One o'clock. Okay.

MS. PRUITT: And we will work -- John Nyarku, who is the staffperson assigned to this case, please work really closely with him so that we can update the record, the file, so that the exhibits can be in as early as possible, and the file updated so that everybody can sort of have the same picture to work from.

CHAIRPERSON REID: And there were a couple of requests by the Board members.

MS. PRUITT: Well, the record isn't closed. I didn't know if you wanted to wait until the end of the record for that information.

CHAIRPERSON REID: No, not necessarily. If we are

going to come back on the 23rd, then I had requested pictures of Mr. Sloame's house, if they would provide that, and Ms. Mitten had asked for the timeline from the ANC and from the appellant. Then that could be submitted at the same time that we have the hearing, and we'll have a complete record for the most part, unless there is something else.

MS. PRUITT: Madam Chair, you want a timeline from the appellant. Do you also want one from DCRA? We have one from the intervenor.

CHAIRPERSON REID: From the appellant and from the ANC.

MS. PRUITT: Okay, and from the ANC. Do you also want to include DCRA is what I'm asking.

CHAIRPERSON REID: Well, that wouldn't hurt.

MS. PRUITT: As much as they can get?

CHAIRPERSON REID: Yes. I don't think that there are any other questions. This segment here completes the government, DCRA, testimony; and we have heard from Mr. Bello and Mr. Lourenco and Mr. Johnson stated for the record that Mr. Lourenco could respond to any questions that would have been directed to him anyway. So --

MR. LOURENCO: Madam Chair, that means that on the 23rd you desire me to come?

CHAIRPERSON REID: I don't think so.

MR. LOURENCO: Or it would be advisable?

CHAIRPERSON REID: I don't think so, unless -- DCRA does not usually cross-examine, do you?

MR. LOURENCO: No.

CHAIRPERSON REID: No. Then I don't think that -- Your portion of this particular case has now been taken care of, and we move now to the intervenor's case, which is also the owner of the property, and rebuttal. Those are the only two things we have to do.

So, Mr. Brown, you don't have to squeeze your whole presentation into just ten or 15 minutes. Just joking. We wouldn't do that anyway.

All right. Does that take care of everything? Board members, do you have any other questions? Are we done? All right. Thank you very much for your indulgence and for your time, and we will reconvene this case on the 23rd at one o'clock.

(Whereupon, the foregoing matter went off the record at 8:13 p.m.)