

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 2, 2007

+ + + + +

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., Ruthanne Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chairperson
CURTIS ETHERLY, JR., ESQ.	Vice-Chairperson
MARC D. LOUD	Board Member
SHANE DETTMAN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL	Commissioner (AOC)
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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JANICE SKIPPER, ESQ.
SHERRY GLAZER, ESQ.
MELINDA M. BOLLING, ESQ.
MATTHEW J. GREEN, JR., ESQ.

D.C. DEPARTMENT OF CONSUMER AND REGULATORY
AFFAIRS PRESENT:

MATTHEW LE GRANT Deputy Zoning
Administrator

The transcript constitutes the
minutes from the Public Hearing held on
October 2, 2007.

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P R O C E E D I N G S

(2:22 p.m.)

CHAIRPERSON MILLER: Good

afternoon, ladies and gentlemen. This is the
October 2nd afternoon public hearing of the
Board of Zoning Adjustment of the District of
Columbia.

My name is Ruthanne Miller. I'm
Chair. Joining me today to my right is the
Vice Chair, Mr. Curtis Etherly. To my left,
Mr. Shane Dettman representing NCPC, and
Janice Skipper from the Office of Attorney
General, and Beverly Bailey from the Office of
Zoning.

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

Please be aware that this
proceeding is being reported by a court
reporter, and is also Webcast live.
Accordingly, we must ask you to refrain from
any disruptive noises or actions in the
hearing room.

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1 When presenting information to the
2 Board, please turn on and speak into the
3 microphone, first stating your name and home
4 address. When you are finished speaking,
5 please turn your microphone off so that your
6 microphone is no longer picking up sound or
7 background noises.

8 All persons planning to testify
9 either in favor or in opposition are to fill
10 out two witness cards. These cards are
11 located to my left on the table near the door
12 and on the witness tables.

13 Upon coming forward to speak to
14 the Board, please give both cards to the
15 reporter sitting to my right.

16 The order of procedure for special
17 exceptions and variances is:

18 One, statement and witnesses of
19 the Applicant;

20 Two, government reports, including
21 Office of Planning, Department of Public
22 Works, DDOT, et cetera;

23 Three, report of the Advisory

1 Neighborhood Commission;

2 Four, parties or persons in
3 support;

4 Five, parties or persons in
5 opposition;

6 Six, closing remarks by the
7 Applicant.

8 The order of procedure for appeal
9 applications will be as follows:

10 One, statement and witnesses of
11 the Appellant;

12 Two, the Zoning Administrator or
13 other government officials' case;

14 Three, case for the owner, lessee
15 or operator of the property involved, if not
16 the Appellant;

17 Four, the ANC within which the
18 property is located;

19 Five, intervenor's case, if
20 permitted by the Board;

21 Six, rebuttal and closing
22 statement by Appellant.

23 Pursuant to Sections 3117.4 and

1 3117.5, the following time constraints will be
2 maintained: the Appellant/Appellant, persons
3 and parties, except an ANC, in support,
4 including witnesses, 60 minutes collectively;
5 Appellees, persons and parties, except an ANC,
6 in opposition, including witnesses, 60 minutes
7 collectively; individuals, three minutes.

8 These time restraints do not
9 include cross-examination and/or questions
10 from the Board. Cross-examination of
11 witnesses is permitted by the Applicant or
12 parties.

13 The ANC within which the property
14 is located is automatically a party in a
15 special exception or variance case. Nothing
16 prohibits the Board from placing reasonable
17 restrictions on cross-examination, including
18 time limits and limitations on the scope of
19 cross-examination.

20 The record will be closed at the
21 conclusion of each case, except for any
22 materials specifically requested by the Board.
23 The Board and the staff will specify at the

1 end of the hearing exactly what is expected
2 and the date when the persons must submit the
3 evidence to the Office of Zoning.

4 After the record is closed, no
5 other information will be accepted by the
6 Board.

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

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

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

1 The Board will make every effort
2 to conclude the public hearing as near as
3 possible to 6:00 p.m. If the afternoon cases
4 are not completed at 6:00 p.m., the Board will
5 assess whether it can complete the pending
6 case or cases remaining on the agenda.

7 At this time, the Board will
8 consider any preliminary matters. Preliminary
9 matters are those that relate to whether a
10 case will or should be heard today, such as
11 request for postponement, continuance, or
12 withdrawal or whether proper and adequate
13 notice of the hearing has been given.

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

18
19 Does the staff have any
20 preliminary matters?

21 MS. BAILEY: Madam Chair, members
22 of the Board, to everyone, good afternoon.
23 Staff does not have any preliminary matters at

1 this time.

2 CHAIRPERSON MILLER: In that case,
3 would all those wishing to testify today
4 please rise to take the oath?

5 MS. BAILEY: Would you please
6 raise your right hand?

7 (Whereupon, the witnesses were
8 duly sworn.)

9 MS. BAILEY: Thank you.

10 CHAIRPERSON MILLER: Thank you.

11 Ms. Bailey, would you call the
12 first case, please?

13 MS. BAILEY: Madam Chair, the
14 first case is the limited public hearing, and
15 it concerns Application No. 17537 of Victor
16 Tabbs, and it's pursuant to 11 DCMR 3104.1,
17 for a special exception under Section 223, not
18 meeting the lot occupancy requirements of
19 Section 403. It's to construct a four-story
20 rear addition to a flat, two-family dwelling
21 at premises 740 13th Street, S.E.

22 The Board initially heard this
23 application on November 21st and December

1 12th, 2007. The Board rendered a decision on
2 January 23rd, 2007. ANC-6B filed a motion for
3 reconsideration. The Board held a limited
4 hearing or discussed the application on
5 September 4th and determined that a limited
6 public hearing would be needed, and that
7 hearing was scheduled for today.

8 CHAIRPERSON MILLER: Thank you.

9 Would the parties in this case
10 please come to the table?

11 Good afternoon. Would you
12 introduce yourselves for the record? Why
13 don't we start with the Applicant?

14 MR. TABBS: Hello. My name is
15 Victor Tabbs, the homeowner of 740 13th
16 Street, S.E.

17 CHAIRPERSON MILLER: Thank you.

18 MR. JARBOE: Kenan Jarboe, on
19 behalf of ANC-6B.

20 MS. GREEN: Carol Green, 6B, ANC-
21 6B.

22 MR. CASSIDY: Bryan Cassidy. I
23 live at 748 13th Street, S.E.

1 MS. GREEN: Madam Chair, I have
2 some exhibits.

3 CHAIRPERSON MILLER: Okay. Wait a
4 second.

5 I'm sorry. First of all, I know
6 your face and everything, but I missed your
7 name. Would you mind giving that again for
8 the record?

9 MR. JARBOE: Certainly, Madam
10 Chair. Kenan Jarboe, ANC-6B-05.

11 CHAIRPERSON MILLER: Right. Okay.
12 Kenan Jarboe, Carol Green, and I'm sorry.
13 What's your name again?

14 MR. CASSIDY: Bryan Cassidy.

15 CHAIRPERSON MILLER: Bryan
16 Cassidy. Okay. Who is representing the three
17 of you or are you all -- you're all one party,
18 correct?

19 MR. JARBOE: We're all one party.
20 I'll start off if I may and go down and
21 present, start with the introduction and then
22 my colleagues here have specific parts of our
23 presentation for you.

1 CHAIRPERSON MILLER: Okay, and Ms.
2 Green said something about exhibits. You have
3 exhibits that you're going to want to use in
4 today's hearing, correct? Did you give them
5 to the Applicant as well?

6 MS. GREEN: Not yet.

7 CHAIRPERSON MILLER: No? Okay.
8 Yeah, that would be good. Do you have copies
9 for the Board members and the applicant?

10 MS. GREEN: I do.

11 CHAIRPERSON MILLER: All right.
12 For the Board members, you can give them to
13 Ms. Bailey, and she will pass them down to us.

14 Oh, Ms. Bailey is currently giving
15 us pictures for Mr. Tabbs. Okay, and did you
16 give the ANC?

17 MS. GREEN: She's going to.

18 CHAIRPERSON MILLER: Okay. Thank
19 you.

20 Let me just say with respect to
21 procedure here, we're of the view up here that
22 the ANC should proceed first since it was
23 their motion, and then the Applicant can make

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1 his case.

2 Okay.

3 MR. JARBOE: Madam Chair, members
4 of the Board, as I said, my name is Ken
5 Jarboe. I am the ANC-6B-05, representing ANC-
6 6B.

7 The purpose of this hearing is a
8 reconsideration of the earlier decision on
9 this particular application. I won't go into
10 the entire letter that we sent in and your
11 decision to open this up, but the gist of our
12 particular request for reconsideration has to
13 do with the issue of air and light, the impact
14 of air and light on the neighboring
15 properties.

16 Specifically, the impact of light
17 as shown in a recently completed shadow study,
18 and I believe we also have photographs. I
19 believe the Applicant has also supplied
20 photographs to show the impact.

21 We are in an interesting situation
22 with this building that the building is almost
23 already completed. So in addition to the

1 shadow studies done by a computer program, we
2 also have actual photographs of the impact of
3 the air and light of this building.

4 CHAIRPERSON MILLER: Can I just
5 ask you a question before you get into the
6 merits, which we granted the motion? But can
7 you tell us why the shadow study wasn't done
8 earlier during the hearing before the order
9 was issued originally?

10 MR. JARBOE: Certainly, I'll be
11 happy to do that. There are actually two
12 reasons. One, we didn't think such a shadow
13 study would even be necessary given that we
14 had -- we had assumed that Office of Planning
15 would do some analysis on this, and I,
16 frankly, was a little shocked when I came to
17 the hearing originally and found out there
18 hadn't been any analysis on this.

19 The second is it was very
20 difficult to do the analysis because the final
21 paperwork on this was never submitted to this
22 Board until after the hearing. There was a
23 long discussion in the transcript, if you

1 review it, and the original hearing in
2 December that the drawings that were being
3 submitted were not, in fact, the drawings of
4 what was being built, and in fact, the final
5 drawings with the final dimensions didn't come
6 to this Board until just before its decision,
7 and frankly, the ANC never got the drawings.

8 We finally got the drawings just
9 this August from the Office of Zoning. So
10 it's a little hard to do an accurate shadow
11 study if you don't know the exact dimensions.
12 That has been a problem here. This is a
13 property where the procedures have been
14 changing constantly on this. I won't go into
15 the details of that.

16 CHAIRPERSON MILLER: I thought it
17 would just be a good idea to get it into the
18 record.

19 MR. JARBOE: Thank you.

20 CHAIRPERSON MILLER: Okay. Thank
21 you.

22 MR. JARBOE: The shadow study has
23 now been done, and the gist of our argument

1 goes back to the decision, actually two
2 findings, a finding of fact and a conclusion
3 of law in the written decision. The decision
4 date was January 23rd, 2007. I don't remember
5 when this was actually filed.

6 But the decision on this cites two
7 things. One, it cites a relevant finding that
8 the addition will cast minor shadows on the
9 property immediately to the north, and under
10 conclusions of law, it states that although
11 there will be shadows from the subject
12 property during the morning, there will be
13 ample sunlight available to the property most
14 of the day.

15 That was the basis for granting
16 the special exception. We would dispute that
17 claim, and we believe that the evidence that
18 we will present in the form of both the shadow
19 studies, the computer generated shadow
20 studies, and the photographs taken very
21 recently will disprove that study, and
22 therefore, we would ask for a reconsideration
23 and a reversal of that decision on the special

1 exception.

2 With that, I would like to turn it
3 over to Bryan Cassidy who will walk you
4 through the shadow study.

5 MR. CASSIDY: My name is Bryan
6 Cassidy. I'm an architect. I live a few
7 doors down from this project.

8 About seven years ago, a group of
9 architects and engineers from Boulder,
10 Colorado got together with some software
11 engineers to design a program that would make
12 reading architectural drawings much simpler by
13 creating a three-dimensional model type from
14 two dimensional drawings so that we can look
15 at architectural drawings now and see them in
16 model form.

17 This program is called SketchUp,
18 S-k-e-t-c-h-U-p, SketchUp. It is now widely
19 recognized as a design tool by architects and
20 engineers to produce three dimensional or
21 model drawings to show a realistic appearance
22 of a particular building.

23 There is also a shadow program

1 built into this system which can give the
2 shadows and shaded areas at any time of the
3 day, any day of the year, any month of the
4 year. The latitudes are set by city location,
5 just need to be typed in, and that's all
6 included in the program. We will be able to
7 show that the shadow study that we have
8 produced is close enough, in fact, to the
9 actual photographs taken just two days ago.

10 MR. JARBOE: I believe that we
11 have submitted the actual drawings that were
12 submitted as part of the reconsideration.

13 MR. CASSIDY: Correct.

14 MR. JARBOE: And, Mr. Cassidy, if
15 you'd like to walk them through page by page
16 on that, or do you want me to do that?

17 Okay. You're the architect.

18 MR. CASSIDY: But I don't have it
19 in front of me.

20 MR. JARBOE: I was going to defer
21 to you.

22 CHAIRPERSON MILLER: I just want
23 to state for the record that the drawings are

1 attached to Exhibit 50 in the record. August
2 6, 2007 letter from ANC-6B, requesting
3 reconsideration of decision.

4 MR. JARBOE: Correct. I believe
5 the first drawing you have, and I hope these
6 are in the same order; correct me if they
7 aren't. The first drawing you have shows the
8 north elevation at 8:30 a.m. Is that this
9 particular drawing?

10 CHAIRPERSON MILLER: Yes.

11 MR. JARBOE: That is the shadow
12 that you have without the current addition,
13 and you can see that the shadow from Jenkins
14 Row begins to go over the last two houses in
15 the row, but not any of the first four houses
16 on 13th Street.

17 If you turn the page on that, the
18 north elevation at 8:30 with the addition in
19 place at 7:40, you can see, again, at 8:30,
20 you can see that the -- and this is taken at
21 mid-winter so that it's the lowest point of
22 the sun, which I'm told by the architects is
23 when you want to use the maximum effect.

1 So you can see from this that the
2 building, the addition at 7:40 now casts a
3 complete shadow on the back of 738 and 736, as
4 well as 734.

5 If you work through the
6 progression, you can see it by 9:00 a.m.
7 without the addition there. The shadow from
8 Jenkins Row is essentially leaving. It's
9 dissipating, but the shadow at the next page,
10 the north elevation at 9:00 a.m., the shadow
11 from the actual addition is actually beginning
12 to creep over the other sets of houses.

13 By 9:30, you can see that the
14 shadow from Jenkins Row is completely gone,
15 and all of the houses are in full sunlight,
16 but with the addition, you can see the next
17 page, the 9:30 elevations with the addition
18 show that the houses at 738 and 736 now are in
19 complete shadow, and we can continue on.

20 At ten o'clock in the morning it
21 shows the same thing. At 10:30 the shadow
22 from 740 is reaching down to 734. At 11
23 o'clock, 11:30; by 11:30 the shadow of 740,

1 the addition on 740 is actually covering
2 almost most of the backyard of the neighbors
3 to the north, whereas without that addition,
4 the page before that you can see that those
5 backyards would, in fact, be in sunlight or in
6 light.

7 Moving on, noon, you can continue
8 to see noon, 12:30. By 12:30 the shadow, you
9 begin to start to see shadows from the
10 townhouses themselves creeping into their own
11 backyards, but the shadow from the addition at
12 740 is almost completely obliterating any
13 light, any direct sunlight to the backyards,
14 to the houses to the north.

15 CHAIRPERSON MILLER: So it stops
16 at 12:30 p.m., right?

17 MR. JARBOE: We stopped it at
18 12:30 p.m. because at that point the sun is
19 moving far enough over that you're getting --
20 the porches from those backyards would be in
21 shadow anyway, but the backyards would still
22 be in light. But we figured by 12:30, you get
23 the picture here of how much of the light is

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1 being blocked off. It's because the sun is
2 now moving off to the point where the houses
3 themselves will start blocking it.

4 But the backyards how, which would
5 have been in light during the afternoon are,
6 in fact, now in shadow because of the
7 addition.

8 Part of the argument here was that
9 the shadow, the air and light was affected as
10 much by Jenkins Row as by this addition.
11 Well, by noon, it's clear that there's
12 absolutely no impact on the sunlight from
13 Jenkins Row, and so any shadow that's coming
14 at that point is going to be from this
15 addition.

16 CHAIRPERSON MILLER: Can I just
17 ask you since you didn't go further, is your
18 point that we should already be able to draw
19 the conclusion that there's an adverse impact
20 on light and air and, therefore, we didn't
21 need to go further into the afternoon or is it
22 something else?

23 MR. JARBOE: No, that's correct.

1 CHAIRPERSON MILLER: Okay.

2 MR. JARBOE: We do have some
3 photos from later in the afternoon, but
4 basically since most of this is morning sun
5 anyway, at least on the porches, that's the
6 major impact on air and light, and again, the
7 argument being that it was being impacted by
8 Jenkins Row anyway. So this was not adding
9 any adverse impact.

10 I think what we wanted to show at
11 this and show that we didn't need to go beyond
12 12:30 was to show that, in fact, it's not
13 Jenkins Row that's causing the adverse impact
14 on air and light. It's this addition.

15 At that point I'd like to turn it
16 over to Carol Green, who has the updated
17 photographs.

18 CHAIRPERSON MILLER: Before you do
19 that, let me just make sure my other Board
20 members don't have questions at this point.

21 Okay. Thank you.

22 MS. GREEN: I wanted to start with
23 the picture that Mr. Tabbs submitted at our

1 last meeting. He attached it to his rebuttal
2 for our request for reconsideration, and he
3 shows the property at 9:15 on September 1st,
4 and you can see from this photograph that more
5 than a quarter of the house next door is
6 covered by shadow from his addition at 9:15 in
7 the morning.

8 The photographs that I gave you
9 that we've taken, I started on September 23rd
10 at 9:31 in the morning, and you can see that
11 over half of the property next door is in
12 shadow from the addition. You can also see
13 the shadow across the back of Mr. Tabbs'
14 addition from Jenkins Row. So presumably part
15 of the backyard would be in shadow, but the
16 house is shadowed by the addition.

17 CHAIRPERSON MILLER: Could you do
18 at least me a favor? My other Board members
19 may see this, but are you looking at this
20 photo?

21 MS. GREEN: Right, yes.

22 CHAIRPERSON MILLER: Okay.

23 MS. GREEN: And I've labeled it.

1 It's 92307, 9:31 a.m.

2 CHAIRPERSON MILLER: Okay. Can we
3 call it Photo 1 at least also for ease?

4 MS. GREEN: Sure, sure.

5 CHAIRPERSON MILLER: Can you just
6 identify the major structures in the picture?

7 MS. GREEN: Yes. On the left is
8 Mr. Tabbs' addition at 740. Next door where
9 the shadow is you see 738, and then the other
10 property where the sun is shining on the back
11 of the house is 736.

12 CHAIRPERSON MILLER: Thank you.

13 MS. GREEN: The next photograph is
14 September 19th, at 9:53, and the sun is -- I
15 mean the shadow from Mr. Tabbs' addition is
16 covering approximately two-thirds of the house
17 next door. You see the line going down the
18 balcony.

19 And you can also see on the
20 property on the left side -- that would be 742
21 -- there's sun on the back of the house. So
22 if not for the addition, this would all be in
23 sun.

1 The next photograph is Photograph
2 No. 3. This was taken September 26 at 12:17,
3 and this is we're trying to line it up with
4 our shadow study, and you can see it's a
5 little bit more difficult to see. I used a
6 different camera this time, but if you look on
7 the left at 742, you can see right under the
8 window there's the shade. There's a little
9 line of shade there. There's a little shade
10 on the back of Mr. Tabbs' property where the
11 light is. You can see the shadow from that,
12 and you can also see that the property next
13 door on the other side of 740 is covered by
14 shadow.

15 And Photograph No. 4 was taken
16 from inside Jenkins Row, looking down on the
17 property, and it was taken at two o'clock in
18 the afternoon on September 3rd, and if you
19 look at the left side at 7:42, you'll see the
20 sun in the backyard, and then you see the
21 addition and the line of shadow that comes
22 across in front of the addition so that the
23 property you can tell is still shading the

1 house next door at 738.

2 And then also you can see there's
3 a line of shadow that goes through. It's a
4 little more difficult to see, but part of the
5 trees are in shade and part of the trees are
6 in sun at 736.

7 MR. JARBOE: Madam Chair, if I
8 could just add on that last picture, I think
9 from that picture by two o'clock in the
10 afternoon, it shows that it is the addition
11 that is causing the backyard to be in complete
12 shadow. At that point, again, if you look
13 over to the far left, you can just see the
14 house at 742, which is in light at that point.
15 There's just the beginnings of the shadow
16 creeping out, but the back of the house is
17 essentially in the light, and the backyard is
18 in complete sunlight.

19 So the shadow that's being cast on
20 742 is all due to the size of the addition at
21 740 and nothing is -- there's no impact from
22 Jenkins Row at this point.

23 MS. GREEN: And just in

1 conclusion, we'd like to say that based on our
2 photographs it looks like the house next door
3 at 738 will never have sun in the backyard or
4 on the house, except for a little sliver of
5 time in the morning and a little sliver of
6 light.

7 And that concludes our
8 presentation.

9 MR. JARBOE: And we would be happy
10 to answer any questions at this point.

11 CHAIRPERSON MILLER: What was the
12 number of the house that you said would never
13 have sun on it?

14 MS. GREEN: Seven, thirty-eight.

15 CHAIRPERSON MILLER: Okay.

16 MR. JARBOE: Which is the house
17 directly to the right in those photographs.

18 CHAIRPERSON MILLER: Board
19 questions?

20 COMMISSIONER DETTMAN: I have a
21 few questions of clarification in terms of the
22 shadow studies, but before I go ahead and ask
23 those questions, Madam Chair, I'd like to, as

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1 I've done with the previous case, just read
2 for the record, being new on the Board of
3 zoning Adjustment and not an original member
4 of this case.

5 According to 3105.15 of the zoning
6 regs., a member attending the decision meeting
7 and having read the transcript and reviewed
8 the complete record may participate and may
9 vote even though the member may not have
10 attended any or all of the prior meetings or
11 hearings on the appeal or application.

12 And I have read the entire record
13 for this case and am prepared to participate.

14 CHAIRPERSON MILLER: I don't know
15 if we're going to be deciding this case today,
16 in any event, but it is good to know that Mr.
17 Dettman has read the record and is fully
18 prepared for this hearing.

19 COMMISSIONER DETTMAN: Now for a
20 few questions with the shadow studies. You
21 had mentioned that the software that was used
22 is SketchUp. That's correct? That's correct.

23 MR. CASSIDY: That is correct.

1 COMMISSIONER DETTMAN: I have
2 quite a bit of experience with that software
3 program, and so just a couple.

4 Did you conduct the shadow studies
5 yourself?

6 MR. CASSIDY: Not personally.

7 COMMISSIONER DETTMAN: You didn't.

8 MR. CASSIDY: I decided that we
9 needed somebody else other than a neighbor to
10 do it.

11 COMMISSIONER DETTMAN: Okay. You
12 had mentioned that there was a shadow module,
13 shadow tool built into the software.

14 MR. CASSIDY: Right.

15 COMMISSIONER DETTMAN: And that
16 it's specific to a geographic location.

17 MR. CASSIDY: Right.

18 COMMISSIONER DETTMAN: And I
19 assume that you set it for Washington, D.C.

20 MR. CASSIDY: Right.

21 COMMISSIONER DETTMAN: And I
22 believe Mr. Jarboe mentioned that basically
23 you modeled maybe worst case scenario, middle

1 of the winter.

2 MR. CASSIDY: That's correct.

3 COMMISSIONER DETTMAN: Okay, but
4 what we're looking at here are shadow studies
5 for one point during the year.

6 MR. CASSIDY: That's correct.

7 COMMISSIONER DETTMAN: Okay. I'm
8 also looking at the photograph that was taken
9 on September 23rd, 2007, at 9:31 a.m. and
10 comparing it to your shadow study, the north
11 elevation at 9:30 a.m., and maybe just a
12 technical answer. I'm not sure, but there
13 seems to be just a very, very small
14 discrepancy.

15 In the shadow study it looks like
16 738 13th Street is completely in shadow. The
17 face of the building, I should say, is
18 completely in shadow.

19 MR. CASSIDY: That's true.

20 COMMISSIONER DETTMAN: Whereas in
21 the photographic evidence, 9:31 a.m., it's not
22 completely in shadow and it also maybe appears
23 to me that it could be the existence of that

1 roof deck.

2 MR. CASSIDY: No. The roof deck
3 casts its own shadow, which is very clear from
4 the photographs. The difference between the
5 shadow study and the actual photograph are
6 three months.

7 COMMISSIONER DETTMAN: Exactly.

8 MR. CASSIDY: It's a technical
9 point, but the sun is actually lower, and the
10 shadows will be longer.

11 COMMISSIONER DETTMAN: Exactly.

12 MR. JARBOE: There's one other
13 difference between the photographs and the
14 shadow study. The shadow study is done to the
15 height of the proposed building. The
16 photographs are that the proposed building is
17 it's not -- well, I said a lot of it has been
18 built. IT's not all the way up to the actual
19 height. It is about two and a half feet, I
20 believe, of a parapet that has not yet been
21 built that would be part of the drawing.

22 So rather than -- again, this is a
23 problem of what to model. Rather than model

1 what's actually in the ground, we had to model
2 what is being proposed in the drawings, and
3 there's a two and a half foot height
4 difference between those two, the proposal
5 being higher than what's already in the
6 ground.

7 COMMISSIONER DETTMAN: Right.

8 MR. JARBOE: They're forecasting
9 more shadow.

10 COMMISSIONER DETTMAN: The shadow
11 study did run the model based on the approved
12 height though, correct?

13 MR. CASSIDY: Correct. So the
14 actual photographs, the shadows will be longer
15 because it's not yet complete to two and a
16 half feet.

17 MS. GREEN: But also in that
18 photograph you can see that the shadow from
19 the addition is vertical and the shadow from
20 the roof line on his balcony is 45 degrees.

21 COMMISSIONER DETTMAN: Okay, and
22 now you had just mention that what exists
23 today, what is constructed today is not what

1 has been approved in terms of the height.

2 MR. CASSIDY: Exactly.

3 COMMISSIONER DETTMAN: Okay.

4 MR. JARBOE: Correct. It has not
5 been --

6 COMMISSIONER DETTMAN: Because
7 prior to the pictures today, I believe in the
8 record it showed that maybe two stories had
9 been constructed, and it looks like there has
10 been some progress. But still what you're
11 saying is that this picture that was taken
12 September 3rd at 2:00 p.m., that it's still
13 not the approved height?

14 MR. JARBOE: Right. That's two
15 and a half feet. There's two and a half foot
16 parapet between that building and the approved
17 drawings. Now, there's a -- I understand Mr.
18 Tabbs will testify that he may or may not
19 build that, but the approved proposal is at 36
20 feet.

21 COMMISSIONER DETTMAN: Okay. And
22 one final question I wanted to revisit, a
23 couple of things that were said about the time

1 that the shadow study was conducted, and it
2 looks like we stopped at 12:30. Is one of the
3 reasons you also stopped at 12:30 is because
4 at that time the sun is basically on the other
5 side of the house?

6 MR. CASSIDY: Well, all of the
7 houses are casting their own shadow across the
8 yard anyway.

9 COMMISSIONER DETTMAN: Correct,
10 correct.

11 MR. CASSIDY: So there wasn't
12 any --

13 COMMISSIONER DETTMAN: So we're
14 really talking 8:00 a.m. to 12:00 p.m.

15 MR. CASSIDY: Yeah, 12:30.

16 COMMISSIONER DETTMAN: Eight a.m.
17 to noon.

18 MR. JARBOE: Except for the shadow
19 in the backyard, the shadow on the porches and
20 the facings of the house, correct, which is
21 why we took the photo at 2:00 p.m. I asked
22 for that photo after I saw the shaw study to
23 show the shadow on the background.

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1 COMMISSIONER DETTMAN: And the
2 shadow study doesn't take into account any
3 sort of rooftop terrace or --

4 MR. CASSIDY: No. This is
5 basically --

6 COMMISSIONER DETTMAN: -- awnings
7 off the back of the house or anything. It's
8 basically just the mass.

9 MR. CASSIDY: Just a block model,
10 yes.

11 COMMISSIONER DETTMAN: Just the
12 mass.

13 That's all I have, Madam Chair.

14 CHAIRPERSON MILLER: Thank you.

15 Did you have anything further?

16 MR. JARBOE: Not at this time.

17 CHAIRPERSON MILLER: Okay.

18 MR. JARBOE: That concludes our
19 presentation.

20 CHAIRPERSON MILLER: Mr. Etherly,
21 did you have any questions?

22 MR. ETHERLY: Thank you very much.

23 Just very briefly, thank you, both

1 Ms. Green and Mr. Jarboe, for your additional
2 testimony.

3 Perhaps the unspoken question here
4 with respect to the impact on light in
5 particular, and I should also say thank you,
6 Mr. Cassidy, as well for your additional
7 testimony, but perhaps what the Board -- not
8 perhaps, but what the Board will need to weigh
9 or is weighing is really the question of
10 whether or not there is an undue impact, and
11 I just wanted to kind of elicit some testimony
12 for the record on that question of undue
13 impact.

14 As the Board looks at the pictures
15 that have been entered into evidence, is it
16 your testimony that the shadows as they are
17 presented by the photographic evidence do
18 represent an undue impact on the light at the
19 rear of that property?

20 MR. JARBOE: Yes, that was our
21 conclusion. That was the ANC's conclusion,
22 and I think that's supported by the two
23 o'clock picture that shows that, frankly, with

1 the size of this addition, and this is a very
2 large addition as you can see -- I won't get
3 into that part of the controversy -- but it
4 basically means that the neighbor next door
5 has lost sunlight, period.

6 MR. ETHERLY: And based on your
7 interchange with Mr. Dettman, what would you
8 estimate would be the length of time that the
9 September 3rd, 2007, 2:00 p.m. condition would
10 attach here.

11 At this particular time of the
12 year when that picture was taken, how long
13 would you say that property was being --

14 MR. JARBOE: At that picture at
15 the time, it's from then on. I mean, because
16 you now have the sun is over in front of the
17 building, and so you're getting the shadow not
18 only of his particular house at 242, but
19 you're going to get that shadow, continue to
20 get that shadow of the addition, and until --
21 he's not going to get any sunlight back there,
22 if at all, until late, late in the evening,
23 and the only place he's going to get it is

1 probably along his garage.

2 So frankly, if he wants to get any
3 sunlight at all in this property, he has to
4 tear down his garage, and from the standpoint
5 of just being clear, thee are all, of course,
6 late summer, technically not yet fall. I'm
7 trying to remember my equinoxes and when we
8 hit that date because we just recently hit the
9 official first day of fall, but essentially if
10 left unchanged, this would essentially be the
11 condition from sunrise until late in the
12 afternoon during the summer months for that
13 property?

14 MR. JARBOE: Correct, and it would
15 be worse in the winter.

16 MR. ETHERLY: Worse in the winter.

17 MR. JARBOE: Because the sun is
18 lower in the winter. Therefore, there could
19 be even more shadow. The addition would be
20 casting a longer shadow because the sun is
21 lower in the horizon.

22 MR. ETHERLY: Okay. Thank you.

23 Thank you, Madam Chair.

1 CHAIRPERSON MILLER: Just as a
2 follow-up to understand the shadow study a
3 little bit better, did you say it represents
4 the worst case scenario, that being the
5 wintertime?

6 MR. CASSIDY: Midwinter, yes.

7 CHAIRPERSON MILLER: Midwinter.
8 So if we look at the study, the pictures, and
9 the worst case, how long does the worst case
10 last for? A few months or --

11 MR. CASSIDY: Yes, definitely, you
12 can see pictures taken two days ago, two days
13 ago when these pictures were taken. That's the
14 one to look at, is the most recent pictures,
15 and it shows the overall effect of the shot.

16 CHAIRPERSON MILLER: Okay. So
17 these were September.

18 MR. CASSIDY: Yes.

19 CHAIRPERSON MILLER: Is the best
20 case scenario the summer or when?

21 MR. CASSIDY: Well, when the sun
22 is overhead, nobody gets shadows. So, you
23 know, it's not relevant.

1 MR. JARBOE: In these particular
2 photographs, the best case scenario, the
3 closest we came to the best case scenario was
4 the September 3rd picture. We don't have one
5 at the solstice. I think that's the right
6 word, not the equinox; the solstice.

7 But you can see that even though
8 we're still officially in summer in this
9 picture on September 3rd, that's when you're
10 seeing at two o'clock the entire backyard of
11 the neighbor being in shadow.

12 MR. ETHERLY: And that's with the
13 movement of the sun coming from the front of
14 the property.

15 MR. JARBOE: From the back of the
16 property to the front.

17 MR. ETHERLY: Circling around to
18 the front.

19 MR. JARBOE: Correct, correct.

20 MR. ETHERLY: So at this point on
21 the September 3rd, two o'clock picture, the
22 sun is arcing from the rear of the house,
23 coming around to the front?

1 MR. CASSIDY: To the front of the
2 house.

3 MR. JARBOE: Correct.

4 MR. ETHERLY: Okay.

5 MR. JARBOE: And you can tell that
6 from the shadow line on the back of the
7 addition. You can see where the angle of the
8 sun is.

9 MR. ETHERLY: But the sun will
10 continue moving.

11 MR. JARBOE: Continue moving in
12 that direction.

13 MR. ETHERLY: That way. It's
14 perhaps I don't want to say subjective, but
15 perhaps what our questions or at least what my
16 questions are kind of beginning to get towards
17 is where is the line of entitlement, if you
18 will, to sunlight, and clearly of course,
19 that's the major concern for the ANC and for
20 the neighboring properties, and so I'm trying
21 to get a sense of how little sun is too
22 little. You know, how little is not enough,
23 so to speak?

1 And it may be the case that that's
2 not an easy or clear-cut question to answer,
3 but I think I'm clear in that the testimony
4 that you're giving is clearly this is not
5 enough, based on the example and the pictorial
6 evidence that you're offering. It definitely
7 would be your testimony that this is not
8 enough sunlight based on what's going to be
9 left for the neighboring property.

10 MR. JARBOE: That would be
11 correct. The rule of thumb we've always used
12 at the ANC for air and light is how far out
13 from the adjoining property you project, and
14 if it's a little bit and it means there's not
15 a lot of air and light impact, this is coming
16 back almost twice as far --

17 MR. CASSIDY: Twenty-seven feet.

18 MR. JARBOE: -- as the adjoining
19 properties, coming back 27 feet. It's also
20 going up as you can see at least a story
21 above. So the combination of the size of the
22 massing, this isn't like there's a dogleg
23 there and you're not getting sun and light

1 anyway. This is clearly a major change in the
2 ecosphere, if you will, of that entire alley
3 back there.

4 MR. ETHERLY: And I don't want to
5 make this too not technical, but I'm trying to
6 work not a rule of thumb, but let's think
7 practically. During the summer months when
8 that when that property owner wants to be
9 outside enjoying that sunlight, does it sound
10 as if that's when the light issue will be at
11 its least because you're dealing with a sun
12 that's higher up --

13 MR. CASSIDY: Overhead.

14 MR. ETHERLY: -- in the sky? It's
15 overhead, whereas in the winter months one
16 could argue that backyard is not going to be
17 used for recreational purposes. However, one
18 might still want to get the benefit of
19 sunlight at the rear of your property if for
20 no other reason than it helps with your eating
21 cause because you're getting the benefit of
22 some of that ambient warmth.

23 I'm just trying to weigh some of

1 those things because the question still is
2 undue impact and part of that to me is what's
3 going to be the ability of this property owner
4 to enjoy any of that backyard during the time
5 of the year when all of us want to be outside
6 enjoying our green space if we're fortunate
7 enough to have it versus those times when, you
8 know, for most purposes I'm probably never
9 going to be in my backyard.

10 MR. CASSIDY: Well, it also
11 affects the resale value of his house because
12 who's going to buy a house that has this
13 gigantic wall beside it?

14 MR. ETHERLY: Sure.

15 MR. CASSIDY: You know, and the
16 wintertime is exactly the time when he does
17 want to enjoy a bit of sunshine. That's
18 exactly the time. It may be too hot in the
19 summertime to enjoy it, but the wintertime is
20 when we do enjoy a little bit of sunshine.

21 So I would anticipate he's in his
22 yard.

23 MR. JARBOE: And I would also

1 point out the picture on September 3rd is
2 about exactly the time. If you're a gardener,
3 that's when you're getting your tomatoes
4 coming up. If you're doing your Labor Day
5 barbecue, that's when you want to be in your
6 backyard, and it's clear that that entire
7 backyard is -- in fact, the picture of
8 September 3rd, you can see his outdoor patio
9 with an umbrella on it. Well, he can sell
10 that umbrella. He's not going to need it
11 anymore because unless you're doing it for
12 rain, you're not going to need it for the sun
13 anymore.

14 MR. ETHERLY: And again, from
15 essentially this time frame on, it only gets
16 worse.

17 MR. JARBOE: It only gets worse.

18 MR. ETHERLY: Because the sun is
19 going to begin to sit lower in the sky.

20 MR. JARBOE: Correct. In the
21 earlier pictures, I believe Picture No. 1
22 shows that you do have that little bit of
23 impact from Jenkins Row on the facing of the

1 addition, but that has very little impact on
2 the facing of the other buildings.

3 And so if the addition wasn't
4 there even at this point, there would be some
5 sunlight that would be direct sunlight coming
6 on his backyard.

7 MR. ETHERLY: And you raise a good
8 point, and then I'm going to be quiet, Madam
9 Chair. As I indicated at the outset of our
10 proceeding on this matter, I have a little
11 familiarity with this neck of the woods,
12 living only about maybe a block and a half, if
13 not two blocks away from this property at the
14 corner of 13th and K, but not applying any of
15 that local knowledge to what we're dealing
16 with here, but the question of Jenkins Row, it
17 came up in the earlier proceeding. With
18 respect to the September 3rd picture, it would
19 stand to reason or I think it would be fairly
20 clear, given where the sun is oriented in that
21 picture, there is definitely no Jenkins Row
22 impact in the September 3rd picture. Because
23 at this time the sun would be throwing the

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1 Jenkins Row shadow onto Pennsylvania Avenue,
2 correct?

3 MR. JARBOE: That is correct and
4 if you look at picture which was September 2,
5 taken more recently at September 19th, that
6 impact of Jenkins Row is essentially gone by
7 9:53 when that particular picture --

8 MR. ETHERLY: So the Jenkins Row
9 impact at all is essentially an early morning
10 impact during the summer months, and then it's
11 gone.

12 MR. JARBOE: Correct. The shadow
13 study shows there is a minor impact.

14 MR. CASSIDY: Before eight o'clock
15 in the morning.

16 MR. JARBOE: Before eight o'clock
17 in the winter months, but by eight, nine
18 o'clock, the impact, any impact of Jenkins Row
19 has gone at least on the shadow side.

20 MR. ETHERLY: thank you.

21 MR. CASSIDY: It's 60 feet away.
22 Jenkins Row is 60 feet away.

23 MR. ETHERLY: Thank you.

1 CHAIRPERSON MILLER: With respect
2 to the shadow study, 9:30 a.m., I just want to
3 make sure that I'm reading it correctly. With
4 respect to 740 being there, do you know how
5 the shadow is on 738, 736, 740? They're of a
6 lighter color than the shadows on the floor
7 level.

8 Does that mean anything?

9 MR. CASSIDY: No, that's just the
10 choice.

11 CHAIRPERSON MILLER: Okay. So
12 it's just shadow-shadow.

13 MR. CASSIDY: Just the entirety,
14 yes.

15 CHAIRPERSON MILLER: So my next
16 question is then if I look at the north
17 elevation at 9:30, shadow study, without 740,
18 and it's all sun there, correct, on the
19 rowhouses?

20 MR. CASSIDY: Right. That's
21 correct.

22 CHAIRPERSON MILLER: Including
23 738, and then I look at the photo of 9/23,

1 which was September, a little different time
2 of the year, but still that's my comparison of
3 time. I should conclude that the impact of
4 the project is this great amount of shadow,
5 that were that project not there, "that
6 project" being 740 here, it would be all
7 sunny.

8 MR. JARBOE:

9 That is correct.

10 CHAIRPERSON MILLER: That is
11 correct, even though we have a difference in
12 time here. It's still okay.

13 MR. JARBOE: There would be a
14 little bit of that shadow that it shows up on
15 the facing of the 740. You can see that right
16 at the bottom here. That's the shadow from
17 Jenkins Row, but that's that. If you look at
18 the north elevation without, do you see
19 there's a little bump-up there where there's
20 a little bit of Jenkins Row going into the
21 back? There's kind of a trapezoid.

22 CHAIRPERSON MILLER: Which photo
23 are you looking at?

1 MR. JARBOE: The north elevation
2 at 9:30 without. You see a small trapezoid
3 there of a shadow coming in from Jenkins Row.
4 That's essentially the same shadow that's
5 hitting the back of 9:40 in this photo, and so
6 it goes to the very -- you know, a little bit
7 of the backyard at 9:30 is in shadow as you
8 can see from the shadow study because of
9 Jenkins Row, but none of it is hitting the
10 facing, and then by ten o'clock you see that
11 shadow receding from the backyards and by 11
12 o'clock it's almost all gone.

13 CHAIRPERSON MILLER: Thank you.

14 Okay. any other questions from
15 Board members?

16 MR. Tabbs, do you have any cross-
17 examination?

18 MR. TABBS: No, I don't have any
19 cross-examination. Could that be something
20 that could be asked later?

21 CHAIRPERSON MILLER: Later when?

22 MR. TABBS: Later after my
23 testimony. Oh, this is the time to do it.

1 CHAIRPERSON MILLER: This is the
2 time, yeah.

3 MR. TABBS: Okay. No, I'm not
4 prepared for full cross-examination right now.

5 CHAIRPERSON MILLER: Okay. Would
6 you like to then present your point of view on
7 this in opposition to their motion to
8 reconsider?

9 MR. TABBS: Yes.

10 CHAIRPERSON MILLER: Okay.

11 MR. TABBS: Yes, I would. Thank
12 you.

13 My name, again, is Victor Tabbs.
14 I wanted just to give a little background on
15 myself. I am not a contractor. I'm a
16 homeowner. I've lived in this area, Capitol
17 Hill, for 35 years, and I attended elementary
18 school there. This is at Lennox. they just
19 converted Lennox to a high school.

20 I attended junior high school at
21 Hyatt Junior High. I graduated from Chanlan
22 (phonetic) High School, which is across the
23 street from where I live at now on 13th

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1 Street. It's like a block away.

2 So just to give you just a little
3 background. So I mean, I'm familiar with this
4 area. I love this area, and that's why I'm
5 here in this area. So just to give you a
6 little background on that.

7 I'm here to request that you deny
8 this motion for reconsideration based on the
9 evidence I'm going to present to you. For
10 one, I wanted to address the shadow study that
11 was produced.

12 I welcome a shadow study, but if
13 it's a correct shadow study. I attempted to
14 call around to several attorneys to get a
15 shadow study. I never knew what a shadow
16 study was until I called around. I talked to
17 a few not attorneys, but architects. I talked
18 to a few architects, and they explained to me
19 that a shadow study, it's more involved. You
20 have to come out to the site. You have to put
21 in a lot of data of the surrounding areas.

22 So you can produce a quality
23 shadow study, and also it costs a couple

1 thousand dollars. So I didn't have that, and
2 I didn't have the time. Also, it takes about
3 two weeks to produce a good shadow study.

4 Now, that's the information I'm
5 getting. I don't know how accurate it is, but
6 that's just information that I'm getting, and
7 just be patient with me because I'm just a
8 little nervous. I'm not used to this
9 environment.

10 CHAIRPERSON MILLER: That's fine.
11 Take your time.

12 MR. TABBS: And I've produced to
13 you some pictures. Okay? So I just want to
14 go ahead and get into those pictures right
15 now, and for the opposition to say that
16 Jenkins Row has an effect on the neighborhood,
17 that's incorrect. It does have an effect on
18 light and the air flow of the neighborhood,
19 and I'm not asking you to take on Jenkins Row.
20 That's not what this case is about, I know,
21 but I did take a couple of pictures that
22 included Jenkins Row.

23 Can you hear me clearly?

1 CHAIRPERSON MILLER: Yeah, we can
2 hear you just fine.

3 MR. TABBS: Okay, okay. The first
4 picture I took is the elevation of the front
5 of Jenkins Row, and that picture was taken on
6 the 1st of October, and as you can see, it was
7 around -- the time was about 8:30 probably,
8 between 8:30 and nine o'clock. I'm not
9 exactly sure what the time was, but as you can
10 see, you can see the sun is there. The sun is
11 to the front of Jenkins Row. That's where all
12 of the sun is.

13 And the next picture is around the
14 same time. Now, all of these pictures were
15 taken within eight o'clock to 12 o'clock, and
16 if you need evidence of time, I have that on
17 my -- I wasn't able to print it out. I have
18 a -- I borrowed a friend of mine's digital
19 camera, and it's supposed to print out the
20 dates and times, but I wasn't able to make it
21 work.

22 But if you want the dates and
23 time, I can show that to you or I can produce

1 that for you.

2 The second picture is the back of
3 Jenkins Row, and this is actually a picture
4 taken from my yard and from Jenkins Row to my
5 yard, I heard something about 60 feet, but
6 it's not 60 feet. From Jenkins Row to my
7 yard, it's a little closer to probably 30 feet
8 between the two. Yeah.

9 CHAIRPERSON MILLER: Where is your
10 yard in relation to 740, 738, the homes we've
11 been looking at?

12 MR. TABBS: Seven, forty?

13 CHAIRPERSON MILLER: Or 738, the
14 one that at least the shadow is on.

15 MR. TABBS: Okay.

16 CHAIRPERSON MILLER: And where are
17 the contacts. I just don't know where your
18 home is.

19 MR. TABBS: Oh, well, I'm actually
20 in my yard taking this. I'm actually taking
21 a picture in my yard, and that's the back of
22 Jenkins Row. That shows you the shadow, how
23 effective the shadow is from Jenkins Row.

1 CHAIRPERSON MILLER: Is Photo No.
2 your home? Okay. What's the address there?

3 MR. TABBS: Well, this photo here
4 is the rear of Jenkins Row. Yeah, this is the
5 rear of Jenkins Row. and I took this photo in
6 my yard, in my back yard.

7 So I was just showing you that if
8 you turn back to the first photo, you can see
9 all of the sunlight, and I just went around
10 the corner to the back of the yard. It was
11 around the same time, maybe five minutes
12 different. I took the picture of the back of
13 Jenkins Row from my yard, and you can see that
14 you don't see any of that sun. You don't see
15 any of that sun at all.

16 CHAIRPERSON MILLER: So what's the
17 address of your house?

18 MR. TABBS: It's 740 13th Street.

19 CHAIRPERSON MILLER: I'm talking
20 about your personal house. We're not talking
21 about the project, right?

22 MR. TABBS: Oh, my personal house?

23 CHAIRPERSON MILLER: Is that where

1 you took the picture from? Are you talking
2 about 740?

3 MR. TABBS: Yeah, I'm talking
4 about 740, yeah.

5 CHAIRPERSON MILLER: All right.
6 Thank you.

7 MR. TABBS: Yeah. When I say my
8 home, this is my home. I mean, if I can get
9 into it, this is my home. Okay. I'm going to
10 apologize. When I say my home, that's what I
11 mean, my home. I don't actually live in it.
12 It's not livable right now.

13 No, this is the subject project,
14 the subject property. I'm sitting in my yard,
15 standing in my yard, taking a picture of the
16 rear or Jenkins Row, and it just illustrates
17 it does have effect on the light and also air.
18 Because like I said, if you refer to the
19 previous picture, you can see the light, how
20 much sun is coming through that's shining on
21 Jenkins Row.

22 Now, if Jenkins Row wasn't as high
23 as it is or as big as it is, we would get some

1 of that sun. That's all I was saying. Okay?

2 And the next picture I have is the
3 north edge of Jenkins Row. It's also in the
4 alley. It's in the alley also, but it's the
5 north edge.

6 Now, if you look to your left,
7 there's a house right there on the left that's
8 almost completely shaded. Okay? That's about
9 where Jenkins Row ends at, the north end of it
10 ends at, and to the right is where you don't
11 see the shadow or you don't see any shadow
12 from Jenkins Row at all.

13 It's real complicated. Maybe I
14 should have focused on Jenkins Row so much,
15 but anyway, the next one is --

16 CHAIRPERSON MILLER: I just want
17 to follow you. I'm sorry.

18 MR. TABBS: Okay.

19 CHAIRPERSON MILLER: You're
20 talking about this photo, correct?

21 MR. TABBS: Yes, this photo.

22 CHAIRPERSON MILLER: Photo No. 3.

23 MR. TABBS: Yeah, No. 3.

1 CHAIRPERSON MILLER: So, for
2 instance, those three townhouses that we see,
3 the brick, the red, the tan, the green, what
4 are they?

5 MR. TABBS: Yeah, the red, tan and
6 green house, they are south of my property.
7 So they are sort of on the end of the block
8 near where Jenkins Row kind of ends at. So
9 the point I'm trying to make is the house
10 that's on the left, it's like a brown house on
11 the left, had a little chimney up there and a
12 satellite dish, that's like a line where
13 Jenkins Row starts at. That's a line.

14 But this is still the back of the
15 houses along my property. That's what these
16 still are.

17 MR. ETHERLY: And if I may, Mr.
18 Tabbs, I'm definitely following you very
19 clearly. What would be helpful as you
20 continue your discussion of the pictures, if
21 you could indicate to the best of your
22 recollection what the timing is of each. You
23 mentioned it for the first two pictures, but

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1 just as you continue, if you could, again, to
2 the best of your recollection.

3 MR. TABBS: Okay.

4 MR. ETHERLY: Because I understand
5 digital equipment can be crazy to operate.

6 MR. TABBS: Okay.

7 MR. ETHERLY: So if you didn't get
8 a chance to get it to print out, but I think
9 one of the critical questions that at least
10 came through in the ANC's testimony and you're
11 speaking to it, is, hey, wait a minute. There
12 is an impact that's created by Jenkins Row.
13 I don't think anyone is disputing that.

14 I think probably the area of
15 interpretation is how long does that impact
16 last.

17 MR. TABBS: Correct.

18 MR. ETHERLY: I think part of what
19 you heard from the ANC's presentation is it's
20 there, but it moves away very quickly because
21 the sun is moving around, coming around the
22 corner, and essentially for much of the
23 remainder of the day, it's your building

1 that's creating more of a light impact as
2 opposed to Jenkins Row because Jenkins Row
3 only has it in the morning when the sun is
4 face on, as your first picture shows, but then
5 as the sun starts to kind of curve around to
6 the back side, part of the testimony that I
7 believe we heard suggests that more time from
8 a light impact is spent dealing with the
9 impact of your house.

10 So I'm trying to get a sense of
11 from Picture No. 1 as you move forward to
12 Picture No. 3, if you have a different sense
13 of how long that Jenkins Row impact is, that
14 would be helpful to point out.

15 So that's why I'm just
16 highlighting the time piece.

17 MR. TABBS: Okay, okay. That's a
18 good point, and what I'll do is I'll try my
19 best to remember it and I don't know how
20 accurate I'm going to be, but I'm going to be
21 in the ball park because like I say, these
22 pictures were taken between eight o'clock and
23 12 o'clock.

1 MR. ETHERLY: Okay.

2 CHAIRPERSON MILLER: Mr. Tabbs, I
3 just want to ask you a question also. Number
4 3, we're talking about these houses.

5 MR. TABBS: Yes.

6 CHAIRPERSON MILLER: Okay. Where
7 are they in relation to 740, 738, the houses
8 that we're looking at from the ANC?

9 MR. TABBS: Okay. The house
10 that's 740, they're on the same -- they're the
11 same row of houses, but it's a source north of
12 these two, of these houses, of these two
13 houses. So it's sort of in the middle of the
14 block.

15 These houses are closer to the end
16 of the block, but it's the same row of houses,
17 yeah, the same row of houses. So my house is
18 right in the middle of the block. These two
19 houses are far north of the block, and then
20 the picture number four I took, these are
21 houses south end of the block, and as you can
22 see, the shadow to the right of the house, and
23 this picture was taken around 8:30, yeah,

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1 around 8:30; this picture was taken around
2 8:30. You can see that shadow is basically
3 from Jenkins Row to the right, and like I
4 said, that is south of my house. My house is
5 right in the middle of the block.

6 Okay, and the next picture I have
7 is taken probably five minutes later that
8 morning, maybe around 8:40, and it shows my
9 home and the other surrounding properties, and
10 that's my home there, 740, and to the right is
11 738 and to the left is 742.

12 It shows at eight -- I think it's
13 about 8:40 in the morning -- none of the
14 houses back there get any shade, and that's
15 directly from Jenkins Row -- I mean get any
16 sun -- and that's directly from Jenkins Row.

17 Okay. And the next picture was
18 taken around 9:09 on October the 1st.
19 Although most of the area is -- most of the
20 shaded area is the result of Jenkins Row,
21 there is some sunlight present, and this was
22 at 9:09 on October the 1st.

23 And as you can see in this

1 picture, you see a lot of sunlight, but you
2 also see shade, but, for example, the shade
3 from the house far to your right is a result,
4 I think, from the trees. They have some big
5 trees in the back of the yards back there.
6 There's some huge trees along the alley.

7 And this is not a good picture
8 that shows 738. I didn't get that picture at
9 all. I didn't get 738 in this photo at all,
10 but I was just trying to take pictures of as
11 much as I could.

12 And the next one is my home taken
13 at around 10:21. Now, this is when the sun
14 started coming up in the yards. It's in the
15 backyards, and as you can see, the shade on my
16 property is from Jenkins Row, and to the right
17 you can see the shade from -- the shade on the
18 right, basically the shade -- most of that
19 shade looks like it's coming from the rooftop,
20 yeah, the rooftop.

21 CHAIRPERSON MILLER: Which photo
22 are you looking at? Excuse me. Number 7?

23 MR. TABBS: Number 7, yeah. It

1 looked like most of that shade is coming from
2 the rooftop. You can see at 738 where
3 horizontal -- you can see the shades going
4 horizontal. That's directly in result of the
5 rooftop when it's going horizontal, but the
6 shade that's going vertical is, yes,
7 definitely part of my property, the shade
8 that's going vertical.

9 And I want to address that, but I
10 want to address that all at one time. So I'm
11 going to come back to that.

12 Okay. Number 8, actually this is
13 what I want to address it at. Number 8, it
14 seems as though, and I don't know; I'm just
15 kind of getting a feel of it. It seems as
16 though the case is being retried almost, but
17 from what I understand, the Board agreed or
18 passed, if I understand -- if I'm wrong, just
19 let me know, if I'm incorrect -- they passed
20 the lot occupancy and allowed me to go 64
21 percent, if I'm correct, of my lot size,
22 correct?

23 CHAIRPERSON MILLER: I have to get

1 the order in front of me, but you're probably
2 correct.

3 MR. TABBS: Well, this allowed me
4 to go to 64 percent of my lot size. Now, my
5 right-of-way, I can build up to 60 percent of
6 my lot. Now, 60 percent of my lot is where
7 that two-by-four is. I'm sorry. It's a four-
8 by-four. I'm looking at Picture No. 8. I'm
9 looking at Picture No. 8.

10 My lot, 60 percent of my lot which
11 I have right-of-way to building, I can build
12 up to 60 percent of my lot, is to the left of
13 that four-by-four. Okay. That's 60 percent.

14 Now, the four percent that the
15 Board approved is to the right. Now, what
16 should be in question, and I welcome a shadow
17 study. I just couldn't afford one. I welcome
18 it, but what should be in question is this
19 four percent. This 4.5 feet of space, not the
20 entire structure.

21 The shadow study is taken on the
22 entire structure, what has already been
23 approved by -- well, actually by right-of-way

1 60 percent of it has already been -- I have
2 right-of-way to that.

3 So what I'm trying to say is we
4 should be addressing this extra 4.5 feet of
5 space that's in question. That's what we
6 should be addressing. That's what the shadow
7 study should be addressing.

8 So I wanted to just kind of put
9 that out there, and also the Office of
10 Planning, they came out. They did a study.
11 I mean, well, they came out and actually
12 physically looked at the property, and they
13 agreed themselves that it didn't have much
14 impact on the neighbors. Okay?

15 So my next photo is another
16 picture of the four-by-four. It's just
17 another angle of the four-by-four, and like I
18 said earlier, by right-of-way I have the right
19 to build up to 60 percent, which is on the
20 left. I could build up to that far.

21 Now, what the Board approved was
22 to the right, which is about 4.5 feet. Now,
23 the study that was done does not address that,

1 and if it's going to be a study, it should
2 address this particular issue. That's just my
3 opinion.

4 Okay, and my next picture, Picture
5 No. 10, Picture No. 10 is -- I'm taking this
6 picture in my yard at 7:40. Okay? I'm taking
7 this picture in my yard. Two doors south of
8 my -- two houses south of my house is another
9 two-story addition. This is a two-story
10 addition that sits out almost four feet
11 further out than mine does.

12 If you can see it, you see where
13 the -- can you see that gray area back there
14 in the back where the bushes are, where the
15 trees are? Well, that's another house. That
16 house is two feet -- I mean three feet past my
17 house. My house is 27 feet. So this house
18 has to be 30 or 40 feet. So this house has to
19 be almost 70 percent lot occupancy.

20 So I just want to kind of make
21 that point out, that my house is not the
22 deepest house on the block, and also, this is
23 a two-story house. Okay. I just kind of want

1 to point that out.

2 And where I took this picture at,
3 to my right, this is the existing house that
4 I have. This is the existing house. Okay?

5 Also, on that same line, there's
6 another house two doors -- I'm looking at
7 Photo No. 11. I'm sorry. Photo No. 11 --
8 there's a same house on that row, on that row,
9 that's almost to the end of the alley, and
10 it's probably more than ten feet past my
11 house, and that's a two-story house as well.

12 So I'm just trying to give you an
13 idea of the area, and when the Office of
14 Planning came out and they looked at
15 everything, they took all of this into
16 consideration, when they made their
17 recommendation.

18 So, I mean, this house is almost
19 sitting in the alley. So that's all I have to
20 say here, but I do want to address some of the
21 issues that my opposition brought up, if
22 that's okay to do it now.

23 Okay. First of all, I wanted to

1 address the ANC mentioned that they didn't
2 receive plans until, I guess, two weeks or a
3 week prior to a decision. I met with the ANC.
4 The first time I met with the ANC I don't know
5 the date, but I could get the records.

6 I met with the ANC prior to my
7 first meeting with the Board, with the BZA.
8 I took my drawings, the same exact drawings
9 that was approved by the Consumer Regulatory
10 Affairs. These were approved drawings by the
11 Consumer Regs., for Regulatory Affairs. I
12 took them down to the ANC meeting, and I
13 presented it to all of them.

14 One of the ANC members are here
15 now, but I presented to all of them. So for
16 the ANC to say that they never received this
17 until two weeks after, they received these
18 drawings a long time -- a long time ahead,
19 because the chairperson at the time, that was
20 one of the items that he wanted me to do. He
21 wanted me to go back and talk to the ANC about
22 this.

23 So that's what I did. I went back

1 and provided them with the drawings and had
2 discussion on it, and they even voted on it.
3 They voted a couple of times on it. I didn't
4 understand the vote, but they voted a couple
5 of times on it.

6 And the second thing, the second
7 drawings that were approved, the revised
8 drawing that was approved, they were approved
9 by the Board. The Board asked that I go back
10 and get the correct drawings, which shows the
11 house at existence, the way that it's supposed
12 to be, which is the 27 -- I mean 18 wide, 27
13 deep. That's what it is right now.

14 So I went back, and that was the
15 only time that the plans were revised, and at
16 that time, the Board asked me to do that.
17 Everybody had ample time to do whatever they
18 needed to do. If they needed to do a shadow
19 study or anything else, they had ample time to
20 do that then. So I just wanted to point that
21 out.

22 Also, one of the witnesses
23 mentioned that the shadow study was conducted

1 in the fall, and I think another witness
2 mentioned that the shadow study -- I think the
3 one, the architect shadow study -- mentioned
4 that the pictures reflect -- the pictures that
5 was just recently taken reflect the shadow
6 study. So it can't be both.

7 Another thing I had questioned on
8 or opposition to is the photos that they
9 presented, the opposition presented, dated
10 9/23/07 and 9/31. Like I mentioned, to the
11 right is 738. In the middle is my property,
12 740.

13 Now, you can see, you can clearly
14 see that to the right of 738 at the top, the
15 shade is as a result from the roof. That's
16 clear. You can see that. The shade is coming
17 from my property. If you can look along the
18 line, there's a line it looks like that's
19 going straight up to where the chimney is.
20 That's where it looks like the shade from my
21 property.

22 Now, if you take into
23 consideration that what this discussion is

1 supposed to be, it's supposed to be based on
2 the additional four feet, 4.5 feet of lot
3 occupancy, that I exceeded the lot occupancy.
4 You take 4.5 feet of that shade off.

5 So that's not a substantial impact
6 on the -- I don't think. That's just my
7 opinion -- that it's not a substantial impact
8 on the neighbors' house or the neighbors'
9 property.

10 Let's see here. And the Board
11 approved as far as the tar pit on the house,
12 the Board approved the way it stands now.
13 That's the way it's built. It's built
14 according to the drawings that were approved.
15 So that's the way the house stands now.

16 Because I think somebody had
17 mentioned about the part that is higher than
18 36 feet. I think I heard that, but wasn't
19 exactly sure.

20 And that's it for me. If you have
21 any questions, I can answer.

22 CHAIRPERSON MILLER: No. I just
23 want to respond to the point you make about

1 that the shadow study should measure the
2 difference between what you're allowed as a
3 matter of right and what's beyond the matter
4 of right. Isn't that --

5 MR. TABBS: Yes.

6 CHAIRPERSON MILLER: -- your
7 position?

8 And this has come up before
9 certainly in proceedings. The regulations
10 don't necessarily read that way. You were
11 granted relief under 223, and it talks about
12 an addition to one family dwellings of class,
13 and it says the addition shall not have a
14 substantially adverse effect on the use or
15 enjoyment of any abutting or adjacent dwelling
16 or property, et cetera.

17 But it talks in terms of the whole
18 addition. Now, I don't know that that's an
19 open and shut question, but I just wanted to
20 let you know that it's not necessarily read
21 the way you understand it, and that's why
22 there are shadow studies showing the impact of
23 the project as built totally, what that would

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1 be with respect to light and air on the
2 abutting properties, why the Board can
3 consider that.

4 MR. TABBS: Okay. Okay. I
5 understand that, but if either one of these
6 adjacent properties wanted to extend their
7 property out, well, let me just back up just
8 a little bit.

9 The reason why I'm actually here
10 is because when my house was inspected by the
11 inspector, Consumer Regulatory Affairs, they
12 came out to inspect the house, and they
13 usually do that, and they found at that time
14 that the house was built a little further than
15 it should have.

16 So I'm just trying to understand
17 this. I'm glad that you're helping me to do
18 this because I really don't know. So if the
19 house had been built as according to the plan,
20 60 percent of lot occupancy, my question is
21 would I even be here.

22 CHAIRPERSON MILLER: Okay. I'm
23 just going to go one little step further

1 because we don't usually want to go into
2 speculation or engaging in dispensing legal
3 advice or anything.

4 But if I understand your question,
5 if you had built it to matter of right --

6 MR. TABBS: Yes.

7 CHAIRPERSON MILLER: -- you
8 wouldn't be here. Correct. I mean, you're
9 only here --

10 MR. TABBS: That's my question.

11 CHAIRPERSON MILLER: -- built
12 beyond matter of right, exactly.

13 MR. TABBS: Exactly.

14 CHAIRPERSON MILLER: Yeah.

15 MR. TABBS: That's my question.

16 CHAIRPERSON MILLER: Okay.

17 MR. TABBS: Yeah. Glad you
18 answered that. thank you.

19 CHAIRPERSON MILLER: Mr. Etherly.

20 MR. ETHERLY: Thank you very much,
21 Madam Chair.

22 Not a question, but perhaps as we
23 move towards what may be useful for the Board

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1 to gather for decision making on this case,
2 and I'm probably inclined to suggest that
3 today would not be the day to decide because
4 there has been a lot of factual information
5 provided by both parties, excellent
6 photographic evidence.

7 What I would like to suggest, and
8 I'm also highlighting this because
9 unfortunately due to another professional
10 commitment I'm going to need to step away for
11 the remainder of the day unfortunately to get
12 into some very squirrely traffic, but for your
13 presentation, Mr. Tabbs, what I think would be
14 very helpful is if you have the opportunity,
15 are the photographs that you provided today
16 still available in your friend's camera?

17 MR. TABBS: Yes, they are.

18 MR. ETHERLY: If there's a way of
19 getting that friend to help you sort out how
20 to get the time information on the pictures,
21 that would be very helpful.

22 I followed the vast majority of
23 your walk through the photographic evidence

1 that you provided. I think there were a
2 couple of instances where an understanding of
3 the time of the picture would be very helpful
4 because it could perhaps be different from the
5 timing of some of the photographic evidence
6 that was provided by the ANC.

7 Again, just for me as one Board
8 member, I think one of the critical issues
9 here is going to be weighing the impact of
10 your structure versus how light is affected
11 generally in the area, whether it's by Jenkins
12 Row or other considerations.

13 So I think being absolutely
14 certain about the times that your photographs
15 were taken on a particular day would be very,
16 very helpful.

17 So I simply wanted to highlight
18 that, Madam Chair, if it's at all possible to
19 secure that information. You provided a very
20 good summary sheet of all of your 11
21 photographs. If you're able to get that time
22 stamp information for each of those
23 photographs and just provide that to the

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1 Board, I think that would be helpful because
2 it will offer a good point of comparison to
3 perhaps some of the photographic evidence that
4 has been provided by the ANC.

5 But otherwise I'm fairly clear
6 with the presentation that's been provided by
7 Mr. Tabbs.

8 Thank you, Madam Chair.

9 CHAIRPERSON MILLER: Thank you.

10 Other questions?

11 (No response.)

12 CHAIRPERSON MILLER: Okay. Does
13 the ANC have questions for Mr. Tabbs?

14 MR. JARBOE: Do we get a summary?

15 CHAIRPERSON MILLER: I'm sorry.
16 what?

17 MR. JARBOE: Do we sum up?

18 CHAIRPERSON MILLER: Yeah, you can
19 sum up.

20 MR. JARBOE: Okay. I think I'll
21 just make my comments as part of the summary
22 as opposed to direct cross.

23 CHAIRPERSON MILLER: Okay. I

1 think now is the time -- Mr. Tabbs, are you
2 finished with your comments?

3 MR. TABBS: Yes.

4 CHAIRPERSON MILLER: Okay. That's
5 what I thought. Okay.

6 MR. JARBOE: Madam Chairman, we're
7 here because of a long, tortured history with
8 this particular project. I won't go into all
9 of the details of the stop work orders and all
10 of that sort of stuff. Suffice it to say, and
11 I think you read the regulations correctly,
12 this is about a special exception.
13 Hypothesizing of what might happen because of
14 matter of right is not what we're here about
15 today. This is a special exception that does
16 not meet the lot occupancy, and we contend has
17 a large, adverse impact on air and light.

18 Now, a number of questions -- I
19 continue to still have a number of questions.
20 I would urge you to go back and look at the
21 drawings versus what the photos go because, in
22 part, what I see this building looks like at
23 least even from a design point of view is not

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1 the same as what the approved drawings were.

2 I would remind you that we've had
3 numerous sets of drawings here. The drawings
4 that Mr. Tabbs referred to when we went to the
5 ANC, when we got to the Board hearing, we
6 realized that those were not the right
7 drawings. Those were not the correct
8 drawings, and it wasn't until after the
9 hearing that we got the correct drawings, and
10 that's what we modeled the shadow study on.

11 I would point out that there are
12 interesting inconsistencies in some of these
13 photos. Mr. Tabbs did, in fact, submit as
14 part of his motion to oppose the
15 reconsideration a photo from September 1st at
16 9:15 that actually shows the shadow lower than
17 the photo that was taken supposedly on October
18 1st at ten o'clock. I'm not quite sure how
19 you end up with a smaller shadow earlier in
20 the morning, given that the sun is rising from
21 that direction. So I just point out that
22 inconsistency.

23 In summation, as we said, we're

1 here about a special exception, and the
2 principle of special exception as you said in
3 Section 223 has to do with adverse impact of
4 the addition on air and light. This isn't
5 about what's down the street. This isn't
6 about what other two-story buildings on this
7 row are all about, especially since this is a
8 three-story building or higher, as we would
9 contend, but we won't go into that right now
10 either.

11 We believe that the evidence is
12 overwhelming that this addition as proposed
13 and this addition as potentially, at least the
14 part of it that's built -- and there is some
15 question about what isn't built and, you know,
16 what hasn't been built, and I can't quite
17 figure it out from the drawings because the
18 windows are different from what's in the
19 drawings. So I'm not quite sure what the
20 height is of the actual building.

21 But what is proposed here, based
22 on both the photographic evidence as far as
23 how much has been built and on the shadow

1 study, I think is overwhelmingly conclusive
2 that there will be an adverse impact on the
3 neighbor's air and light, specifically light,
4 and we would respectfully request that you
5 deny this special exception because of those
6 conditions.

7 Thank you.

8 CHAIRPERSON MILLER: Thank you.

9 And I'm sorry Office of Planning
10 isn't here. I was hoping they would be here.

11 I just wanted to ask the ANC just
12 for background. You said you had contacted
13 them earlier. You thought they might be doing
14 some type of a study. Did you talk to them
15 earlier in the case as to how they were making
16 a determination about light and air?

17 MR. JARBOE: No, we didn't, and
18 that's why I was -- they never came to us to
19 ask. We had, in fact, voted on this twice,
20 once because it was the confusion over a
21 variance versus a special exception, which is
22 why we ended up having two votes on this
23 particular case.

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1 They never contacted. Normally
2 what happens is they get our report, and then
3 they ask questions. They never contacted us
4 on this, and as I say, when I came to the
5 hearing and read their report that said there
6 was no impact, I wouldn't believe it.

7 CHAIRPERSON MILLER: Okay. I
8 think Mr. Etherly was suggesting that we leave
9 the record open at this point for Mr. Tabbs'
10 photographs that may have a date and time on
11 them. Is there anything else that the parties
12 think they need to submit on this one issue?

13 I don't see it. You've got your
14 shadow study in. You've got your photos.

15 Okay. Just wanted to make sure.

16 MR. JARBOE: Madam Chair, just one
17 thing.

18 CHAIRPERSON MILLER: Yes, okay.

19 MR. JARBOE: I understand that at
20 least one of the Board members is familiar
21 with the program. So you don't need any
22 additional information on the program?

23 COMMISSIONER DETTMAN: SketchUp?

1 MR. JARBOE: On SketchUp. I mean,
2 what we have is just the basics you can pull
3 off of, you know, the Website, but we'd be
4 happy to submit those, if necessary. If not,
5 we'll leave it at that.

6 COMMISSIONER DETTMAN: No, I think
7 everything that you have mentioned that's
8 associated with your shadow study, I think it
9 was fairly well done and technically I'd
10 assume that the settings inside the software
11 were correct.

12 One of the suggestions I was going
13 to make if the record is going to remain open
14 is see if we could match up the photographic
15 evidence with the SketchUp shadow study. I
16 mean, I trust that your pictures are accurate
17 and I trust that your shadow study is
18 accurate, but there are settings inside the
19 software that can make a case look worse, and
20 there are settings inside the software that
21 can make a case look better.

22 And then if we could match up the
23 shadow study with the photographic evidence,

1 it might be helpful because right now what we
2 have is a shadow study that sort of models
3 worst case scenario.

4 MR. CASSIDY: Well, let me just
5 add that you could eliminate the shadow study
6 and take the present photos that we took two
7 days ago. Two days ago it shows what is
8 relevant with the existing building, given the
9 fact that it's still two and a half feet lower
10 than it's required to be by the stamped
11 drawings.

12 So the addition of the photo study
13 and the shadow study at this stage is
14 immaterial. We need to go by the exact
15 pictures that were taken most recently.

16 CHAIRPERSON MILLER: I think Mr.
17 Dettman's point goes to though then you could
18 really tell the accuracy of the shadow study,
19 correct? Because then you could see how it
20 exactly plays out.

21 COMMISSIONER DETTMAN: That's
22 correct, and additionally, if the Board is to
23 sort of decide this case on the idea of unduly

1 affected, it might be helpful to see what the
2 effect of this addition is on the neighboring
3 properties throughout the entire year.

4 In a case that's currently before
5 the Board that dealt with shadow studies, it
6 was that in the ideal world a shadow study
7 would be conducted at four times during the
8 year so that you could just get a general
9 sense of how the sun is going to move across
10 the sky on this property throughout the year.

11 So, on one hand, I could see how
12 we could waive the shadow study and just base
13 our decision on the photographic evidence or
14 what I would prefer is to see shadow studies
15 done at four different times during the year.

16 CHAIRPERSON MILLER: Okay. Let me
17 jump in here for a second. I want to make an
18 inquiry, and that is is what Mr. Dettman
19 suggesting a great expense?

20 It is.

21 MR. CASSIDY: Economically not
22 viable.

23 CHAIRPERSON MILLER: Okay, okay.

1 Because I think like there's like the ideal,
2 and then there's, you know, what's practical,
3 and I hear from all parties -- I've seen this
4 in many cases -- that a lot of parties don't
5 even undertake shadow studies because they're
6 expensive, like Mr. Tabbs said. And I
7 understand that you would wait because you
8 might think it's not necessary and only when
9 it appeared necessary would you do that.

10 And also, I think we can make a
11 judgment based on the evidence in the record.
12 So even if we don't have the ideal, we have
13 good evidence, I think.

14 Okay. Okay. Thank you. I think
15 that is a good idea, but then we have to just
16 get into expense. So okay.

17 Why don't we take a moment and
18 look at our calendar and see when we'll decide
19 this?

20 (Pause in proceedings.)

21 CHAIRPERSON MILLER: Okay. We
22 were just conferring about our dates. We have
23 our regularly scheduled meeting on November

1 6th, but Mr. Etherly may not be here then. So
2 we are going to schedule this for October
3 23rd.

4 Mr. Tabbs, when do you think you
5 could get the photos in, if you get them, if
6 you can get them? Within ten days or so?

7 MR. TABBS: Yes, I can get them
8 within ten days. I can get them to you.

9 CHAIRPERSON MILLER: Okay. That
10 would be October 12th. I don't know what day
11 of the week that is, but okay.

12 Do you have any other questions?

13 All right. That will be a meeting
14 at which we will be deliberating on this case,
15 but there won't be any participation by the
16 public. So you can come and hear it or you
17 can listen on the Internet or you can wait and
18 hear it after.

19 MR. TABBS: Oh, okay.

20 CHAIRPERSON MILLER: Okay. Any
21 other questions?

22 MR. TABBS: No.

23 CHAIRPERSON MILLER: Okay. Then I

1 think that concludes this case.

2 Thank you very much.

3 I think before we go to the next
4 case we'll just take a five or ten-minute
5 break. We have other Board members that will
6 be coming on this case, and I believe Mr.
7 Etherly will be leaving. He actually will be
8 leaving the Board after today, and this is his
9 last time on the Board. I just want to thank
10 him for all of his years of service. He has
11 been on the Board since I've been here, and he
12 has a great knowledge of the regulations and
13 the communities and a sense of compassion and
14 humor, and I will miss having him by my side.

15 However, as you all probably do
16 know, Mr. Etherly is not going very far. He's
17 going to be moving on to the Zoning
18 Commission, and so I believe the council voted
19 in favor today, and so he'll be visiting us
20 frequently, I hope.

21 So thank you very much.

22 MR. ETHERLY: Thank you very much,
23 Madam Chair.

1 One does, indeed, need a sense of
2 humor to deal with the complicated and
3 oftentimes challenging issues that we deal
4 with, but it is, indeed, a privilege and an
5 honor to serve the residents of the District
6 of Columbia, and I look forward to continuing
7 working with you and other members of the
8 Board, you know, should things move positively
9 with respect to the Zoning Commission.

10 I was very hopeful because I
11 recognize that it is an incredibly complex
12 case that we have coming in front of us in
13 terms of appeal. I was very hopeful that I
14 would at least be able to get into the case,
15 and I'm still guardedly optimistic that
16 conceivably I could read the record, but it
17 just looks like unfortunately circumstances
18 won't allow me to do that for this particular
19 proceeding, as I will need to run.

20 But it has been a pleasure to
21 serve with this body. I've been on the Board
22 for six years, and it seems like double that,
23 but in a very positive way, and I've had an

1 opportunity to work with wonderful counsel on
2 the part of applicants, on the part of our
3 agencies, on the part of Zoning
4 Administrators, acting, in term, otherwise
5 over the years, and I just look forward to
6 continuing that work on the Zoning Commission.

7 So thank you, Madam Chair. Thank
8 you to my colleagues, and thank you to the
9 staff. It will continue to be a joy to work
10 with you. I said as much during my remarks
11 before the council, that your work oftentimes
12 goes unappreciated, be it the Office of Zoning
13 staff and be it the staff of the Office of
14 Attorney General sometimes who find themselves
15 in the unenviable position of having to rein
16 us in when we get too far afield.

17 But I look forward to working with
18 you all in the future.

19 Thank you, Madam Chair.

20 CHAIRPERSON MILLER: Thank you.

21 Anything else?

22 MR. MOY: Madam Chair, I don't
23 think I can let Mr. Etherly take off without

1 a final word from the staff.

2 On behalf of the Director of the
3 Office of Zoning, we wish Mr. Etherly well on
4 his journey, and we know that he will do very
5 well, but we also know that we will see him
6 back on the Board from time to time.

7 Good luck.

8 CHAIRPERSON MILLER: Okay. Thank
9 you.

10 On that note, we'll just take a
11 short break.

12 (Whereupon, the foregoing matter
13 went off the record at 3:55 p.m.
14 and went back on the record at
15 4:15 p.m.)

16 CHAIRPERSON MILLER: Okay. We're
17 back on the record.

18 We'll begin our last case of the
19 afternoon, please.

20 MS. BAILEY: Madam Chair, that's
21 Appeal No. 17657 of 1231 Morse Street, Inc.,
22 pursuant to 11 DCMR 3100 and 3101, from the
23 decision of the Zoning Administrator to deny

1 a building permit to application for revisions
2 to an existing building permit allowing for
3 the reconstruction of collapsed walls for a
4 single family dwelling with an addition and a
5 conversion to an 11-unit apartment building.

6 The property is zoned R-4, and
7 it's located at 1233 Morse Street, N.E.,
8 Square 4069, Lot 130.

9 There are several motions before
10 the Board to dismiss the appeal that was filed
11 by the Department of Consumer and Regulatory
12 Affairs. There's a motion for summary
13 judgment from the Appellant, and there is also
14 a request to accept the affidavit of Mr.
15 Bello.

16 CHAIRPERSON MILLER: I think
17 there's also a motion to amend pending appeal
18 to incorporate directly related revocation of
19 permits by DCRA. Is that a separate one, yes,
20 from Mr. Bello? Okay.

21 MS. BAILEY: Correct, Madam Chair.

22 MR. BROWN: And, Madam Chair, I
23 filed a letter this morning.

1 CHAIRPERSON MILLER: Okay. Wait a
2 second. You haven't introduced yourself for
3 the record yet.

4 But I know we want to get all of
5 these motions straight. I know there was a
6 letter that came in in opposition to the
7 Board's considering the motion to dismiss.

8 MR. BROWN: That's correct.

9 CHAIRPERSON MILLER: Okay, but I
10 can't form motions.

11 Okay. All right. As Mr. Etherly
12 would say if he were here, we've saved the
13 best for last, and why don't we start with an
14 intro from all of the parties at the table?

15 MR. GREEN: Good afternoon, Madam
16 Chairman, members of the Board. My name is
17 Matthew J. Green, Jr. I'm an Assistant
18 Attorney General with the Department of
19 Consumer and Regulatory Affairs.

20 MR. LE GRANT: Madam Chair, I'm
21 Matthew Le Grant. I'm the Acting Zoning
22 Administrator for the Office of Zoning
23 Administrator, Department of Consumer and

1 Regulatory Affairs.

2 MS. PARKER-WOOLRIDGE: Good
3 afternoon. My name is Doris Parker-Woolridge.
4 I'm Assistant Attorney General with the Office
5 of Attorney General at DCRA.

6 CHAIRPERSON MILLER: Could you
7 repeat your last name?

8 MS. PARKER-WOOLRIDGE: Parker,
9 hyphen, Woolridge.

10 CHAIRPERSON MILLER: Parker -- oh,
11 okay. Thank you.

12 MS. BOLLING: Good afternoon,
13 Madam Chair. My name is Melinda Bolling the
14 Assistant Attorney General for the District of
15 Columbia for the Department of Consumer and
16 Regulatory Affairs.

17 MR. BROWN: Good afternoon.
18 Patrick Brown from Greenstein, DeLorm & Lux,
19 here on behalf of the Appellant, Mr. Taiwo
20 Demuren.

21 Please introduce yourself.

22 MR. DEMUREN: Good afternoon,
23 Madam Chairman and members of the Board. My

1 name is Taiwo Demuren, 1231 Morse Street, Inc.

2 MR. BELLO: Toye Bello. Good
3 afternoon. Bello, Bello & Associates.

4 MR. BROWN: Vincent Ford with Ford
5 & Associates. Mr. Bello is here as an expert
6 witness in zoning matters, having served as
7 the Zoning Administrator for D.C., as well as
8 a post here at the Office of Zoning.

9 Mr. Ford is here as a building
10 code expert, having served for as long as I
11 can remember as the Chief Building Inspector
12 for the Department of Consumer and Regulatory
13 Affairs.

14 CHAIRPERSON MILLER: Thank you.

15 Okay, and we'll get to qualifying
16 experts when we get to that point.

17 Okay. So I think we have four
18 motions. We have three motions and a request
19 to accept the late filing of the affidavit of
20 Mr. Bello.

21 Why don't we start with the least
22 controversial ones if that can be possible?
23 Is there objection from any of the parties to

1 the late filing of the affidavit of Mr. Bello?

2 I understand his affidavit was
3 signed -- I mean was submitted in a timely
4 manner, but without his signature. For
5 personal reasons he wasn't able to get the
6 signed affidavit in on time.

7 Is there any objection to that?

8 MR. GREEN: There is no objection
9 from the government.

10 CHAIRPERSON MILLER: Thank you.

11 All right. Then we'll take that
12 in as accepted.

13 The next least controversial I
14 think is the motion to amend pending appeal to
15 incorporate directly related revocation of
16 permits by DCRA. That is by the Appellant.

17 Is there an objection to this
18 motion to amend their appeal?

19 MR. GREEN: Madam Chairman, again,
20 with the indulgence of the Board, can the
21 Appellant clarify the nature of his amendment,
22 please?

23 CHAIRPERSON MILLER: That's a good

1 idea. I was trying to understand the
2 relationship between this and the original
3 appeal.

4 So could you put on the record,
5 Mr. Brown, exactly what this amendment is
6 doing?

7 MR. BROWN: The original appeal
8 was of a decision by the former Zoning
9 Administrator, Mr. Crews, revolving around
10 Section 330.5(c) of the zoning regulations
11 having to do with the conversion of a pre-'58
12 building in R-4 zone.

13 Subsequently there has been a lot
14 of subsequent events in this matter, but
15 subsequently, for purposes of this matter, on
16 July 19th, DCRA issued a notice to revoke the
17 building permit. The original building permit
18 was issued for the addition to and conversion
19 of the single family dwelling to an 11-unit
20 apartment building, as well as the notice to
21 revoke the emergency demolition permit, which
22 the Appellant had obtained based on structural
23 problems with the building during

1 construction.

2 Again, the centerpiece of the
3 notice to revoke permits is once again Section
4 330.5(c) and the conversion of an existing
5 building to an 11-unit apartment building.

6 In addition to the same focus on
7 the same code section in the zoning
8 regulations and the need to resolve that issue
9 in both matters. If you look at the
10 background having to do with the notice to
11 revoke the original building permit, as well
12 as the emergency demolition permit, those are
13 critical facts in the background of this case
14 for code compliance, zoning code compliance,
15 as well as laches and estoppel.

16 Also, and this arises out of the
17 building code, and Mr. Ford can elaborate upon
18 this, but when you make an application to
19 revise an existing building permit, you are
20 acting upon the permit that exists. You're
21 not creating a new permit, but the regulations
22 specifically say that you are amending and
23 acting upon the original permit.

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1 The original permit is in this
2 case the notice to revoke being revoked. So
3 we can't have a discussion about the original
4 appeal, which is the revision of that original
5 permit which I made clear when I filed the
6 original appeal. You can't have a discussion
7 about that initial action by Mr. Crews without
8 having a discussion about the original permit,
9 which in fact DCRA five or six months later
10 decided that it would revoke.

11 So the two go hand in hand
12 because, again, when you're looking at an
13 original building permit which has been issued
14 and vested, and then you seek to revise it,
15 the discussion reverts back in the context of
16 the original permit. It's not a separate
17 activity, separate action. It has to be
18 reviewed in the context of the original permit
19 that is being revised, which is, again, the
20 substance of the original appeal.

21 So you can't have a discussion,
22 and again, which came first, the chicken or
23 the egg? You can't have a discussion about a

1 revision to the permit without discussing the
2 original permit, and you can't have a
3 discussion, quite frankly, about the
4 revocation of that original permit without a
5 discussion of that permit and also the
6 proposed or requested revision.

7 So the two are interlocking. The
8 same set of facts, same circumstances so that
9 we're not going beyond the box of the original
10 appeal, where I made it very clear that given
11 the background that this was about the
12 revision as well as the underlying permit.

13 CHAIRPERSON MILLER: Well, so that
14 I understand you correctly, in the appeal, is
15 that an appeal of Zoning Administrator's
16 denial of the revision of the building permit?

17 MR. BROWN: The original appeal.
18 That's correct.

19 CHAIRPERSON MILLER: That's the
20 original appeal.

21 MR. BROWN: But I also made it
22 clear, again, because of this relationship,
23 this symbiotic relationship between the

1 original permit and any revision to that, I
2 made it clear at the time I filed the original
3 appeal in April, and it's, I believe, listed
4 in the notice board, that this is also a --
5 the Zoning Administrator's action constitutes
6 a challenge to the underlying permit, and so
7 I --

8 CHAIRPERSON MILLER: Yeah, I don't
9 want you to really argue it now. We got a lot
10 of papers today. I just want to make sure
11 that we know what we're considering.

12 So the first was an appeal of the
13 revision, denial of the revision of the
14 original building permit. It sounds like you
15 wanted to amend it to include the revocation
16 of the original building permit and the
17 revocation of the demolition permit, and that
18 these two decisions, these two revocations
19 occurred later in time; is that correct?

20 MR. BROWN: That's correct.

21 CHAIRPERSON MILLER: Okay. After
22 you filed the original appeal.

23 MR. BROWN: That's correct.

1 CHAIRPERSON MILLER: Okay.

2 MR. BROWN: The original appeal
3 was filed on April 20th based on a decision
4 made in March by Mr. Crews. The notice to
5 revoke permits, which to be honest surprised
6 me, was issued or dated July 19th of this
7 year. So there's almost a four-month gap
8 between the two.

9 CHAIRPERSON MILLER: Okay. So
10 what we are considering is whether or not to
11 grant your motion to amend your original
12 appeal to include these other related
13 decisions by Zoning Administrator.

14 Okay. Does the Board have any
15 questions on this?

16 Does DCRA have any objection to
17 this?

18 MR. GREEN: DCRA would object,
19 Madam Chairman. It's our contention that
20 we're here for a straightforward matter, and
21 that to include the other matters would just
22 make an obfuscatory mess.

23 What we have is something that the

1 Board -- if the Board makes a determination
2 regarding the initial appeal, then that would
3 be dispositive as to a solution to the
4 situation at hand.

5 But, again, to include additional
6 amendments to it, as I said, is obfuscatory.
7 It's confusing, and also the Board does not
8 need to get entangled in other matters that
9 really can be resolved by an addressing of the
10 first appellate issue.

11 CHAIRPERSON MILLER: Well, how do
12 we know that? What would our authority be
13 over the other decisions by ruling on just the
14 first one?

15 MR. GREEN: Well, first of all,
16 with regard to the other ones, if they had any
17 consideration for DCRA, they would have been
18 brought to the attention of DCRA at least
19 early on for sort of DCRA through its process
20 could have addressed them perhaps, but by
21 including it in the situation that we have
22 before us now, all we're doing is making the
23 matter muddy and cloudy.

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1 I believe that we should keep this
2 appellate process simply and to the point, but
3 by bringing in other matters that really can
4 be resolved by the first, it will not help.

5 CHAIRPERSON MILLER: What do you
6 mean by that? What do you mean by that, Mr.
7 Green? Do you mean you would stipulate that
8 the decision on the first decision would be
9 binding on the other two decisions?

10 MR. GREEN: What I'm simply saying
11 is that the first appellant issue is
12 straightforward concern and issue that should
13 be addressed by the Board. I'm saying that
14 the second and perhaps third issues, if you
15 will, that are being brought out now are
16 brought out at the wrong time. They should
17 have been brought out earlier. They should
18 have been considered at least giving the
19 agency an opportunity to address the
20 situation.

21 The agency was not aware of the
22 other two concerns.

23 MR. BROWN: Madam Chair, I mean,

1 please.

2 CHAIRPERSON MILLER: Do you want
3 to response? Is that what you're saying, Mr.
4 Brown?

5 MR. BROWN: Yeah. The first
6 appeal was, again, filed on April 20th. I
7 could not have anticipated, and quite frankly,
8 found it unbelievable that DCRA then proceeded
9 to issue a notice to revoke permits on July
10 19th.

11 The only reason why I didn't file
12 as part of the original appeal is an action
13 that hadn't occurred until July 19th. I filed
14 the amendment to the appeal on August 9th with
15 this Board so that we're now the better part
16 of two months later.

17 For DCRA to say that this is one
18 confusing them or, two, they didn't have any
19 notice of it is incredible. And the Appellant
20 has the obligation to file its appeals in a
21 timely manner, a 60-day rule that we're all
22 aware of.

23 CHAIRPERSON MILLER: Those

1 decisions were issued July 19th?

2 MR. BROWN: Pardon?

3 CHAIRPERSON MILLER: The second
4 two decisions are revocation decisions?

5 MR. BROWN: The letter was dated
6 July 19th of '07. I received it by messenger
7 on July 20th, the following day. I filed the
8 appeal with this Board on August 9th.

9 CHAIRPERSON MILLER: And does it
10 go to both revocations is my question.

11 MR. BROWN: Absolutely.

12 CHAIRPERSON MILLER: Okay. So,
13 Mr. Green, our regulations require an
14 appellant to file within 60 days of notice of
15 a decision.

16 MR. GREEN: I understand that,
17 Your Honor -- I mean Madam Chairman, and I
18 respect that. But I still say that Mr.
19 Brown's client who had been dealing with DCRA
20 should have at least approached the agency and
21 asked that some resolution to the second
22 concerns be addressed. That opportunity was
23 never presented to the agency.

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1 MR. BROWN: Madam Chair, my client
2 has to use or lose his appellate rights. As
3 you can see from the background of this case,
4 we've gotten absolutely no cooperation from
5 the agency. We're getting more information
6 than you need, but we're on our fourth stop
7 work order, Mr. Crews' decision and then the
8 notice to revoke permits.

9 And quite frankly, I need to
10 resolve as many issues as I can today because
11 I have zero confidence that this is the end of
12 it. I fully expect and am in the position
13 where I need to be prepared for a fifth and
14 sixth stop work order and further actions by
15 DCRA.

16 I think it's only appropriate that
17 we've exercised in a timely manner our
18 appellate rights on these two matters that are
19 interrelated. I don't think you can have a
20 discussion of one without the other, and we're
21 entitled to our day in court, and I'd like to
22 go forward with it now without the blame being
23 put on my clients for somehow not acting in an

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1 appropriate or timely manner.

2 CHAIRPERSON MILLER: Okay. Just
3 so we don't spend all afternoon arguing about
4 procedure, the way I see this is that the
5 Appellant certainly has the right and is under
6 a time limit to file appeals of decisions and,
7 therefore, had a choice in this case to either
8 seek amendment of the pending appeal, which
9 does appear to me to be quite related to the
10 first appeal, or else to file separate
11 appeals, and though we would encourage
12 certainly the Applicant and DCRA to confer,
13 there's no obligation to do that before filing
14 an appeal, and they do have to protect their
15 rights to file an appeal.

16 So, therefore, we need to consider
17 whether or not to consolidate appeal of the
18 other decisions into this appeal or to
19 separate it out, I guess. And I think for
20 judicial efficiency, I think it makes sense to
21 hear it all at once.

22 What do other Board members think
23 about this?

1 COMMISSIONER LOUD: Madam Chair,
2 I'm moving in the direction of where you just
3 sort of set forth for us. As I listened to it
4 and reviewed the pleadings, it involves the
5 same property, the same witnesses, the same
6 parties, the same proposed development, the
7 same linear chain of events, the same time
8 frame for judicial economy or administrative
9 economy or whatever we want to call it. It
10 just seems like the same case really.

11 COMMISSIONER TURNBULL: Madam
12 Chair, I would concur with your assessment.

13 CHAIRPERSON MILLER: Okay. Mr.
14 Dettman?

15 Okay. So then it's a consensus of
16 the Board then at this point to allow the
17 amendment to incorporate the other decisions
18 that are referenced in Appellant's notice of
19 related appeal and motion to amend pending
20 appeal to incorporate directly related
21 revocation of permits by DCRA.

22 Okay. So we're granting that
23 motion.

1 Next we get to the other two
2 motions. We have a motion for summary
3 judgment that was --

4 MR. GREEN: Madam Chairman, may I
5 ask a --

6 CHAIRPERSON MILLER: Okay, yeah.

7 MR. GREEN: In light of the fact
8 that this matter has been consolidated to
9 allow what DCRA clearly sees as additional
10 matters, we find it necessary to add
11 additional witnesses to address this in light
12 of the fact that this case is also pending or
13 at least a portion of it is pending in the
14 Office of Administrative Hearings.

15 Based on that, we would ask this
16 matter be continued.

17 CHAIRPERSON MILLER: We're
18 stepping aside here. Okay.

19 MR. BROWN: Madam Chair.

20 CHAIRPERSON MILLER: Is this
21 something we should discuss at this point
22 before the other two motions?

23 MR. GREEN: Yes, ma'am.

1 CHAIRPERSON MILLER: Is that what
2 you're saying?

3 MR. GREEN: Yes.

4 CHAIRPERSON MILLER: And Mr.
5 Brown?

6 MR. BROWN: Well, I think we could
7 defer on this, moving through the question I
8 think, first and foremost, the motion for
9 summary judgment. If, in fact, the Board acts
10 on that favorably, the continuance, it becomes
11 a moot point.

12 I do have to object, and I think
13 the Board is well aware of it, that none of
14 this should be a surprise to DCRA, that the
15 appeal was filed. I mean, this is part of an
16 ongoing case. There's a lot of activity in
17 this case, some of it happening outside this
18 Board's jurisdiction.

19 None of this is a surprise. My
20 motion to amend was filed two months ago. My
21 motion for summary judgment made it very
22 clear, which was filed in a timely manner,
23 made it very clear that I was seeking summary

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1 judgment on both matters.

2 So if DCRA isn't prepared to go
3 forward, that's their problem. I'm ready to
4 go. The Board is ready to go, notwithstanding
5 some of the last minute filings and
6 continuance as appropriate.

7 But, again, if we hit the motion
8 for summary judgment, I think we have an
9 opportunity to move all of this out and there
10 wouldn't be any need for further hearings or
11 continuance.

12 MR. GREEN: Madam Chairman, in
13 terms of the full hearing, DCRA is prepared to
14 go forward with the appeal, and we have the
15 appropriate witness to address that, but in
16 light of the fact that there has been now an
17 amendment to that appeal that counsel so
18 strenuously fought for and got, we would
19 certainly ask that the matter be continued to
20 allow us to address it through the appropriate
21 witnesses.

22 CHAIRPERSON MILLER: Okay. It's
23 like 20 of five, and I'm not sure that we need

1 to reach that issue yet either. However, I
2 would ask, Mr. Green, how is it that if you
3 were served with this motion to amend two
4 months ago and the motion for summary
5 judgment, I guess, two weeks ago at least you
6 wouldn't be somewhat prepared in the event
7 that the Board might grant them, at least
8 grant the consolidation?

9 It's a rhetorical question.

10 MR. GREEN: Part of the problem,
11 Madam Chairman, is that the Appellant has
12 filed in several forums, OAH, part of which
13 is, I guess, awaiting some determination by
14 this body or some decision to be had, I guess,
15 and I understand that there are other forums
16 that this matter is before, and based on that
17 and based on all of this running around,
18 clearly what the Appellant is doing then, I
19 mean, you can't have it in both ways. I mean,
20 if he's going to ask that this thing be
21 consolidated, then we ought to be given at
22 least the opportunity to provide the
23 appropriate witness so that the Board can deal

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1 with these individuals, hear what they have to
2 say, and make a fair determination.

3 Now, if he wants to go forward
4 with the original appeal, we've got the Zoning
5 Administrator here who is prepared to address
6 it and so forth. We are also prepared to deal
7 with the summary issue, if that's what the
8 Board wants to do.

9 CHAIRPERSON MILLER: Okay. Mr.
10 Brown, I wanted to ask you. Mr. Green made
11 reference to the fact that the same issues are
12 pending before the OAH. Could you elaborate
13 on that?

14 MR. BROWN: Sure, and by way of
15 background, and there is some background
16 required, I mean, as you have seen from the
17 papers, this originated from a building permit
18 issued in 2005, the first stop work order in
19 February of 2006.

20 That first stop work order went to
21 the Office of Administrative Hearings. I've
22 enclosed the order. The Administrative Law
23 Judge who has jurisdiction over stop work

1 orders issued a decision on my motion for
2 summary judgment there saying that this stop
3 work order was invalid as a matter of law.
4 That was March of 2007.

5 Subsequent to that decision, DCRA
6 issued a second stop work order for the same
7 violations on April 9th of 2007. They issued
8 a third stop work order on April 12th, 2007
9 for the same violations in the same property
10 and again on May 8th 2007, a fourth stop work
11 order.

12 All of those matters are before
13 the Office of Administrative Hearings, and for
14 my convenience, quite frankly, I have had
15 those stayed or we're pending the outcome or
16 conclusion of this hearing.

17 Those are separate matters.
18 Jurisdiction is with the Office of
19 Administrative Hearings not here.

20 I have also as a precaution filed
21 an appeal of the notice to revoke permits
22 with the Office of Administrative Hearings
23 because notwithstanding the substance of that

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1 notice, which is zoning issues, it was couched
2 in terms of the building code, which is,
3 again, within the jurisdiction of the Office
4 of Administrative Hearings.

5 What's going on in another forum
6 should have no bearing on this Board, the
7 ripeness of this case. If DCRA is unable to
8 keep track of two separate proceedings,
9 there's not much this Board or I can do about
10 that.

11 We're having a zoning hearing. We
12 filed an appeal. We amended the appeal. We
13 filed all of our papers in a timely manner,
14 and we need to have the hearing, and if
15 they're not ready, shame on them, and this
16 Board is too busy, invests too much time in
17 preparing to continue because DCRA can't keep
18 up.

19 CHAIRPERSON MILLER: Okay. Thank
20 you.

21 And, Mr. Green, did I hear you
22 correctly that you have no objection to
23 proceeding today on the motion for summary

1 judgment?

2 MR. GREEN: No, fine.Ms.

3 CHAIRPERSON MILLER: Okay. Then
4 the only other outstanding procedural issue we
5 have is what to do with the motion to dismiss
6 that the Board just got today and hasn't
7 really had much chance to digest.

8 We have a letter from Mr. Brown
9 opposing our consideration of that motion
10 today.

11 MR. BROWN: Consideration, period.

12 CHAIRPERSON MILLER: Period. Oh.

13 MR. BROWN: Because, Madam Chair,
14 and we went through this unpleasantness of
15 last minute filings the last time we were
16 together for appeal on May 1, where DCRA
17 walked into the hearing and attempted to file
18 something for the first time in that matter.

19 I asked DCRA to file in a timely
20 manner. They refused to do so and then hit me
21 late last night late in the day with this, and
22 I don't know when the Board received it. The
23 best I could tell it was some time this

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1 afternoon.

2 That's not how these proceedings
3 are supposed to work. The Board's rules are
4 a little gray in this area, but if you look at
5 the Administrative Procedures Act, which is
6 the backstop of all these proceedings, where
7 reasonable notice and opportunity to
8 participate is the centerpiece, you can't be
9 filing motions on the day of the hearing.

10 CHAIRPERSON MILLER: Right. Mr.
11 Brown, I got that, and I'm in agreement with
12 you to a certain extent. The Board is. I
13 think Mr. Green is already at the point where,
14 you know, okay, we just got it. It's too soon
15 to deal with it, but that doesn't mean that --

16 MR. BROWN: But you shouldn't deal
17 with it at all.

18 CHAIRPERSON MILLER: Well --

19 MR. BROWN: Because, I mean --

20 CHAIRPERSON MILLER: Why can't we
21 hold it in abeyance until afterwards and maybe
22 give you -- not maybe. I mean, we could give
23 you an opportunity to respond later if you

1 don't prevail on the motion for summary
2 judgment or whatever happens today.

3 MR. BROWN: Because the concern I
4 raised on May 1 with the MLW appeal when they
5 showed up on the spot and really put the Board
6 in a very disruptive and inappropriate
7 position, and I warned then that it's going to
8 happen again, and it has happened again, and
9 the Board is the master of this hearing.

10 The Board has always made it clear
11 when I've overstepped my bounds, and I think
12 in this case unless the Board seizes the
13 control of this process and makes it clear to
14 DCRA, and quite frankly, the private zoning
15 bar is not coming in here and filing things on
16 the day of the hearing like this. If the
17 Board doesn't make it clear to DCRA this is
18 not how you're going to hold your hearings,
19 when I'm back here in January for my next
20 appeal hearing, the same thing is going to
21 happen and the Board is going to be in the
22 same position.

23 A different client of mine's

1 rights are going to be impinged upon because
2 they get the filing to me at 5:49 p.m. the day
3 before a hearing.

4 So I'm asking the Board to play
5 tough, but if it doesn't unfortunately we're
6 all going to suffer. The process is going to
7 suffer. Mr. Demuren has already suffered, and
8 my next appellant client will suffer because
9 it will happen again.

10 So I think the Board has the
11 authority to exclude it, and should exercise
12 that authority.

13 CHAIRPERSON MILLER: Mr. Green.

14 MR. GREEN: Madam Chairman, you
15 know, I'm sitting here like a potted plant,
16 and I keep hearing this mischaracterization of
17 the Department of Consumer and Regulatory
18 Affairs as some "infanterrible" by the
19 Respondent counsel, and I think he should take
20 several things into consideration.

21 First of all, this so-called
22 documents that he started filing were around
23 the 19th of September, and we're looking at

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1 seven business days from that. We're looking
2 at October 1 for the motion to dismiss, and
3 that's some 11 calendar days later and then
4 seven calendar days to respond. I think the
5 Department of Consumer and Regulatory Affairs
6 is well within the scope, if not the spirit of
7 being responsive, number one.

8 And, number two, you know, I'm not
9 a guy that likes to cite rules and
10 regulations, but I will here. Three, one,
11 one, two, point, one, oh speaks of no later
12 than 14 days before the date of a hearing for
13 the appeal, and it talks about the Appellant
14 shall file with the Board any additional
15 statements, information, briefs, and reports
16 and so forth.

17 Department of Consumer and
18 Regulatory Affairs was put in this position by
19 Mr. Brown's client filing these documents.
20 Now, what --

21 MR. BROWN: Madam Chair, I object.
22 My client --

23 MR. GREEN: Wait a minute.

1 MR. BROWN: -- played by the rules
2 and filed --

3 MR. GREEN: No, hold on. I was
4 speaking, and I did not --

5 CHAIRPERSON MILLER: Let Mr. Green
6 finish.

7 MR. GREEN: -- interrupt you. I
8 ask for the same consideration and courtesy,
9 and I will extend it, Madam Chairman.

10 MR. BROWN: And my client would
11 like the same courtesy in --

12 CHAIRPERSON MILLER: Mr. Brown.

13 MR. BROWN: -- receipt of
14 documents which --

15 CHAIRPERSON MILLER: Okay. We're
16 not going to have this squabbling. Okay? And
17 one at a time, and we really have to move on
18 and get into the substance.

19 Is it your position, Mr. Green,
20 that you're not required to file within 14
21 days because you're not the Appellant?

22 MR. GREEN: That is correct.

23 CHAIRPERSON MILLER: Okay.

1 Anything else? Because I think the Board
2 needs to rule on this and move off of it.

3 MR. GREEN: Yes, Madam Chair.

4 CHAIRPERSON MILLER: Okay. So the
5 only thing I -- oh, go ahead. Did you have a
6 question you want to ask beforehand?

7 COMMISSIONER LOUD: I have a
8 question of DCRA to just help, I guess,
9 educate me a little bit more on the difference
10 between the stop work order and the notice to
11 revoke. From a practical standpoint, what is
12 the difference between, say, the stop work
13 order on B477039 versus the notice to revoke
14 on the same underlying permit?

15 Is there some strategic point of
16 view or what?

17 MR. GREEN: Yeah. I'm going to
18 defer to our expert in this, the Zoning
19 Administrator.

20 COMMISSIONER LOUD: Okay, and in
21 responding remember I'm not looking to have
22 all of the case recited.

23 MR. GREEN: Right. We understand,

1 sir.

2 COMMISSIONER LOUD: Any case.

3 What's the point of doing both of them?

4 MR. LE GRANT: My understanding,
5 the stop work order is intended to freeze
6 construction activity on the site itself so
7 that construction does not proceed any
8 further. To distinguish that from a
9 revocation of a building permit, that is then
10 taking the rights granted under that building
11 permit and withdrawing those or revoking the
12 site, that's the difference between those two
13 actions.

14 COMMISSIONER LOUD: So with the
15 latter you permanently preclude there being
16 some kind of corrective action that would
17 allow the person to resume work. Is that
18 fair?

19 MR. LE GRANT: Right. If that
20 building permit is revoked, then it's a clean
21 slate and you can come in with a new building
22 permit.

23 COMMISSIONER LOUD: All right.

1 CHAIRPERSON MILLER: Any other
2 questions?

3 (No response.)

4 CHAIRPERSON MILLER: Okay. I
5 think the Board just needs to finish this
6 housekeeping matter with respect to what to do
7 with the motion to dismiss.

8 DCRA filed a motion to dismiss.
9 The Board just got it this morning, hasn't had
10 a chance to read it very much. It is a very
11 untimely way in which to file a pleading.
12 It's not enough time for us. It's not enough
13 time for the opposing party to have to
14 respond.

15 And so unless others feel
16 differently, I think we have two options. One
17 is Mr. Brown is saying exclude it, and another
18 option would be just to leave it in the record
19 but not deal with it today and have certainly
20 the Appellant an opportunity to respond later
21 on, depending on how the case goes today.

22 So we could exclude it. We could
23 leave it in the record. I don't know what

1 else. Do people have any other ideas or
2 thoughts on this?

3 We've agreed we're not going to
4 deal with it today. Even Mr. Green has said
5 that. So it's not going to be disruptive to
6 our proceedings any more than just talking
7 about it.

8 Does anybody have any strong
9 thoughts about excluding it?

10 See, the way I see it is that even
11 if it's excluded there's nothing to preclude
12 Mr. Green from filing another one. I mean, I
13 wouldn't go that far, you know, certainly. So
14 I don't see any harm in leaving it in our
15 record for now and then deciding what we want
16 to do with it later.

17 Any comments?

18 COMMISSIONER LOUD: Yes, ma'am. I
19 haven't had a chance to look at it at all. So
20 I think the safest thing is to leave it in the
21 record so that we have an opportunity to
22 review it, if that's the course we want to
23 move down, but I haven't had a chance to do

1 anything with it.

2 CHAIRPERSON MILLER: Okay. I
3 mean, if we leave it in the record for now,
4 that's just, you know, we leave it for now.
5 We can consider it later on when we think it's
6 timely or whatever. So let's do that and move
7 to the motion for summary judgment.

8 MS. BOLLING: Madam Chair.

9 CHAIRPERSON MILLER: Yes.

10 MS. BOLLING: Just a point of
11 clarification. The District's motion to
12 dismiss was, in fact, titled that way, but it
13 was in response or in opposition to the motion
14 for summary judgment.

15 So it is our response to Mr.
16 Brown's motion for summary judgment.

17 MR. BROWN: Which, Madam Chairman,
18 makes it all the more unfortunate and
19 damaging. One, it doesn't read like a
20 response to a motion for summary judgment,
21 which typically would have disputed facts and
22 legal conclusions in response to our motion.
23 It doesn't come near to that.

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1 And if, in fact, you treat it as a
2 response to our motion for summary judgment,
3 then we've gotten back to the exact place that
4 none of us wanted to be and thought was
5 appropriate because the Board hasn't read this
6 document having just received it. Then
7 they're not in a position to act on the motion
8 for summary judgment, which is --

9 CHAIRPERSON MILLER: Now, why is
10 that, Mr. Brown? Now, let's say they didn't
11 do any response. It's your motion. Can we
12 not hear it and then they can respond? And
13 some of it is in writing and we can read some
14 of this later.

15 I mean, when I glanced at it, I
16 thought, "Oh." I glanced at it. It looked
17 like some of the same issues. So I don't see
18 a prejudice for your going forward today. Do
19 you?

20 I mean, do you not want to go
21 forward because she wants to call this a
22 response?

23 MR. BROWN: I very much want and

1 intend to go forward to the extent the Board
2 will let me today. That's why we had the
3 hearing. Unfortunately, the Board's calendar
4 which is something you're a victim of, my
5 clients had to wait from April 20th until now
6 to get his day in court, and everybody is
7 ready to go, Board and my client, but DCRA,
8 and I'm baffled by that. I really am.

9 Whether you call this a motion to
10 dismiss or motion for summary judgment, the
11 time to file it is timely. I'm ready to go
12 forward on the motion for summary judgment.

13 I would though because the Board
14 hasn't read it, I think you need to treat the
15 motion for summary judgment, at least the
16 documents, as uncontested. I mean, you do not
17 see anything in the record, and I think that
18 would be appropriate.

19 You also have in our motion for
20 summary judgment, it's well documented. There
21 are affidavits. There's a list of material
22 facts not in dispute. All those by failure to
23 respond to that document in an appropriate

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1 manner, putting aside the timing.

2 CHAIRPERSON MILLER: Okay. I
3 think we need to stop. I hear what you're
4 saying. I mean, I don't really want to cut
5 off your due process, but I have to say that,
6 you know, part of it is the fault of our
7 rules. We don't have a rule that says the
8 time for a response is.

9 So I would not be comfortable
10 saying because since they didn't respond in
11 writing by today it's undisputed when they
12 have a witness here, to begin with, who is
13 probably going to dispute it. So what I think
14 we should do is go forward with this motion
15 and then at the end of the hearing today see
16 if certain papers -- what papers should be
17 filed and what papers shouldn't, or if you
18 want to make an argument later for exclusion
19 of papers, but if you want to go forward
20 today, it's five o'clock. I think we should
21 go forward.

22 MR. BROWN: And in going forward,
23 I have three witnesses here: factual, Mr.

1 Demuren, and legal witnesses and experts, Mr.
2 Bello and Mr. Ford.

3 The government doesn't have any
4 factual witnesses. They have Mr. Le Grant,
5 who is the Acting Zoning Administrator and can
6 discuss zoning issues, but we have -- to go
7 forward, we have to recognize that they
8 haven't brought any factual witnesses, and so
9 that it goes back to the same point I made as
10 far as the motion for summary judgment being
11 uncontested.

12 I made a filing. I have my
13 witness here ready to support that, and DCRA
14 doesn't. And so that we just need to
15 recognize that this is how DCRA chose to
16 proceed, and recognize that, and I don't think
17 -- my biggest concern is that at five o'clock
18 that we're going to be put off. And part of
19 that reason why we're going to be put off is
20 DCRA was not ready to proceed, and that's
21 painful and costly for my client.

22 So I need the Board to factor that
23 into the fact as we go forward because I've

1 laid out, I think, a very strong, well
2 documented motion for summary judgment for
3 which there really hasn't been any response
4 from DCRA and not likely to be a complete
5 response.

6 And to then say, well, DCRA, you
7 get another bite at the apple doesn't seem
8 appropriate under the circumstances. We
9 should be able to resolve this motion for
10 summary judgment between now and 6:00 p.m.
11 based on the witnesses I have.

12 And, quite frankly, I'll stand on
13 the record that exists that I documented. the
14 Board, I know for a fact, has read this
15 motion. They can ask any questions of my
16 expert.

17 I would perhaps spend a moment
18 with Mr. Bello, but I don't need to belabor
19 it. It's all there in black and white.

20 MR. GREEN: Madam Chairman, if I
21 might be heard very briefly, I think I have a
22 solution to the problem.

23 CHAIRPERSON MILLER: What problem

1 is that?

2 MR. GREEN: Well, Mr. Brown is
3 continually mischaracterizing the Department
4 of Consumers and Regulatory Affairs as an
5 "infanterrible," as the one that's causing his
6 client time and money and impacting adversely
7 on his ability to get a fair consideration.

8 Here's what my solution is. It's
9 very simple. Take his motion for summary
10 judgment, put it down next to our response,
11 deal with it as the Board sees fit, at a later
12 point allow Mr. Brown to put on his case-in-
13 chief or appeal.

14 The Department of Consumer and
15 Regulatory Affairs will respond, and we can
16 all go home at a reasonable time, and the
17 Board will have all of the information before
18 it and make a determination. And you can make
19 whatever suggested filings that you require of
20 us after these cases-in-chief are put on.

21 And that way the Board's time is
22 not wasted. Mr Brown's client's money is not
23 wasted, and justice can be served.

1 MR. BROWN: Madam Chair, the key
2 there is it's all about later. We can't do it
3 now. We'll do it later.

4 We're here to have a hearing.
5 Everybody seemed to know the hearing was going
6 to occur, and I think the Board is ready to
7 proceed, and we're ready to move forward and
8 make our case, and I'm willing to move forward
9 on the motion for summary judgment.

10 MR. GREEN: Madam --

11 CHAIRPERSON MILLER: You know --

12 MR. GREEN: -- said that we can't
13 go forward with the hearing. I think I have
14 -- again, this mischaracterization is not only
15 flown from my client, but it has flown to me.

16 CHAIRPERSON MILLER: Okay. I
17 don't want to spend any more time on this
18 arguing. Basically it appears to me we have
19 a motion for summary judgment that the Board
20 has decided it would hear, and I haven't heard
21 good cause as to why we shouldn't proceed
22 today or prejudice to any part in proceeding
23 today.

1 So where I'm at is I wasn't sure
2 if I heard Mr. Brown say instead of putting on
3 his witnesses you might just stand in the
4 record on your motion for summary judgment and
5 ask if the Board has any questions or how
6 would you like to proceed? You're the movant.

7 MR. BROWN: I'm prepared to stand
8 on the written record I've filed, subject to
9 questions from the Board. I think though that
10 because the critical issue, again, all
11 revolves around 330.5(c). I would like to --
12 and Mr. Demuren is here to answer the
13 questions because he was the active
14 participant.

15 But I would like to defer and have
16 some brief testimony from Mr. Bello, again,
17 one having recognized as a zoning expert
18 witness, as the Board has done previously, and
19 to allow him to engage discussion of the
20 situation in the context of 330.5(c) and then
21 also, more importantly, make himself available
22 to answer questions to the Board.

23 And I think we can be most

1 efficient, most helpful to the Board and move
2 this thing along in that manner.

3 CHAIRPERSON MILLER: Okay.

4 MR. BROWN: And obviously at any
5 point you stop and say, "We need more." This
6 is not about giving you less. It's about
7 being efficient and responding to your
8 questions. But I'd like to -- Mr. Bello.

9 CHAIRPERSON MILLER: Just a
10 second. The first thing is to qualify Mr.
11 Bello as an expert witness.

12 The Chair is very familiar with
13 Mr. Bello, as is DCRA, I believe. However, I
14 don't know if all the other -- Mr. Turnbull
15 probably is. Are you familiar with Mr. Bello
16 or do you -- why don't you give a quick just
17 summary of Mr. Bello's experience and
18 qualifications? Really quick just so that
19 some of the Board members who aren't familiar
20 with him, you know, can have an understanding
21 of his expertise.

22 MR. GREEN: Excuse me, Madam
23 Chairman. Can't it be done quickly or quicker

1 if Mr. Bello himself were to do that.

2 You know, if you want me to, I'll
3 stipulate. I know Mr. Bello. He's an expert.

4 CHAIRPERSON MILLER: All right.

5 DCRA has no objection; is that correct?

6 MR. GREEN: Absolutely.

7 CHAIRPERSON MILLER: All right.

8 Let me just tell my fellow Board members that
9 Mr. Bello has been Zoning Administrator, also
10 worked in the Office of Zoning, has been
11 qualified as an expert witness before this
12 Board several times.

13 So there doesn't seem to be any
14 issue unless other Board members have an
15 issue.

16 Okay. Let's move then.

17 MR. BROWN: Could I ask for --

18 CHAIRPERSON MILLER: It is the
19 consensus of the Board --

20 MR. BROWN: -- particularly for
21 Mr. Dettman's benefit --

22 CHAIRPERSON MILLER: Okay.

23 MR. BROWN: -- that I've been

1 practicing as a zoning lawyer for 20 years
2 now, and I cannot remember, even though I
3 suspect back in '87 or '88 Mr. Bello wasn't
4 there, but I can't remember when Mr. Bello
5 wasn't part of the zoning apparatus in the
6 District of Columbia in one function or
7 another, either at DCRA or here at the Office
8 of Zoning.

9 So we're not talking about limited
10 tenure. We're talking about extended tenure
11 in the zoning practice of increasing
12 responsibilities so that he has grown up and
13 become, you know, as experienced and
14 sophisticated as anybody in the public or
15 private sector on zoning matters and leave it
16 at that.

17 And I don't think anybody objects
18 to that characterization.

19 CHAIRPERSON MILLER: Anybody
20 object?

21 Okay.

22 MR. GREEN: I certainly don't
23 object.

1 CHAIRPERSON MILLER: Okay. We've
2 got it.

3 MR. GREEN: And we don't need his
4 imprimatur.

5 CHAIRPERSON MILLER: Okay, okay.
6 Now, Mr. Brown has the floor with Mr. Bello.
7 I would suggest, Mr. Brown, maybe to set the
8 stage again.

9 MR. BROWN: Absolutely.

10 CHAIRPERSON MILLER: Because it
11 has been a long day, and I think that it would
12 be good for the Board to just be reminded of
13 the context of these issues.

14 MR. BROWN: Briefly, Mr. Demuren
15 back in 2005 received a building permit to
16 make an addition and conversion to an existing
17 single family dwelling. That conversion and
18 addition was for an 11-unit apartment building
19 in the R-4 zone. That's permitted as a matter
20 of right. A pre-1958 building can be
21 converted to an apartment building subject to
22 most importantly that there be 900 square feet
23 of lot area per dwelling unit.

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1 CHAIRPERSON MILLER: Just do you
2 know the reg. that you're referring to?

3 MR. BROWN: That's in 401. -- the
4 conversion in the R-4 that allows the
5 conversion is referenced in 330.5(c), which it
6 reads, "The following uses shall be permitted
7 as a matter of right in the R-4 district," and
8 then you go down to Subsection C.

9 "The conversion of a building or
10 other structure existing before May 12th, 1958
11 to an apartment house is limited by Section
12 350.4(c)," which doesn't apply in this case,
13 "or Section 401.3."

14 One, as we've set forth in our
15 papers, this was -- the existing single family
16 dwelling was, in fact, a pre-'58 building. If
17 you go to 401(c), that provides for purposes
18 of the minimum lot area; that a conversion to
19 an apartment house in the R-4 zone requires
20 900 square feet of lot area per apartment or
21 bachelor apartment. In this case the proposal
22 was for 11 apartments, which would have
23 required a lot area of 9,900 square feet.

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1 This lot exceeds 10,000 square
2 feet. I'll also point out that the building
3 met all of the side yard. There are no front
4 yard requirements, met the rear yard
5 requirements, and in fact, had excess parking
6 above, as I've laid out in my papers, above
7 the minimum level of parking required for an
8 apartment conversion in the R-4 zone.

9 The permit was issued in 2005, I
10 believe September 6th, 2005. Mr. Demuren
11 began work at the site the following day, on
12 September 7th, 2005. At the time you'll have
13 to recall that all that was there was the
14 existing pre-1958 single family dwelling for
15 which then he proceeded to put the addition to
16 the rear of it and begin the process of
17 incorporating the single family dwelling into
18 the addition.

19 In February of '06, the
20 construction process was ongoing, and Mr.
21 Demuren as we have laid out in our papers had
22 spent quite a bit of money in the process, in
23 addition to acquiring the land, he determined

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1 or became concerned that there were structural
2 problems with respect to the single family
3 dwelling, existing single family dwelling
4 portion of the structure.

5 At that point, rather than
6 pretending it wasn't a problem, covering it
7 up, he actually voluntarily contacted DCRA.
8 DCRA came out and inspected and told them,
9 yes, in fact, there was a structural problem
10 and told them exactly what to do; told them to
11 obtain an emergency demolition permit.

12 The District issued that
13 demolition permit in accordance with the
14 instructions they had given him, and Mr.
15 Demuren went about the demolition that needed
16 to occur.

17 CHAIRPERSON MILLER: Does the
18 permit say what can be demolished or just a
19 general demolition permit?

20 MR. BROWN: It was -- and, again,
21 this was occurring in a short order, and
22 perhaps Mr. Demuren can amplify, but he was
23 given -- and, again, this was obtained in

1 conjunction with and with the assistance of
2 DCRA. It contained what they thought it
3 should contain. He was acting under their
4 direction. They told him what he had to get,
5 and he got it, and they're the ones who chose
6 the language and the method for occurring, and
7 he complied.

8 He knew exactly what they had told
9 him to do, and he proceeded to do it. Before
10 he could complete the demolition, the
11 remaining part of the building collapsed, and
12 as a result of that, he went back to DCRA and
13 said, "What do I do now?"

14 And they told him exactly what to
15 do, which was to stabilize the site, and
16 stabilize meaning -- and you've seen pictures
17 and I can show them here to you -- stabilize
18 the site meaning exactly put down block to
19 keep the -- and this will show the addition of
20 the structure under construction.

21 CHAIRPERSON MILLER: Is that an
22 exhibit in our record?

23 MR. BROWN: You have various

1 versions of that already in the record as part
2 of my filing. I'm willing to submit this, but
3 the method for stabilizing the site at the
4 instruction of DCRA was, in fact, to lay the
5 block, to keep the excavated walls from
6 collapsing, particularly in the context of the
7 proximity of the excavation to adjoining
8 properties and the risk of collapse to those
9 properties.

10 So, again, Mr. Demuren acted in
11 accordance with the instructions given to him
12 by DCRA. It's very important and perhaps you
13 should hear it from his own words, but --

14 CHAIRPERSON MILLER: That's what I
15 was wondering because you're giving us a great
16 synopsis of what happens.

17 MR. GREEN: He's giving testimony,
18 Your Honor.

19 CHAIRPERSON MILLER: Well, then
20 that's what I was wondering, whether or not
21 your witness is going to say more or this is
22 uncontested.

23 MR. BROWN: Well, it's in his

1 affidavit.

2 CHAIRPERSON MILLER: He has an
3 affidavit which says these things?

4 MR. BROWN: Absolutely.

5 CHAIRPERSON MILLER: Okay.

6 MR. BROWN: And we go back to the
7 notice to revoke permits where basically the
8 allegation is Mr. Demuren all along knew that
9 he wasn't putting in an addition and
10 conversion of the building, but he always
11 intended to tear this single family dwelling
12 down and raze it and so that, one, he
13 misrepresented himself in the building permit
14 stage, as well as the demolition permit stage.

15 I think it's important that you
16 hear it from him, what he intended to do and
17 the fact that he encountered problems along
18 the way and acted in accordance with what DCRA
19 told him.

20 So, Mr. Demuren, if you could,
21 tell the Board briefly when you applied for
22 and obtained the building permit exactly what
23 you were intending to do.

1 MR. DEMUREN: Okay. Madam
2 Chairman, members of the Board, I'll be as
3 brief as I can.

4 When I applied to obtain the
5 permit, I was intending and my intention is to
6 put an addition to an existing building, an
7 additional to make it a 11-unit apartment
8 building.

9 I went through the whole process
10 of obtaining the building permit, all the
11 disciplines in D.C. area reviewed it and
12 approved it. I was issued the permit. I paid
13 the fee for the permit and started working on
14 the site.

15 When we started working on the
16 site, we decided to start from the back
17 working our way forward. When we got by where
18 the existing building was, we found out that
19 this structure needs somebody to look at it
20 because we thought it is something that's
21 wrong, and we called the District.

22 They sent in the XBOX, and they
23 said there's a problem. They said, "You need

1 a demo."

2 I mean, we applied for the
3 demolition permit, all along following the
4 instructions. Whatever we do, we go to them
5 and they tell us what to do.

6 So we got the demolition permit,
7 paid for it, started the demo. Before we
8 finished the demolition, I don't know. You
9 have that by act of God or something. The
10 remaining part of the building that was there
11 collapsed, which also I believe supported our
12 initial understanding that there's a problem
13 here, and they came in and said, "Yes, there's
14 a problem."

15 So after we got that collapse,
16 DCRA came and they told us that, well, so that
17 we don't have a problem with the neighbor's
18 house collapsing, being closed on one side, we
19 want you to -- we don't know what the exact
20 word is -- but we want you to stabilize the
21 site and ask them what do we do to stabilize
22 the site. They said, well, build the block,
23 and backfill so that the grade there will be

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1 these, as the next door neighbor, and after we
2 did that the stop work order was issued, and
3 that's how, I mean, the whole -- we got here.

4 MR. BROWN: Mr. Demuren, you got
5 the permit in September.

6 MR. DEMUREN: The building permit?

7 MR. BROWN: The building permit in
8 September of '05.

9 MR. DEMUREN: Yes.

10 MR. BROWN: And you started work,
11 and you constructed based on that permit --

12 MR. DEMUREN: Yes.

13 MR. BROWN: -- until February of
14 '06.

15 MR. DEMUREN: '06, yes.

16 MR. BROWN: And could you give us
17 an idea of how much money you spent based on
18 that building permit during that period?

19 MR. DEMUREN: Over \$300,000.

20 MR. BROWN: And were you surprised
21 when the District issued the first stop work
22 order in February of '06?

23 MR. DEMUREN: Yeah, I was

1 surprised, and I was really surprised because
2 I thought when I kept going to them they went
3 there to help me to get it done properly, not
4 for them to sabotage what I'm trying to do.
5 So I was really surprised.

6 MR. BROWN: And notwithstanding
7 the fact that the first stop work order was
8 ruled invalid by the Office of Administrative
9 Hearings, your project has essentially been
10 stopped since February of '06 till now.

11 MR. DEMUREN: Yes.

12 MR. BROWN: And as a result of
13 being stopped for that period of time, have
14 you suffered damage to the property?

15 MR. DEMUREN: Yeah, we've suffered
16 damage to the property at different times.
17 We've had -- we have people living in there
18 without, you know, breaking in, and we have to
19 go and enclose it and, you know, I've so far
20 a lot financially.

21 MR. BROWN: And there have been
22 break-ins to the property?

23 MR. DEMUREN: Yeah, the break-ins

1 and damage, and we had to sometime, I believe,
2 had to get the police to get them out of the
3 building, and now we got it more secure.

4 MR. BROWN: And how much does it
5 cost you to carry this property from February
6 of '06 till now?

7 MR. DEMUREN: It cost me over
8 100,000 as a carrying cost, about 100,000 in
9 carrying costs.

10 MR. BROWN: And just to be clear,
11 at the time you obtained your building permit,
12 you had no reason to believe that there was a
13 structural problem with the existing house?

14 MR. DEMUREN: No reason to
15 believe. You know, we looked at it, and it
16 looked fine to us. It looked fine.

17 MR. BROWN: In an attempt to
18 resolve the first stop work order, did you ask
19 Mr. Bello and myself to meet with DCRA?

20 MR. DEMUREN: Oh, yes, and I
21 believe you me them a couple of times.

22 MR. BROWN: And as a result of
23 meeting with DCRA, they suggested to you to

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1 file for the revised building permit?

2 MR. DEMUREN: Yes.

3 MR. BROWN: And did Mr. Bello file
4 that revised building permit for you?

5 MR. DEMUREN: Yes.

6 MR. BROWN: And that revised
7 building permit was intended to resolve the
8 first stop work order and allow you to
9 continue construction at the site?

10 MR. DEMUREN: Yes.

11 MR. BROWN: And as a result of
12 being denied that revised building permit, you
13 filed this appeal?

14 MR. DEMUREN: Yes.

15 MR. BROWN: After the Office of
16 Administration Hearings ruled that the first
17 stop work order from February '06 was invalid
18 as a matter of law, were you able to continue
19 work?

20 MR. DEMUREN: Yeah, I did some
21 work.

22 MR. BROWN: Briefly?

23 MR. DEMUREN: Briefly.

1 MR. BROWN: Yeah, briefly, and
2 then I got another stop work order.

3 MR. BROWN: In early April of
4 2007?

5 MR. DEMUREN: Yes, yes.

6 MR. BROWN: And then did you know
7 that DCRA had issued a third stop work order
8 shortly after the second one?

9 MR. DEMUREN: No, I was not aware
10 of it.

11 MR. BROWN: And you became aware
12 subsequently that they had issued a fourth
13 stop work order in early May of 2007?

14 MR. DEMUREN: Yes.

15 MR. BROWN: You've appealed all of
16 those stop work orders to the Office of
17 Administrative Hearings?

18 MR. DEMUREN: Yes, I have.

19 MR. BROWN: You also know that the
20 city has issued a notice to revoke your
21 original building permit, claiming that you
22 misrepresented yourself in that original
23 application?

1 MR. DEMUREN: Yes, I know this.

2 MR. BROWN: Did you misrepresent
3 yourself in that application?

4 MR. DEMUREN: No, I didn't.

5 MR. BROWN: The fact that events
6 occurred beyond your control subsequently,
7 that shouldn't reflect on what you thought and
8 knew and how you proceeded at the time of the
9 original permit issuance?

10 MR. DEMUREN: Yes, it shouldn't.

11 MR. BROWN: When you obtained the
12 emergency demolition permit, did you
13 misrepresent yourself then?

14 MR. DEMUREN: No, I didn't. I was
15 working on the instruction of the inspector
16 and DCRA.

17 CHAIRPERSON MILLER: Let me ask
18 you. With respect to this intent to demolish
19 the building --

20 MR. DEMUREN: Sorry?

21 CHAIRPERSON MILLER: You're
22 talking about an intent to demolish the
23 building, that when you applied for your

1 original building permit, you didn't have any
2 intent to demolish the building.

3 MR. DEMUREN: Yeah, I did not have
4 any intent.

5 CHAIRPERSON MILLER: Right. That
6 was the basis for the DCRA's revocation, that
7 you misrepresented your intent?

8 MR. DEMUREN: Yes. That's what
9 DCRA is saying now.

10 CHAIRPERSON MILLER: Can I ask you
11 what information did you have about the
12 structural integrity of the building when you
13 purchased it or when you applied for your
14 permit?

15 MR. DEMUREN: I didn't --

16 CHAIRPERSON MILLER: My question
17 goes to your knowledge. When you applied for
18 your building permit --

19 MR. DEMUREN: Yes.

20 CHAIRPERSON MILLER: -- what did
21 you know about the structural integrity of the
22 single family dwelling that was existing? Did
23 you know it was in bad shape or what did you

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1 know?

2 MR. DEMUREN: Well, we -- we
3 inspected it. We knew it was in livable, but
4 we believed at that time that it was
5 structurally sound.

6 CHAIRPERSON MILLER: Who inspected
7 it?

8 MR. DEMUREN: I don't even
9 remember who I inspected it with then. I
10 mean, I am --

11 MR. BROWN: Was it a professional?

12 MR. DEMUREN: I would say that I
13 know I had an engineer in, but I don't -- I
14 can't say right off top of my head now. You
15 know, I'll be giving false statement if I tell
16 you who.

17 CHAIRPERSON MILLER: Yeah, I just
18 wanted to kind of explore the reasonableness
19 of what they're saying, which I mean it's an
20 attack on your integrity, and it's not like
21 I'm --

22 MR. DEMUREN: Can I give a brief
23 description of my experience in the

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1 construction industry?

2 CHAIRPERSON MILLER: Sure, sure.

3 MR. DEMUREN: Okay. I have been
4 in the construction industry in about three
5 continents. I started out in Nigeria. I
6 worked -- I have an HND in civil engineering,
7 which is a diploma. I work with a
8 construction firm that builds multi-story
9 houses in Nigeria. I worked in England,
10 London. I was part of a team that built the
11 South Chelsea Hospital that is now Liberated
12 Anna on the Chelsea in Chelsea, in London.

13 I built a couple of other -- I was
14 involved, the engineer on site involved with
15 a couple of other construction projects in
16 England before I came to the United States.

17 And while I'm here, I built in the
18 city at least 25 to 30 single family houses,
19 about three condominium projects, some of them
20 from scratch, some of them from making an
21 addition to an existing building, and
22 currently I have quite about four projects
23 going on.

1 So when I go in -- and I also have
2 an architect that I also work with, that we
3 went through together. So that's my
4 knowledge. I'm a layman in law, but in
5 construction I learn a little bit.

6 CHAIRPERSON MILLER: So I mean,
7 that's very impressive. So I mean, you have
8 a great knowledge and understanding of
9 construction and stuff. So what happened
10 here? You know, you inspected this property
11 and then it got into a state where it needed
12 to be demolished. I mean, what?

13 MR. DEMUREN: What happened was --
14 I mean, maybe I should -- I mean, I'll say it
15 in also layman's terms. When we originally
16 looked at it, we believed that it was
17 structurally sound, but we gave it a second
18 look. We said, okay, we might have, might
19 have -- let's call the experts who is the city
20 inspector. Let them bring him in and then
21 address one of the things that we're looking
22 at.

23 So that's what -- because when we

1 originally looked at it, yes, it was
2 structurally sound, I mean, from -- but we had
3 a second look. Sometimes when you have a
4 second look at it and you have a bit of a
5 concern, that you take it to the authorities,
6 which is what we did. We took it to DCRA. We
7 called and we said, "We have this project
8 going on here. We have something that we
9 think you should look at."

10 And they came out and they said,
11 "Okay. Yeah, we think there might be a
12 problem. Get a demo permit."

13 And we went in and applied for it
14 based on their instructions, and they gave it
15 to us because they have the record of coming
16 to inspect it, which they have. They didn't
17 give us any of it. They have a record of
18 having to inspect it. They have a record of
19 -- and then they told us this is what we have
20 to do, and we went in and we got it.

21 And that's -- and I believe that
22 in construction sometimes that's what you do,
23 you know.

1 CHAIRPERSON MILLER: But you
2 brought them in after you sought the permit,
3 correct?

4 MR. DEMUREN: Yeah.

5 CHAIRPERSON MILLER: Okay.

6 MR. DEMUREN: What happened was if
7 you look at the design of it, it goes to the
8 back and it comes out like a T shape. So when
9 we got the permit, we started from the back,
10 which we looked at it as the most difficult
11 part at that time, and we started working that
12 way to the front, and then when we now got to
13 the front, we took on about four or five
14 months, and we were getting to that part and
15 we said, "Okay. Let's start here."

16 Then he says, "Okay. Well, this
17 is what we see. This is what it is, I mean,
18 and let's call in the experts."

19 CHAIRPERSON MILLER: Okay. Let me
20 ask you this because I'm far from an expert in
21 construction. That's why I'm asking you all
22 of these questions.

23 MR. DEMUREN: Yes.

1 CHAIRPERSON MILLER: So is it that
2 when you first inspect some property to
3 purchase it, you can tell generally what
4 condition it's in, but when you start
5 construction, it's possible to run into a
6 problem that you might not have been able to
7 discern just by a general inspection
8 beforehand.

9 MR. DEMUREN: Oh, yes.

10 CHAIRPERSON MILLER: Is that what
11 happened?

12 MR. DEMUREN: Yes, that's what
13 happened.

14 CHAIRPERSON MILLER: Okay. Thank
15 you.

16 COMMISSIONER TURNBULL: Now, Madam
17 Chair, I wonder if I might ask a question?

18 The inspection that came with DCRA
19 later, the demolition was for -- I've seen
20 testimony there's evidence that it was only
21 for one wall.

22 MR. DEMUREN: No, it didn't
23 specify. We showed them the whole building,

1 and they didn't specify one wall, two walls.

2 It says emergency demo on it, and --

3 COMMISSIONER TURNBULL: So your
4 understanding was the demo permit was for all
5 the walls?

6 MR. DEMUREN: Well, I believe the
7 statement that was also made was to bring it
8 to a safe -- to a safe -- what is that word
9 again?

10 MR. BROWN: Height?

11 MR. DEMUREN: Height, to a safe
12 height, and that was the instructions that was
13 given to us.

14 COMMISSIONER TURNBULL: I guess
15 that's my confusion on this, is that DCRA has
16 in their information provided to us, has
17 always say that it has been for one wall
18 and --

19 MR. DEMUREN: DCRA -- sorry.

20 COMMISSIONER TURNBULL: -- and I
21 don't -- in looking at what you've submitted,
22 it doesn't really say other than you started
23 demolition, and then apparently over the

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1 weekend the rest of the building collapsed.

2 So I'm confused as to what was the
3 extent because I think DCRA is contending that
4 you've now razed the building rather than
5 simply do demolition on the one piece that was
6 in structural -- it was a structural issue.

7 So I think that's my confusion, is
8 trying to figure out if the whole building
9 then was to be demolished. That sort of
10 implies a different set of circumstances than
11 just a small part of the structure that is at
12 issue.

13 And I wonder. I'm trying to
14 figure out how I relate to the demolition
15 permit and the state of the building site at
16 the time.

17 MR. BROWN: Mr. Turnbull, and I'm
18 going to ask Mr. Demuren to use this as a
19 prop, but this was attached to the original
20 building permit file, which should be in the
21 motion for summary judgment or my original
22 appeal.

23 And, Mr. Demuren, if you could --

1 my apologies to the Board for the small size
2 -- but to orient you here, you'll see the
3 cross-hatch building. That's the original
4 existing single family dwelling.

5 MR. DEMUREN: Yes.

6 MR. BROWN: Mr. Demuren, if you
7 could, just -- and I'll hold it up -- when the
8 problem occurred and you were instructed to
9 bring the walls of -- multiple walls -- of the
10 existing building to a safe height; is that
11 correct?

12 MR. DEMUREN: Yes.

13 MR. BROWN: So show me where, what
14 walls we are talking about.

15 MR. DEMUREN: We're talking about
16 this wall. I think is it not east? Or I
17 don't know. I don't know the east, south.
18 This wall right here.

19 COMMISSIONER TURNBULL: But we're
20 talking about on the existing building, they
21 would be interior walls of the new structure,
22 not the exterior walls of the building.

23 MR. DEMUREN: It is the exterior

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1 walls.

2 COMMISSIONER TURNBULL: They're
3 the exterior walls of the existing building,
4 but they become interior walls or supports of
5 the new building.

6 MR. DEMUREN: Oh, the new, yes,
7 yes, yes, yes.

8 COMMISSIONER TURNBULL: All right

9 MR. DEMUREN: Yes, yes. So it
10 would be the interior wall of the new
11 building.

12 COMMISSIONER TURNBULL: Okay.

13 MR. DEMUREN: Yes, and then the
14 exterior, the one that was the exterior, which
15 is also going to be the exterior of the new
16 building, is the one that collapsed.

17 COMMISSIONER TURNBULL: So is it
18 my understanding then that you were actually
19 trying to stabilize or remove the two walls
20 that were interior to the new building?

21 MR. DEMUREN: Yes, to stabilize.

22 COMMISSIONER TURNBULL: But you
23 weren't necessarily removing them? You were

1 basically working with the existing materials
2 to correct an unsafe situation?

3 MR. DEMUREN: Now, are you talking
4 about the exterior or --

5 COMMISSIONER TURNBULL: No, the
6 interior.

7 MR. DEMUREN: The new interior.

8 COMMISSIONER TURNBULL: Yes, were
9 they the problems that you had to --

10 MR. DEMUREN: Yes, they were the
11 problems.

12 COMMISSIONER TURNBULL: But you
13 were not necessarily removing them in total.
14 You were trying to repair them and stabilize
15 them?

16 MR. DEMUREN: We were removing
17 part of it --

18 COMMISSIONER TURNBULL: Part of
19 it. Okay.

20 MR. DEMUREN: -- to a safe height.

21 COMMISSIONER TURNBULL: Okay.

22 MR. DEMUREN: To a safe height,
23 and stabilizing.

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1 COMMISSIONER TURNBULL: Oh,
2 stabilizing.

3 MR. DEMUREN: Yeah.

4 COMMISSIONER TURNBULL: Okay.

5 MR. BROWN: And that was to
6 prevent them from collapsing.

7 COMMISSIONER TURNBULL: Okay.

8 MR. GREEN: Madam Chairman, you
9 know, I hate to stop the flow here, but
10 counsel has his witness on the witness stand,
11 and he's testifying.

12 CHAIRPERSON MILLER: Okay.

13 MR. GREEN: Let the witness
14 testify.

15 CHAIRPERSON MILLER: Okay.

16 MR. BROWN: Mr. Demuren, how tall
17 were these walls previously, in their existing
18 state?

19 MR. DEMUREN: About 18 foot.

20 MR. BROWN: Eighteen feet?

21 MR. DEMUREN: Yes.

22 MR. BROWN: So you had to bring
23 them down to a level -- you were instructed to

1 pull them down --

2 MR. DEMUREN: Yes.

3 MR. BROWN: -- to some --

4 MR. GREEN: I have a continuing
5 objection, Your Honor.

6 CHAIRPERSON MILLER: Okay.

7 MR. GREEN: Thank you.

8 Oh, Madam Chairman. Sorry.

9 CHAIRPERSON MILLER: I think
10 that's true. I mean, you're saying the words
11 and then your witness --

12 MR. BROWN: I'm asking him a
13 question.

14 MR. GREEN: No, he's not.

15 MR. BROWN: Mr. Demuren is a very
16 experienced builder. He's a less experienced
17 witness, although he's doing quite well.

18 MR. GREEN: I think you're a
19 better witness though, Mr. Brown.

20 CHAIRPERSON MILLER: I mean it --

21 MR. BROWN: I've had more
22 practice.

23 Mr. Demuren, you just said that

1 the walls were originally 18 feet. Tell us
2 what you were supposed to do with those 18
3 foot walls.

4 MR. DEMUREN: To bring them down
5 to safe heights.

6 MR. BROWN: And that was to
7 prevent them from collapsing?

8 MR. DEMUREN: Yeah, that was to
9 prevent them from collapsing.

10 MR. BROWN: And when you brought
11 them down to a -- bringing them down to a
12 lower height, before you could complete that,
13 what happened?

14 MR. DEMUREN: It collapsed. The
15 walls collapsed?

16 CHAIRPERSON MILLER: What
17 collapsed?

18 MR. DEMUREN: The walls.

19 CHAIRPERSON MILLER: Those walls
20 collapsed?

21 MR. DEMUREN: Yes.

22 CHAIRPERSON MILLER: Okay.

23 MR. DEMUREN: All the walls

1 collapsed before we could.

2 COMMISSIONER LOUD: Can I ask a
3 question?

4 MR. DEMUREN: Yes.

5 COMMISSIONER LOUD: Just for
6 clarification purposes. Can you, holding the
7 map up again -- not the map --

8 MR. DEMUREN: Oh, the plat. Okay.

9 COMMISSIONER LOUD: -- the
10 surveyor's plat.

11 Can you point, just so I
12 understand, to the interior walls that you
13 were trying to reduce the height of?

14 MR. DEMUREN: Oh, you mean the
15 highlight?

16 COMMISSIONER LOUD: Just kind of
17 show it. Yeah, that would be good.

18 MR. BROWN: He's going to
19 highlight it in pink.

20 MR. GREEN: Madam Chairman, if I
21 might make a suggestion, using the compass and
22 making the north the top, south the bottom,
23 you know, the east to the right, west to the

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1 left, it might help us.

2 First of all, this proceeding,
3 though it's on television, I don't know if
4 there's any kind of record that's being made
5 that we can go back 25 years from now. I know
6 that the written record we can go back 25
7 years and go forward 25. Excuse me.

8 I would suggest that every witness
9 that tries to describe for the record speak
10 with a degree of clarity, and that that
11 clarity be either north, south, east, west or
12 right, left, top, bottom, and so forth, so
13 that the record itself is clear when the Board
14 considers the descriptions that are being
15 given are not only the Board but so that we
16 all who might write our positions are clear of
17 what the parties are talking about.

18 CHAIRPERSON MILLER: Okay. It's a
19 good suggestion to the extent --

20 MR. BROWN: -- when we're done,
21 we'll submit this in the record because we've
22 now made a notation on it.

23 CHAIRPERSON MILLER: Right. That

1 has the pink on it.

2 MR. BROWN: Right.

3 CHAIRPERSON MILLER: That's very
4 helpful. I think that's what I thought you
5 were talking about. As long as that clarifies
6 it.

7 MR. BROWN: Does that help you,
8 MR. Loud?

9 COMMISSIONER LOUD: It does, and
10 just one follow-up question.

11 And you were instructed to reduce
12 the height of those walls by DCRA.

13 MR. DEMUREN: Yes.

14 COMMISSIONER LOUD: And did they
15 indicate the extent of the reduction or simply
16 you were going to know as you reduced them the
17 point at which they became stabilized?

18 MR. DEMUREN: Yes.

19 COMMISSIONER LOUD: That was left
20 to your judgment?

21 MR. DEMUREN: Yes.

22 COMMISSIONER LOUD: Okay.

23 MR. DEMUREN: And I'd also like to

1 state that the only record that was given to
2 us was go and get emergency demo permit. They
3 know what it is because when we went there to
4 get it, they gave it to us. All the records
5 of what they did we're not privy to. We don't
6 know. So I don't -- all they told us, and
7 that's all that is on the permit, emergency
8 demo permit.

9 COMMISSIONER LOUD: Thank you.

10 CHAIRPERSON MILLER: I just want
11 to pin down the point with these two walls
12 that collapsed.

13 MR. DEMUREN: Yes.

14 CHAIRPERSON MILLER: Okay. This
15 is what I would say. This is not a smart
16 question, but I'm trying to think. The
17 demolition permit, did you get that after the
18 walls collapsed or did you get a demolition
19 permit because you were going to stabilize the
20 walls?

21 MR. DEMUREN: We got the
22 demolition permit before we started because we
23 looked at it and we saw that there's a problem

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1 here. And DCRA instructed us to get the
2 emergency demolition permit to bring it to a
3 safe height and stabilize it. The only thing
4 that was written on there was "emergency demo
5 permit."

6 CHAIRPERSON MILLER: Okay.

7 MR. DEMUREN: So I don't know if
8 that answers you.

9 CHAIRPERSON MILLER: No, just you
10 got a demolition permit but the action that
11 you took was not necessarily demolition,
12 right? It was stabilizing, getting the walls
13 to a certain height.

14 MR. DEMUREN: It was demolition.
15 We started with the demolition, but we had not
16 finished the demolition when the walls that
17 were there collapsed.

18 MR. BROWN: Mr. Demuren. Maybe
19 you could clarify. When you say --

20 MR. DEMUREN: Yeah, we got the
21 permit first.

22 MR. BROWN: The demotion was --
23 was the demolition to reduce the height of the

1 wall by demolishing that wall? Is that
2 correct?

3 MR. DEMUREN: Yes.

4 MR. BROWN: You had to tear the
5 wall -- the wall was 18 feet high, correct?

6 MR. DEMUREN: Yes.

7 MR. BROWN: And in order to
8 accomplish what the District told you to do on
9 the demo permit, you had to demolish or tear
10 down part of the height of that wall.

11 MR. DEMUREN: Yes.

12 MR. BROWN: And that's what they
13 told you to do, and that's why they issued you
14 the demo permit; is that correct?

15 MR. DEMUREN: Yes, yes.

16 CHAIRPERSON MILLER: Okay. So you
17 demolished part of the wall. That's what you
18 got the permit to do.

19 MR. DEMUREN: Yes.

20 CHAIRPERSON MILLER: But then the
21 rest of the wall collapsed.

22 MR. DEMUREN: Collapsed, yes.

23 CHAIRPERSON MILLER: Okay.

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1 MR. DEMUREN: That's what the
2 problem was.

3 CHAIRPERSON MILLER: Okay. So
4 that's two walls.

5 MR. DEMUREN: Yes.

6 CHAIRPERSON MILLER: Were other
7 walls demolished?

8 MR. DEMUREN: Do you mean the
9 interior wall?

10 CHAIRPERSON MILLER: Are those the
11 only two walls we're talking about?

12 MR. DEMUREN: Yes, yes.

13 CHAIRPERSON MILLER: Okay.

14 COMMISSIONER TURNBULL: Madam
15 Chair, could I ask a question?

16 MR. DEMUREN: Yes.

17 COMMISSIONER TURNBULL: Is this a
18 picture of the existing building?

19 MR. DEMUREN: Yes, Your Honor.

20 COMMISSIONER TURNBULL: So part of
21 the north wall and the south wall -- I mean,
22 it's actually a two-story structure.

23 MR. DEMUREN: Yes.

1 COMMISSIONER TURNBULL: So you
2 have to build up no matter what on what would
3 be the east side of the building.

4 MR. DEMUREN: Which one is the
5 north or the south? I don't know the north or
6 the south.

7 COMMISSIONER TURNBULL: If this is
8 the east side over here and what I'm looking
9 at is really the north end of the building.

10 MR. DEMUREN: Okay. It is like
11 this.

12 COMMISSIONER TURNBULL: So, I
13 mean, if this is really the east side of the
14 building here, I'm looking at the front of the
15 building which is the north side.

16 MR. DEMUREN: Yes.

17 COMMISSIONER TURNBULL: So you are
18 tearing down part of this wall? At the time
19 is the roof on this building gone?

20 MR. DEMUREN: No, the roof is
21 there.

22 COMMISSIONER TURNBULL: The roof
23 was still there at the time.

1 MR. DEMUREN: Yes.

2 COMMISSIONER TURNBULL: So you
3 have to tear down part of the wall. You've
4 got to keep the roof in place at the same time
5 though, right?

6 MR. DEMUREN: I'm sorry. I didn't
7 get what you said.

8 COMMISSIONER TURNBULL: Well, I
9 just say that if you're taking down part of
10 the wall on this side, which is the exterior
11 of the building, which is the west wall, if
12 you're taking part of that down to stabilize
13 it, you've got to keep the roof in place, too,
14 right?

15 MR. DEMUREN: No, that roof, that
16 roof was back.

17 COMMISSIONER TURNBULL: The roof
18 was back?

19 MR. DEMUREN: Bad, bad, bad.

20 COMMISSIONER TURNBULL: Bad. Oh,
21 so the roof is gone.

22 MR. DEMUREN: The roof, yes, yes.

23 COMMISSIONER TURNBULL: That's

1 what I'm saying.

2 MR. DEMUREN: Yes, the roof was,
3 yes, supposed to be gone, too.

4 COMMISSIONER TURNBULL: The roof
5 is gone, too.

6 MR. DEMUREN: Yes.

7 COMMISSIONER TURNBULL: On just
8 the top part or on --

9 MR. DEMUREN: No, all the way to
10 the back.

11 COMMISSIONER TURNBULL: Okay, but
12 is the lower roof gone, too?

13 MR. DEMUREN: Yes, yes.

14 COMMISSIONER TURNBULL: So the
15 roofs are all gone on this building.

16 MR. DEMUREN: Yes, yes.

17 COMMISSIONER TURNBULL: Okay. I'm
18 just trying to clarify what this thing looks
19 like. So it's a multi -- it's not just a
20 single story building. It actually goes up
21 and down.

22 MR. DEMUREN: It's two story.

23 Yes, you have the stairs inside it.

1 COMMISSIONER TURNBULL: Okay.

2 Thank you.

3 MR. DEMUREN: Yes, and you also
4 had a basement.

5 MR. BROWN: Mr. Demuren, maybe it
6 would be helpful. When you first looked at
7 this building and inspected it, were the walls
8 closed in and covered?

9 MR. DEMUREN: Yes. The walls were
10 closed in. They were -- I don't know what --
11 "debris" is what I should use because there
12 was debris in there, and we couldn't see the
13 whole inside walls, and they would clean out
14 the debris.

15 COMMISSIONER TURNBULL: But in
16 your estimation, when you looked at this
17 building --

18 MR. DEMUREN: Yes.

19 COMMISSIONER TURNBULL: -- knowing
20 that this was going to be a two-story building
21 totally --

22 MR. DEMUREN: Yes.

23 COMMISSIONER TURNBULL: -- your

1 professional expertise said that you could
2 build on top of this existing one-story wall
3 to build a second floor.

4 MR. DEMUREN: Yeah, we could. We
5 could -- we could build on it with the beam
6 and the columns.

7 COMMISSIONER TURNBULL: Okay. All
8 right. Thank you.

9 MR. DEMUREN: And the beam and
10 columns would be the load bearing.

11 COMMISSIONER LOUD: An additional
12 clarification question, and again, if you
13 could pick up your --

14 MR. DEMUREN: The one I
15 highlighted?

16 COMMISSIONER LOUD: Yes, your pink
17 highlighted copy. Once all of the walls
18 collapsed, can you just outline the additional
19 areas of collapse?

20 I'm assuming it was more than the
21 L shape.

22 MR. DEMUREN: Yes. All of these
23 collapsed. I don't know if you use a

1 different color. Would I use the same color?

2 COMMISSIONER LOUD: Okay. That's
3 fine.

4 MR. BROWN: It completed the loop.

5 MR. DEMUREN: Yeah.

6 COMMISSIONER LOUD: Okay.

7 MR. DEMUREN: All of that
8 collapsed.

9 CHAIRPERSON MILLER: Now, was that
10 over a weekend or what?

11 MR. DEMUREN: Well, it was a
12 holiday weekend, and also I believe that
13 weekend if we check the forecast, it rained
14 that weekend also.

15 MR. BROWN: I think --

16 MR. DEMUREN: And like I also said
17 before, I think it is also in one of
18 paperwork. I did not realize because most of
19 the permits that we have says that you have to
20 work within 7:00 p.m. -- 7:00 a.m. to 7:00
21 a.m., and you're not supposed to work when the
22 D.C. government is on holidays, and I did not
23 realize that emergency permit allows you to

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1 work beyond that. Nobody informed us that.

2 So maybe if we would have know
3 that weekend, we would have gotten everything
4 done.

5 MR. BROWN: Madam Chairman, if you
6 look at the original appeal on page 2, give
7 you a little context. and I'm not testifying.
8 I'm just referencing the fact that in the
9 middle of the page, on Saturday, February
10 18th, 2006, Mr. Demuren stopped the demo
11 activities thinking that he had to stop by
12 7:00 p.m. on a Saturday.

13 That was the long President's Day
14 weekend, and I reference heavy rains and wind.
15 So that some time between Saturday, close of
16 construction activities, and the following
17 Tuesday when the holiday was over was when
18 they collapse occurred.

19 And that's on page 2 of the
20 original.

21 CHAIRPERSON MILLER: I see it, but
22 what's the point? Is the point that if he
23 hadn't stopped that maybe there wouldn't have

1 been further collapse, but the reason he
2 stopped was that he believed he wasn't allowed
3 to work?

4 MR. BROWN: That's correct.

5 CHAIRPERSON MILLER: Okay.

6 COMMISSIONER TURNBULL: I don't
7 want to cut anybody off from the Board asking
8 Mr. Demuren questions.

9 COMMISSIONER DETTMAN: Madam
10 Chair, just a couple questions.

11 When you stopped working, when you
12 stopped your activities for that long holiday
13 weekend, were you at all concerned that the
14 way you were leaving the structure, the
15 remaining walls, were they suspect? Did you
16 fully believe that, okay, well, I can go away
17 for the long weekend and they're still going
18 to be standing; they're structurally sound?
19 Were you at all concerned about the structural
20 integrity of the remaining structure?

21 MR. DEMUREN: I wasn't that
22 concerned about it because I believed at that
23 time that would withstand whatever would have

1 to until we come back, yeah.

2 COMMISSIONER DETTMAN: And, Mr.
3 Brown, I think you held up a picture of the
4 existing site. Is that correct, when you were
5 showing the stabilized site with the block?

6 That's the existing site. So the
7 debris, the rubble has been cleared.

8 MR. DEMUREN: Yes.

9 COMMISSIONER DETTMAN: What we're
10 looking at is what would have been the
11 basement, what is the basement of the existing
12 structure.

13 MR. DEMUREN: Yes.

14 COMMISSIONER DETTMAN: Okay.

15 MR. DEMUREN: Yes.

16 COMMISSIONER DETTMAN: And that's
17 the new addition in the back?

18 MR. DEMUREN: Yes.

19 COMMISSIONER DETTMAN: Okay.

20 Thank you.

21 MR. DEMUREN: Thank you, sir.

22 MR. BROWN: And the block was --

23 MR. DEMUREN: The instructions

1 were given to stabilize so it doesn't.

2 MR. BROWN: And if I could, Mr.
3 Demuren, I'll show you. This is a more recent
4 picture. This was taken this month?

5 MR. DEMUREN: Yeah, this was taken
6 September.

7 MR. BROWN: Of '07?

8 MR. DEMUREN: Of '07.

9 MR. BROWN: And if you could just
10 describe the site as it is now or --

11 MR. DEMUREN: Yes. Well, this is
12 the front of the building. We've enclosed it
13 to stop the people that were breaking in and,
14 you know, staying there, and we cleaned up,
15 put the fence back up. That's what we did.

16 MR. BROWN: And on the addition,
17 it's fully under roof?

18 MR. DEMUREN: Yes. It's all fully
19 under roof, weather tight.

20 MR. BROWN: Meaning windows?

21 MR. DEMUREN: Yeah, windows,
22 doors, and the Tyvek.

23 MR. BROWN: Is to prevent water

1 damage?

2 MR. DEMUREN: Yes.

3 CHAIRPERSON MILLER: How do you do
4 that? Oh, I'm sorry.

5 COMMISSIONER TURNBULL: Let me ask
6 just this one question.

7 CHAIRPERSON MILLER: yes.

8 COMMISSIONER TURNBULL: I mean, is
9 the damage so bad to these walls, the
10 structural, that you had to replace them all
11 the way down to the foundation, not just the
12 first floor walls and second floor? There was
13 actually the foundation walls had to be
14 removed?

15 MR. DEMUREN: Yes, sir. When it
16 collapsed, he -- he -- he affected the
17 integrity of the foundation.

18 COMMISSIONER TURNBULL: All right,
19 but when you got your emergency demolition,
20 you were not planning on replacing the
21 foundation walls.

22 MR. DEMUREN: No, no, I wasn't.

23 COMMISSIONER TURNBULL: Okay.

1 Thank you.

2 COMMISSIONER LOUD: To follow Mr.
3 Turnbull's question, so when you returned to
4 the site or where you learned that the story
5 had forced collapse at the site, is what had
6 collapsed the entire site, both the L shaped
7 part that you were authorized to reduce --

8 MR. DEMUREN: Yes.

9 COMMISSIONER LOUD: -- and so all
10 of it had collapsed down to where?

11 MR. DEMUREN: Inside. It all went
12 down inside.

13 COMMISSIONER LOUD: Okay.

14 MR. DEMUREN: I would say inside
15 the hole.

16 COMMISSIONER LOUD: So in effect,
17 it looked like it had been razed to the ground
18 at that point.

19 MR. DEMUREN: I don't know the
20 meaning of "raze." So I mean, it's going to
21 be --

22 COMMISSIONER LOUD: Go ahead, Mr.
23 Brown.

1 MR. BROWN: Mr. Demuren, if you
2 could tell the Board what the original
3 foundation walls were of the building.

4 MR. DEMUREN: The original
5 foundation were blocks, cinder blocks and
6 bricks.

7 CHAIRPERSON MILLER: We have a
8 question from a Board member.

9 COMMISSIONER DETTMAN: Mr. Brown,
10 I think earlier -- and I'm going to go quickly
11 -- go way back to the issuance of the original
12 building permit. I think, Mr. Brown, you said
13 that DCRA contends that it was always your
14 intention to tear down the single family
15 dwelling. That's what they're sort of
16 claiming.

17 MR. DEMUREN: They are claiming.

18 COMMISSIONER DETTMAN: So because
19 I'm completely unfamiliar with the process of
20 going to get building permits, maybe you could
21 help me understand what that process is. Do
22 you go to DCRA? Do you fill out the
23 appropriate paperwork?

1 If you filled out paperwork were
2 you clear in saying that this is an addition
3 to an existing single family dwelling? Did
4 you have to submit plans and in those plans
5 was it clear that the existing single family
6 dwelling was to remain?

7 MR. BROWN: I'll let Mr. Demuren
8 answer, but before I do I'd like to draw your
9 attention --

10 MR. GREEN: I'm sorry. Madam
11 Chairman, please.

12 CHAIRPERSON MILLER: Wait. I want
13 to hear.

14 MR. GREEN: He has directed a
15 question to the witness. The witness is on
16 the stand.

17 CHAIRPERSON MILLER: I understand
18 that, but it appears that Mr. Brown may just
19 be drawing attention to something in the
20 record. I think he can do that.

21 Is that what you're going to do,
22 Mr. Brown?

23 MR. BROWN: Yes. I'd like to --

1 it's already in, but it's the actual building
2 permit application, and it is Exhibit B,
3 Exhibit B to my original appeal, which I'll
4 just show you the first page, Mr. Dettman and
5 everybody.

6 It's an application dated April
7 12th of '05.

8 COMMISSIONER DETTMAN: Is it the
9 April 20th submission that you're referring
10 to?

11 MR. BROWN: Yes.

12 COMMISSIONER DETTMAN: And you
13 said Exhibit B?

14 MR. BROWN: Yes. Okay. Would it
15 be permissible? Could I? Mr. Ford is the
16 building permit construction expert. Maybe
17 I'd just let him tell you or be available to
18 walk you through the permit application.

19 CHAIRPERSON MILLER: I think that
20 would be responsive to Mr. Dettman's question,
21 but are we going to qualify this witness in
22 any way or not?

23 MR. BROWN: If I could, just a

1 brief introduction. I'd like to --

2 MR. GREEN: Madam Chairman, I
3 object. We started off with --

4 CHAIRPERSON MILLER: Object to
5 what?

6 MR. GREEN: Well, I know we're
7 informal, but it's kind of confusing to start
8 out. I think we started out with Mr. Bello as
9 a witness, and then we switched to Mr. Demuren
10 as a witness, and now we're going to Mr. Ford
11 as a witness, and we're going to come back to
12 Mr. Bello and maybe to Mr. Demuren.

13 You know, I would ask that we
14 start and stop with one witness, we get his
15 testimony, we cross-examine him, and then we
16 move on to the next witness.

17 CHAIRPERSON MILLER: Okay.

18 MR. GREEN: I think what he's
19 doing, again --

20 CHAIRPERSON MILLER: Now, Mr. --

21 MR. GREEN: -- this is obfuscatory
22 behavior.

23 CHAIRPERSON MILLER: Okay.

1 MR. GREEN: And it should not be
2 permitted.

3 CHAIRPERSON MILLER: I'm sorry,
4 but this was in response to a question of a
5 Board member, and as I understand it, Mr.
6 Brown is indicating that this witness would be
7 best capable of answering the question, and I
8 think that that's part of what this process is
9 about.

10 So for this one limited purpose,
11 which is a response to a Board member's
12 question, I don't think that it's prejudicial.
13 I think it just makes sense at this point.

14 So why don't we just qualify this
15 witness and he can answer the question, and
16 then I think we're almost finished. I don't
17 know if you're almost finished with your first
18 witness, but it appears that way.

19 MR. BROWN: I think Mr. Demuren is
20 finished subject to your questions.

21 CHAIRPERSON MILLER: Okay.

22 MR. BROWN: Briefly, Vincent Ford
23 is --

1 MR. GREEN: I'll help you again.
2 I'll stipulate to Mr. Ford's qualifications,
3 whom I've known just like Mr. Bello, who has
4 not testified yet, and I will accept him as an
5 expert in the area for which he's being
6 offered as a construction man.

7 I have no problems with him being
8 qualified as an expert.

9 CHAIRPERSON MILLER: Okay. Thank
10 you.

11 But, Mr. Brown, I know what you're
12 going to say, I think. What I want to say is
13 that we're not familiar with Mr. Ford, and we
14 would like to hear a little bit, not a whole
15 long thing, but a basic, concise summary of
16 his qualifications and experience.

17 MR. BROWN: I've known Mr. Ford
18 since at least 1987. He recently, in 2004,
19 retired from the -- 2001 -- retired as the
20 Chief Building Inspector for the District of
21 Columbia, and he served in that post for 18
22 years.

23 So there isn't much more you need

1 to know than that.

2 CHAIRPERSON MILLER: Okay, great.

3 MR. GREEN: I'll put my imprimatur
4 on that, please. I accept this man as an
5 expert.

6 CHAIRPERSON MILLER: We're happy
7 to have you here. Okay. I don't think there
8 are any concerns from Board members. So we'll
9 be happy to qualify you as an expert witness
10 in building codes.

11 MR. FORD: What was your question?

12 COMMISSIONER DETTMAN: I was just
13 wondering if you could sort of quickly step
14 through the building permitting process from
15 the Applicant's perspective.

16 MR. FORD: Okay. Applicant comes
17 in with -- in this case would come in with a
18 set of plans and a filled out application for
19 a building permit. Not only would he have the
20 plans, but he also would have a plat, and that
21 plat would show the location of the existing
22 buildings that are on the site as well as the
23 proposed building or buildings to be built on

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1 the site. The plat is reviewed by the Zoning
2 Office to make sure that what he's
3 constructing there comports with the zoning
4 regulations, and the plans are shifted through
5 the various technical areas of the review
6 process to make sure that it complies with the
7 building codes, the various other technical
8 codes, including the fire code, energy codes,
9 and so on and so forth.

10 They look at the plan in
11 relationship to the information that is given
12 on the permit application, and in this case,
13 the permit application calls for an addition
14 to a single family dwelling and goes on to say
15 about an apartment building.

16 In looking and/or reviewing the
17 plan, it is shown that the existing building
18 is existing, and it's shown also how the new
19 building will be attached to the old building
20 or the existing building on site and what
21 changes will occur, if any, within the
22 existing building, as it will be affected by
23 the new building that's going to be built.

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1 If, indeed, the existing building
2 is in need of having footings, new footings
3 put in and foundation walls, that should be
4 shown on the plan. If any rooms are to be
5 created in the existing building, that should
6 be shown on the plan.

7 If no additional work, if no work
8 is going to occur other than maybe the
9 connections of maybe electrical systems or
10 plumbing systems, then that will be shown on
11 the plan, and everything will be shown as is.
12 no changes.

13 Any changes that would occur, such
14 as removal of walls or relocation of walls,
15 there are symbols that architects use to show
16 that relocation or construction of new walls.

17 Once the permit -- once the plan
18 has been reviewed, the permit is issued, and
19 the plans are given to the developer or the
20 contractor or even the permit expediter, if
21 that's one that's being used. The permit is
22 good for one year from the date that it's
23 issued or one year from the last inspection

1 that occurs on site.

2 That's it in a nutshell.

3 CHAIRPERSON MILLER: Any other
4 Board questions?

5 So you're --

6 COMMISSIONER TURNBULL: Madam
7 Chair.

8 CHAIRPERSON MILLER: Yes, go
9 ahead.

10 COMMISSIONER TURNBULL: Let me
11 just ask one question. On the typical permit
12 application you get a full set of plans?

13 MR. FORD: That's correct.

14 COMMISSIONER TURNBULL: Sections
15 and --

16 MR. FORD: Sections, details.

17 COMMISSIONER TURNBULL: The only
18 plans I know, I have a set of plans here in
19 this document which have this. This is part
20 of this document. The plans though are dated
21 September 6, 2006. Are these revised plans?

22 What I'm getting at is do the
23 original plans show on the foundation plan

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1 that there is -- unfortunately there's no code
2 or there's nothing that I can tell what the
3 different wall sections mean, but is this
4 existing to remain?

5 I'm trying to determine what's
6 new, what's existing.

7 MR. FORD: If it's original, if
8 it's the plan showing -- and the plan should
9 show what's proposed and what's existing and
10 any changes that may occur in the existing
11 portion of the building.

12 Now, what you have there is a
13 small plan.

14 COMMISSIONER TURNBULL: right.

15 MR. FORD: Because they will not
16 accept the eight and a half by 11.

17 COMMISSIONER TURNBULL: Right.

18 MR. FORD: So it has to be blown
19 up. The minimum dimension is a quarter inch
20 equals a foot in drawing.

21 COMMISSIONER TURNBULL: I'm just
22 trying to clarify in fact, at the time
23 documents are filed it would appear that this

1 section in here, which I think is the new --
2 which is the existing structure, appears to be
3 cross-hatched a little different than what
4 appear to be new construction.

5 I want to make sure that's your
6 intent, that if that is actually meaning
7 existing foundation to remain.

8 MR. FORD: Yes.

9 MR. BROWN: Mr. Turnbull.

10 COMMISSIONER TURNBULL: This is
11 Document S-1. It's Drawing S-1.

12 I mean, typically you see a cross-
13 hatching which indicates a new foundation, but
14 it looks like in this one section it's
15 poched a little bit thicker, and I just want
16 to make sure that that's your indication that
17 that's existing to remain.

18 MR. DEMUREN: Yes.

19 COMMISSIONER TURNBULL: I mean,
20 normally it's my experience that on floor
21 plans that when you're dealing with existing
22 and new, you differentiate between new
23 construction and existing construction to

1 remain, and I'm just trying to set for the
2 record here that what was meant to remain,
3 what you were working with and what you were
4 intending to get rid of.

5 MR. DEMUREN: Yes.

6 MR. GREEN: Madam Chairman, on a
7 point of personal privilege, I would ask that
8 my folks here be given an opportunity to get
9 a break, please, just for a few moments.

10 CHAIRPERSON MILLER: Yeah, okay.
11 How long would you like? Ten minutes?

12 MR. GREEN: Whatever your Board
13 considers appropriate we'll accept.

14 CHAIRPERSON MILLER: Do you have a
15 comment? Is this an okay time to break for
16 you all?

17 MR. BROWN: That's fine. I would
18 like to --

19 CHAIRPERSON MILLER: Figure out
20 how long we're going to stay here in general.

21 MR. BROWN: Yeah. We're prepared
22 to stay as long as the Board needs us to stay.

23 CHAIRPERSON MILLER: I have a

1 question as I was listening to this case. It
2 sounded like you're putting on your appeal as
3 opposed to your motion for summary judgment.
4 I mean, because I thought -- I mean, this is
5 fine, but I'm just --

6 MR. BROWN: Frankly, the two are
7 very similar. I mean, one of the beauties of
8 the summary judgment process is the ability to
9 establish what we consider undisputed facts
10 that then apply to what we consider as the
11 undisputed law, and when we've supported those
12 by affidavits, both by factual witnesses and
13 Mr. Bello on the zoning, the law side. So
14 yes, we are recreating our case-in-chief, but
15 we're prepared to do that because I think it
16 responds to the Board's questions, whether
17 they arise in summary judgment or on the
18 merits.

19 CHAIRPERSON MILLER: So basically
20 what is left probably will go more to the law
21 and elaborating just a little bit more of
22 what's in the affidavit, correct?

23 MR. BROWN: I think the key will

1 be -- and I'm not so sure there's a whole lot
2 more need to be expanded upon in Mr. Demuren's
3 affidavit. I think it's critical that you
4 hear from Mr. Bello because, again, this all
5 revolves around the zoning issues, and then as
6 needed, Mr. Ford will follow through on the
7 building code issues.

8 CHAIRPERSON MILLER: If I could
9 get a feel for maybe how much the rest of the
10 presentations will take so that we can see,
11 you know, how long we should stay. You know,
12 if it's an hour and we're going to be
13 finished, you know, great or when should the
14 cutoff be? But if it's really going to be two
15 hours, I mean, what are we talking about do
16 you think?

17 MR. BROWN: I think we can be
18 finished in presenting everything we need to
19 present. Assuming we don't take a long break,
20 we could be done prior to seven o'clock,
21 subject to, you know, any questions the Board
22 may have.

23 You know, I don't want to --

1 CHAIRPERSON MILLER: There's also
2 cross-examination. So that's without cross?
3 Seven? You think you need an hour.

4 MR. BROWN: No, I said before
5 seven.

6 CHAIRPERSON MILLER: Before seven.
7 Okay. And how about you, Mr. Green? Any
8 thoughts on the time?

9 MR. GREEN: You know, I --

10 CHAIRPERSON MILLER: Guesstimates?

11 MR. GREEN: You know, I'm going to
12 be reasonable. I'm going to ask a few
13 questions, and if they answer the questions,
14 we can get out of here and go home, I guess,
15 in 45 minutes, quickly. But I do have the
16 Acting Zoning Administrator here, and I think
17 that he certainly would be given the
18 opportunity to rebut.

19 I mean this is just not going to
20 be a naked assertion this afternoon or this
21 evening.

22 CHAIRPERSON MILLER: My question
23 is, yeah, if we take a ten-minute break or so,

1 do you think we have a chance of being done at
2 7:30 or are we talking about 8:30?

3 MR. GREEN: That's my goal.

4 CHAIRPERSON MILLER: Okay.

5 MR. GREEN: That is my goal. I
6 have no idea what counsel on the opposing side
7 wants to do.

8 MR. BROWN: It's doable from our
9 perspective.

10 CHAIRPERSON MILLER: Okay. Hold
11 on.

12 (Pause in proceedings.)

13 CHAIRPERSON MILLER: All right.
14 We're going to take a 15 minute break so that
15 everybody can take care of whatever business
16 they need to take care of, and then we'll see
17 if we can finish tonight if it moves along
18 fast enough.

19 Okay. Thanks.

20 (Whereupon, the foregoing matter
21 went off the record at 6:09 p.m.
22 and went back on the record at
23 6:33 p.m.)

1 CHAIRPERSON MILLER: Okay. We're
2 back on the record. Everybody is here.

3 All right. At this stage I guess
4 we have a choice how to proceed. The
5 Appellant can finish his case with his
6 witnesses and everything or else we do it both
7 ways or else Mr. Green can cross-examine Mr.
8 Demuren right now.

9 Do you guys have a preference or
10 an opinion on that? Which way do you want to
11 go?

12 MR. BROWN: I mean, I think my
13 preference would be that -- because I think
14 we're close to being done across the board --
15 so that we'd like to do that from our side.

16 CHAIRPERSON MILLER: Okay.

17 MR. BROWN: Now, if Mr. Green
18 wants to cross-examine Mr. Demuren just for
19 continuity purposes, that's fine. I don't
20 anticipate that that's going to be a lengthy
21 process.

22 CHAIRPERSON MILLER: I would just
23 also say it's possible, you know, if you

1 finish your case and Board members had
2 questions, we might end up asking another
3 witness a question, and I don't know if that
4 would open any doors.

5 But, Mr. Green, do you have an
6 opinion?

7 MR. GREEN: I'll be governed by
8 whatever the Board directs that I do.

9 CHAIRPERSON MILLER: Okay, okay.
10 Let's move then. Mr. Brown has said that he'd
11 like to finish his case. I think that
12 probably makes sense. So let's proceed that
13 way.

14 Thank you, Mr. Green.

15 MR. BROWN: Madam Chairwoman, when
16 we left, I think, Mr. Turnbull, we were trying
17 to close out a discussion about the plans and
18 perhaps Mr. Ford could just make sure that we
19 close the loop as far as your question related
20 to the foundation of the existing building.

21 COMMISSIONER TURNBULL: I wanted
22 to be sure what was shown on the permits. The
23 drawings that I have are dated 2006, but it

1 sort of indicates on the 2006 set, what is
2 stamped here that there is an indication that
3 you had intended that the foundation, existing
4 foundation of the building was to remain.

5 MR. FORD: That's correct. What
6 wasn't shown, as you know, and when plans are
7 drawn up in the legend --

8 COMMISSIONER TURNBULL: Well, I
9 was just going to say we don't have a legend
10 on ours.

11 MR. FORD: We have a limited
12 legend, and go if you look at the perimeter
13 walls or the walls also within the foundation,
14 you'll see more of a solid kind of dotted
15 line, and that's the foundation for the
16 existing building, and then you see various
17 areas where you have it looks like the Xes
18 going around the perimeter walls. Those would
19 be the new walls, and the darker area is the
20 existing walls.

21 And in a detail, sheet detail, it
22 shows a section cut of the new wall in two
23 locations, and the detail is on S2, and it

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1 shows Detail B, as in "boy," and C, as in
2 "cat," for various areas around the new
3 foundation wall. There are no section cuts of
4 the existing or the foundation wall that was
5 in place at the time that these plans were
6 drawn.

7 COMMISSIONER TURNBULL: Now, that
8 same indication for existing and new is not
9 indicated on the first floor plan though. I
10 just simply see the solid wall at least on the
11 plan that I have.

12 MR. FORD: Do you mean on the
13 front?

14 COMMISSIONER TURNBULL: Now, on
15 the first floor plan, the figure set, it just
16 shows basically new walls. There's no
17 indication on this that if some of these walls
18 are existing --

19 MR. FORD: Let me put on my
20 glasses so I can see.

21 COMMISSIONER TURNBULL: I guess
22 I'm looking at Drawing A-2, first floor plan.

23 MR. FORD: A-2?

1 COMMISSIONER TURNBULL: Drawing A-
2 2.

3 MR. FORD: I'm getting there.
4 Okay, and that's correct because those walls
5 that you see on the other plan is, indeed, the
6 foundation wall. That's the wall from the
7 footing up to just about grade, grade level,
8 and that shows that it is cinder block
9 material.

10 This is the first floor wall from
11 the grade up. So you would not see that same
12 indication of whether those walls down
13 below --

14 COMMISSIONER TURNBULL: Right. I
15 know they wouldn't be shown as cinder block,
16 but wouldn't there be some indication to show
17 that some of those walls are existing to
18 remain?

19 MR. FORD: It should show that
20 they are to remain. There's nothing in here
21 that indicates to me, as I see it right now,
22 whether these openings in this wall are
23 existing openings or they're new openings in

1 this wall, nor does it show whether this is
2 existing material or new material.

3 COMMISSIONER TURNBULL: Right.
4 Okay. Thank you.

5 MR. BROWN: If we could, I think,
6 proceed to Mr. Bello, and if you could, Mr.
7 Bello, just provide the Board with your
8 analysis of the original permit that was
9 issued, and we'll start with the original
10 permit that was issued first.

11 MR. BELLO: Madam Chair, good
12 evening. Board members, good evening.

13 The original permit clearly was a
14 request to convert a pre-'58 building to an
15 11-unit apartment house by constructing an
16 addition to it, and the attendant application
17 to that process clearly indicates and is check
18 marked in the addition box, including the
19 description of the work.

20 Now, clearly the issuance of a
21 building permit is done in conjunction with
22 not only the description of the work on the
23 building permit application, but the plans

1 that accompany it.

2 MR. BROWN: And do the plans that
3 accompany the application agree with or
4 comport with the application and the permit
5 that was actually issued?

6 MR. BELLO: Absolutely, yes.

7 CHAIRPERSON MILLER: Excuse me.
8 Do we have those plans on the record?

9 MR. BROWN: They were submitted by
10 DCRA as part of their motion to dismiss. I
11 have a larger set that I can submit in the
12 record that are kinder and gentler on people's
13 vision. I've asked that copies be made if
14 that's acceptable to DCRA, or we can stick
15 with what they've marked in their motion to
16 dismiss as it looks like Exhibit 3.

17 MR. GREEN: Madam Chairman, we
18 have the larger version as well, and I must
19 submit that this is their appeal. They should
20 have given you whatever it is they wanted you
21 to have and to view.

22 CHAIRPERSON MILLER: Okay, but in
23 any event, this is in the record unless we

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1 tossed the whole thing out.

2 Sorry. What?

3 MR. DEMUREN: Can I respond to the
4 statement he just made? He made a
5 statement --

6 CHAIRPERSON MILLER: You need to
7 get on the record.

8 MR. DEMUREN: Oh, I'm sorry. The
9 only statement that -- the response I wanted
10 to make to that statement is that when we made
11 the application to revise the permit, we
12 submitted the original approved drawings to
13 DCRA because that's, I believe, a requirement,
14 but the Zoning Administrator at that time held
15 onto it and up to today, we don't have it
16 back.

17 CHAIRPERSON MILLER: Okay, but is
18 that in DCRA's attachments that you're
19 referring to? I mean not the original, but a
20 copy.

21 MR. DEMUREN: I mean, he made a
22 statement that I'm supposed to put it in
23 there.

1 CHAIRPERSON MILLER: Okay.

2 MR. DEMUREN: But they took it
3 from me and didn't give it back to me.

4 CHAIRPERSON MILLER: Okay, okay,
5 okay. All right. Well, we'll see who is best
6 capable of putting it in the record. I don't
7 know what you had, Mr. Brown. I think we
8 would like it in the record.

9 Fine. I thought that Mr. Turnbull
10 couldn't find the plans dated back to the
11 original, and so just for clarification, is
12 Exhibit 3 to DCRA's motion to dismiss -- what
13 is that?

14 MR. GREEN: Madam Chair.

15 CHAIRPERSON MILLER: Yes.

16 MR. GREEN: So that we all are
17 playing from the same play book, I would
18 request that we be given an opportunity to at
19 least review what is being submitted and about
20 to be admitted into the record as an exhibit.
21 I'd like to see what he has got, in other
22 words.

23 CHAIRPERSON MILLER: Okay, fine.

1 I don't think that's a problem.

2 Is that a problem, Mr. Brown?

3 MR. BROWN: No, no.

4 CHAIRPERSON MILLER: yeah.

5 MR. BROWN: I will note just for
6 everybody's comfort that throughout the
7 document that I have, and it's a little easier
8 in the larger size, you'll see the District of
9 Columbia DCRA stamps showing various
10 approvals. So I think that helps you
11 authenticate the documents.

12 I supply this to staff and --

13 CHAIRPERSON MILLER: Do you want
14 to show it to Mr. Green first, I guess, and
15 then supply it.

16 So basically those are a copy of
17 the original plans.

18 MR. BROWN: That's right.

19 CHAIRPERSON MILLER: You don't
20 have the original back, right. Okay.

21 MR. BROWN: Continuing, Mr. Bello,
22 and you just, so that we don't break our chain
23 of though, you indicated that the plans that

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1 you've seen that have the approved stamps and
2 the permits and the application themselves,
3 all agree with each other.

4 MR. BELLO: That's correct.

5 MR. BROWN: And is it correct that
6 your judgment for zoning purposes, the
7 issuance of that permit was as a matter of
8 right?

9 MR. BELLO: It is as a matter of
10 right. That's correct.

11 MR. BROWN: So that it complies
12 with Section 330.5(c)?

13 MR. BELLO: It does comply with
14 the requirements of that section and all
15 applicable requirements of the zoning
16 regulations.

17 MR. BROWN: And the approved
18 addition and conversion to an 11 unit
19 apartment, is that a conforming use and
20 structure under the zoning regulations?

21 MR. BELLO: Absolutely, yes, it
22 is.

23 MR. BROWN: And once the permit is

1 issued for that conforming use and structure,
2 is the use being approved, is that granted a
3 provisional certificate of occupancy?

4 MR. BELLO: Yes, it is, and if I
5 may just reference a section of the zoning
6 regulations to speak to that, that will be
7 Section 32 of 3.11. What that section says
8 very clearly is at the time of the issuance of
9 approval of a building permit, the Zoning
10 Administrator effectively issues a provisional
11 certificate of occupancy.

12 MR. BROWN: And as a result of the
13 permit being issued, you have a conforming use
14 and structure. What occurs -- a casualty or
15 an act of God occurs with respect to a
16 conforming use and conforming structure. What
17 limitations are there in repairing the
18 casualty?

19 MR. BELLO: If I may preface the
20 answer to that question, I think there should
21 be easy consensus that the zoning regulations
22 cannot be so interpreted to be more
23 restrictive on a conforming use than it is on

1 a nonconforming use, use or structure.

2 If you go to certain provisions of
3 Chapter 20, in fact, a nonconforming structure
4 that is destroyed by an act of God, nature.
5 A collapse can be restored to its
6 nonconforming state. What we're talking about
7 here would be an existing single family
8 dwelling that is a conforming structure prior
9 to the addition.

10 MR. BROWN: And the fact that
11 under the permit the work had occurred at the
12 site such that the addition to the conversion
13 to the single family dwelling had occurred to
14 the point where the project was under roof and
15 enclosed.

16 Does that give further support for
17 the conforming use and structure and its right
18 to be rebuilt in the event of casualty?

19 MR. BELLO: Yes, it does,
20 absolutely.

21 MR. BROWN: A casualty occurred to
22 the part of the conforming use, the existing
23 single family dwelling part. Is a single

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1 family dwelling permitted as a matter of right
2 in an R-4 zone?

3 MR. BELLO: Without question, yes.

4 MR. BROWN: So that independent of
5 the existing addition and conversion, the
6 single family dwelling portion of the
7 structure could in itself be rebuilt as a
8 matter of right.

9 MR. BELLO: Absolutely, can be
10 restored to its previous state.

11 MR. BROWN: In your experience was
12 a structural failure like what occurred in
13 this, does that comport with what's considered
14 a casualty or an act of God?

15 MR. BELLO: To the extent that the
16 intent was not to raze the building and to the
17 extent that part of the existing walls that
18 were partially demolished to a safe height
19 collapsed, and it is my understanding, in
20 fact, that there is record that the collapse,
21 in fact, caused the electrical grid damage to
22 the neighborhood so much that the neighborhood
23 lost power for a couple of days.

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1 This is how I understand that DCRA
2 came to the site.

3 MR. BROWN: You've reviewed the
4 original permit application and permit. Did
5 you see any basis to conclude that Mr. Demuren
6 had misrepresented any of the facts on that
7 application?

8 MR. BELLO: I see no evidence of
9 that whatsoever.

10 MR. BROWN: And would a subsequent
11 event, such as the collapse that occurred,
12 occurring months if not almost a year after
13 the permit application was applied for, would
14 those subsequent events and changed
15 circumstances -- could that be characterized
16 as creating a misrepresentation on the
17 original permit?

18 MR. BELLO: Retroactively so,
19 absolutely not.

20 MR. BROWN: In, I believe, late
21 December of '06, you and I met with several
22 officials from the Department of Consumer and
23 Regulatory Affairs; is that correct?

1 MR. BELLO: That is correct.

2 MR. BROWN: And the purpose of
3 that meeting was to obtain an understanding
4 from DCRA about how to proceed to resolve at
5 the time of the first stop work order?

6 MR. BELLO: That's correct.

7 MR. BROWN: And how did you meet
8 with or who did we meet with?

9 MR. BELLO: I personally met with
10 the Deputy Director for Inspections at the
11 time, Nicholas Majette (phonetic). I met with
12 an electrical inspector, Gil Davidson, and I
13 believe he's the issuing office official on
14 the first stop work order, and you and I
15 subsequently met with Lenny Douglas and Ms.
16 Doris Woolridge.

17 MR. BROWN: And what was the end
18 result of all of those conversations in
19 meeting as far as how to proceed on behalf of
20 Mr. Demuren?

21 MR. BELLO: I think it was an
22 agreement that we proceed to obtaining a
23 revised permit to restore the collapsed

1 portion of the building, the preexisting
2 building, and that's what we did.

3 MR. BROWN: And so you prepared
4 that application?

5 MR. BELLO: I did.

6 MR. BROWN: And did you make it
7 clear in that application that you were to
8 reconstruct the collapsed walls? It was not
9 aimed toward new construction. You were
10 rebuilding?

11 MR. BELLO: Very clearly so. If I
12 may just address that question a little
13 further, even though I do not offer myself as
14 an expert in the building codes, but I am
15 quite familiar with the building codes,
16 Section 105.3.3 of the building codes, in
17 pertinent part, it's a section that deals with
18 amendments to building permits, and there is
19 a specific sentence there that says once --
20 and this is in respect to amendment for
21 permits or revisions to permits -- it says the
22 holder of a valid active building permit shall
23 be authorized to amend it or to amend the

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1 plan's application or other records pertaining
2 to it by filing at any time before completion
3 of the work for which the original permit was
4 issued on an application for revision of a
5 building permit accompanied by two sets of
6 revised plans or documents. Once such
7 amendments are approved and the revision
8 permit is issued, it shall be deemed a part of
9 the original permit and shall be kept there
10 with in the official records of the
11 department.

12 So, in essence, you cannot
13 extricate the revised permit from its original
14 permit.

15 MR. BROWN: And you submitted the
16 revised permit application. For the Board's
17 reference, it's Exhibit A to the original
18 appeal. It's attached to Mr. Crews' letter.

19 You filed that permit application;
20 is that correct?

21 MR. BELLO: I did, yes.

22 MR. BROWN: And you filed that
23 application in January of '07?

1 MR. BELLO: I believe it is. Yes,
2 that's correct.

3 MR. BROWN: And going to page 4 of
4 the application form itself, was the
5 application approved by the zoning office on
6 January 8th of '07?

7 MR. BELLO: The application was
8 initially approved by the Zoning Division as
9 of that date. That's correct.

10 MR. BROWN: And it was approved by
11 Swan Mack?

12 MR. BELLO: It was approved by
13 Swam Mack.

14 MR. BROWN: And you're familiar
15 with Swan Mack?

16 MR. BELLO: Yes.

17 MR. BROWN: And did you consider
18 her a qualified, competent zoning technician?

19 MR. BELLO: I think she's the most
20 experienced zoning technician in the office as
21 we speak.

22 MR. BROWN: So you think her
23 approval was in accordance with the zoning

1 regulations?

2 MR. BELLO: Absolutely.

3 MR. BROWN: and you'll note that
4 over Swan Mack's signature the Zoning
5 Administrator at the time, Bill Crews,
6 overruled Ms. Mack?

7 MR. BELLO: From the application
8 and as we found out eventually, yes.

9 MR. BROWN: And he did that,
10 although it was approved for zoning in January
11 of '07, he did that in March of '07. So he
12 waited nearly two months to overrule Ms. Mack?

13 MR. BELLO: That's correct.

14 MR. BROWN: In your opinion,
15 should gave the revised permit been issued?

16 MR. BELLO: Absolutely, yes.

17 MR. BROWN: Madam Chair, I think
18 we'll stop there and let you ask any questions
19 you have for Mr. Bello.

20 COMMISSIONER LOUD: Good
21 afternoon, Mr. Bello. Just a couple of
22 questions to clarify my notes on the matter.
23 When you referred to -- and I'm sure it's in

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1 the pleadings somewhere, but there's a section
2 that relates to nonconforming having a matter
3 of right to rebuild, I guess, when there's an
4 act of God. Can you just identify that
5 section?

6 MR. BELLO: It will be 2001.5 and
7 .6.

8 COMMISSIONER LOUD: And when you
9 say that zoning regs. cannot be interpreted so
10 as to be more restrictive on a conforming
11 structure than a nonconforming structure,
12 that's your expert opinion.

13 MR. BELLO: That's correct.

14 COMMISSIONER LOUD: Okay, and is
15 that tied to a specific case or specific
16 principle in the zoning regs. or even a
17 specific section?

18 MR. BELLO: I think it's
19 consistent with general principles of zoning.

20 COMMISSIONER LOUD: Okay. Just,
21 again, just to clarify for me.

22 MR. BELLO: Absolutely.

23 COMMISSIONER LOUD: I didn't know

1 if it had actually been part of a case
2 language at some point in time or not.

3 Now, also, when your counsel asks
4 you, I guess, whether you had an opinion on
5 whether there was evidence that would suggest
6 it was a misrepresentation on the application
7 and your response was no.

8 I was wondering whether you could
9 give examples of what you would view to be
10 evidence of there being some kind of
11 misrepresentation, in other words, how you
12 could look at the four corners of the document
13 and somehow glean that there was
14 misrepresentation.

15 MR. BELLO: Sure. First of all,
16 the building permit process comes with an
17 assumption that the applicant is telling the
18 truth, and of course, that truth has to be
19 supported in the documents that's filed for a
20 building permit.

21 So it is the reviewing official's
22 duty to come through not only in the language
23 on the application, but to read the plans very

1 carefully and very closely to see there might
2 be discrepancies between such information.

3 So I think if you do not have any
4 hard evidence before you of misrepresentation,
5 then it is speculative at best what is
6 deemed -- if you're able to connect the two
7 incidences, one, the incidence of the permit
8 issuance and what actually happens on site, if
9 Mr. Demuren had gone out and intended always
10 to raze the building and he razed the building
11 before commencing construction, then the fact
12 of what happened on site was what he presented
13 in the application, would have been enough
14 evidence to say, well, we believe you always
15 intended to.

16 But that's not what occurred here.

17 COMMISSIONER LOUD: Okay, and are
18 you aware, just sort of off the top of your
19 head, are you aware of the types of examples
20 of discrepancies between the various documents
21 that constitute a permit application that
22 would raise in your mind some red flags about
23 misrepresentations being made?

1 MR. BELLO: For an experienced
2 reviewer, if you bring about an application in
3 a single family dwelling zone, which only
4 allows one unit, and your plans reflect some
5 kind of rough ground plumbing work, and
6 perhaps indication that might be the plans
7 speak to establishing a separate unit within
8 the building. It will be the reviewer's duty
9 to catch it before it's issued, but if it's
10 issued, then that in itself could be evidence
11 of intent.

12 COMMISSIONER LOUD: Okay. And
13 also if I understood your testimony correct,
14 you proffered an opinion that the collapse was
15 due to an act of God; is that correct, or did
16 I mischaracterize?

17 MR. BELLO: No, I said an actual
18 collapse in and of itself. I think if you go
19 back to the nonconforming chapter of the
20 regulations and what you can or cannot do with
21 the nonconformance structure, it speaks to
22 destruction by fire, collapse, explosion or
23 act of God.

1 So this is by collapse.

2 COMMISSIONER LOUD: By collapse.

3 So that the collapse doesn't have to be caused
4 by an act of God.

5 MR. BELLO: Absolutely.

6 COMMISSIONER LOUD: Okay, and so
7 your expert opinion in this case was that,
8 what? That there was a collapse or it speaks
9 for itself?

10 MR. BELLO: Well, I believe that
11 the combination of the integrity, the
12 structural integrity of the structure as
13 already documented in his exchange with DCRA
14 and the condition of the weather over the
15 weekend may have contributed to that collapse,
16 but clearly the differentiation is where the
17 raze of demolition was wilful, and when a
18 building falls of its own will, I do not
19 believe that that's wilful raze.

20 COMMISSIONER LOUD: All right.
21 thank you.

22 COMMISSIONER DETTMAN: Mr. Bello,
23 in your experience, especially with regards to

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1 interpretation of 330.5(c) --

2 MR. BELLO: Correct.

3 COMMISSIONER DETTMAN: -- which I
4 can't recall off the top of my head the exact
5 wording, but if I was to paraphrase, it has
6 something to say -- it uses the word
7 "conversion" of a single family home --

8 MR. BELLO: Correct.

9 COMMISSIONER DETTMAN: -- that
10 predates September 1958.

11 MR. BELLO: Correct.

12 COMMISSIONER DETTMAN: Some date
13 in 1958.

14 CHAIRPERSON MILLER: May 12th.

15 MR. BELLO: Right.

16 COMMISSIONER DETTMAN: May 1958.

17 In your experience, do you know if the
18 interpretation of that particular section has
19 always included the conversion of a single
20 family home in and of itself, as well as
21 additions to existing single family homes?

22 MR. BELLO: For all my years of
23 the Zoning Office it has been interpreted to

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1 mean the ability not only to be able to
2 convert just the single family home. Any
3 structure in that zone, including an addition,
4 provided you comply with all of the
5 requirements.

6 COMMISSIONER DETTMAN: Right.
7 You're right. I'll correct my quote. I
8 believe it says building or structure that
9 predates that particular date.

10 But you said that it includes the
11 conversion of that building or structure as
12 well as the conversion and an addition.

13 MR. BELLO: Correct.

14 COMMISSIONER DETTMAN: Okay, and I
15 believe your counsel asked you if a single
16 family dwelling as a matter of right use
17 inside R-4, and you answered in the
18 affirmative.

19 MR. BELLO: Yes.

20 COMMISSIONER DETTMAN: Is an
21 apartment building in and of itself a matter
22 of right use?

23 MR. BELLO: Yes.

1 COMMISSIONER DETTMAN: It is in R-
2 4?

3 MR. BELLO: Yes.

4 COMMISSIONER DETTMAN: It doesn't
5 have to be attached to an existing structure
6 or building that predates 1958?

7 MR. BELLO: Well, I mean --

8 COMMISSIONER DETTMAN: For
9 example, a hypothetical. If this was a vacant
10 lot --

11 MR. BELLO: Right.

12 COMMISSIONER DETTMAN: -- could I
13 build an 11-unit apartment building as a
14 matter of right?

15 MR. BELLO: No, you can't.

16 COMMISSIONER DETTMAN: I couldn't.

17 MR. BELLO: Yes.

18 COMMISSIONER DETTMAN: Okay. And
19 so getting back to this conversion of existing
20 building or structure, if you were the ZA,
21 what would you say if I purchased this
22 building and tore down everything except the
23 front facade and built an 11-unit apartment

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1 building? Would that be the conversion of an
2 existing?

3 I guess what I'm saying is to what
4 extent can you tear down a building and still
5 have it considered an existing building or
6 structure that predates May 1958?

7 MR. BELLO: Well, that's a very
8 good question. I do not believe that the
9 conversion rule in and of itself obviates the
10 need for improving the structural integrity of
11 the building. The idea is to preclude the
12 proliferation of conversions. That's the
13 intent and purpose of the conversion rule.

14 It is not to discourage the use.
15 It is to control its proliferation. So to the
16 extent that an existing building may require
17 structural improvements, I believe that the
18 interpretation of a section itself does not
19 necessarily say that every membrane of a pre-
20 '58 building may not be replaced if it's
21 necessary.

22 In fact, if you look at Section
23 2001.2, it does say that except as provided in

1 2001.11 and .12, ordinary repairs,
2 alterations, modernizations through structure
3 including structural alterations shall be
4 permitted even to a nonconforming building.

5 So I think that the idea then, the
6 pre-'58 nature of a building has to be
7 preserved in order for conversion to occur
8 is extreme in inter-protection (phonetic).

9 COMMISSIONER DETTMAN: Okay. You
10 had mentioned that if an existing building or
11 structure suffered a casualty or act of God
12 that it could be reconstructed. Is there
13 anywhere in the regs. that might speak to
14 whether or not that reconstructed structure
15 would still be considered pre-1958?

16 MR. BELLO: Whether the structure
17 may be considered pre-1958?

18 COMMISSIONER DETTMAN: Right.

19 MR. BELLO: So in this example,
20 the existing structure predates this May 1958,
21 which allowed you to construct the 11-unit
22 apartment dwelling under 330.5(c). We've seen
23 in the pictures that the building sort of no

1 longer exists. We were in the process of a
2 partial demolition, and over the weekend it
3 was blown down.

4 If we were to reconstruct that
5 building, do we still fall under 330.5(c)? Is
6 it still --

7 MR. BELLO: Well, let me answer
8 your question in two parts. In the
9 straightforward, literal sense, absolutely
10 not. A new structure is a new structure. It
11 wouldn't be a pre-'58 structure, but in the
12 contest of the case before you, you're looking
13 at a fluid construction site.

14 This is not a situation where the
15 demolition preceded the construction. If you
16 look at the records before you, the
17 construction of the addition has significantly
18 progressed so that the net result is what I
19 believe is important here.

20 And the net result is that the
21 footprint and what was approved would not be
22 different in shape or size whatsoever by the
23 incidence of the collapse.

1 COMMISSIONER DETTMAN: Okay.

2 Thank you.

3 COMMISSIONER TURNBULL: Madam
4 Chair, I wonder if I might continue the
5 dialogue that Mr. Dettman has started. We get
6 into some semantics with conversion and
7 addition, and trying to pick up on what he was
8 talking about, your first glance of a
9 conversion is an existing building that gets
10 either gutted, gets changed and is redone for
11 its use.

12 An addition always seems to
13 signify to me at one level something smaller
14 than the original structure, not necessarily,
15 but the size.

16 In this particular case, the
17 conversion addition ends up being five, six
18 times the original size of the existing single
19 family dwelling, and I'm just wondering. The
20 regs. don't really dictate or give any
21 conclusive aspect to what's defined by that,
22 but is this an extreme case of this conversion
23 addition when you get a structure such as

1 this? It seems an extreme situation that
2 you're taking this little single family
3 dwelling and all of a sudden it's now six --
4 I mean, square footage, it's now huge.

5 I'm just wondering what your
6 thoughts are on that.

7 MR. BELLO: No, and I understand
8 your question. I agree with you. This
9 appears to be a very unusual case when you
10 think in terms of, you know, what the purpose
11 of these conversion rules are.

12 But my regulatory experience which
13 basically limits me to is that something
14 that's allowed as a matter of right, are there
15 any provisions of the zoning regulations that
16 have been violated here or that are not being
17 complied with may tie the hands of the zoning
18 administrator in this respect.

19 To further address that question,
20 I have always been a proponent of the fact
21 that I believe that this particular section
22 had needed cleaning out for a long time. I
23 did not necessarily agree with the way the

1 Zoning Commission has done it, but I believe
2 that in the true sense if properly worded, I
3 think that the original intent of the
4 regulations were to allow conversion of
5 existing structures without additions. But
6 unfortunately that's not --

7 COMMISSIONER TURNBULL: It doesn't
8 really clarify that.

9 MR. BELLO: Yes.

10 COMMISSIONER TURNBULL: Okay.
11 Thank you.

12 MR. BROWN: Can I kind of follow
13 through with that, ask a question following
14 Mr. Turnbull's question?

15 The conversion, whether an
16 addition or just a conversion of an existing
17 building, the 900 square foot per unit limit,
18 that's a control mechanism that was placed on
19 these conversions to insure an appropriate
20 scale.

21 MR. BELLO: Absolutely. I think
22 actually there is specific language to that
23 effect in the general provisions for the R-4

1 zone. The intent was to control density by
2 also limiting conversions to lot sizes.

3 This happens to be obviously also
4 another unusually shaped and sized lot for its
5 underlying zone, but we also have to be
6 cognizant of the uniformity clause of the
7 zoning regulations. They have to apply to all
8 properties within the same district the same.

9 MR. BROWN: So by virtue of
10 complying and exceeding the 900 square foot
11 per unit, this project maintained and exceeded
12 the density restrictions that existed and that
13 the zoning Commission applied and deemed
14 appropriate in the R-4.

15 MR. BELLO: Absolutely, yes.

16 CHAIRPERSON MILLER: Without the
17 conversion, could you just refresh my
18 recollection of the regs.? You say this
19 apartment would not be allowed as a matter of
20 right. How would it be allowed if at all? By
21 special exception?

22 MR. BELLO: Would the apartment
23 house if you were to construct a new apartment

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1 house in the R-4 zone? It would be subject to
2 a use variance actually.

3 CHAIRPERSON MILLER: Use variance.

4 MR. BELLO: It's one of those
5 interesting anomalies of the zoning
6 regulations.

7 CHAIRPERSON MILLER: Oh. Use
8 variances, we've heard of those. Okay.

9 As a reviewer in the zoning part
10 of DCRA, would a reviewer be able to make a
11 determination with respect to the structural
12 integrity of the building that existed prior
13 to May 1958?

14 MR. BELLO: Well, that would not
15 necessarily be the zoning official's call, but
16 the Zoning Office works in concert with the
17 building codes officials. That's why they're
18 made essentially a part of the building permit
19 process.

20 So if there was a necessity even
21 to determine the structural integrity of the
22 building either by observation -- I don't know
23 how -- of the zoning official or the

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1 structural engineer, then the building codes
2 official would have been their right to
3 request a structural report.

4 CHAIRPERSON MILLER: Okay. So
5 it's not necessarily readily apparent, at
6 least to the zoning technician, and indeed not
7 necessarily to the building code inspector,
8 but if he or she had reason to suspect that
9 there might be an issue with that, he could
10 inspect the site. Is that what you're saying?

11 MR. BELLO: Yes. The building
12 codes official or the Zoning Administrator,
13 for that matter, if for whatever reason
14 believed that there was a necessity for field
15 verification prior to permanent issuance,
16 that's within their authority to do.

17 CHAIRPERSON MILLER: How would the
18 building code person know, reviewer?

19 MR. BELLO: How would they know?

20 CHAIRPERSON MILLER: Yeah.

21 MR. BELLO: But, quite frankly,
22 there's no way for them to know with the plans
23 in front of them. I mean, they're reviewing

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1 plans that lay out exactly what is to be done
2 and that's what they have to go by.

3 CHAIRPERSON MILLER: Are there any
4 other questions?

5 (No response.)

6 CHAIRPERSON MILLER: Thank you.

7 MR. BELLO: Thank you.

8 MR. BROWN: I think Mr. Ford has
9 been qualified as an expert.

10 CHAIRPERSON MILLER: He has.

11 MR. BROWN: Mr. Ford, if you
12 could, in looking at the circumstances here,
13 did Mr. Demuren act correctly in bringing his
14 concerns about the structural issues of this
15 property? Did he act correctly in bringing
16 that to DCRA's attention?

17 MR. FORD: Yes, he did.

18 MR. BROWN: And having brought
19 that to DCRA's attention, he was required or
20 it was appropriate for him to follow DCRA's
21 guidance?

22 MR. FORD: That's correct.

23 MR. BROWN: Based on your

1 experience and your understanding of the
2 circumstances, was the recommendation or
3 direction to Mr. Demuren to get an emergency
4 demolition permit the appropriate action to
5 take?

6 MR. FORD: Yes.

7 MR. BROWN: Did Mr. Demuren, based
8 on the information you have, exercise or
9 follow the directions that he received in the
10 emergency demolition permit?

11 MR. FORD: As I have read, yes.

12 MR. BROWN: And the fact that a
13 collapse occurred while the emergency
14 demolition was underway, you wouldn't consider
15 that exceeding the scope of the emergency
16 demolition permit?

17 MR. FORD: No, not at all.

18 MR. BROWN: More like Mr. Demuren
19 was a victim of circumstances rather than
20 doing something affirmatively wrong?

21 MR. GREEN: Objection.

22 Characterization.

23 CHAIRPERSON MILLER: Well, you are

1 really putting words in your witness' mouth in
2 general. So I'll --

3 MR. BROWN: I'm just trying to
4 move it along.

5 CHAIRPERSON MILLER: Okay. But
6 you could ask the questions instead of telling
7 the question kind of, you know.

8 MR. GREEN: Well, let me --

9 CHAIRPERSON MILLER: Was it an
10 appropriate, was it this, you know?

11 MR. BROWN: I'll let Mr. Ford
12 respond.

13 MR. FORD: On the conditions that
14 I've seen in pictures, the emergency work that
15 took place took care of 95 percent of the
16 concerns I would have had on the site. The
17 collapsing of the other walls as far as I'm
18 concerned was based on the fact that the walls
19 were standing fairly tall, and when you have
20 windy conditions, and you have freestanding
21 walls, normally you put some sort of vertical
22 support to keep those walls or some sort of
23 horizontal support to keep those walls from

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1 falling over, and if the weather conditions
2 were as has been stated, that you had high
3 winds and --

4 MR. GREEN: Objection. Objection
5 to this response. Well --

6 MR. BROWN: He's as an expert
7 evaluating the facts that's been presented to
8 the Board.

9 MR. GREEN: He's evaluating
10 speculation that was given to the Board. It
11 hasn't been established that winds were high
12 or, for that matter, there were any winds.

13 CHAIRPERSON MILLER: Okay. Based
14 on the information that's in the record, what
15 would you conclude, without a weather report
16 or whatever.

17 MR. FORD: Well, freestanding
18 walls of eight feet and ten feet that have
19 questionable structural conditions are prime
20 to collapse.

21 CHAIRPERSON MILLER: If they're
22 prime, if that's the case, did you say they
23 were prime to collapse?

1 MR. FORD: Prime to collapse under
2 certain conditions. They may not collapse on
3 their own. If the foundation below is strong,
4 they may not collapse on their own if the
5 structural system within the wall is such that
6 it can stand its own weight or it can stand
7 the rigidity of external forces, such as
8 weather conditions.

9 CHAIRPERSON MILLER: Well, okay,
10 and I understand, Mr. Green, you might
11 challenge the weather conditions, which we
12 haven't heard a lot about. Okay? We've heard
13 that they're windy or whatever, but given that
14 the conditions the Appellant has represented,
15 why would it be responsible then to leave
16 walls standing like that if they're primed for
17 collapse or something to that effect?

18 MR. FORD: Well, if, indeed, they
19 had the ability to come back the following day
20 and either lower the walls or, in essence,
21 demolish it to a safe height, or they had the
22 ability -- and I don't know what time they
23 quit that evening -- to stabilize what was

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1 there, they may have even thought that it was
2 stabilized, but the conditions were ripe for
3 the fall.

4 CHAIRPERSON MILLER: Well, in your
5 opinion would it mean that they weren't
6 stabilized or can you make that judgment?

7 MR. FORD: Can't make that
8 judgment.

9 CHAIRPERSON MILLER: You can't
10 make that judgment. Okay.

11 COMMISSIONER LOUD: And in the
12 spirit, I guess, or in line with what you're
13 testifying to right now about conditions being
14 ripe for the fall, would the demo work also be
15 an example of a factor that could make those
16 freestanding walls collapse?

17 MR. FORD: Well, it depends on how
18 the walls that have been removed, how they
19 were taken down, and the materials of the wall
20 itself. If the wall were masonry, if the
21 masonry did not have cracks in it, such as
22 vertical cracks that may have appeared because
23 of a shifting foundation, you may have had a

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1 stronger wall.

2 If when taking down the portions
3 of the wall that used a jackhammer, sledge
4 hammer, didn't take it down by hand, then you
5 set up some cracks or some other forces within
6 the wall which would cause it to collapse
7 later on. Those things I don't know, and I
8 don't know what the condition of those
9 remaining walls were at the time, but if
10 cracks had developed and you already had a
11 wall that the inspectors had said something
12 should happen to it to bring it down to a safe
13 height, then I don't know what was remaining.
14 I don't know what the conditions of that other
15 material was that was there.

16 But depending on how they took it
17 down depends on how the roof -- it came down.
18 The portions that they took down, did it
19 collapse on its own or did they somehow cause
20 it to move in kind of a circular motion that
21 would have kind of jarred the remaining wall
22 almost like a whiplash situation? Don't know,
23 but these are things that could unstable the

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1 wall.

2 In looking at it, a layman's sort
3 of looking at it or just a worker who's not
4 familiar with cracks that are set up in the
5 wall that can cause additional concerns later
6 on, not knowing. They may have thought they
7 had a decent wall that could stay there
8 overnight or for another day.

9 COMMISSIONER LOUD: Just a quick
10 follow-up question, and again, I appreciate
11 your patience with me as I'm learning a lot of
12 this, as all of you give your testimony.

13 Is it possible for someone
14 retroactively to draw the conclusion then that
15 a specific thing caused the collapse, be it an
16 act of God or the demolition work that had
17 been undertaken in close proximity to the time
18 of the collapse?

19 MR. FORD: Well, if you do a
20 forensic study of the wall or what was
21 remaining of the wall or the collapsed
22 material itself, then it's possible that you
23 could have determined what may have caused

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1 that portion to come down, but that not having
2 been done, the only thing you can do is
3 speculate.

4 COMMISSIONER LOUD: Thank you.

5 COMMISSIONER DETTMAN: Mr. Ford,
6 with regard to the Applicant's statement that
7 he wasn't aware that the normal time
8 constraints for construction -- he wasn't
9 aware that those didn't apply to an emergency
10 permit situation -- am I saying that
11 correctly?

12 MR. FORD: Yes, sir.

13 COMMISSIONER DETTMAN: How would
14 one know that? Is it on paperwork that you
15 fill out? Is it on a Website? Is it DCRA's
16 responsibility to inform them of that?

17 MR. FORD: Well, normally, I used
18 to go out on most collapses. So everyone was
19 speaking to me, and I would say continue
20 working until it is completed.

21 Now, I don't know what directions
22 were given to the owner of this property other
23 than get yourself a demolition permit, and

1 that's what's shown on the demolition permit,
2 just demolition permit. It doesn't give any
3 directions or anything else about what should
4 be done, no guidance whatsoever.

5 And knowing that the city
6 regulations as far as construction is
7 concerned is from seven to seven, Monday
8 through Saturday, no Sundays, no holidays
9 unless you have a permit to do so, if they
10 weren't told continue on until it's completed,
11 then they would have stopped on that date, the
12 day before at seven o'clock, before the
13 holiday.

14 COMMISSIONER DETTMAN: Thank you.

15 COMMISSIONER TURNBULL: Madam
16 Chair, I'm trying to -- if the walls come down
17 and we've talked that there is a right to go
18 ahead and rebuild these to their existing
19 former conditions, do you notify the agency in
20 charge that you are doing that?

21 MR. FORD: Well, what normally
22 would occur is once the demolition portion
23 took place, then someone would then tell the

1 contractor to go in now and get a permit for
2 the replacement of.

3 COMMISSIONER TURNBULL: The
4 replacement.

5 MR. FORD: Now, in this particular
6 case, from what I understand is he started
7 doing work on the foundation because of the
8 close proximity of the house next door, the
9 neighboring house.

10 COMMISSIONER TURNBULL: Okay.

11 MR. FORD: And then one thing is
12 that this hole or the excavation wasn't their
13 design at a 45 degree angle and there was no
14 shoring there. So if anything would happen,
15 because it was not at a 45 degree angle -- it
16 was a steeper angle than that -- is it
17 possible -- it's a possibility that the ground
18 on that side of the neighboring house could
19 start slipping because there's nothing there
20 now to hold it, which then would cause the
21 foundation of the neighboring house to come
22 in, and that's an old structure also.

23 So from what I understand, what he

1 was told was go back and stabilize it, and
2 what he did was he went in and put a
3 foundation wall in, which is in the location
4 of where it was going to go in the first
5 place, I guess, or where it was in the
6 beginning, and that was so that ground would
7 not come in now.

8 So the stabilized wall is now
9 acting as a retaining wall to keep the soil
10 from coming into the site and thus you
11 wouldn't have adverse action occurring with
12 the house next door.

13 COMMISSIONER TURNBULL: Okay.
14 Thank you.

15 CHAIRPERSON MILLER: I just want
16 to follow up on that. So the work that was
17 completed was stabilizing?

18 MR. FORD: That was stabilizing
19 the ground.

20 CHAIRPERSON MILLER: Stabilizing
21 the ground.

22 MR. FORD: Yes.

23 CHAIRPERSON MILLER: But then

1 walls collapsed.

2 MR. FORD: No, no. The walls
3 collapsed prior to the stabilization.

4 MR. BELLO: The collapse of the
5 walls created the need for stabilization.

6 MR. GREEN: Objection.

7 CHAIRPERSON MILLER: It's okay. I
8 mean, I think he's helping me to understand
9 this a little better. I'm not an expert in
10 construction.

11 MR. GREEN: I know. I'm not
12 either. That's why we have Mr. Ford.

13 CHAIRPERSON MILLER: Yes, okay.

14 MR. BROWN: Subject to further
15 questions --

16 CHAIRPERSON MILLER: No, I think
17 we'll hold off. I would hold off, but I guess
18 ask DCRA some of the same kind of questions
19 about, you know, notice to contractors and
20 what to do when they haven't finished the work
21 that might be creating a danger or something
22 is what it sounds like.

23 Okay. Anything else you want?

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1 MR. BROWN: No, I think we can
2 hook it up to cross-examination.

3 CHAIRPERSON MILLER: Okay.

4 MR. BROWN: By Mr. Green.

5 CHAIRPERSON MILLER: Well, wait.
6 No, we have another Board question.

7
8 COMMISSIONER LOUD: Just one final
9 question. Just on the issue again of matter
10 of right to rebuild, does it matter if the
11 collapse was due to an act of God or if it was
12 due to the permit holder's demo team, their
13 work contributing to the collapse? Is the
14 matter to rebuild as a matter of right?

15 Is a right to rebuild as a matter
16 of right still intact under your
17 understanding?

18 MR. BELLO: I believe the right to
19 rebuild is still intact. I think your
20 question is also tantamount to the incident of
21 fire that demolishes a building, and the
22 question as to who started the fire. I don't
23 think that would be relevant to the case.

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1 The section clearly says if it's
2 destroyed by fire, collapse, explosion or an
3 act of God. I guess the act of God would be
4 like lightning striking your house or
5 something like that.

6 COMMISSIONER LOUD: But, again,
7 your expert opinion is that it wouldn't make
8 a difference. It wouldn't make beans of
9 difference one way or the other.

10 MR. BELLO: True. true.

11 COMMISSIONER LOUD: It could be my
12 team that contributed to the collapse through
13 their neglect or whatever or it could be an
14 act of God.

15 MR. BELLO: As long as it's
16 negligence --

17 COMMISSIONER LOUD: In your
18 opinion it would not matter.

19 MR. BELLO: -- and not wilful
20 demolition.

21 COMMISSIONER LOUD: Okay.

22 CHAIRPERSON MILLER: And I want to
23 follow up on your theory about the right to

1 rebuild as a matter of right. With respect to
2 330.3, which we're talking about, the
3 conversion --

4 MR. BELLO: Correct.

5 CHAIRPERSON MILLER: -- is your
6 theory based on in this case the fact that the
7 Appellant was already operating under a
8 building permit that was issued earlier before
9 this -- while it was a structure that was
10 built before 1958? Is it based on that or is
11 it just -- you don't think in any event if
12 there's like a fire and this -- wait. First
13 we'll go there.

14 You think that, correct? If you
15 got the building permit and you started work
16 and there was a structure that was built
17 before 1958 and there's an act of God or not
18 a wilful wrongdoing, there's a right to
19 rebuild?

20 MR. BELLO: Yes.

21 CHAIRPERSON MILLER: Okay.

22 MR. BELLO: The answer to your
23 question is yes.

1 CHAIRPERSON MILLER: Okay, but the
2 next one -- I'm sorry. I just wonder while
3 I'm thinking about this though -- the next
4 question though is do you believe the same
5 point. If the structure that was built before
6 1958, you know, collapses or whatever, is an
7 act of God and not wilful, wrongfulness,
8 whatever, but there hadn't been a building
9 permit issued yet because then you have this
10 new structure, as Mr. Dettman was referring to
11 earlier, that was constructed after 1958.

12 MR. BELLO: Exactly, totally
13 different.

14 CHAIRPERSON MILLER: Okay. So do
15 you think in that case it's not a matter of
16 right to rebuild or it is?

17 MR. BELLO: Well, in that case,
18 yes, it wouldn't be a matter of right to
19 rebuild because there was no --

20 CHAIRPERSON MILLER: Right.

21 MR. BELLO: -- no vested building
22 permit.

23 CHAIRPERSON MILLER: Right. Okay.

1 That's what I thought. So the point is in
2 this case it was when the building permit was
3 issued.

4 MR. BELLO: That's correct.

5 CHAIRPERSON MILLER: Okay. Thank
6 you.

7 We're ready for cross examination.

8 Do you have an objection to what
9 order? Okay.

10 MR. GREEN: All right. Well,
11 let's see. Mr. Bello, how are you doing this
12 evening?

13 MR. BELLO: Very well, Mr. Green.

14 MR. GREEN: Good, good. I'm not
15 going to be long, Mr. Bello. I'll try to get
16 to the point here.

17 Directing your attention to Mr.
18 Brown's, Appellant's prehearing statement and
19 motion for summary judgment, do you recall an
20 affidavit you filled out, sir?

21 MR. BELLO: Yes, I do.

22 MR. GREEN: Now, I want to direct
23 your attention to a couple of points in your

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1 affidavit. Let's go to -- one moment, Madam
2 Chairman.

3 Oh, yeah. Question number or I
4 should say Statement No. 6. You said,
5 "Emergency demolition Permit No. B478240,
6 dated February 14, 2006, approving emergency
7 demolition, authorizing the demolition of an
8 existing single family dwelling located at the
9 property, was reviewed and approved by the
10 Zoning Administrator's Office and remains
11 valid." Is that right?

12 MR. BELLO: That's what it states,
13 yes.

14 MR. GREEN: Well, sir, wouldn't
15 the matters you described in number six really
16 require a razing permit?

17 MR. BELLO: No, sir. There is
18 provisions in the building codes for the
19 partial demolition of a building. That does
20 not meet the threshold for a raze. Raze of a
21 building, in fact, requires not only the
22 complete removal of a building, but also the
23 removal of the utilities connected to that

1 building.

2 MR. GREEN: May I approach the
3 witness?

4 CHAIRPERSON MILLER: Do you want
5 to show him a document?

6 MR. GREEN: Yes.

7 CHAIRPERSON MILLER: If Mr. Brown
8 doesn't have an objection.

9 MR. BROWN: We're all friends
10 here.

11 MR. GREEN: Yeah. I don't know
12 what number this is, Mr. Brown. Can you --

13 MR. BROWN: That one hasn't been
14 introduced. We only introduced these two
15 photos previously.

16 MR. GREEN: Oh, all right. I'll
17 take this one then, and this one is number
18 what?

19 MR. BROWN: Ms. Bailey is on top
20 of that.

21 MS. BAILEY: Mr. Green, they
22 haven't been given an exhibit number as yet,
23 but if you -- I could find an exhibit number

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1 for you. Just continue and I'll find the
2 exhibit number for you.

3 COMMISSIONER TURNBULL: Maybe you
4 could describe what's on the photograph. That
5 would help.

6 MR. GREEN: Well, Mr. Bello, I'll
7 let you describe what's on this.

8 CHAIRPERSON MILLER: Mr. Green,
9 oh. I don't know. I have a feeling you're
10 not in a position where the people can see you
11 on the Internet.

12 MR. GREEN: Oh.

13 (Laughter.)

14 CHAIRPERSON MILLER: Not to
15 mention you are blocking Mr. Brown, you know.

16 MR. GREEN: Well, I don't want to.
17 Far be it from me to block Mr. Brown.

18 MR. BROWN: I think everybody went
19 to sleep about a half hour ago.

20 MR. GREEN: All right. Can you
21 tell me what that picture is, sir, please?

22 MR. BELLO: Well, it appears to me
23 to be a Tyvek wrapped structure that's still

1 under construction.

2 CHAIRPERSON MILLER: Can the Board
3 see what picture is being discussed?

4 MR. GREEN: Yes. That's why I
5 asked for the number, so that we'd know.

6 MR. BROWN: It's the Christmas
7 wrap.

8 CHAIRPERSON MILLER: Yeah.

9 MR. GREEN: Tyvek? Yeah.

10 CHAIRPERSON MILLER: Okay. I'm
11 sorry. Can you repeat the question and the
12 answer, please?

13 MR. GREEN: All right. What is
14 that exhibit that I've just given you? What
15 is it a picture of?

16 MR. BELLO: Well, it's a picture
17 of a building under construction.

18 MR. GREEN: A building under
19 construction. Do you know what building it is
20 under construction?

21 MR. BELLO: I believe it is Morse
22 Street that is the subject of this appeal,
23 yes.

1 MR. GREEN: All right. Now, can
2 you tell me what Morse Street construction
3 consists of based on that picture? What does
4 it show?

5 MR. BELLO: It shows a structure
6 that's under construction that's Tyvek
7 wrapped.

8 MR. GREEN: That's Tyvek wrapped.
9 Does it include any portion of the original
10 building that was on Morse Street that I
11 believe was shown to be this building, and I
12 think counsel has an older copy of this
13 somewhere --

14 MR. BROWN: Yes.

15 MR. GREEN: -- in his pile.

16 Now, this is, again, without the
17 numbering, and I might refer to the
18 Government's Exhibit No. 1. We did number
19 ours, but this is a colored rendition, and
20 it's Exhibit No. 1 the Government has. All
21 right?

22 And do you know what this is, Mr.
23 Bello?

1 MR. BELLO: This appears to be a
2 photograph of the pre-'58 building that was on
3 the site.

4 MR. GREEN: All right. You've
5 identified the Tyvek and new building. Can
6 you show me where in the new building
7 parameters, if you will, the pre-building, the
8 one that was taken down or fell down, can you
9 show me on that picture where it is? Where's
10 the footprint of that building?

11 MR. BELLO: Well, let me answer
12 your question this way. First of all, I think
13 the history of the construction on this site
14 is well documented on the record. So that's
15 one.

16 Number two --

17 MR. GREEN: That's why I'm asking
18 you to tell me what you see and how can you
19 find it on that picture.

20 MR. BELLO: If you will --

21 MR. GREEN: I want you to identify
22 it, sir.

23 MR. BROWN: If I might object --

1 CHAIRPERSON MILLER: Okay.

2 MR. BROWN: -- he's talking about
3 a footprint on a side view of a picture. I
4 mean, I'm not so sure what he's trying to get
5 at. Plus it's covered with Tyvek. So it's
6 very hard to see what's beyond.

7 CHAIRPERSON MILLER: Okay. But,
8 first of all, Mr. Bello should be able to
9 answer whether or not he can identify it
10 within this picture or, if not, why not.

11 MR. BELLO: Well, the footprint or
12 the preexistent structure is unidentifiable
13 because it is -- it is within the footprint of
14 the picture building.

15 MR. GREEN: So you're telling me
16 that the picture building now encompasses the
17 older building; is that right? Is that what
18 you're telling me?

19 MR. BELLO: For all intents and
20 purposes, yes.

21 MR. GREEN: For all intents and
22 purposes. So in other words, you're telling
23 me it's new construction. Is that not right?

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1 MR. BELLO: No.

2 MR. GREEN: No?

3 MR. BELLO: No.

4 MR. GREEN: Well, where is the old
5 building?

6 MR. BELLO: Well, it is -- if I
7 can address your question a little
8 liberally --

9 MR. GREEN: Please do, sir.

10 MR. BELLO: Absolutely.

11 MR. GREEN: In construction, I
12 mean, -- I'll be a construction expert -- I
13 think it is a very simple approach to
14 basically say, "Is there a building there?"
15 And the building is no longer there.

16 There's a whole history to the
17 building permit process. I think the critical
18 question is: was there a building permit for
19 new construction at the site?

20 I think the unequivocal answer to
21 that is no. The first building permit that
22 was issued for this site was a building permit
23 to construct an addition to an existing

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1 building. Because of construction
2 contingencies on site, there was a necessity
3 for a revision to that permit per instructions
4 from the government agency.

5 So if you put together the whole
6 string of history of construction, I think it
7 will be difficult for you to request that I
8 answer your question in an isolated manner.

9 MR. GREEN: In other words, you
10 don't know by looking at that picture other
11 than what you've just stated, which is the new
12 building, the new structure wrapped in Tyvek
13 encompasses the old structure. Is that what
14 you're telling me?

15 MR. BELLO: No, what I'm saying is
16 that the footprint of the preexisting building
17 is within the structure that we're viewing a
18 picture of, no more, no less.

19 CHAIRPERSON MILLER: I don't
20 understand that answer. What do you mean "the
21 footprint"? You mean there's nothing left of
22 the building itself but where the building was
23 is incorporated in the new building?

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1 MR. BELLO: Right, but you've got
2 to look at the chain of events. I mean, I
3 think it creates a little difficulty here to
4 just say -- I mean, I think we all can reach
5 a consensus that the preexisting building by
6 a chain of events is no longer there. The
7 question is what the regulations allow in
8 terms of step-by-step process to get from
9 Point A to Point B.

10 You've got to paint the whole
11 picture. The simple answer to his question is
12 of course within this structure, the existing
13 footprint where the previous building was,
14 which by events have collapsed and partial
15 demolition is no longer there, no argument
16 there, is within this footprint. There's no
17 portion of this structure that's outside of
18 the preexisting footprint.

19 MR. GREEN: Sir, can you tell me
20 was the existing building at 1231 Morse Street
21 razed or was it demolished?

22 MR. BELLO: Was it razed or was it
23 demolished?

1 MR. GREEN: Yes.

2 MR. BELLO: I think the records
3 actually reflect that DCRA issued a permit for
4 an emergency demo to partially demolish the
5 walls, and that through a chain of events the
6 remainder of the walls collapsed. I wouldn't
7 say that it was razed because prior to that
8 event a building permit existed. It was
9 issued to the owner of the property to
10 construct an addition, including to install
11 new utility lines going into this building.

12 Remember that the existing
13 structure had been abandoned obviously,
14 apparently abandoned for many, many years. So
15 the whole scope of the building permit and
16 plans that were approved is relevant to the
17 end product.

18 MR. GREEN: For our purposes and
19 for our discussion today, what is the
20 difference between razing a building and
21 demolition?

22 MR. BELLO: Well, you can get a
23 building permit to demolish the interior of a

1 building, a totally gutted and leave the
2 exterior wall standing. You can get a
3 demolition permit to partially demolish a
4 building without taking the entirety of the
5 building down.

6 Again, to reiterate what I said
7 earlier, a razed permit is only necessary when
8 you're totally demolishing a building to its
9 foundation and also removing all utility
10 connections.

11 And as a matter of process, that
12 happens as a precursor to the issuance of a
13 building permit.

14 MR. GREEN: Now, this building was
15 demolished initially, right?

16 MR. BELLO: I don't believe so. I
17 don't believe that anybody has testified to
18 that effect.

19 MR. GREEN: Well, you got a
20 demolition permit.

21 MR. BELLO: No, what you got was
22 an emergency demolition permit inclusive of
23 instructions from whomever the inspector was

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1 for the walls of this building to be partially
2 removed.

3 MR. GREEN: And that's what a
4 demolition is as you understand it.

5 MR. BELLO: And that is consistent
6 with obtaining a demolition permit. That is
7 correct.

8 MR. GREEN: Okay. I direct your
9 attention to number nine of your affidavit,
10 and you say, "Based on my extensive experience
11 in the interpretation and enforcement of the
12 zoning regulations, it is well established and
13 beyond dispute that a conforming use and a
14 conforming structure destroyed by casualty or
15 act of God may be rebuilt as a matter of right
16 and, therefore, is not in violation of the
17 zoning regulations; is that correct?

18 MR. BELLO: That is correct.

19 MR. GREEN: What section of the
20 code is involved or have you invoked to come
21 to this conclusion, sir?

22 MR. BELLO: Mr. Green, I think
23 that you would agree that if I have a vacant

1 lot in a single family R-1 zone upon which
2 preexists a conforming structure, and I think
3 you will agree that a single family dwelling
4 use in an R-1 zone is a conforming use; if
5 that structure and use were destroyed by
6 casualty or an act of God, Section 401.1 of
7 the zoning regulations allows me to rebuild
8 that structure whether or not the existing lot
9 was a conforming lot.

10 In fact, Chapter 20 under same
11 provisions would allow me to rebuild a
12 nonconforming structure to its previous
13 nonconforming state if that building were
14 destroyed by an act of God or collapse or
15 fire.

16 MR. GREEN: Do you understand that
17 or how do you understand this particular
18 structure came down, sir? What is your
19 understanding as to how it came down?

20 MR. BELLO: My understanding is,
21 one, that based on what I've read in the
22 records and the evidence of the emergency demo
23 permit that I've seen with my own eyes, that

1 an emergency demo permit was issued to the
2 owner of the property to partially bring the
3 walls down to a safe height, and that
4 subsequently there was an incidence of
5 collapse.

6 In fact, I believe that the
7 incident made the news. It was the subject of
8 news reports on TV. So that's --

9 MR. GREEN: So, in other words,
10 sir, is it safe to state that you really don't
11 know how the building came down?

12 MR. BELLO: Well, to the extent
13 that I wasn't an eyewitness to it at the time
14 of collapse, yes.

15 MR. GREEN: So you heard
16 discussion or you've been present at today's
17 proceedings. Is that not right?

18 MR. BELLO: Yes.

19 MR. GREEN: And you've heard the
20 statement by the builder that they were doing
21 some work on that building; is that not right?

22 MR. BELLO: That's undisputed.

23 MR. GREEN: So in terms of how the

1 collapse occurred, is it not a fact that based
2 on your experience, that the disturbance to
3 the wall as described by Mr. Ford, also an
4 expert, could have been brought about by
5 working on the building, by the builder?
6 Would you not agree?

7 MR. BELLO: That would be
8 speculating on my part.

9 MR. GREEN: But then again, it
10 could have been brought down by some other act
11 of nature. Is that not right?

12 MR. BELLO: Well, there's a myriad
13 of possibilities, but let me state on the
14 record --

15 MR. GREEN: Tell me what you
16 know --

17 MR. BELLO: If I can finish.

18 MR. GREEN: -- for the record.

19 MR. BELLO: Yes.

20 MR. GREEN: What do you know
21 caused the collapse based on your professional
22 experiences, shall we say?

23 MR. BELLO: Now, let me just state

1 for the record that in several of our meetings
2 with Mr. Lenny Douglas and some of the
3 inspectors at DCRA that there was no time that
4 DCRA disputed that the existing building
5 collapsed, the remaining wall of the existing
6 building collapsed.

7 So any statement to the contrary
8 would be a latter day position for DCRA.

9 MR. GREEN: Well, I just want your
10 position, what you believe caused the collapse
11 or could have caused the collapse.

12 MR. BELLO: I have not idea.

13 MR. GREEN: You don't know.

14 MR. BELLO: Other than what the
15 records --

16 MR. GREEN: What you've read and
17 what you've heard, but you personally don't
18 know. You don't know. There's no disgrace in
19 not knowing.

20 MR. BELLO: No. Again, I --

21 CHAIRPERSON MILLER: Let him
22 answer the question.

23 MR. BELLO: Again, I think that if

1 you -- given what we heard in the media
2 announcement of this, obviously a collapsed
3 wall causing damage to the electrical grid in
4 the neighborhood, unless the contractor
5 himself went to knock the wall down, and this
6 happened overnight, not during construction
7 hours.

8 So I think it's reasonable; one
9 can reasonably conclude that, in fact, the
10 collapse did occur at the site.

11 MR. GREEN: So when Mr. Demuren
12 went out there to do his work and then
13 stopped, is it not possible that could cause
14 -- could have caused the collapse, sir?

15 MR. BELLO: Well, I think that
16 I've heard in evidence here and in testimony
17 that the questionable structural integrity of
18 the building was also affirmed by an inspector
19 from DCRA. So I would not question the
20 expertise of DCRA's construction inspector.

21 MR. GREEN: All right.

22 MS. BAILEY: Mr. Green, while
23 you're thinking, the photograph of the side

1 view of the subject building with the words
2 "Tyvek" is marked as Exhibit 21 of the record.

3 MR. GREEN: Thank you, Ms. Bailey.

4 PARTICIPANT: Which one?

5 MS. BAILEY: Exhibit 21.

6 MR. GREEN: Thank you.

7 You indicated in your testimony,
8 Mr. Bello, that the plans -- and I think
9 counsel has shown you quite a few -- did not
10 misrepresent the construction or Mr. Demuren's
11 intent to convert, I guess, without seeking
12 someone's approval. I mean, you stand by that
13 statement. Is that not right?

14 MR. BELLO: I stand by that
15 statement, and it's further underscored that
16 if Mr. Demuren had intended a raze of this
17 building, then he would have done so without
18 having to call a D.C. inspector out. That
19 would be the normal for people who are
20 interested illegal construction or illegal
21 work.

22 MR. GREEN: All right. I'd like
23 to again approach the witness, Madam Chairman,

1 if I might.

2 Counsel, I think these are ones
3 that you've seen.

4 MR. BROWN: Yes.

5 CHAIRPERSON MILLER: Okay. We
6 can't hear you. I know you have a loud voice.
7 You have to use it when you're not on
8 microphone.

9 MR. GREEN: All right. Mr. Bello,
10 I'm going to show you what has been identified
11 as the building plan. Do you agree that they
12 are?

13 MR. BELLO: Yes.

14 MR. GREEN: I'd like for you to
15 differentiate on that document where the
16 existing building at 1231 Morse is and where
17 the addition is located on that plan.

18 CHAIRPERSON MILLER: Mr. Green,
19 even though we can hear you really well, the
20 court reporter doesn't hear you as well when
21 you're not in the mic.

22 THE REPORTER: I can hear him now.

23 CHAIRPERSON MILLER: Oh, you can?

1 Okay.

2 MR. GREEN: Show me on this
3 document, which is marked as Exhibit -- I
4 think I'll use one of our exhibits since we
5 have so many numbers here -- our Exhibit, the
6 Government's exhibit is Number 3.

7 What you see is a blow-up of
8 Number 3. Show me where the existing
9 building, 1231 Morse Street, is located and
10 also where the addition to 1231 Morse Street
11 is located.

12 MR. BELLO: Well, I think what
13 you're referring to here, Mr. Green is
14 essentially what is a site plan for the
15 building, and if you look at just the site
16 plan, I think you will see clearly a
17 delineation of a line that represents what
18 would have been the area of the existing
19 building.

20 And I might add that while that is
21 one -- one -- one incident of showing intent,
22 that there are other documents of the plans
23 and Servious (phonetic) plat which is required

1 and germane to the zoning review where the
2 footprint of the existing building as opposed
3 to the addition is clearly marked out and
4 identified.

5 MR. GREEN: Is it safe to state
6 that the plan submitted shows that the
7 addition, if you will, literally gobbles up
8 the existing building?

9 MR. BELLO: Well, I think Mr.
10 Turnbull has actually established that fact in
11 his very direct question about the unusual
12 size of the addition compared to the existing
13 building, but I don't believe that that in and
14 of itself obviates the intent to retain the
15 existing building as part of this approval.

16 MR. GREEN: You've made several
17 references in your testimony, Mr. Bello, about
18 certain inspectors coming out and doing
19 certain things. Who are these inspectors, if
20 you know?

21 MR. BELLO: I don't know. I'm not
22 a construction management guy for Mr. Demuren.
23 Mr. Demuren manages his own construction site.

1 MR. GREEN: One moment, Madam
2 Chairman.

3 CHAIRPERSON MILLER: Okay. I'd
4 like to ask a question then if you're going to
5 take a moment.

6 Mr. Bello, you talked about
7 330.5(c) allowing in your interpretation a re-
8 building if there has been an act of, you
9 know, collapse, destruction by act of God or
10 not a wilful wrongdoing. We talked about
11 that.

12 And so my question is as a follow-
13 up to Mr. Green's question. Where was this
14 rebuilt? Was a single family dwelling rebuilt
15 in this case?

16 MR. BELLO: Well, if you look at
17 the construction site, the plans, and
18 everything in totality and then try to piece
19 them together, you're looking at a gentleman
20 that started for reasons known to him the
21 addition that was approved for him from the
22 rear and adding towards the building.

23 So for purposes of zoning

1 illustration here, if you look at the existing
2 building as a preexisting single family
3 dwelling, our point is that as an extension of
4 the construction that's already underway and
5 mind you that the revision necessary to
6 rebuild these walls is an extension of the
7 original building permit.

8 The net result is that the
9 addition is still what is being perpetuated
10 here, notwithstanding every membrane of the
11 pre-'58 building may have been replaced.

12 After all, it's in the public
13 interest to have a structurally sound
14 building. Just because we want to preserve a
15 pre-'58 building, that's not enough reason to
16 have a life safety situation here.

17 So our argument is that if you
18 look at that single family dwelling in
19 isolation, even if it were a nonconforming
20 structure, if you take it in isolation, which
21 is really what the revision is designed to
22 document here, that you're replacing or
23 rebuilding the walls that was there, then even

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1 if this building were a nonconforming
2 structure, Mr. Demuren would have been able to
3 rebuild this building in and of itself.

4 CHAIRPERSON MILLER: Okay. I know
5 you didn't build a single family dwelling
6 here. Did you follow the footprint of the
7 original design that was in the plans?

8 MR. BELLO: Absolutely. No
9 change.

10 CHAIRPERSON MILLER: No change.
11 It still goes around --

12 MR. BELLO: No change.

13 CHAIRPERSON MILLER: -- the house
14 the way it was before.

15 MR. BELLO: And I might add that
16 not only was the previous building not a
17 nonconforming structure. The approved project
18 here also is conforming in every respect.

19 COMMISSIONER LOUD: On this very
20 point, just so I'm clear, I thought that there
21 was in the record some reference to a request
22 to rebuild the collapsed wall. Did I misread
23 the record?

1 MR. BELLO: No, you're absolutely
2 right. The chain of events is such that when
3 the gentleman was obviously issued an
4 emergency demo to bring the wall down to a
5 safe height, the remainder of the walls
6 collapsed and for reasons that Mr. Ford has
7 testified to on the record, DCRA instructed
8 one of the projects to actually go ahead and
9 rebuild the foundation walls in order the
10 stabilize the site.

11 So there's nothing here that is
12 done that has not been a formal instruction,
13 direct instruction from DCRA.

14 COMMISSIONER LOUD: My question is
15 a little different, and again, I probably need
16 to consult the record, but I thought that you
17 had attempted to rebuild the collapsed wall,
18 but then it got caught in the regulatory back-
19 and-forth with the agencies and you were being
20 held in a holding pattern almost, preventing
21 you from rebuilding.

22 MR. BELLO: Yeah.

23 COMMISSIONER LOUD: Is that a

1 correct characterization?

2 MR. BELLO: Yeah, I think you're
3 correct.

4 COMMISSIONER LOUD: Okay.

5 MR. BELLO: And that's essentially
6 what the revision permit was for.

7 MR. GREEN: May I inquire, Madam
8 Chair?

9 CHAIRPERSON MILLER: Yes, it's
10 your turn.

11 MR. GREEN: Thank you.

12 Mr. Bello, Mr. Ford indicated that
13 unsupported walls in a situation that he has
14 just described had a structural integrity
15 problem and were primed to collapse, I
16 believe. My question to you as an expert, and
17 we all agree that you are: was it not
18 irresponsible to leave the walls not
19 supported.

20 MR. BROWN: I'm not so sure that's
21 a question that either Mr. Ford or certainly
22 Mr. Bello is in a position to answer.

23 CHAIRPERSON MILLER: I would agree

1 that he's been qualified as an expert in
2 zoning, not in construction.

3 MR. GREEN: Okay. I'll ask the
4 question of Mr. Ford.

5 MR. BROWN: Can we finish with Mr.
6 Bello first?

7 MR. GREEN: Well, you know, you
8 seem to have jumped around a little bit. I
9 think I can jump, too.

10 MR. GREEN: All right. Very well.

11 MR. FORD: What is your question?

12 MR. GREEN: In your prior
13 testimony you indicated that unsupported
14 walls as described were structurally -- posed
15 a structural integrity problem, and that they
16 were prime to collapse. I'm asking you as an
17 expert building was it not irresponsible to
18 leave walls in such a condition.

19 MR. FORD: Well, first of all,
20 they were prime to collapse if I knew what the
21 conditions were of the wall. As I've stated,
22 I don't know what the materials were. I don't
23 know what the structural integrity was. I

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1 don't know what the reinforcement was within
2 the wall. If the wall were over eight feet in
3 height and didn't have either vertical or
4 horizontal support, it's possible that the
5 wall was left in a condition to fail.

6 Not all walls fail if they're
7 under good structural, sound conditions. You
8 can get some townhouses that are built and the
9 walls will stay up --

10 MR. GREEN: Let me see if I can
11 help you just a little bit.

12 MR. FORD: Okay.

13 MR. GREEN: Let me just see if I
14 can help you just a little bit. You are a
15 former Chief of Construction for the
16 Department of Consumer and Regulatory Affairs.

17 MR. FORD: That's correct.

18 MR. GREEN: And during the course
19 of this conversation, it was brought out that
20 certain inspectors came out and made certain
21 recommendations that something be done from an
22 emergent point of view. Based on that
23 information, based on your prior experience as

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1 a former Chief of Construction, would it be
2 irresponsible to leave walls of that type up,
3 unsupported, unbraced?

4 MR. FORD: First of all, I have no
5 idea what the height of the wall was.
6 Secondly, I don't know what the materials
7 were. Thirdly, I don't know what instructions
8 were given to the developer of the property on
9 site.

10 I would have, if I were there,
11 would have told them if the wall is over eight
12 feet in height to either brace the wall if
13 it's going to be left overnight. That's what
14 I would have told them.

15 One, I would have looked at the
16 conditions of the site. Two, I would have
17 looked at the weather conditions. I always
18 look at weather conditions because I've gone
19 out to too many collapses based on weather.

20 So I would have taken the
21 approach. I don't know what approach the
22 inspector, and I'm not going to second guess
23 the inspectors that were out there. I think

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1 they probably did a good job based on what
2 they saw. I don't know even what time they
3 saw it. I don't know if they --

4 MR. GREEN: I'm not asking you to
5 second guess the inspectors. They already
6 said that there was an emergent situation
7 here. I'm asking you to second guess the
8 builder.

9 MR. FORD: Well, I don't want to
10 second guess either one of them because I
11 don't know what time the inspection occurred
12 or the last inspection occurred on that area
13 of the demolition.

14 Yeah, I can come back and say,
15 yeah, if I -- I can look at it and say, "Oh,
16 yeah, I would have done this, that, and the
17 other," but I wasn't there under those
18 conditions.

19 You try not to leave a tall wall
20 unbraced no matter what happens, but in some
21 conditions you may be able to do so, but I
22 don't know. Now, this was an old structure.
23 They said it was built in the '40s.

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1 MR. GREEN: Yes.

2 MR. FORD: What was it built of in
3 the '40s? Was it built of wood and wire and
4 had parging (phonetic) over it or was it built
5 of masonry, not necessarily brick, or it may
6 have been old cinder block. I have an idea.

7 What were the forces against that
8 wall? How was the foundation under that wall
9 left after the original takedown or the
10 original failures within the wall? What kind
11 of conditions were they under?

12 I don't know. The only way I
13 could make an accurate determination was I'd
14 have to go back after the fact and try to
15 reconstruct the conditions of that wall prior
16 to its collapse and then tell you what
17 possibly caused the failure.

18 Was it negligence on the part of
19 the owner of the property in not securing the
20 wall so that it wouldn't topple over, or was
21 it something else?

22 Did somebody intentionally do
23 something, or was it something that was so

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1 gradual because of the original work that was
2 done around it that you had some cracking that
3 occurred within the structure that only would
4 take a person that knows something about
5 cracks that say, "Oh, you have a very
6 dangerous condition here"?

7 Because as I saw on one of the
8 pictures, you've got some parging, and
9 sometimes you can look at parging and say,
10 "Oh, it's just loose," but sometimes you look
11 at it and it's more than loose. It indicates
12 that you've got some structural failure that's
13 going on up under it.

14 MR. GREEN: All right. Just one
15 question, and I'll let you go, and I'm going
16 to ask Mr. Bello one question.

17 You really don't know why the wall
18 came down, do you?

19 MR. FORD: Have no idea.

20 MR. GREEN: All right. Thank you.

21 Mr. Bello, just one last question
22 that I'll have for the evening for you for the
23 moment. Now, you testified that DCRA cannot

1 interpret the zoning regulations to be more
2 restrictive for conforming than nonconforming;
3 is that right? That's what you said.

4 MR. BELLO: Structural use, yes.

5 MR. GREEN: Can you show me in
6 your affidavit where this assertion is
7 located?

8 MR. BELLO: The assertion?

9 MR. GREEN: The assertion in your
10 affidavit.

11 MR. BELLO: It's not there.

12 MR. GREEN: It is not there.

13 MR. BELLO: It's my testimony.

14 MR. GREEN: Okay, all right. I
15 don't have any other questions of Mr. Bello.
16 I do believe Ms. Woolridge has one or two she
17 wants to ask him.

18 MR. BELLO: Good evening.

19 MS. PARKER-WOOLRIDGE: I'm not
20 going to be as loud as Mr. Green.

21 PARTICIPANT: It's not possible.

22 CHAIRPERSON MILLER: Can you talk
23 in your microphone just to make sure that the

1 court reporter gets it.

2 MS. PARKER-WOOLRIDGE: Okay.

3 Thank you.

4 Mr. Bello, you said you met with
5 Mr. Douglas.

6 MR. BELLO: Yes, I did.

7 MS. PARKER-WOOLRIDGE: To discuss
8 the 1233 Morse Street property?

9 MR. BELLO: That's correct, and I
10 believe you were present at that meeting.

11 MS. PARKER-WOOLRIDGE: Yes, I was.

12 Mr. Bello, do you recall what Mr.
13 Douglas said in reference to the structure
14 that was no longer existing?

15 MR. BELLO: No, my recollection is
16 that DCRA's position has been simply 58
17 buildings there, 58 buildings not there. And
18 my consistent position is that -- has been and
19 still is -- well, it's not that simple.

20 MS. PARKER-WOOLRIDGE: No, I asked
21 you what was DCRA's. What was Mr. Douglas'
22 position, not your position. What was Mr.
23 Douglas' position about nonexistent building?

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1 MR. BELLO: That it was
2 nonexistent.

3 MS. PARKER-WOOLRIDGE: It was
4 nonexistent.

5 MR. BELLO: Yes.

6 MS. PARKER-WOOLRIDGE: What was
7 Mr. Douglas' position in reference to being
8 able to convert an apartment building with a
9 nonexistent building? Do you recall that
10 discussion?

11 MR. BELLO: I don't recall and if
12 Mr. Douglas would have made any statement to
13 the effect that I would say he would not have
14 been qualified to do so. He is not the Zoning
15 Administrator.

16 MS. PARKER-WOOLRIDGE: You have to
17 be a Zoning Administrator to make that
18 decision --

19 MR. BELLO: Well --

20 MS. PARKER-WOOLRIDGE: -- make a
21 comment in reference to Section 330.5(c)? If
22 a building is nonexistent, there's nothing to
23 convert?

1 MR. BELLO: Well, I think from the
2 very beginning, first of all, after the first
3 stop work order I believe that the issue was
4 really centered on exceeding the scope of
5 construction which --

6 MS. PARKER-WOOLRIDGE: No, I
7 didn't ask you that. What I was asking you is
8 in reference to what Mr. Douglas said at his
9 meeting in reference to a nonexisting
10 building, trying to convert a nonexisting
11 building to an addition.

12 MR. BELLO: I'm not sure I
13 understand your question.

14 MS. PARKER-WOOLRIDGE: Did Mr.
15 Douglas tell you that DCRA's position is you
16 cannot convert a nonexisting structure to an
17 addition?

18 MR. BELLO: Amongst other
19 positions. They have been shifting all the
20 time.

21 MS. PARKER-WOOLRIDGE: Did Mr.
22 Douglas also indicate that you could provide
23 -- that you could follow the advise

1 application, building permit application?

2 MR. BELLO: Yes. Mr. Douglas did
3 say that.

4 MS. PARKER-WOOLRIDGE: And did you
5 do so.

6 MR. BELLO: Mr. Douglas did say we
7 could fight.

8 MS. PARKER-WOOLRIDGE: And you did
9 file on?

10 MR. BELLO: If I could just finish
11 my answer, we did file one, and --

12 MS. PARKER-WOOLRIDGE: And when
13 did you file that one?

14 MR. BELLO: I'm not sure what the
15 date is. It's after --

16 MS. PARKER-WOOLRIDGE: Was it
17 January 2007?

18 MR. BELLO: I believe so.

19 MS. PARKER-WOOLRIDGE: What took
20 yo uso long to file that application from the
21 time we met, I believe, in October and
22 November? Do you recall?

23 MR. BELLO: I believe we met in

1 December, and we had the -- the owner of the
2 project had to procure revised plans, and
3 those revised plans were reviewed by me under
4 the third party program and before submission
5 to DCRA.

6 MS. PARKER-WOOLRIDGE: And it was
7 also because you were out of the country
8 possibly and we had to wait until you came
9 back, and is it a possibility to file those
10 plans?

11 It was delayed on DCRA. Am I
12 correct?

13 MR. BELLO: No, I believe that the
14 records will reflect that we did file in
15 January, obtain swift approval in January, and
16 then Mr. Bill Crews' action did not occur
17 until March.

18 MS. PARKER-WOOLRIDGE: Okay. And
19 speaking of Mr. Bill Crews, a former Zoning
20 Administrator, I believe at that meeting were
21 you also requested to notify Mr. Douglas prior
22 to filing the building permit application so
23 that we could expedite your revised

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1 application permit?

2 MR. BELLO: Notify? I think the
3 substance of our discussions which I made very
4 clear to Mr. Douglas was that we were not
5 going to file an application that would
6 indicate that this was new construction. I
7 told him that very, very clearly.

8 And the reason that I said that
9 was because I said that that was a no brainer.
10 That would be a dead on arrival application
11 because the Zoning Administrator would have
12 been rightfully in the right place to deny
13 such an application if it's applied as a new
14 construction.

15 It was simply because you can't
16 have new construction of an eight-unit
17 building or an 11-unit building in an R-4
18 zone. I made that clear to him.

19 MS. PARKER-WOOLRIDGE: Mr. Bello,
20 didn't Mr. Douglas ask you to submit that
21 application directly to him or notify him when
22 you're about to file that application so that
23 we could expedite it?

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1 Wasn't the issue the terminology
2 was the concern of DCRA as well as yourself?

3 MR. BELLO: I don't -- my
4 recollection is not that Mr. Douglas requested
5 that I notify him before filing an
6 application. Mr. Douglas is saying, "I will
7 expedite it."

8 MS. PARKER-WOOLRIDGE: Okay.

9 MR. BELLO: And I think the
10 records will reflect that when I filed the
11 application, I, in fact, called Mr. Douglas
12 and say we were ready for permanent issuance.

13 In fact, the revision that I filed
14 was plucked out of permit issuance.

15 MS. PARKER-WOOLRIDGE: You said
16 you contacted Mr. Douglas before filing.

17 MR. BELLO: Before filing, while
18 the application was in process.

19 MS. PARKER-WOOLRIDGE: You did?

20 MR. BELLO: Yes.

21 MS. PARKER-WOOLRIDGE: And did you
22 go directly to Ms. Mack to get --

23 MR. BELLO: We didn't go directly

1 to Ms. Mack. The revision as a matter of
2 process and protocol at DCRA is a walk-through
3 process, and --

4 MS. PARKER-WOOLRIDGE: We
5 understand that. For this particular revised
6 application, it was filed in January '07. You
7 went directly to Ms. Mack, not the Zoning
8 Administrator, Bill Crews, as indicated at
9 that meeting. The Zoning Administrator would
10 have to review this revised application.

11 MR. BELLO: I disagree with that
12 assertion.

13 MS. PARKER-WOOLRIDGE: Okay. That
14 was not your understanding of what took place?

15 MR. BELLO: That's not my
16 understanding whatsoever.

17 MS. PARKER-WOOLRIDGE: So, Mr.
18 Bello, it's your understanding that for a
19 conforming structure, you do not have to -- if
20 it's a conforming structure, you do not have
21 to -- if it's a conforming structure, you can
22 convert if the structure has fallen down, has
23 been removed. Once the structure has been

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1 removed, do you still consider it to be a
2 conforming structure?

3 MR. BELLO: I'm not sure I
4 understand the context of the question.

5 MS. PARKER-WOOLRIDGE: Okay. Once
6 the building, the single family dwelling has
7 been removed and we still have the addition,
8 it is your testimony that you can still
9 convert --

10 MR. BELLO: It is -- it is --

11 MS. PARKER-WOOLRIDGE: -- a
12 nonexisting structure to --

13 MR. BELLO: It is --

14 MS. PARKER-WOOLRIDGE: -- an
15 apartment building?

16 MR. BELLO: It is my testimony
17 that post the issuance of a building permit
18 upon which one has proceeded to vest their
19 rights under the building permits, that that
20 construction can be conducted to completion.
21 Yes, that's correct.

22 And I believe the Chair has
23 actually given a very sound example of two

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1 scenarios in which one may we be so and one
2 may not be so.

3 MS. PARKER-WOOLRIDGE: But in the
4 conformance section in the regulation, the
5 zoning regulations, is there anything that
6 says based on the act of God or if the
7 building collapsed, that you may reconstruct
8 that nonexisting building?

9 MR. BELLO: No, I think that was
10 referenced in terms of context, and the
11 context is, again, to underscore the basic
12 zoning principle that the zoning regulations
13 cannot be so interpreted to be more
14 restrictive where conforming structures or
15 conforming uses are concerned as opposed to
16 nonconforming structures.

17 And of course, we went ahead and
18 cited specific sections of the nonconforming
19 chapter, which would allow you to, in fact,
20 rebuild the collapsed nonconforming structure
21 to its previous nonconforming state.

22 MS. PARKER-WOOLRIDGE: So as you
23 indicated, I guess, you're referring to 11

1 DCMR 2001.4? Is that what you're referring
2 to, nonconforming structures restored by fire,
3 collapse or --

4 MR. BELLO: Two, zero, zero, one,
5 point, four, five, and six.

6 MS. PARKER-WOOLRIDGE: But that's
7 not conforming. That's nonconforming. Am I
8 correct? Is that what that section states?

9 MR. BELLO: Well, the example
10 again is --

11 MS. PARKER-WOOLRIDGE: Is that
12 what the section states?

13 MR. BELLO: If I can explain to
14 you a little bit, please, again, the example
15 was cited in context to underscore a point
16 that in interpreting and enforcing the zoning
17 regulations you cannot interpret such
18 regulations such that it appears to be more
19 restrictive for conformance structures.

20 So to the extent that there's a
21 zoning element to the revision to the permit,
22 if you look at the previously existing
23 building as an existing single family

1 structure that's destroyed by collapse, that,
2 in fact, if that building was nonconforming,
3 the owner would be able to rebuild that
4 structure.

5 I don't see much difference
6 between that and what holds in this situation.

7 MS. PARKER-WOOLRIDGE: Okay, but
8 to answer my question, it says "nonconforming
9 structure," and that's just the bottom line,
10 isn't it, in 2001.4? Yes.

11 MR. BELLO: If it pleases you.

12 MS. PARKER-WOOLRIDGE: Yes, it
13 does please me. Thank you.

14 Turning your attention to the
15 first building permit application, it says
16 building for addition to a single family
17 dwelling and to convert to an 11-unit
18 apartment building. Government's Exhibit No.
19 2.

20 MR. BELLO: Okay.

21 MS. PARKER-WOOLRIDGE: Do you see
22 it?

23 MR. BELLO: Got you

1 MS. PARKER-WOOLRIDGE: Okay. So
2 this permit was for a single family dwelling
3 that was built, like you said, in the 1940s or
4 whatever, and it was to convert into an 11-
5 unit apartment building, correct?

6 So if there is no single family
7 structure, how are you still in compliance
8 with this particular building permit?

9 MR. BELLO: I think I've testified
10 substantially.

11 MS. PARKER-WOOLRIDGE: Appease me,
12 sir.

13 MR. BELLO: Yeah. Then --

14 CHAIRPERSON MILLER: Can I jump
15 in? Because I think that, you know, we're
16 running late, and I think he has answered and
17 you can correct me if I'm wrong, but as I
18 understand what Mr. Bello's point is, and I
19 think it's a point we should focus on to some
20 extent, it says the rights had already vested;
21 that when he got the original building permit,
22 there was a house there and the permit related
23 to the conversion, to the 11-unit apartment

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1 building, you know, attached to this house.

2 I understand his point to be that
3 if something happened to that house in the
4 process before this whole project was
5 finished, he could still proceed under that
6 permit; is that correct?

7 Because the rights has -- because
8 some rights had vested. I asked him, you
9 know, in the abstract, well, if you didn't
10 have a building permit and you had the same
11 situation where the house was destroyed for
12 some reason, you're not saying you could still
13 have this conversion to an 11-unit apartment
14 building and he said no. It's the fact that
15 they were operating already until an original
16 permit, correct?

17 MR. BELLO: Absolutely correct.

18 CHAIRPERSON MILLER: Okay.

19 MR. BELLO: Thank you.

20 MS. PARKER-WOOLRIDGE: No other
21 questions. Thank you.

22 CHAIRPERSON MILLER: Okay. Yes,
23 Mr. Brown.

1 MR. BROWN: Does anybody have any
2 cross examination of Mr. Demuren?

3 MR. GREEN: Absolutely. Yes.

4 CHAIRPERSON MILLER: Everybody all
5 right to continue longer? We were talking
6 about 7:30. It's almost 8:30. Do you think
7 that we're going to wrap this up within half
8 an hours? No. How much time?

9 Okay. Maybe we'll recess then.

10 MR. GREEN: The cross will be
11 wrapped up certainly, but again, in terms of
12 our, you know, Zoning Administrator, he's not
13 going to be that long, not from us. I have no
14 idea what my learned counsel intends to do.

15 MR. BROWN: I'll have to wait to
16 hear what he has to say. I mean, I think we
17 should try to finish cross-examination. As
18 much as I'd want to finish, I'm willing to
19 keep going, but we ought not to start
20 something with Mr. Le Grant that we can't
21 finish.

22 CHAIRPERSON MILLER: That makes
23 sense probably at least to finish cross-

1 examination, finish a whole part of the
2 proceeding. Everybody okay with that?

3 MR. BROWN: Madam Chair.

4 CHAIRPERSON MILLER: Yes.

5 MR. BROWN: If we're finished, to
6 be kind to Mr. Ford, because I think he's done
7 with his cross-examination, you wouldn't
8 object to him leaving?

9 That's fine. All right. We'll
10 finish.

11 MR. GREEN: Just let him relax.
12 You know, he's on his meter here. Let him
13 relax.

14 MR. BROWN: He's a government
15 retiree. So cross examination for Mr.
16 Demuren, we're ready.

17 CHAIRPERSON MILLER: Okay. Mr.
18 Green, do you think that in this cross-
19 examination some question might arise that's
20 more appropriate for Mr. Ford? That's why you
21 want him to stay?

22 MR. GREEN: Yes.

23 CHAIRPERSON MILLER: Okay. Mr.

1 Ford, are you okay there?

2 MR. FORD: Yes.

3 CHAIRPERSON MILLER: Like the rest
4 of us. Okay.

5 MR. GREEN: Mr. Demuren, you
6 indicate -- maybe I'm mispronouncing your
7 name. I'm very sorry. Why don't you tell me
8 what it is?

9 MR. DEMUREN: You're good. You're
10 good.

11 MR. GREEN: All right. Mr.
12 Demuren, you indicated in your testimony that
13 you spent some \$300,000 to get a permit with
14 DCRA. What -- who did you pay this to?

15 MR. DEMUREN: if you go through
16 the record, you will find out that the
17 question that was asked was before we were
18 stopped, how much had I spent not to get a
19 permit. There's no way I would spend 300,000
20 to get a permit. I'd be building the whole
21 city.

22 MR. GREEN: I'm glad to know that
23 that's not -- that you didn't pay 300,000 to

1 get a permit at DCRA. But then again, I heard
2 you say that you're carrying cost was 100K.
3 Now, which was it 100K or 300,000?

4 MR. DEMUREN: If I may, there's a
5 difference between a carrying cost and the
6 cost of construction. Carrying cost is
7 usually what you pay for taxes. I have a
8 mortgage on this property, and that's for the
9 mortgage. I have insurance. That's what the
10 carrying cost is.

11 MR. GREEN: Okay.

12 MR. DEMUREN: Construction cost is
13 what you pay for concrete, for steel, for
14 lumber, for contractors. That's the
15 difference. I hope that explains.

16 MR. GREEN: Yes, it did. Thank
17 you very much.

18 COMMISSIONER LOUD: Excuse me.
19 Did you say 500,000 or did you say 100,000?

20 MR. DEMUREN: The carrying cost I
21 said was over 100,000.

22 COMMISSIONER LOUD: Thanks.

23 MR. GREEN: Well, actually you

1 said it was 100,000. He didn't say "over,"
2 but then again, we won't quibble about
3 thousands of dollars.

4 You indicated that Mr. Bello filed
5 a revised permit and that ultimately this was
6 denied. Can you tell us why, particularly
7 when the building is no longer there?

8 MR. BROWN: I'm not so sure Mr.
9 Demuren is the best person to ask that.

10 CHAIRPERSON MILLER: We have in
11 the record a denial letter from Mr. Crews.

12 MR. BROWN: Yes.

13 CHAIRPERSON MILLER: Is that what
14 you're referring to? Okay. That's in the
15 record. Why do you need to ask him why it was
16 denied?

17 MR. GREEN: Well, I just wanted
18 him to tell me what he understood it to be,
19 especially since there was no building there.

20 MR. DEMUREN: You want my honest
21 opinion?

22 MR. GREEN: Yes.

23 MR. DEMUREN: I believe it was

1 approved by the Zoning Committee. It was
2 approved by DCRA Zoning, but Mr. Crews, I
3 don't know if he had something against me or
4 something against anybody, just decided to
5 disapprove it. That's my honest opinion.

6 MR. GREEN: All right. You
7 indicated that during the course of this
8 construction that you suffered a casualty
9 brought on by the weather and so on; is that
10 right?

11 MR. DEMUREN: You mean the
12 building suffered a casualty?

13 MR. GREEN: Yes, the building
14 collapsed --

15 MR. DEMUREN: Okay.

16 MR. GREEN: -- you say because of
17 the weather.

18 MR. DEMUREN: Well, I wasn't there
19 personally, but it was all on the news. I
20 don't know if anybody remembers and the
21 building collapsed overnight. I mean, nobody
22 was there. You were not there to be able to
23 say this is exactly what happened.

1 So I mean, I can tell you that I
2 don't know because I wasn't there.

3 MR. GREEN: Can you tell me if you
4 know what the rainfall was during that time?

5 MR. DEMUREN: Well, if I was -- if
6 I knew you were going to ask that question, I
7 probably would have recorded it. I don't
8 know. There's a way we can get the record of
9 the weather.

10 MR. GREEN: Tell me what you know
11 now.

12 MR. DEMUREN: You want me to --

13 MR. GREEN: You made an assertion.
14 You made an assertion. You made an assertion
15 or your lawyer on your behalf did, and he said
16 and has been saying all along and you, too,
17 have said wind and weather. Tell me what you
18 know.

19 And let the record reflect that
20 his lawyer is whispering a response in his
21 ear.

22 CHAIRPERSON MILLER: We don't
23 know --

1 MR. GREEN: So what comes out of
2 his mouth will come out of his lawyer's mind.

3 CHAIRPERSON MILLER: We do see
4 that his lawyer was whispering. We don't know
5 what though.

6 MR. DEMUREN: Well, can I say --
7 can I --

8 MR. GREEN: He's giving him an
9 answer.

10 MR. DEMUREN: No, can I answer
11 honestly?

12 MR. GREEN: No, it won't be an
13 honest answer because your lawyer told you.

14 CHAIRPERSON MILLER: Mr. Green, do
15 you want to withdraw your question or --

16 MR. GREEN: No, ma'am.

17 CHAIRPERSON MILLER: -- do you
18 want him to answer it?

19 MR. GREEN: I want him to answer
20 it, even though I know it's his lawyer's
21 response.

22 CHAIRPERSON MILLER: Okay.

23 MR. DEMUREN: Well, it rained that

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1 weekend. How many inches of rain or how many
2 knots of wind I don't know, but it rained that
3 weekend, and they said it was windy. How much
4 of it I don't know.

5 MR. GREEN: Were you working
6 during that weekend, sir?

7 MR. DEMUREN: No.

8 MR. GREEN: You weren't working.
9 When did you stop working?

10 MR. DEMUREN: Do you want it to
11 the minute?

12 MR. GREEN: No, I want the day.

13 MR. DEMUREN: Before seven o'clock
14 on Saturday.

15 MR. GREEN: Seven o'clock on
16 Saturday, and the building collapsed when?

17 MR. DEMUREN: From what I -- from
18 what the media said, I didn't know exactly
19 what time, but it collapsed overnight Sunday
20 -- no, Monday to the Tuesday. Monday was a
21 holiday.

22 MR. GREEN: But you were working
23 Saturday; is that not right?

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1 MR. DEMUREN: Yes, I just stated
2 that.

3 MR. GREEN: Un-huh. Can you tell
4 me with a degree of certainty that your
5 working didn't cause a collapse?

6 MR. DEMUREN: I can't answer that
7 question.

8 MR. GREEN: All right. There's
9 been discussion that a DCRA inspector came by
10 and told you that the wall had to be shored up
11 or braced up or something of that sort. Do
12 you recall what day that was, sir?

13 MR. DEMUREN: I don't recall the
14 exact date, but I know it was, I believe, a
15 day or two after the collapse.

16 MR. GREEN: Wait a minute. You're
17 telling us that a day or two after the
18 collapse the inspector came by and told you to
19 brace up the wall.

20 MR. DEMUREN: Let me understand
21 your question.

22 MR. GREEN: Okay.

23 MR. DEMUREN: Are you talking

1 about shoring the wall for the neighbor's
2 house not collapse or shoring -- what's your
3 question?

4 MR. GREEN: I'm talking about
5 taking down your wall from the height that it
6 was to a height determined to be a safe height
7 by the DCRA inspector. That's what I'm
8 talking about.

9 MR. DEMUREN: Okay.

10 MR. GREEN: When were you told to
11 do this?

12 MR. DEMUREN: Before the emergency
13 demo permit was issued, we called the --
14 there's a number you call for the D.C.
15 inspector's office when you have a problem.

16 MR. GREEN: Let me see if I can
17 help you a little bit. What day? You said
18 you worked out there on Saturday. Was it
19 Friday? Was it Thursday? Was it Wednesday?
20 Was it Tuesday?

21 When, please? Give me the day.

22 MR. DEMUREN: If you let me
23 finish, you will understand the whole

1 sequence.

2 CHAIRPERSON MILLER: Okay, Mr.
3 Demuren.

4 MR. DEMUREN: You're asking me to
5 put the cart before the horse.

6 CHAIRPERSON MILLER: Yeah, let him
7 have some space to answer the question.

8 MR. GREEN: All right.

9 CHAIRPERSON MILLER: Okay. Go
10 ahead.

11 MR. DEMUREN: Before we got the
12 emergency demo permit, from what I understand
13 this is how it works with DCRA. We call a
14 number. We let them know exactly what issues
15 we have, and they say an inspector will come
16 out and look at it. What day, what time, they
17 don't tell us.

18 Inspector came in there and looked
19 at it. I was in there when he came there, and
20 I was invited back to their office. I believe
21 I talked to -- I'm not 100 percent sure. I
22 believe I talked to Mr. Lenny Douglas, and he
23 was one that said: we're going to issue the

1 emergency demo permit. We're going to do the
2 demo to -- it might not be exact words, but
3 this was my understanding -- to a safe height,
4 and the emergency demo permit was issued.

5 The date of the emergency permit
6 was wrongly typed on there. I don't know the
7 date of mine unless I look at it, and I
8 believe we started working on the demo the
9 following day we got that permit.

10 On the Saturday, my understanding
11 -- I didn't even look on this permit to see if
12 there's a time restraint on there, but on most
13 of the permits that I've seen from DCRA it
14 states in there specifically that you are
15 going to work 7:00 a.m. to 7:00 p.m., and you
16 do not work on Sunday and holidays when D.C.
17 is not working. And that's basically what we
18 did because we were following the instructions
19 of what they told us.

20 I hope that answers your question.

21 MR. GREEN: Well, you have given
22 me an answer, and I'll have to accept it.
23 What I want to know though is this. You

1 indicated in your testimony that there was a
2 roofing problem or open space for roofing in
3 the building; is that right? That there was
4 no roof?

5 MR. DEMUREN: No, I indicated that
6 the roof was bad.

7 MR. GREEN: All right. The roof
8 was bad. All right. And you indicated also
9 that at some point an inspector came out and
10 recommended that the wall be demolished down
11 to a certain height, right? At some point.

12 MR. DEMUREN: Yeah, I believe the
13 record also says that DCRA agrees to that
14 fact.

15 MR. GREEN: Right.

16 MR. DEMUREN: And that they sent
17 somebody out to --

18 MR. GREEN: Right, and you also
19 indicated that this property was one of, I
20 guess, at least 25 or 30 that you had been
21 involved with based on your background and
22 training as a construction engineer; is that
23 right?

1 MR. DEMUREN: I've been involved
2 with a couple. I didn't say I'm a
3 construction engineer.

4 MR. GREEN: Well, you're civil
5 engineering then; is that right?

6 MR. DEMUREN: I said I have a
7 diploma in civil engineering.

8 MR. GREEN: Yeah, a diplomate in
9 civil engineering, and that you've been
10 involved in this type of thing all over the
11 world, or at least in England and Africa,
12 Nigeria; is that right?

13 MR. DEMUREN: That is exactly what
14 I said.

15 MR. GREEN: Un-huh.

16 MR. DEMUREN: And I'll stand by
17 it.

18 MR. GREEN: Well, how come you
19 didn't apply this background, training, and
20 experience and exposure to 1231 Morse Street?

21 MR. BROWN: Objection.

22 MR. DEMUREN: Can I ask a
23 question?

1 CHAIRPERSON MILLER: Objection --

2 MR. DEMUREN: Have you ever been
3 involved in an accident?

4 CHAIRPERSON MILLER: -- sustained.

5 MR. DEMUREN: Sorry?

6 CHAIRPERSON MILLER: What is it?

7 MR. GREEN: Not a building
8 collapse.

9 MR. DEMUREN: No.

10 MR. GREEN: Based on my background
11 and training, oh, no. I'm not a building man.

12 MR. DEMUREN: -- a car accident?

13 MR. BROWN: He's now badgering Mr.
14 Demuren.

15 MR. GREEN: I'm not badgering him.
16 I'm just asking a simple question. We have a
17 man who put himself in a position of being on
18 par in terms of expertise with Vincent Ford
19 and Mr. Bello. He did. He testified that he
20 had that background, training and experience,
21 and yet what happened? A building collapses,
22 and he's over there working.

23 This man had that experience,

1 Madam Chairman.

2 CHAIRPERSON MILLER: Mr. Green,
3 what is your question though? Are you
4 saying --

5 MR. GREEN: I'm asking him -- I'm
6 asking him based on this background, based on
7 this experience that he has proffered -- no,
8 that he has stated unequivocally under oath.
9 I want to know why he didn't at least brace up
10 this building. I want him to tell me that.

11 CHAIRPERSON MILLER: All right.
12 Well, that's a different question.

13 MR. GREEN: Well, tell me.

14 CHAIRPERSON MILLER: Why didn't
15 you brace up the building?

16 MR. DEMUREN: I never told you
17 that I didn't brace it.

18 MR. GREEN: What did you do?

19 MR. DEMUREN: The property was
20 left in a safe condition. It was --

21 MR. GREEN: And --

22 CHAIRPERSON MILLER: Let him
23 answer the question.

1 MR. GREEN: All right.

2 CHAIRPERSON MILLER: This is an
3 important point.

4 MR. DEMUREN: Do you --

5 CHAIRPERSON MILLER: Mr. Ford --

6 MR. DEMUREN: -- want me to tell
7 you how many two-by-fours we used to brace it?

8 CHAIRPERSON MILLER: You're saying
9 that when you left work Saturday night --

10 MR. DEMUREN: Yes.

11 CHAIRPERSON MILLER: -- at seven -
12 -

13 MR. DEMUREN: Yes.

14 CHAIRPERSON MILLER: -- the
15 building was left in a safe condition.

16 MR. DEMUREN: Yes.

17 CHAIRPERSON MILLER: Is that
18 right?

19 MR. DEMUREN: Yes.

20 CHAIRPERSON MILLER: Why do you
21 say that? How was it safe? Why do you think
22 it was safe? It collapsed later.

23 MR. DEMUREN: Yeah, it collapsed

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1 later.

2 CHAIRPERSON MILLER: What
3 condition did you leave it in which in your
4 opinion made it safe?

5 MR. DEMUREN: I mean, in my
6 opinion we had the walls. The walls were
7 still up. I mean, what appeared to us to be
8 safely held in place.

9 CHAIRPERSON MILLER: Were they
10 braced?

11 MR. DEMUREN: Yes, they were
12 braced.

13 COMMISSIONER TURNBULL: This was
14 additional bracing that you provided?

15 MR. DEMUREN: Yes.

16 CHAIRPERSON MILLER: I just want
17 to jump in here because I just want to get it
18 clear for the record. I thought Mr. -- Mr.
19 Ford, I thought that you said they weren't
20 braced.

21 MR. GREEN: He did.

22 CHAIRPERSON MILLER: Mr. Green,
23 please. Let me Ford answer the question.

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1 MR. FORD: I wasn't on site. So I
2 don't know if they were braced or not. I was
3 saying if the walls were left at a certain
4 height they should be braced to keep the wind
5 from tumbling over under certain conditions,
6 but I wasn't there. I have no idea how they
7 were left, and I haven't seen any pictures to
8 indicate how they were left. So I couldn't
9 say that I've seen something to say that they
10 were braced or not braced.

11 CHAIRPERSON MILLER: Okay. If
12 they were braced could they still have
13 collapsed?

14 MR. FORD: If they were braced
15 correctly, no, it would not have collapsed.

16 CHAIRPERSON MILLER: Okay.
17 Anything else?

18 MR. GREEN: Yeah, I just have one
19 question, you know. I direct your attention
20 to your affidavit and number nine where you
21 stated that on or about February 7, 2006,
22 during the construction of the addition that
23 you became concerned about the structural

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1 integrity of the single family dwelling, and
2 that you notified DCRA of this concern and
3 requested an inspection of the property; is
4 that right?

5 MR. DEMUREN: Yes, that's correct,
6 and I believe I also stated that with my
7 testimony.

8 MR. GREEN: All right. Tell me
9 this. Who did you contact? How did you
10 contact them?

11 MR. DEMUREN: Okay. First of all,
12 I don't know who, and there's a telephone
13 number that you call for the inspection. I
14 don't know who picks up the phone on the
15 telephone number. That's the number that we
16 call. Right now if you ask me the telephone
17 number, I can't tell you.

18 MR. GREEN: You didn't ask anyone
19 for their name or follow-up number or
20 anything?

21 MR. DEMUREN: At that time I
22 didn't.

23 MR. GREEN: And yet you were

1 concerned about the structural integrity of
2 your walls; is that not right?

3 MR. DEMUREN: Yes, and I believe
4 what I was supposed to do was to call, which
5 I called them, and they have a receptionist --
6 who I believe is a receptionist -- who took my
7 call and told me that an inspector was going
8 to show up and later I found out the inspector
9 showed up. So I know she did her job.

10 MR. GREEN: But you didn't ask for
11 her name or anything of that sort?

12 MR. DEMUREN: No, I didn't see the
13 need to ask for her name, no.

14 MR. GREEN: All right, and the
15 inspector that did show up, what was his name?

16 MR. DEMUREN: Like I stated on the
17 testimony, I didn't know because I wasn't
18 there when he was there.

19 MR. GREEN: Who was there when he
20 came? Do you know?

21 MR. DEMUREN: I don't have a clue.
22 I don't know.

23 MR. GREEN: No one from your firm

1 or you company?

2 MR. DEMUREN: No, because they
3 didn't tell us when he was going to be there.

4 MR. GREEN: All right. Was there
5 a follow-up conversation with DCRA after the
6 inspector left?

7 MR. DEMUREN: Yes.

8 MR. GREEN: And who was that
9 inspector or individual?

10 MR. DEMUREN: I believe, like I
11 stated and I told you I wasn't 100 percent
12 sure, I believe it was Lenny Douglas, and he
13 told us based on what they have reviewed
14 they're going to issue us a demo permit, an
15 emergency demo permit, and I believe DCRA
16 still agrees to that fact.

17 MR. GREEN: All right. I don't
18 have any other questions, Madam Chairman. I
19 know Ms. Woolridge does. She's just got two.

20 MS. PARKER-WOOLRIDGE: Mr.
21 Demuren.

22 MR. DEMUREN: Yes, ma'am.

23 MS. PARKER-WOOLRIDGE: Good

1 evening. You said you spoke with Mr. Douglas.

2 MR. DEMUREN: I believe so.

3 MS. PARKER-WOOLRIDGE: Okay. Did
4 you also go to Mr. Douglas' office to speak
5 with him?

6 MR. DEMUREN: You mean before --

7 MS. PARKER-WOOLRIDGE: Did you go
8 to his office?

9 MR. DEMUREN: -- before we
10 received the emergency demo permit for --

11 MS. PARKER-WOOLRIDGE: Yes, sir.

12 MR. DEMUREN: Or after? Before?

13 MS. PARKER-WOOLRIDGE: Yes, sir.

14 MR. DEMUREN: No, I didn't.

15 MS. PARKER-WOOLRIDGE: You did not
16 go to his office.

17 MR. DEMUREN: No, I did not go
18 to --

19 MS. PARKER-WOOLRIDGE: So you
20 spoke to him on the phone before you received
21 the demolition permit?

22 MR. DEMUREN: Yes.

23 MS. PARKER-WOOLRIDGE: You did.

1 Do you recall the conversation? What was Mr.
2 Douglas' conversation with you?

3 MR. DEMUREN: If I remember
4 correctly, and I also stated, he said he was
5 going to issue the emergency demo permit and
6 we should remove to a safe height.

7 The other -- that's my
8 understanding of what he was telling me.

9 MS. PARKER-WOOLRIDGE: Okay, and
10 you're saying you do not recall going to Mr.
11 Douglas' office at all to discuss this
12 demolition permit.

13 MR. DEMUREN: After.

14 MS. PARKER-WOOLRIDGE: After.

15 MR. DEMUREN: I went to his office
16 where I think the conference -- I don't know
17 his office. I went to his after, but before
18 the demolition permit was issued, I did not go
19 to his office.

20 MS. PARKER-WOOLRIDGE: Do you
21 recall saying to Mr. Douglas that one of the
22 walls are not structurally sound and you need
23 a demolition permit?

1 MR. DEMUREN: No, I didn't tell
2 Mr. Douglas. I made the call to send an
3 inspector out. Maybe the inspector talked to
4 Mr. Douglas. I don't know how it works inside
5 DCRA. The only thing I did was we had a
6 concern. We called the authority in charge.
7 We waited for them to act. They told us what
8 to do, and we went out and did it.

9 MS. PARKER-WOOLRIDGE: Mr.
10 Demuren, you keep saying that someone from
11 DCRA told you what to do. Who was this person
12 that you have spoken of? You said so many
13 people. Inspectors, you don't know the name.
14 You said they came to your premises and you
15 don't know when, who, where, what the person
16 did.

17 So who was the inspector that came
18 to your premises?

19 MR. DEMUREN: Are you talking
20 about before the emergency demo permit was
21 issued or --

22 MS. PARKER-WOOLRIDGE: Tell me
23 about before and after, the inspectors that

1 came to your premises.

2 MR. DEMUREN: Okay. Before it was
3 the emergency permit was issued, I already
4 stated that I was in there when the inspector
5 came there.

6 MS. PARKER-WOOLRIDGE: Okay. How
7 do you know --

8 CHAIRPERSON MILLER: He did say
9 that.

10 MR. DEMUREN: And he didn't leave
11 a card.

12 CHAIRPERSON MILLER: Okay.

13 MS. PARKER-WOOLRIDGE: I
14 understand that. How do you know an inspector
15 came there then?

16 MR. DEMUREN: Because I got a call
17 that says the inspector was there. They've
18 inspected it. They're going to give me
19 emergency demo permit. You would take it down
20 -- my understanding was take to a safe height.
21 So that's how I knew he was there because if
22 he wasn't there, they don't give me the
23 emergency demo permit.

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1 MS. PARKER-WOOLRIDGE: So you said
2 an inspector or someone from DCRA called and
3 said somebody was at your premises and that
4 somebody -- that DCRA will give you a permit.
5 Am I correct?

6 MR. DEMUREN: Well, they said they
7 would give me a permit, and they did. So know
8 that the person that called me must have
9 authority to issue the permit.

10 MS. PARKER-WOOLRIDGE: And you
11 don't know who called either?

12 MR. DEMUREN: No, I don't know. I
13 didn't get -- you know, I don't know, I mean.

14 MS. PARKER-WOOLRIDGE: Do you
15 usually get calls from DCRA and says someone
16 is going to issue you a permit after they've
17 done an inspection? That's not procedure.

18 MR. DEMUREN: No, it depends.

19 MS. PARKER-WOOLRIDGE: Okay.

20 MR. DEMUREN: It depends on --

21 MS. PARKER-WOOLRIDGE: Have you
22 received --

23 MR. DEMUREN: -- what I've called

1 them for.

2 MS. PARKER-WOOLRIDGE: Have you
3 received a call from DCRA saying, "Okay.
4 We've done an inspection. Now come and get
5 your permit"?

6 MR. DEMUREN: I think in this
7 situation what happened is this. I made a
8 call first.

9 MS. PARKER-WOOLRIDGE: Okay.

10 MR. DEMUREN: And I was expecting
11 a call back. I haven't had the situation to
12 make a call to them first. What I do when I
13 want to get a permit is I go there or send
14 somebody there.

15 So if I don't call first, nobody
16 from DCRA will just call me and say, "Come and
17 get this permit."

18 MS. PARKER-WOOLRIDGE: So you
19 called.

20 MR. DEMUREN: Yes. That's what I
21 stated earlier.

22 MS. PARKER-WOOLRIDGE: No, that's
23 not what you stated earlier, but we'll move

1 forward.

2 MR. DEMUREN: No, that's what I
3 stated. I'd like to -- I called inspection.
4 The lady, the receptionist picked up and said
5 they were going to send an inspector. That's
6 what I did say.

7 MS. PARKER-WOOLRIDGE: Your Honor,
8 unfortunately Mr. Douglas is not here for us
9 to present as a rebuttal witness that Mr.
10 Demuren -- he came to Mr. Douglas' office and
11 they did have a meeting.

12 CHAIRPERSON MILLER: This is
13 probably going to be continued if you want to
14 present him.

15 MS. PARKER-WOOLRIDGE: Okay. Then
16 I'll call as a rebuttal witness, yes. Thank
17 you, Your Honor. I'm sorry. Madam Chair.

18 Just a few more questions.

19 Mr. Demuren, did you attend the
20 meeting with, I believe, Attorney Brown and
21 Mr. Bello at DCRA?

22 MR. DEMUREN: No.

23 MS. PARKER-WOOLRIDGE: You were

1 not there, were not present?

2 MR. DEMUREN: Wait, wait. Do you
3 mean a meeting or the hearing?

4 MS. PARKER-WOOLRIDGE: No, a
5 meeting in December or November. I believe it
6 was November.

7 MR. DEMUREN: No, I wasn't there.

8 MS. PARKER-WOOLRIDGE: You were
9 not present? Okay.

10 MR. DEMUREN: I wasn't there.

11 MS. PARKER-WOOLRIDGE: Okay. Is
12 this the first time you've ever obtained a
13 building permit from DCRA?

14 MR. DEMUREN: A building permit
15 from DCRA?

16 MS. PARKER-WOOLRIDGE: Un-huh.

17 MR. DEMUREN: No.

18 MS. PARKER-WOOLRIDGE: So you
19 pretty much know the procedure?

20 MR. DEMUREN: Well --

21 MS. PARKER-WOOLRIDGE: You're not
22 new at it?

23 MR. DEMUREN: (Pause.)

1 MS. PARKER-WOOLRIDGE: You can
2 answer the first question.

3 MR. DEMUREN: Well, that's a
4 difficult question to answer because --

5 MS. PARKER-WOOLRIDGE: Do you
6 have --

7 MR. DEMUREN: -- sometimes when I
8 ask the people at DCRA and I ask them the
9 procedure, they don't know because it changes.

10 MS. PARKER-WOOLRIDGE: That's not
11 what I asked. I asked --

12 MR. DEMUREN: You asked --

13 MS. PARKER-WOOLRIDGE: -- do you
14 have experience.

15 MR. BROWN: And he's saying what
16 his experience is.

17 MS. PARKER-WOOLRIDGE: Either he
18 has experience --

19 CHAIRPERSON MILLER: Does he have
20 experience with what, with --

21 MS. PARKER-WOOLRIDGE: Obtaining
22 permits --

23 CHAIRPERSON MILLER: -- obtaining

1 permits from DCRA?

2 MS. PARKER-WOOLRIDGE: -- from
3 DCRA, which he would know the procedure.

4 MR. DEMUREN: Well, my statement
5 is this, that the procedures at DCRA changes
6 on a daily basis on who you meet. So it's
7 difficult for me to tell you that I understand
8 the procedure.

9 CHAIRPERSON MILLER: Okay. Wait.

10 MS. PARKER-WOOLRIDGE: I just
11 asked the question --

12 CHAIRPERSON MILLER: Okay. I
13 think -- well, there's some language problems,
14 too. You're speaking very fast.

15 MS. PARKER-WOOLRIDGE: Okay.

16 CHAIRPERSON MILLER: And I think -
17 -

18 MS. PARKER-WOOLRIDGE: I'll slow
19 down.

20 CHAIRPERSON MILLER: -- that he --
21 I don't think that you were answering the
22 question she was asking.

23 MS. PARKER-WOOLRIDGE: Okay.

1 MR. DEMUREN: Okay.

2 CHAIRPERSON MILLER: I don't
3 think. So do you want to ask it again more
4 slowly?

5 MS. PARKER-WOOLRIDGE: Okay. Do
6 you -- have you -- have you obtained permits
7 from DCRA?

8 MR. DEMUREN: Yes.

9 MS. PARKER-WOOLRIDGE: Okay. How
10 many times have you obtained permits from
11 DCRA? More than 100?

12 MR. DEMUREN: No, I would say
13 maybe from when I started up till today maybe
14 30.

15 MS. PARKER-WOOLRIDGE: Thirty. So
16 you have some experience with DCRA as far as
17 how to obtain a permit, how to get a permit.
18 You're not a newcomer.

19 MR. DEMUREN: I cannot honestly
20 answer that question.

21 MS. PARKER-WOOLRIDGE: Okay.

22 MR. DEMUREN: Because my opinion -

23 -

1 MS. PARKER-WOOLRIDGE: So you have

2 30 --

3 MR. DEMUREN: -- is different.

4 MS. PARKER-WOOLRIDGE: -- permits
5 from DCRA that you obtained yourself.

6 MR. DEMUREN: Oh, you mean -- see,
7 that's why it's difficult for me. I have
8 permit expeditors that obtain permits for me.
9 When you say personally go there to obtain it,
10 that makes it -- that's why it's difficult for
11 me to answer that question.

12 MS. PARKER-WOOLRIDGE: Okay.

13 MR. DEMUREN: If you --

14 MS. PARKER-WOOLRIDGE: I'm asking
15 that you, not your permit expeditors, you.

16 MR. DEMUREN: That I personally
17 applied for? Maybe eight.

18 MS. PARKER-WOOLRIDGE: Eight.

19 MR. DEMUREN: Yeah, maybe. I
20 don't know.

21 MS. PARKER-WOOLRIDGE: And you got
22 those permits yourself.

23 MR. DEMUREN: Yes.

1 MS. PARKER-WOOLRIDGE: Okay. You
2 mentioned that no one told you what to do --
3 well, I guess you said no one from DCRA told
4 you what to do once you got the demolition
5 permit. Is that what you said? Was that your
6 testimony?

7 MR. BROWN: I think he said the
8 complete opposite.

9 MR. DEMUREN: I think my statement
10 was that I was told to take it down to a safe
11 height. I didn't say nobody told me --

12 MS. PARKER-WOOLRIDGE: Okay. Who
13 told you to take it down to a safe height?

14 MR. DEMUREN: I believe I made a
15 statement that I believe it was Mr. Lenny
16 Douglas.

17 MS. PARKER-WOOLRIDGE: Mr. Lenny
18 Douglas told you to take it down to a safe
19 height.

20 MR. DEMUREN: Yes.

21 MS. PARKER-WOOLRIDGE: This was on
22 the phone and not in the office.

23 MR. DEMUREN: Not in the office,

1 definitely not in the office.

2 MS. PARKER-WOOLRIDGE: Okay. Was
3 there some question when you were talking to
4 Mr. Douglas as to the safety of that
5 structure? Is that to get it to a safe
6 height?

7 MR. DEMUREN: Well, I didn't ask
8 that question. Basically I made a request,
9 and they granted my request. They told me
10 what to do. So I didn't ask him, you know,
11 that question I asked him. Maybe I should
12 have, but I didn't.

13 MS. PARKER-WOOLRIDGE: Were you
14 doing the work yourself?

15 MR. DEMUREN: No.

16 MS. PARKER-WOOLRIDGE: Okay. So
17 you had -- you hired some people to, I assume,
18 advise you in how to construct the structure?

19 MR. DEMUREN: Well, let me back
20 up. What do you mean by my doing the work
21 myself? Do you mean physically putting the
22 nails in or --

23 MS. PARKER-WOOLRIDGE: What was

1 your -- what was your position? What did you
2 do besides being the owner?

3 MR. DEMUREN: I manage.

4 MS. PARKER-WOOLRIDGE: You manage.

5 MR. DEMUREN: I manage the
6 contractors. I manage the people. I manage
7 the job site. That's basically what I do.

8 MS. PARKER-WOOLRIDGE: So earlier
9 you testified that you went to the premises on
10 a Saturday and you braced the structure. Am
11 I correct?

12 MR. DEMUREN: We worked there on a
13 Saturday --

14 MS. PARKER-WOOLRIDGE: "We"?

15 MR. DEMUREN: -- before we left --
16 well, I didn't -- I don't, like I just stated
17 -- the people that I managed that were doing
18 the work, we were there together on the
19 Saturday and before we left, we braced the
20 part of the walls that were left standing. I
21 hope that explains.

22 MS. PARKER-WOOLRIDGE: Okay. You
23 braced; you and your workers braced the

1 structure on Saturday, and then two days later
2 or a day later it collapsed.

3 MR. DEMUREN: I believe that --

4 MS. PARKER-WOOLRIDGE: Prior to
5 you going there you were saying --

6 MR. DEMUREN: -- it collapsed
7 Monday evening, Tuesday -- Monday being a
8 holiday then.

9 MS. PARKER-WOOLRIDGE: You then it
10 collapsed on Tuesday?

11 MR. DEMUREN: I don't know what
12 time in the evening. Maybe it was before 12
13 or after 12. I just know it was in the news.

14 CHAIRPERSON MILLER: It's probably
15 in -- is it not in this appeal statement? Is
16 it in the appeal statement?

17 MR. DEMUREN: Oh, I don't --

18 MR. BROWN: There's a discussion.
19 I mean, I don't pinpoint the time when the --

20 CHAIRPERSON MILLER: The day it
21 collapsed?

22 MR. BROWN: A range between --

23 CHAIRPERSON MILLER: Oh.

1 MR. BROWN: -- the evening of the
2 18th, Saturday, through the holiday.

3 CHAIRPERSON MILLER: That's what
4 you said. Okay. So I can see then why she's
5 asking the question, I guess. I thought maybe
6 it was answered in here.

7 Sir, you believe --

8 MR. BROWN: Does it matter?

9 CHAIRPERSON MILLER: It matters to
10 them. I don't know for what reason at this
11 point.

12 So what is the answer? Monday
13 evening is what you think?

14 MR. DEMUREN: Monday evening is
15 what I believe.

16 CHAIRPERSON MILLER: Okay.

17 MS. PARKER-WOOLRIDGE: Just one
18 more question. Mr. Demuren, just a follow-up
19 question about Mr. -- Attorney Matthews asked
20 you with your knowledge and expertise that you
21 had told the Board earlier dealing with
22 construction.

23 Okay. In reference to just to

1 follow up Mr. Green's question earlier about
2 your knowledge and your expertise in
3 construction, and Mr. Ford testified about
4 that you would look for cracks in the wall and
5 et cetera, did you even look for that when you
6 all were bracing the building to secure this
7 building?

8 MR. DEMUREN: We saw some of the
9 cracks.

10 MS. PARKER-WOOLRIDGE: You saw
11 some cracks.

12 MR. DEMUREN: Yeah, we didn't open
13 it up to see what was behind it, and we braced
14 it as we saw fit at that particular point in
15 time.

16 MS. PARKER-WOOLRIDGE: So what do
17 you usually do when you see cracks? I mean,
18 you know, if you're -- you know all about --
19 I don't know anything about construction.

20 MR. DEMUREN: It is not all the
21 cracks that you open. We were told to bring
22 it down to a safe height. We didn't want to
23 go lower than that.

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1 MS. PARKER-WOOLRIDGE: But weren't
2 you concerned when you saw that cracks?
3 Because it sounded like Mr. Ford was when he
4 testified, that --

5 MR. DEMUREN: Well --

6 MS. PARKER-WOOLRIDGE: -- we
7 should have.

8 MR. DEMUREN: If you're on site, I
9 mean, I believe some of the cracks -- I don't
10 even know which crack you're talking about.
11 If it's a thin line crack or it is a crack
12 that is two inches wide or -- and so it's
13 difficult for me to be able to answer that
14 particular question on the crack. I don't
15 know which way you're talking about.

16 MS. PARKER-WOOLRIDGE: Well, I
17 wasn't there, but you said you saw cracks, and
18 Mr. Ford mentioned about cracks in
19 construction.

20 MR. DEMUREN: Well, you asked me
21 about the cracks.

22 MS. PARKER-WOOLRIDGE: Un-huh.

23 MR. DEMUREN: And I told you

1 that --

2 MS. PARKER-WOOLRIDGE: You saw
3 some cracks.

4 MR. DEMUREN: -- we saw some
5 cracks, but --

6 MS. PARKER-WOOLRIDGE: Okay.
7 Now, --

8 MR. DEMUREN: -- the cracks that
9 we saw were think line cracks, and we didn't
10 see the need to open them up.

11 MS. PARKER-WOOLRIDGE: Thin line
12 cracks now.

13 MR. DEMUREN: Yes.

14 CHAIRPERSON MILLER: What do you
15 mean "open them up"?

16 MR. DEMUREN: I mean making them
17 bigger.

18 CHAIRPERSON MILLER: Why would you
19 do that?

20 MR. DEMUREN: I mean, we don't see
21 the need to so that we didn't do that. The
22 only way you would -- I mean, we didn't see
23 the need to do it. So that's why we did not

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1 do it.

2 CHAIRPERSON MILLER: I don't know
3 a lot about construction. So that's my
4 question. You say we didn't see the need to
5 open them up. What would the need be to open
6 them up? When would there be a need?

7 MR. DEMUREN: Before that event --
8 well, if let's say the --

9 CHAIRPERSON MILLER: Oh, you mean
10 to break --

11 MR. DEMUREN: -- crack was wide
12 and it goes long and then maybe on the other
13 side of the wall you see the same crack. Then
14 it might be a structural problem.

15 MS. PARKER-WOOLRIDGE: I have no
16 other questions. Thank you.

17 CHAIRPERSON MILLER: I just want
18 to ask one other follow-up about this. Have
19 you had other projects where walls have
20 collapsed?

21 MR. DEMUREN: No.

22 CHAIRPERSON MILLER: Okay. So you
23 don't have a lot of experience with collapsing

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1 walls?

2 MR. DEMUREN: Not -- not a lot of
3 experience on collapsing walls.

4 CHAIRPERSON MILLER: Do you have
5 experience with bracing walls?

6 MR. DEMUREN: Yes.

7 CHAIRPERSON MILLER: Okay. Okay.
8 Any other questions?

9 (No response.)

10 CHAIRPERSON MILLER: Okay. We're
11 just going to take a minute and look at our
12 calendar for a continuance.

13 (Pause in proceedings.)

14 CHAIRPERSON MILLER: Okay. Do the
15 parties have any problem with October 16th,
16 first case in the afternoon? So that could be
17 as early as one o'clock.

18 It's okay with the Appellant.

19 MR. GREEN: Excuse me, Madam
20 Chairman. In terms of days, you said the
21 16th. Is there anything other than that case,
22 this case that's scheduled for the 16th?

23 CHAIRPERSON MILLER: You mean do

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1 we have Tuesday like totally wide open except
2 for to slip this case in?

3 MR. GREEN: No, no. The only
4 reason I ask that is that co-counsel has
5 indicated that she's got a case that she
6 thought it was here, and I'm saying that it
7 would be kind of difficult.

8 CHAIRPERSON MILLER: We have
9 appeals every Tuesday afternoon.

10 MR. GREEN: I know you do.

11 CHAIRPERSON MILLER: And they most
12 likely involve DCRA. So she probably will be
13 here.

14 So, yeah, we also were
15 anticipating that that case might not be able
16 to be completed that afternoon and, therefore,
17 might need to be continued anyway so that we
18 would take the first part of the afternoon to
19 finish this case and then pick up that second
20 case. We're not bumping the other case.
21 We're just -- it will just start a little bit
22 later. It's the only case scheduled in the
23 afternoon.

1 Maybe it will finish. We haven't
2 read the case yet. Basically we have a very
3 full calendar all the way through December.
4 It's just a question of where we're going to
5 try to fit you in. So this looks like the
6 best spot right now. We don't have any
7 withdrawals or anything like that at this
8 point.

9 MR. GREEN:

10 We'll take it, Your Honor. I mean
11 Madam Chairman.

12 CHAIRPERSON MILLER: Okay. Any
13 other questions?

14 MR. BROWN: We left kind of in
15 abeyance the motion to dismiss from DCRA. In
16 the period between now and the 16th, I'd like
17 to file a response. Is that acceptable?

18 CHAIRPERSON MILLER: Does DCRA
19 have any objection to that?

20 MS. BOLLING: Yes, Madam Chairman.
21 We object in that our motion to dismiss was a
22 response or opposition to his motion for
23 summary judgment. We styled it as that

1 because we believe the law is clear in this
2 matter and that 33.5(c) does not allow the
3 Zoning Administrator to act as the remedy
4 sought by the Appellant.

5 CHAIRPERSON MILLER: Okay. Wait a
6 second because I'm a little bit confused. If
7 you called it a motion to dismiss, why in the
8 world wouldn't the Appellant have an
9 opportunity to file an opposition to the
10 motion to dismiss?

11 MS. BOLLING: It's an opposition
12 to summary judgment in that we believe that it
13 is clear on the face of his filing that there
14 is no relief that can be granted pursuant
15 under law. So we believe ours is a true
16 opposition, but it's styled as a motion to
17 dismiss because there's no relief under the
18 law available as a remedy for him.

19 So we would oppose because it
20 would be a sur-response -- a surrebuttal.

21 MR. BROWN: I mean, I don't think
22 the Chair even believes that. I would like to
23 be able to respond. Today is the 2nd. I can

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1 try to -- does the Board feel any need to have
2 anything before Monday, the 15th, in response?

3 And I promise not to belabor it.

4 CHAIRPERSON MILLER: I'm just
5 trying to figure out the best way to proceed.
6 We want all of the facts; we want all of the
7 arguments, you know. And so I'm wondering,
8 you know, is this going to be it or are you
9 all going to want to file something after the
10 hearing as well?

11 MR. GREEN: I think, Madam
12 Chairman, you've hit the nail on the head.
13 What you're going to have in the situation is
14 a response and the surrebuttal and the
15 rebuttal. I mean, this could go on ad
16 infinitum or ad nauseam, if you will.

17 I think that what you could do,
18 you could put a limitation on the response, if
19 any. What we, in effect, did was respond to
20 his motion. Yes, it was styled the way it was
21 styled, but if you want us to -- you know,
22 you want to get all of the facts, I think
23 you've gotten pretty much the facts that

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1 you're going to get from anything other than
2 maybe a findings of fact and conclusions of
3 law.

4 I think that to continue this back
5 and forth will not assist you in understanding
6 what the facts are and what the law is. I
7 think you have a pretty clear understanding of
8 the facts and the law, and it's getting even
9 clearer through the testimony. And it
10 certainly will be clear when the Zoning
11 Administrator and the other witness that we
12 intend to bring speak.

13 MS. BOLLING: And, Madam Chair, if
14 the Board is of a mind to allow Mr. Brown to
15 respond to our motion to dismiss and not treat
16 our motion to dismiss as a response or
17 opposition to his motion for summary judgment,
18 then the District would ask for time to file
19 an opposition to summary judgment if you're
20 not going to treat ours as opposition.

21 CHAIRPERSON MILLER: Okay. This
22 is what I think. I'll hear what other Board
23 members think.

1 I mean, I'm certainly interested
2 in hearing from the parties if it's going to
3 help us focus on the issues and resolve the
4 questions in dispute, and I don't care
5 personally if you do both file supplemental
6 pleadings if you want to. It's more work for
7 you. I wouldn't say you need to. I wouldn't
8 ask for it, but if anybody is willing, in my
9 opinion -- and we can hear from other Board
10 members -- you know, we want to -- I think it
11 is addressed as a motion to dismiss, and I
12 would say that the Appellant should be allowed
13 to file an opposition to that, and if you say
14 you've already filed and that your motion to
15 dismiss is an answer to their motion for
16 summary judgment, then I'd say you don't even
17 need to file another opposition because you
18 already have.

19 However, I don't want to, you
20 know, shut anybody off from filing something
21 now or later. You can wait until later, till
22 all of the evidence is in if you want to make
23 your case later. If somebody has something

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1 compelling to respond to, I wouldn't say no to
2 it.

3 I would say also that at this
4 juncture, you know, if there are any issues
5 that the Board members are really concerned
6 about, I think it might be worth letting you
7 all know that, and then we can use the time
8 for Dr. Lee (phonetic) if you want to address
9 that as well.

10 Of course, I mean, what's going to
11 happen next week, October 16th, of course,
12 what's going to happen is DCRA s going to get
13 to present its case, but I think at the same
14 time that that's our last hearing. You will
15 all be able to make legal arguments as well.

16 So I have two issues that I would
17 like you to focus on and other Board members
18 if they can think of anything right now, fine.
19 Otherwise we'll leave it to your presentation,
20 but I think the question of vesting has been
21 raised by Mr. Bello and the Appellant, and I
22 think I would be interested in hearing more
23 about that issue, and then the other issue is

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1 whether there was a rebuilding here of this
2 structure under 330.5(c).

3 Mr. Bello and the Appellants have
4 talked about, you know, being able to rebuild
5 under that provision, and so I have a question
6 in my mind. Is this a rebuilding or not a
7 rebuilding?

8 So I'd say that I would leave the
9 record open if the parties feel any need to
10 address any legal issues in writing or, you
11 know, respond to these documents before the
12 next hearing. I don't think it's necessarily
13 necessary, but it would be your own strategy.

14 The question is by what date you
15 would need to file it if you do file it. Let
16 me look. Mr. Brown said the 15th. That
17 doesn't give the other parties much time to
18 think about it, but I don't know that that's
19 required.

20 MR. BROWN: I think that's the
21 purpose of the filing.

22 CHAIRPERSON MILLER: What would be
23 the purpose of your filing?

1 MR. BROWN: Well, the purpose
2 would be to respond to their motion to dismiss
3 to educate the Board. It's not -- I don't
4 think it's for consumption for DCRA's purpose.
5 There obviously can --

6 CHAIRPERSON MILLER: So you're
7 saying that you would submit it on the 15th
8 and so it could be like faxed to the Board?

9 MR. BROWN: Well, if you -- and I
10 don't know how documents are transmitted to
11 you. You know, we could file it sooner than
12 that.

13 CHAIRPERSON MILLER: I think
14 sooner probably would be better for the staff,
15 but at the last minute is harder on the staff.

16 MR. BROWN: Before Friday, October
17 12th, I mean.

18 MS. BAILEY: I would suggest that
19 the latest, Madam Chair -- I think Mr. Brown
20 just put his fingers on it -- Friday, October
21 12th would be a good date for us to have a
22 little time to process the information and get
23 it to the Board.

1 MR. BROWN: By like three o'clock,
2 3:00 p.m..

3 CHAIRPERSON MILLER: Okay, if
4 that's okay with the staff.

5 Okay. So we'll leave the record
6 open for that and also if DCRA wants to file
7 in response to the motion to -- summary
8 judgment motion. Though you've said you have
9 filed a response. So I don't know. So it's
10 certainly not required and it probably won't
11 be your last opportunity to address the
12 issues.

13 So okay. Any other questions?

14 COMMISSIONER LOUD: The one thing
15 I want clarification on --

16 CHAIRPERSON MILLER: Yes.

17 COMMISSIONER LOUD: -- is if
18 you're going to proceed this way, and we'll
19 have a motion for summary judgment before us,
20 and a motion to --

21 CHAIRPERSON MILLER: We already
22 have a motion for summary judgment.

23 COMMISSIONER LOUD: -- dismiss

1 before us --

2 CHAIRPERSON MILLER: Right, right.

3 COMMISSIONER LOUD: -- and its
4 opposition, that you address the material
5 facts that are in dispute with respect to the
6 motion for summary judgment.

7 I'd also like to, you know, have
8 you think about whether you really need --
9 whether this case really needs both a motion
10 for summary judgment and a motion to dismiss.
11 It just doesn't sound like -- it sounds like
12 one would state a case for release in the
13 motion for summary judgment and would not need
14 to even respond to -- you know, you've got to
15 do what you've got to do, but one's motion for
16 summary judgment would have sufficient
17 recitation of facts to state a claim for
18 relief, almost to the point where on these
19 facts it doesn't make a lot of sense to have
20 both of those preliminary motions pending for
21 review.

22 I can't see --

23 CHAIRPERSON MILLER: I think

1 that's a good point, and I didn't want to end
2 this before actually I heard if there were any
3 other specific concerns by Board members, and
4 I'm wondering if we can clarify for the record
5 DCRA, you know, or you can do this in maybe
6 a supplemental pleading because, on the one
7 hand, you say it's a motion to dismiss and
8 then, on the other hand, you say, no, it's in
9 opposition to the motion for summary judgment,
10 and it would just be neater for the record if
11 that's clarified, unless you want to do that
12 right now.

13 MS. BOLLING: Does Madam Chair
14 want us to do that right now?

15 CHAIRPERSON MILLER: If you can,
16 if you know the answer. It seems to me though
17 when I glanced at your motion to dismiss that
18 some of it looks like it's in motion to
19 dismiss form. So I'm not sure that you really
20 -- unless you're going to say you want to
21 leave it as a motion to dismiss. I don't
22 know.

23 MS. BOLLING: It is a motion to

1 dismiss, and it was brought about in response
2 to counsel's motion for summary judgment, and
3 upon our analysis we felt the Board would be
4 best served with a motion to dismiss in
5 response because in our view the law is clear
6 and a motion to dismiss more accurately
7 reflected what needed to be filed.

8 CHAIRPERSON MILLER: Okay. So
9 then what we have here is a motion for summary
10 judgment and a motion to dismiss, and then I
11 believe we'll leave the record open to file by
12 October 15th for opposition to those motions.
13 Okay. Good.

14 Now, do we have any other
15 questions from Board members that we want the
16 parties to address in particular?

17 COMMISSIONER LOUD: And wilfulness
18 issue, the issue of wilfulness. There was
19 some testimony here regarding the only
20 scenario under which the act of God or --
21 excuse me -- the act of God and the casualty
22 underpinning for this matter of right to
23 rebuild would not apply would be if the

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1 collapse were in some way wilful, and that's
2 the issue that I'm asking we addressed as part
3 of the preliminary proceedings.

4 MR. BROWN: As a legal or a
5 factual matter?

6 COMMISSIONER LOUD: I would think
7 for the summary judgment it would have to be
8 as a fact. There would have to be some
9 indication of the factual nature of the
10 wilfulness and whether or not that's in
11 dispute and what makes it in dispute for the
12 purposes of the summary judgment.

13 MR. BROWN: Understood.

14 CHAIRPERSON MILLER: Okay.
15 Anything else?

16 (No response.)

17 CHAIRPERSON MILLER: Okay. Then
18 we'll see you on the 16th. Thank you.

19 Good night. This hearing is
20 adjourned.

21 (Whereupon, at 9:18 p.m., the
22 hearing in the above-entitled matter was
23 adjourned, to reconvene at 1:00 p.m., October

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1 16, 2007.)

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